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Presidential Documents

Title 3—

The President

Proclamation

Greek Independence Day: a National Day of Celebration of Greek And American Democracy, 2010

By the President of the United States of America

A Proclamation

Today, as we commemorate the 189th anniversary of Greece's independence, we reaffirm the ties that link our nations together as allies and warm friends. We also honor the accomplishments of Greek Americans and their immeasurable contributions to the United States.

It was the genius of America's forebears to enshrine the pre-eminent idea of democracy in our Nation's founding documents. Inspired by the governing values of ancient Greece, they launched the great American experiment. Thomas Jefferson, the principal author of our Declaration of Independence, later expressed his admiration for the Greeks and their heritage as they fought their War of Independence. Writing in 1823, he acknowledged Greece as "the first of civilized nations, [which] presented examples of what man should be."

The Hellenic influence on America's scholarly traditions reflects our Nation's high regard for Greece's lasting heritage. Our physicians uphold the timeless ethics of Hippocrates, and our students learn the mathematics of Euclid and Pythagoras. Our law schools use the Socratic Method, and the structures of ancient Greece have inspired many of our most cherished buildings and monuments. Greek Americans have also shaped our Nation as leaders in every sector of American life, and their community has strengthened the fabric of our country with its vibrant culture and unique traditions.

Above all, we were blessed to inherit the Hellenic ideal of democracy, which lives on today in Greece and America, and reinforces the enduring bonds between our two nations.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 25, 2010, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy." I call upon all the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–7240
Filed 3–29–10; 8:45 am]
Billing code 3195–W0–P

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

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

[FNS–2009–0001]

RIN 0584–AD71

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This rule makes administrative corrections to a final rule published in the **Federal Register** on October 8, 2009, entitled "Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment."

DATES: *Effective Date:* March 30, 2010.

FOR FURTHER INFORMATION CONTACT: Sandra Clark, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305–2746, or *Sandy.Clark@fns.usda.gov.*

SUPPLEMENTARY INFORMATION: The Food and Nutrition Service published a final rule in the **Federal Register,** entitled "Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Vendor Cost Containment," 74 FR 51745, on October 8, 2009. Pages 51754 and 51758 stated that two sentences would be added at the end of § 246.12 (g)(4)(i)(D). These two sentences were inadvertently omitted from the regulatory text of paragraph (g)(4)(i)(D) set forth in the final rule published on October 8, 2009. This final rule correction adds the two omitted sentences to § 246.12 (g)(4)(i)(D).

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Grants programs—health, Indians, Infants and children, Maternal and child health, Nutrition, Penalties, Reporting and recordkeeping requirements, Women.

Accordingly 7 CFR part 246 is corrected by making the following correcting amendment:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. Section 246.12 is amended by adding two sentences at the end of paragraph (g)(4)(i)(D) to read as follows:

§ 246.12 Food delivery systems.

* * * * *

(g) * * *
(4) * * *
(i) * * *
(D) * * * A State agency may exclude partially-redeemed food instruments from a quarterly cost neutrality assessment based on an empirical methodology approved by FNS. A State agency may not exclude food instruments from the quarterly cost neutrality assessment based on a rate of partially-redeemed food instruments.

* * * * *

Dated: March 22, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–6977 Filed 3–29–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AC22

Common Crop Insurance Regulations; Florida Avocado Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations; Florida Avocado Crop Insurance Provisions to convert the Florida avocado pilot crop insurance program to a permanent insurance program for the 2011 and succeeding crop years.

DATES: *Effective Date:* April 29, 2010.

FOR FURTHER INFORMATION CONTACT: Claire White, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through March 31, 2012.

E-Government Act Compliance

The Risk Management Agency is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132,

Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1,000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J, for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On Wednesday, May 20, 2009, FCIC published a notice of proposed rulemaking in the **Federal Register** at 74 FR 23660–23664 to add 7 CFR 457.173 Florida avocado crop insurance provisions effective for the 2011 and succeeding crop years. Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions.

A total of 29 comments were received from three commenters. The commenters were two reinsured companies and one insurance service organization. The comments received and FCIC's responses are as follows:

General Comments

Comment: One commenter supports the proposed changes along with the conversion of the Florida Avocado Pilot Crop Insurance Provisions to a permanent program for 2011.

Response: FCIC thanks the commenter for their support.

Comment: One commenter agrees with the proposed deletion of the "order of priority" statement since the order of priority is covered in the Basic Provisions.

Response: FCIC agrees with the commenter that the "order of priority" statement is no longer needed.

Comment: One commenter states an underwriting guide was not developed for the Florida Avocado program during the pilot period as it was for other pilot programs. Underwriting guidelines are useful to ensure consistency among approved insurance providers (AIPs) and to provide guidance to AIPs throughout all aspects of the policy lifecycle.

Response: FCIC will provide underwriting guidelines for the Florida Avocado program in the Crop Insurance Handbook.

Section 1—Definitions

Comment: Two commenters state the defined term "direct marketing" is referenced in section 10 and section 11(c)(1)(B) as "direct marketed." Therefore, the commenters recommend changing the defined term from "direct marketing" to "direct marketed" to be consistent with how it is referenced in sections 10 and 11(c)(1)(B).

Response: FCIC agrees the defined term "direct marketing" should be consistent with the terms used in sections 10 and 11(c)(1)(B). However, FCIC does not agree with the recommendation to change the defined term from "direct marketing" to "direct marketed." Instead, FCIC has changed the term "direct marketed" in sections 10 and 11(c)(1)(B) to "direct marketing" to be consistent with the defined term since this is the term used in all other Crop Provisions. FCIC has also revised sections 10 and 11(c)(1)(B) by adding the phrase "sold by" before the term "direct marketing" so the provision reads clearly.

Comment: Two commenters suggest revising the definition of "type." One commenter suggests revising the definition to be more consistent with other Crop Provisions to include, at the end of the definition, the phrase "as specified in the Special Provisions." Another commenter suggests rearranging the definition so it reads "Either early varieties or late varieties of avocados," unless it is done otherwise in the Crop Provisions for other tree fruit crops.

Response: FCIC agrees with both commenters and has revised the definition accordingly.

Comment: One commenter questions if the definition of "type" means all early varieties will be one type and all late varieties will be a second type, or whether there will be more than two types.

Response: There will only be two insurable types. All early varieties will be one type and all late varieties will be another type.

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: Two commenters state section 3(a) allows the producer to elect different coverage levels for each separate type being insured under these provisions, if the Special Provisions provide that the producer may elect different coverage levels for each avocado type listed in the Special Provisions. If this is the intent, one commenter states language needs to be clarified to read something like "* * *

you may select a different coverage level for each separate type * * *." This revised language states a different coverage level can be elected for each type. When the language states one coverage level may be selected for each type, it is not clear if it must be the same or if it can vary by type. The language needs to be clarified so it is clear as to what is being intended. Another commenter states the language should be changed to something like "* * * you may select a different coverage level for each avocado type * * *" or "* * * you may select one coverage level by type * * *" to be clear that all types do not have to have the same (one) level except when Catastrophic Risk Protection (CAT) level of coverage is elected.

Response: FCIC agrees with the commenters. The provision has been revised to clarify that different coverage may be selected for each type if permitted by the Special Provisions.

Comment: One commenter states the added language in section 3(a) regarding CAT level of coverage states it "* * * will be applicable to all insured types of avocados in the county." This not only suggests there are more than two types, but also the insured might be able to choose to insure some but not all of the types, which does not appear to match the language in section 6(a). Perhaps the word "insured" should be deleted.

Response: FCIC agrees the word "insured" may cause confusion. All types of avocados in which the producer has a share must be insured. The producer cannot choose which types to insure. FCIC has revised section 3(a) by removing the word "insured." The provision has also been clarified to state that the CAT level of coverage applies to all types grown by the producer.

Comment: One commenter states language has been added to section 3(a) to clarify if the producer elects the CAT level of coverage on any type, it must apply to all types in the county. The commenter suggests FCIC consider if similar language should be added in section 3(b) regarding the price election.

Response: FCIC agrees and has revised section 3(b) to include language similar to that in section 3(a) regarding the CAT level of coverage.

Comment: One commenter states the last sentence in section 3(b) refers to using the same price election percentage on "* * * all other types." This appears to be standard language, but see earlier comments about whether or not there are more than two types of avocados.

Response: FCIC agrees and has reworded the provision to specify that the 55 percent CAT coverage will apply to each type the producer grows in the county.

Comment: Two commenters state section 3(d) allows the AIP to reduce the yield used to establish the production guarantee if certain things as specified in this section occur. The proposed provisions state the procedures for reducing the production guarantee are in accordance with the Special Provisions. The commenters say it is difficult to provide any comments since the proposed Special Provisions language is not provided, as this has been difficult to administer in the past. It would be helpful if FCIC would provide a copy of the proposed Special Provisions language so the commenters could offer input on how this is proposed to be implemented.

Response: FCIC realizes it is not necessary to provide the procedures for reducing the yield used to establish the production guarantee in the Special Provisions. After further review, FCIC determined providing a Special Provisions statement to cover all conditions listed in section 3(d) would be difficult. The effects of interplanting a perennial crop; removal of trees; trees that have been buckhorned; damage; or a change in practices on yield potential of the insured crop could provide a wide range of possible problems that may need to be evaluated on an individual basis. Therefore, FCIC has retained the provision as it was stated in the pilot Florida Avocado Crop Provisions. This provision is consistent with provisions in other perennial Crop Provisions, such as Texas citrus fruit, peaches and pears, regarding reducing the yield used to establish the production guarantee.

Section 6—Insured Crop

Comment: One commenter suggests removing the hyphen in the term "commercially grown" in section 6(a).

Response: FCIC agrees and has removed the hyphen.

Comment: One commenter asks for clarification in section 6(a). When this section refers to "* * * types in the county listed in the Special Provisions for which a premium rate is provided * * *" the commenter questioned whether it means the types listed in the SPOI or the county listed in the SPOI.

Response: FCIC agrees this language may be confusing. The language is intended to say the insured crop will be all commercially grown avocado types for which a premium rate is provided by the actuarial documents for the county. The provision has been revised accordingly.

Comment: One commenter suggests FCIC consider changing "* * * actuarial table" to "* * * actuarial documents" in section 6(a) as has been done in other policies and procedures.

Response: FCIC agrees and has revised the provision accordingly.

Comment: Two commenters state section 6(b) provides that any avocados produced on trees that have not reached the fourth growing season after set out and have not produced the minimum production per acre as specified in the Special Provisions in at least one of the previous three crop years are not insurable. The commenter says since the proposed Special Provisions language is not provided, it is difficult to provide any comments. It would be helpful if FCIC would provide a copy of the proposed Special Provisions language so the commenters could know if a change from the current 50 bushels per acre is being considered and therefore know what, if any, comments might be made. One commenter asks if changes to more or less than 50 bushels are being considered.

Response: The Special Provisions allow changes in policy provisions by geographical area when appropriate based on agronomic conditions. When this policy is expanded, it is possible that the 50 bushels currently in the policy may not be appropriate to an area. Providing the minimum production per acre requirement in the Special Provisions will allow flexibility to change the minimum production per acre requirement, which will eliminate the administrative burden of revising the regulation when a simple numerical change is necessary. FCIC is not expecting the minimum production per acre to be more than 50 bushels.

Comment: One commenter notes section 6(b) is revised to state coverage is not provided "* * * on trees that have not reached the fourth growing season after setout and have not produced the minimum production per acre as specified in the Special Provisions in at least one of the previous three crop years." The explanation in the Proposed Rule is this provides flexibility for productive groves, compared to the current language, which states coverage is not provided "* * * on trees that have not reached the fifth growing season after setout. However, we may agree in writing to insure avocados on acreage that has not reached this age if the acreage has produced at least 50 bushels of avocados per acre in a previous year." The commenter asks if this proposed "flexibility" is only in relation to the possible changes from the current 50-bushel figure, or whether it is also supposed to be related to the change from the fifth to the fourth growing

season after setout. The latter flexibility appears to have already existed since the AIP could agree in writing to insure avocados from younger trees as long as they had produced at least 50 bushels per acre in a previous year. The commenter asks how often were such agreements in writing necessary, how often did avocado trees produce at least 50 bushels in the fourth growing season, and how often was that amount produced in the third or second growing seasons, which might no longer be insurable under the proposed language until the trees have reached the fourth growing season. The commenter also asks whether it is possible trees that have reached the fourth growing season (or more) will not yet have produced 50 bushels (or whatever the minimum production requirement per acre is as specified in the Special Provisions), and therefore not be insurable according to the proposed language.

Response: The explanation in the Proposed Rule states providing the minimum production per acre on the Special Provisions allows the flexibility to specify a different minimum production per acre for early and for late varieties. Therefore, "flexibility" relates to providing separate minimum amounts of production per acre on the Special Provisions, if needed, for early varieties and late varieties.

Insuring avocados on trees before the trees reached the fifth growing season after setout was allowed under the Florida Avocado Pilot Crop Insurance Provisions if the AIP agreed in writing. However, FCIC did not receive any written agreement requests to insure avocados grown on trees reaching the second, third or fourth growing season. Since FCIC did not receive any written agreements, FCIC cannot provide an estimate of how often avocado trees produced at least 50 bushels in the second, third or fourth growing seasons.

It is possible trees reaching the fourth growing season (or more) will not yet have produced the minimum production per acre specified in the Special Provisions. Avocados grown on trees not reaching the fourth growing season and not meeting the minimum production per acre specified in the Special Provisions will not be insurable until the trees on which the avocados are grown have met both requirements. A written agreement will not be available for trees not reaching the fourth growing season and not meeting the minimum production per acre requirement.

Section 8—Insurance Period

Comment: One commenter suggests moving the parenthetical phrase at the end of both sections 8(a)(i) and 8(a)(ii) to an unnumbered paragraph following (ii) so it applies to both but is stated only once.

Response: FCIC agrees with the commenter. FCIC moved this parenthetical to a new section 8(a)(iii) and revised sections 8(a), 8(a)(i), and 8(a)(ii) to make the provisions less redundant.

Comment: One commenter suggests adding a hyphen in "* * * 10-day period * * *" in section 8(a)(1)(ii).

Response: FCIC agrees and has revised the provision accordingly.

Comment: One commenter states section 8(b)(1) only addresses acquiring an insurable share in acreage after coverage begins but on or before the acreage reporting date. The commenter suggests adding some additional language to address acquiring an insurable share in acreage after the acreage reporting date. The commenter recommends such additional language allow AIPs the opportunity to inspect and insure such acreage if they wish to do so. AIPs should have the opportunity to accept or deny coverage in these types of situations. This would be similar to what is currently allowed for acreage that is not reported per section 6(f) of the Basic Provisions.

Response: Section 8(b)(1) is silent regarding allowing AIPs the opportunity to inspect and insure acreage that was acquired after the acreage reporting date. Therefore, section 6(f) of the Basic Provisions, which allows the AIPs to determine by unit the insurable crop acreage, share, type and practice, or to deny liability if the producer failed to report all units, has been applied in this situation under other Crop Provisions and would apply here. The provisions in this final rule are consistent with provisions in other perennial Crop Provisions, such as Texas citrus fruit, peaches and pears and to change them here would suggest that section 6(f) of the Basic Provisions would not be applicable to these other policies, creating an unnecessary ambiguity. The Crop Insurance Handbook also allows for AIPs to revise an acreage report that increases liability if the crop is inspected and the appraisal indicates the crop will produce at least 90 percent of the yield used to determine the guarantee or amount of insurance for the unit. No change has been made.

Section 9—Causes of Loss

Comment: One commenter recommends the insured cause of loss in section 9(a)(2) be clarified as "Fire, due to natural causes, * * *" (or "Fire, if caused by lightning, * * *", as in the proposed revisions to the Tobacco Crop Provisions).

Response: Revising the insured cause of loss to read "Fire, due to natural causes, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove" is not necessary since section 12 of the Basic Provisions states all insured causes of loss must be due to a naturally occurring event. To repeat this requirement for a single cause of loss in the Crop Provisions will only create confusion regarding whether or not the other listed causes must be naturally occurring. FCIC also disagrees with revising the insured cause of loss to read "Fire, if caused by lightning * * *" as in the proposed revisions to the Tobacco Crop Provisions. Due to public comments, the original provision, mirrored here and in other Crop Provisions, was retained. No change has been made.

Comment: One commenter notes "Insects, but not damage due to insufficient or improper application of pest control measures" in section 9(a)(7) and "Plant disease, but not due to insufficient or improper application of disease control measures" in section 9(a)(8) are at the end of the list of insured causes of loss. The commenter states the order makes sense since they are unlikely to be the cause of "Failure of the irrigation water supply caused by an insured peril specified in section 9(a)(1) through (5) that occurs during the insurance period," which is stated in section 9(a)(6), but this is not the usual order of the causes of loss in other Crop Provisions.

Response: FCIC agrees this is not the usual order of the causes of loss in other Crop Provisions. However, while this is a change, it does not change the meaning of the provisions because failure of the irrigation water supply cannot be caused by insects or plant disease in this policy or any other policy.

Section 11—Settlement of Claim

Comment: One commenter suggests adding a comma in section 11(b)(2) before the phrase "* * * if applicable" as in sections 11(b)(1) and 11(b)(4).

Response: FCIC agrees and has revised the provision accordingly.

Comment: One commenter suggests moving the comma in section 11(b)(4) after the parenthetical phrase "(see subsection 11(c))" and placing it before the parenthetical phrase.

Response: Moving the comma after the parenthetical could give a different meaning to the provision. Instead, FCIC has revised the provision by placing the parenthetical phrase between the words

"counted" and "by" because the parenthetical phrase is more appropriately placed here because section 11(c) is the provision regarding production to count. FCIC has also removed the word "subsection" in the parenthetical phrase and replaced it with "section" to be consistent with the other references to "section" in section 11.

Comment: One commenter suggests changing the semicolon after the phrase "* * * abandon or no longer care for" to a comma in section 11(c)(1)(iv).

Response: In the Proposed Rule, a comma comes after the phrase "* * * abandon or no longer care for." Therefore, there is no need to change a semicolon to a comma. No change has been made.

In addition to the changes described above, FCIC has made the following changes:

1. Added a comma after the phrase "by type" in the introductory text in section 3(c) and after the phrase "and type" in section 3(c)(5)(i).

2. Removed the word "setout" in section 6(b)(1) and replaced it with the words "set out" to be consistent with the defined term "set out."

3. Revised the provisions in section 8(a)(ii) to remove the phrase ", acreage and production reports are" and add the word "is" in its place. The current language states for the year of application, if the producer applies for coverage after November 21, but prior to December 1, insurance will attach on the 10th day after the producer's properly completed application, acreage and production reports are received. It is not necessary for the producer to submit, at the time of application, his acreage and production reports, as those are not due until the acreage reporting date. Therefore, FCIC has removed the requirement for the producer to submit acreage and production reports at the time of application.

List of Subjects in 7 CFR Part 457

Crop insurance, Florida Avocado, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, Common Crop Insurance Regulations, for the 2011 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

■ 2. Section 457.173 is added to read as follows:

§ 457.173 Florida Avocado crop insurance provisions.

The Florida Avocado Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture Federal Crop Insurance Corporation

Reinsured policies: (Appropriate title for insurance provider)

Both FCIC and reinsured policies: Florida Avocado Crop Insurance Provisions.

1. Definitions.

Bushel. A unit of measure equal to 55 pounds of avocados, unless otherwise specified in the Special Provisions.

Buckhorn. To prune any limb at a diameter of at least four inches.

Crop year. A period beginning with the date insurance attaches to the avocado crop and extending through the normal harvest time. The crop year is designated by the calendar year after insurance attaches.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the fields for the purpose of picking all or a portion of the crop.

Harvest. Picking of the avocados from the trees or ground by hand or machine.

Pound. A unit of weight equal to sixteen ounces avoirdupois.

Set out. Transplanting a tree into the grove.

Type. Either early varieties or late varieties of avocados, as specified in the Special Provisions.

2. Unit Division.

Provisions in section 34 of the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established by type when provided for in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one coverage level for all the avocados in the county insured under this policy unless the Special Provisions provide that you may select a different coverage level for each avocado type designated in the Special Provisions. However, if you elect the Catastrophic Risk Protection (CAT) level of coverage, the CAT level of coverage will be applicable to all types of avocados you produce in the county.

(b) You may select only one price election for all the avocados in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each avocado type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must choose 100 percent of the maximum price election for the other type. However, if you elect the CAT level of coverage, the price election percentage will be equal to 55 percent of the applicable price election for each type of avocado you produce in the county.

(c) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type, if applicable:

(1) Any damage, removal of trees, trees that have been buckhorned, change in grove practices, or any other circumstance that may reduce the expected yield per acre to less than the yield upon which the production guarantee per acre is based, and the number of affected acres;

(2) The number of trees on insurable and uninsurable acreage;

(3) The age of the trees;

(4) Any acreage that is excluded under section 6 of these Crop Provisions; and

(5) For acreage interplanted with another crop:

(i) The age of the interplanted crop, and type, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your production guarantee per acre.

(d) We will reduce the yield used to establish your production guarantee as necessary, based on the effect of interplanting a perennial crop; removal of trees; trees that have been buckhorned; damage; or a change in practices on the yield potential of the insured crop. If you fail to notify us of any circumstance as set out in paragraph (c) of this section, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change

date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are the first November 30th after insurance attaches.

6. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the commercially grown avocado types for which a premium rate is provided by the actuarial documents for the county:

(1) In which you have a share;

(2) That are grown for harvest as avocados; and

(3) That are grown on trees that, if inspected, are considered acceptable to us.

(b) In addition to the avocados not insurable in section 8 of the Basic Provisions, we do not insure any avocados produced on trees that have not:

(1) Reached the fourth growing season after set out; and

(2) Produced the minimum production per acre as specified in the Special Provisions in at least one of the previous three crop years.

7. Insurable Acreage.

In lieu of the provisions in section 9 of the Basic Provisions that prohibits insurance attaching to a crop planted with another crop, avocados interplanted with another perennial crop are insurable unless we inspect the acreage and determine it does not meet the requirements of insurability contained in these Crop Provisions.

8. Insurance Period.

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application:

(i) If you apply for coverage on or before November 21st, coverage begins for the crop year on December 1 of the calendar year; or

(ii) If you apply for coverage after November 21 but prior to December 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet the requirements for insurability contained in your policy.

(iii) You must provide any information we require so we may determine the condition of the grove to be insured.

(2) For continuous policies, coverage begins for the crop year on December 1 of the calendar year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions, is:

(i) The first November 30th after insurance attaches for early varieties of avocados.

(ii) The second March 31st after insurance attaches for late varieties of avocados.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage of avocados after coverage begins, but on or before the acreage reporting date of any crop year, and if after inspection we consider the acreage acceptable, then insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any acreage of avocados on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, no premium will be due and no indemnity paid for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity or a similar form approved by us is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(3) Wildlife, unless control measures have not been taken;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of the irrigation water supply caused by an insured peril specified in section 9(a)(1) through (5) that occurs during the insurance period.

(7) Insects, but not damage due to insufficient or improper application of pest control measures; and

(8) Plant disease, but not due to insufficient or improper application of disease control measures.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Theft; or

(2) Inability to market the avocados for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production, etc.

10. Duties in the Event of Damage or Loss.

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us at least 15 days before any production from any unit will be sold by direct marketing.

(1) We will conduct a preharvest appraisal that will be used to determine your production. If damage occurs after the preharvest appraisal, and you can provide acceptable records to us that account for all production removed from the unit after our appraisal, we will conduct an additional appraisal that will be used to determine your production.

(2) Failure to give timely notice that production will be sold by direct marketing will result in an appraised production to count of not less than the production guarantee per acre if such failure results in an inability to make an accurate appraisal.

(b) If you intend to claim an indemnity on any unit, you must notify us 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest so that we may inspect the damaged production.

(1) You must not destroy the damaged crop until after we have given you written consent to do so.

(2) If you fail to meet the requirements of this subsection, and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each type, if applicable;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted (see section 11(c)) by type, if applicable, by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the results in section 11(b)(5) from the results in section 11(b)(3); and

(7) Multiplying the result in section 11(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of early variety A in the unit, with a guarantee of 140 bushels per acre and a price election of $16.00 per bushel. You are only able to harvest 6,000 bushels due to an insured cause of loss. Your indemnity would be calculated as follows:

(1) 50 acres × 140 bushels = 7,000 bushel guarantee;

(2) 7,000 bushels × $16.00 price election = $112,000.00 value of guarantee;

(4) 6,000 bushels × $16.00 price election = $96,000.00 value of production to count;

(6) $112,000.00 − $96,000.00 = $16,000 loss; and

(7) $16,000 × 100 percent = $16,000 indemnity.

(c) The total production to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10 of these Crop Provisions;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to adequately care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

12. Late and Prevented Planting.

The late and prevented planting provisions of the Basic Provisions are not applicable.

Signed in Washington, DC, on March 24, 2010.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2010–6975 Filed 3–29–10; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. FAA–2007–29015; Amdt. No. 61–125A]

RIN 2120–AJ10

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors With a Sport Pilot Rating; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule published on February 1, 2010. In that rule, the FAA amended its regulations for sport pilots and flight instructors with a sport pilot rating to address airman certification and operational issues that have arisen since regulations for the certification of aircraft and airmen for the operation of light-sport aircraft were implemented in 2004. This document corrects errors in the codified text of that document.

DATES: The final rule and this correction will become effective April 2, 2010.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule, contact Larry L. Buchanan, Light-Sport Aviation Branch, AFS–610, Regulatory Support Division, Flight Standards Service, Federal Aviation Administration, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; telephone (405) 954–6400; Mailing address: Light-Sport Aviation Branch, AFS–610, P.O. Box 25082, Oklahoma City, OK 73125.

For legal questions concerning this rule, contact Paul G. Greer, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2010, the FAA published a final rule entitled, "Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Modifications to Rules for Sport Pilots and Flight Instructors With a Sport Pilot Rating" (75 FR 5204).

In that final rule, the FAA revised § 61.327. Paragraph (a) introductory text of § 61.327 referenced endorsement requirements for a sport pilot operating "a light-sport aircraft that has a V_H less than or equal to 87 knots CAS." Paragraph (b) introductory text of § 61.327 referenced endorsement requirements for persons operating "a light-sport aircraft that has a V_H greater than 87 knots CAS." In the revision to § 61.315(c)(14)(i) and (c)(14)(ii), however, references to those paragraphs of § 61.327 were incorrectly cited.

Additionally, the FAA revised § 61.327 to require a sport pilot who seeks to operate a light-sport aircraft that has a V_H less than or equal to 87 knots CAS to receive and log training in an aircraft that has a V_H less than or equal to 87 knots CAS. In the preamble to the final rule, the FAA noted that it "does not believe that receiving training in an airplane with a V_H greater than 87 knots CAS will adequately prepare a sport pilot to operate a low-speed, high-drag airplane with a V_H less than or equal to 87 knots CAS without additional training." The agency did not intend to require specific endorsements for other categories and classes of aircraft, such as powered parachutes and weight-shift-control aircraft that typically have a V_H that does not exceed 87 knots CAS. Accordingly the FAA is correcting § 61.327(a) and (c) to reflect the agency's intent and is making conforming corrections in §§ 61.315(c)(14), 61.415(f), and 61.423 (a)(2)(iii)(C).

Sections 61.319 and 61.323 were revised to eliminate the requirement that persons exercising sport pilot privileges have an aircraft make-and-model endorsement to operate an aircraft within a specific set of aircraft. The FAA therefore also should have included a conforming amendment to § 61.317 *Is my sport pilot certificate issued with aircraft category and class ratings?* to remove reference to the words "make and model."

Lastly, §§ 61.315(c)(14)(ii) and 61.327(c) contained provisions that permit a sport pilot to operate an aircraft with a V_H less than or equal to 87 knots CAS if that person has logged flight time

as pilot in command of an aircraft with a V_H less than or equal to 87 knots CAS prior to March 3, 2010. The FAA is correcting this date to read "April 2, 2010," to correspond with the effective date of the final rule.

Corrections

In final rule FR Doc. 2010–2056, beginning on page 5204 in the **Federal Register** of February 1, 2010, make the following corrections:

■ 1. On page 5222, in the first column, revise § 61.315(c)(14) to read as follows:

§ 61.315 What are the privileges and limits of my sport pilot certificate?

* * * * *

(c) * * *

(14) If the aircraft:

(i) Has a V_H greater than 87 knots CAS, unless you have met the requirements of § 61.327(b).

(ii) Has a V_H less than or equal to 87 knots CAS, unless you have met the requirements of § 61.327(a) or have logged flight time as pilot in command of an airplane with a V_H less than or equal to 87 knots CAS before April 2, 2010.

* * * * *

■ 2. On page 5222, in the first column, add amendment 15A to read as follows:

§ 61.317 [Amended]

■ 15A. Amend § 61.317 by removing the words "logbook endorsement for the category, class, and make and model of aircraft" from the last sentence and adding in their place the words "logbook endorsement for the category and class of aircraft".

§ 61.327 [Corrected]

■ 3. On page 5222, in the first column, amend § 61.327 by:

■ a. Amending paragraph (a) introductory text by removing the words "light-sport aircraft that has" and adding in their place the words "light-sport aircraft that is an airplane with".

■ b. Amending paragraph (a)(1) by removing the word "aircraft" and adding in its place the word "airplane".

■ c. Amending paragraph (a)(2) by removing the words "light-sport aircraft" and adding in their place the words "light-sport aircraft that is an airplane".

■ d. Amending paragraph (c) by removing the word "aircraft" and adding in its place the word "airplane" and by removing the date "March 3, 2010" and adding in its place the date "April 2, 2010".

§ 61.415 [Corrected]

■ 4. On page 5222, in the second column, in § 61.415(f), remove the words "light-sport aircraft" and add in their place the words "light-sport aircraft that is an airplane".

§ 61.423 [Corrected]

■ 5. On page 5222, in the third column, in § 61.423(a)(2)(iii)(C), remove the words "light-sport aircraft" and add in their place the words "light-sport aircraft that is an airplane".

Issued in Washington, DC, on March 25, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2010–7039 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 500 to 599, revised as of April 1, 2009, in § 558.55, on page 408, at the end of the table to paragraph (d)(2), reinstate footnote 1 to read as follows:

[1] Bacitracin zinc in § 510.600(c) of this chapter.

[FR Doc. 2010–7095 Filed 3–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Consolidated Returns; Intercompany Obligations

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.1401 to 1.1550), revised as of April 1, 2009, on page 347, in §1.1502–13, move the first paragraph (g)(3)(i)(B)(*1*)(*vi*) into numerical order to follow (g)(3)(i)(B)(*1*)(*v*), remove the second paragraph (g)(3)(i)(B)(*1*)(*vi*), and reinstate paragraph (g)(3)(i)(B)(*1*)(*iv*) to read as follows:

§ 1.1502–13 Intercompany transactions.

* * * * *

(g) * * *

(3) * * *

(i) * * *

(B) * * *

(*1*) * * *

(*iv*) The transferee member has a nonmember shareholder;

* * * * *

[FR Doc. 2010–7094 Filed 3–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Exclusions From Gross Income of Foreign Corporations

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.851 to 1.907), revised as of April 1, 2009, on page 444, in § 1.883–0, under the heading § 1.883–1, remove paragraphs (g)(3)(i), (g)(3)(ii), (h)(3)(i), (h)(3)(ii), and (h)(3)(iii).

[FR Doc. 2010–7092 Filed 3–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

Employment Taxes and Collection of Income Tax at Source

CFR Correction

In Title 26 of the Code of Federal Regulations, Parts 30 to 39, revised as of April 1, 2010, on page 262, in § 31.3402(o)–3, replace the fifth sentence in paragraph (c) with three sentences to read as follows:

§ 31.3402(o)–3 Extension of withholding to sick pay.

* * * * *

(c) * * * If the payee is paid sick pay on a semimonthly basis, the specific whole dollar amount shall be at least $44 per semimonthly payment of sick pay. If the payee is paid sick pay on a monthly basis, the specific whole dollar amount shall be at least $88 per monthly payment of sick pay. If the payee is paid sick pay on a basis other than weekly, daily, biweekly, semi-monthly, or monthly, the specific whole dollar amount shall be the equivalent of at least $4 per day, assuming a 5 day work week of 8 hours per day (40 hours total) in each 7 day calendar week. * * *

* * * * *

[FR Doc. 2010–7093 Filed 3–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0065]

RIN 1625–AA00

Safety Zone; United Portuguese SES Centennial Festa, San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the San Diego Bay in support of the United Portuguese SES Centennial Festa. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this temporary safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 9 p.m. to 9:30 p.m. on May 16, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0065 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0065 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail Corey.R.McDonald@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the logistical details of the fireworks show were not finalized nor presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete.

Background and Purpose

Pyro Spectaculars is sponsoring the United Portuguese SES Centennial Festa, which will include a fireworks presentation originating from a tug and barge combination in the vicinity of Shelter Island in the San Diego Bay. The safety zone will encompass all navigable waters within 600 feet of any point of the tug and barge combination. This safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 9 p.m. to 9:30 p.m. on May 16, 2010. The safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative. The limits of the safety zone encompass all navigable waters within 600 feet of any point of the tug and barge combination located at approximately 32°42.55′ N, 117°13.13′ W.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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

This determination is based on the size, location, and brief duration of the safety zone. Commercial vessels will not be hindered by the safety zone. Vessel traffic can pass safely around the zone. Recreational vessels will not be allowed to transit through or anchor in the established safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the San Diego Bay from 9 p.m. to 9:30 p.m. on May 16, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced only 30 minutes late in the day when vessel traffic is low. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the temporary safety zone is enforced.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate

against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–286 to read as follows:

§ 165.T11–286 Safety Zone; United Portuguese SES Centennial Festa; San Diego Bay, San Diego, CA.

(a) *Location.* The limits of the safety zone encompass all navigable waters within 600 feet of any point of the tug and barge combination located at approximately 32°42.55′ N, 117°13.13′ W.

(b) *Enforcement Period.* This section will be enforced from 9 p.m. to 9:30 p.m. on May 16, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Communications Center (COMCEN). The COMCEN may be contacted via VHF–FM channel 16 or 619–278–7033.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 15, 2010.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010–6995 Filed 3–29–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-8123]

Suspension of Community Eligibility

Correction

In rule document 2010–6632 beginning on page 14356 in the issue of Thursday, March 25, 2010 make the following corrections:

(1) The department docket number is corrected to read as set forth above.

(2) On page 14357, in the fourth column, under the heading "Current effective map date", the date should read April 5, 2010.

[FR Doc. C1–2010–6632 Filed 3–29–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA–2009–0201 (HM–208H)]

RIN 2137–AE47

Hazardous Materials Transportation; Registration and Fee Assessment Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: PHMSA is amending the statutorily mandated registration and fee assessment program for persons who transport, or offer for transportation, certain categories and quantities of hazardous materials. For those registrants not qualifying as a small business or not-for-profit organization, PHMSA is increasing the annual fee from $975 (plus a $25 administrative fee) to $2,575 (plus a $25 administrative fee) for registration year 2010–2011 and following years. The increase is necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at approximately $28,300,000 in accordance with the Administration's Fiscal Year 2010 budget and proposed Fiscal Year 2011 budget.

DATES: Effective date of this final rule is April 29, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David Donaldson, Office of Hazardous Materials Planning and Analysis, PHMSA, (202) 366–4484, and Ms. Deborah Boothe or Mr. Steven Andrews, Office of Hazardous Materials Standards, PHMSA, (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1992, PHMSA has conducted a national registration program under the mandate in 49 U.S.C. 5108 for persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce. The purposes of the registration program are to gather information about the transportation of hazardous materials, and to fund the Hazardous Materials Emergency Preparedness (HMEP) grants program and additional related activities. *See* 49 U.S.C. 5108(b), 5116, 5128(b). PHMSA may set the annual registration fee between a minimum of $250 and maximum of $3,000. *See* 49 U.S.C. 5108(a)(2), 5108(g)(2)(A).

Since 2006, the annual registration fee has been set at $250 (plus a $25 processing fee) for small businesses and not-for-profit organizations and $975 (plus a $25 processing fee) for all other registrants. *See* 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (*See* 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, PHMSA has been able to fully fund the obligation limit of $28,318,000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110–116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to $1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010–2011 and following registration years and fully fund the current authorization and expected budget requests of $28.3 million for Fiscal Years beginning in 2010. This can be done by leaving the annual registration fee at $250 (plus a $25 processing fee) for those persons who are a small business or not-for-profit organization and increasing to $2,575 (plus a $25 processing fee) the annual fee paid by all other persons required to register.

II. Notice of Proposed Rulemaking

On February 2, 2010, PHMSA published a notice of proposed rulemaking (NPRM; 75 FR 5258) to ensure full funding of the HMEP grants program, by proposing an increase in registration fees beginning with the 2010–2011 registration year to fund the program at the $28.3 million level. As explained in the NPRM, since 2006, the annual registration fee has been set at $250 (plus a $25 processing fee) for small businesses and not-for-profit organizations and $975 (plus a $25 processing fee) for all other registrants. *See* 49 CFR 107.612(d). Because PHMSA had accumulated a surplus following a prior adjustment in 2000 (*See* 65 FR 7297, 7309 [Feb. 14, 2000]), notwithstanding a temporary reduction between 2003 and 2006, since Fiscal Year 2008, PHMSA has been able to fully fund the obligation limit of $28,318,000 in the Consolidated Appropriations Act of 2008 (Pub. L. 110–116 [121 Stat. 1295], November 13, 2007), and the Omnibus Appropriations Act, 2009 (Pub. L. 111–8 [123 Stat. 945], March 11, 2009). However, that surplus has now been reduced to $1,500,000, and it is necessary to adjust registration fees in order to collect additional monies in the 2010–2011 and following registration years and fully fund the current authorization in Fiscal Year 2010 and expected budget requests of $28.3 million for future fiscal years. Accordingly, PHMSA proposed to increase the registration fees for persons other than small businesses from $975 (plus $25 processing fee) to $2,975 (plus $25 processing fee) for registration year 2010–2011 and following, in order to maintain the statutorily mandated goal of funding the HMEP grants program activities at approximately $28,300,000.

III. HMEP Grants Program

A. Purpose and Achievements of the HMEP Grants Program

The HMEP grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance to States and Indian Tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency

Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.* The grants are used to: (1) Develop, improve, and implement emergency plans; (2) train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; (3) determine flow patterns of hazardous materials within a State and between States; and (4) determine the need within a State for regional hazardous materials emergency response teams.

The HMEP grants program encourages the growth of the hazardous materials planning and training programs of State, local, and Tribal governments by limiting the Federal funding to 80 percent of the cost a State or Indian Tribe incurs to carry out the activity for which the grant is made. *See* 49 U.S.C. 5116(e). HMEP grants supplement the amount already being provided by the State or Indian Tribe. By accepting an HMEP grant, the State or Tribe makes a commitment to maintain its previous level of support. *See* 49 U.S.C. 5116(a)(2)(A) and 5116(b)(2)(A).

Since 1993, PHMSA has awarded all States and territories and 45 Native American Tribes planning and training grants totaling $203 million. These grants helped to:

- Train 2,420,000 hazardous materials responders;
- Conduct 9,282 commodity flow studies;
- Write or update 55,826 emergency plans;
- Conduct 13,372 emergency response exercises; and
- Assist 25,059 local emergency planning committees (LEPCs) or approximately 1670 per year.

Since the beginning of the program, HMEP program funds have also supported the following related activities in the total amounts indicated:

- $3.4 million for the development and periodic updating of a national curriculum used to train public sector emergency response and preparedness teams. The curriculum guidelines, developed by a committee of Federal, State, and local experts, include criteria for establishing training programs for emergency responders at five progressively higher skill levels: (1) First responder awareness, (2) first responder operations, (3) hazardous materials technician, (4) hazardous materials specialist, and (5) on-scene commander.
- $2.6 million to monitor public sector emergency response planning and training for hazardous materials incidents, and to provide technical assistance to State or Indian Tribe emergency response training and planning for hazardous materials incidents.
- $7.6 million for periodic updating and distribution of the North American Emergency Response Guidebook. This guidebook provides immediate information on initial response to hazardous materials incidents, and is distributed free of charge to the response community.
- $3.5 million for the International Association of Fire Fighters (IAFF) to train instructors to conduct hazardous materials response training programs.

B. Funding of the HMEP Grants Program

An estimated 800,000 shipments of hazardous materials make their way through the national transportation system each day. It is impossible to predict when and where a hazardous materials incident may occur or what the nature of the incident may be. This potential threat requires State and local agencies to develop emergency plans and train emergency responders on the broadest possible scale.

The HMEP training grants are essential for providing adequate training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. There are over 2 million emergency responders requiring initial training or periodic recertification training, including 250,000 paid firefighters, 850,000 volunteer firefighters, 725,000 law enforcement officers, and 500,000 emergency medical services (EMS) providers. Due to the high turnover rates of emergency response personnel, there is a continuing need to train a considerable number of recently recruited responders at the most basic level.

In addition, training at more advanced levels is essential to ensure that emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The availability of funding for the HMEP grants program will encourage State, Tribal, and local agencies to provide more advanced training.

The funding for HMEP grants will enable PHMSA to help meet previously unmet needs of State, local and Tribal governments, and public and private trainers by providing for the following activities authorized by law:

- $21,800,000 for training and planning grants;
- A new $4,000,000 grant program for non-profit hazmat employee organizations to train hazmat instructors who will train hazmat employees;
- $1,000,000 for grants to support certain national organizations to train instructors to conduct hazardous materials response training programs, an increase of $750,000;
- $625,000 for revising, publishing, and distributing the North American Emergency Response Guidebook;
- $188,000 for continuing development of a national training curriculum;
- $150,000 for monitoring and technical assistance; and
- $555,000 for administrative support.

IV. Discussion of Comments

PHMSA received 42 sets of comments on the NPRM, from the following individuals and organizations:

Steven Kovacsi (Mr. Kovacsi)
John Q. Counts (Mr. Counts)
Dale Anderson (Mr. Anderson)
Angela Brenwalt and Jenny Carver (Brenwalt and Carver)
The Council on the Safe Transportation of Dangerous Articles, Inc. (COSTHA)
Canadian Trucking Alliance
American Trucking Associations (ATA)
Association of HAZMAT Shippers, Inc. (AHS)
The Institute of Makers of Explosives (IME)
Petroleum Marketers Association of America (PMAA)
New England Fuel Institute (NEFI)
Owner-Operator Independent Drivers Association, Inc. (OOIDA)
Dangerous Goods Advisory Council (DGAC)
Horizon Lines, LLC (Horizon)
Fann Contracting, Inc. (Mr. Fann)
International Vessel Operators Hazardous Materials Association, Inc. (VOHMA)
Alexander & Baldwin, Inc. (A&B)
Cleveland County Local Emergency Planning Committee (CCLEPC)
North Central Florida LEPC
South Florida LEPC
Texas Department of Safety/Emergency Management
Missouri Emergency Response Commission
Oklahoma Hazardous Materials Emergency Response Commission (OHMERC) (two comments)
National Association of SARA Title III Program Officials (NASTPO)
Tulsa County (OK) Local Emergency Planning Committee (LEPC)
Livingston County (MO) LEPC
Garfield County (WA) Fire District #1
Oklahoma County (OK) LEPC
Grand River Dam Authority LEPC
Benton County (MO) Emergency Management
Douglas County (CO) LEPC
Gila County (AZ) LEPC
Ponca City, OK Emergency Management/ LEPC
Jefferson County (IN) LEPC
Jefferson County (CO) LEPC
Garfield County (OK) LEPC
Blaine County (OK) LEPC
Connecticut State Emergency Response Commission (SERC)
Dade County (MO) LEPC

Arizona Emergency Response Commission
Environmental Protection Agency
Utility Solid Waste Activities Group (USWAG)

Commenters from the emergency response community support the proposed fee increase. They state that the HMEP grants are their only source of funding for planning for hazardous materials transportation incidents and training local emergency responders. They note that the high turnover rate for first responders is a significant issue and indicate that increased funding will enable them to ensure that all first responders are trained.

Comments from the regulated community are divided. Some oppose the proposal to increase fees for large businesses and suggest that, in the interest of fairness, the fee increase should be risk based so that higher volume shippers of carriers of hazardous materials bear a higher percentage of proposed fees. Other commenters recommend, again in the interest of fairness, that PHMSA consider an increase in the registration fees paid by small businesses and not-for profit organizations. Commenters also express concern about how funds are allocated and spent, grants to non-profit hazmat employee organizations, and alleged ineffective enforcement of the current registration requirements.

The comments are discussed in more detail below.

A. Support for HMEP Grants and the Registration Fee Increase

A total of 24 State and local government emergency planning and response entities submitted comments on the NPRM. These commenters from the emergency response community support the proposed fee increase. As indicated above, they state that the HMEP grants are their only source of funding for planning for hazardous materials transportation incidents and training local emergency responders. For example, Texas DPS/Emergency Management notes that almost 80% of fire departments in Texas have no paid responders and that volunteers depend on HMEP funding to receive appropriate and up-to-date training. According to Texas DPS/Emergency Management, "HMEP is the only source of hazardous materials training funds for the majority of our fire departments and under the current economical situation is becoming a major source of funding for all of our departments." Similarly, OHMERC states that, throughout most of Oklahoma, the first responders on scene at a transportation incident are local volunteers. "There is no industrial tax base in the surrounding area to support the planning and exercising activities of these dedicated individuals. There is no industry-based training available * * * There are regionally based Hazmat response teams that can provide assistance to local volunteers but their response times may be in excess of 2 hours. * * *" CCLEPC states that it is "heavily dependent upon the money it receives each year through the * * * HMEP grant. Without this source of funding we would be greatly hampered in our ability to carry out our mission. * * *" The Arizona Emergency Response Commission states that "[w]ithin Arizona as with other states, serious financial shortfalls have occurred which greatly affect how much funding will be passed through to the local communities."

These commenters also note that turnover among volunteer firefighters is high, so, in the words of Texas DPS/Emergency Management, "a consistent continual training program is necessary. Volunteer, rural responders need to have the knowledge to protect themselves, the public, and the environment. * * *."

PHMSA believes it is critical to fund local emergency planning and response efforts to the maximum level allowed under the law. Government and industry have a shared responsibility to minimize the consequences of hazardous materials transportation accidents. The possible consequences of a serious incident require that all communities develop response plans and train emergency services, fire, and police personnel to assure an effective response. The importance of planning and training cannot be overemphasized. Small towns and rural communities are served by largely volunteer fire departments and, in many instances, these communities' resources already are overextended in their efforts to meet routine emergency response needs.

B. Basis of Proposed Registration Fee Increase

OIDA, NEFI, and PMAA support the two-tiered registration structure. PMAA states that it is "entirely appropriate and inherently fair that small business registrants pay a significantly lower fee than large HAZMAT offerors * * * Reduced risk should be rewarded with a lower fee." OIDA agrees and adds that small-business motor carriers already pay a "significantly higher per unit cost than their large competitors." OIDA suggests that while a one-truck motor carrier faces a total cost of $275 per unit, a larger carrier with 15,000 trucks would pay the equivalent of 20 cents for each truck in its fleet under the proposed higher fee structure.

VOHMA recommends that fee assessments should be "more equitably determined" based on volumes of hazardous materials transported. "[T]he higher volume carrier[s] who benefit from the revenue of carrying such commodities should bear a higher percentage of the * * * fees." A&B and AHS assert that the current fee structure is unfair because it requires registrants who only occasionally offer for transportation or transport hazardous materials to pay the same fee as registrants who offer or transport hazardous materials as their primary business. VOHMA and Horizon suggest that vessel carriers calling at U.S. ports have "little need" to employ the additional resources of Emergency Response Teams funded through the registration fee program as they already have a "vast listing of reserved parties on call" and further, ships are at sea most of the time. ATA, AHS, Mr. Fann, and IME suggest that before large businesses are asked to absorb a 200 percent fee increase, PHMSA should consider increasing fees paid by small businesses and not-for-profit organizations. Alternatively, AHS and IME suggest that PHMSA consider a fee structure with multiple fee tiers. Further, IME does not agree that large businesses pose a greater risk, and, therefore, should shoulder a greater share of funding for the HMEP grant program. IME suggests that PHMSA institute a waiver process under which businesses that demonstrate that their shipment patterns are similar to those of large not-for-profit entities could qualify to pay at the small business rate. IME also suggests that PHMSA set a cap on total fees paid by subsidiaries of a parent company, stating, "[s]uch qualified relief would accommodate gross inequities resulting from the 'ability-to-pay' approach to financing the HMEP and would interject a dimension to the fee calculation based on risk." ATA suggests that PHMSA consider eliminating certain exceptions to the current registration requirements, including the exception for farmers that transport placarded materials in direct support of the farmer's farming operations. NACD and DGAC recommend a "performance-based fee system" under which entities with poor incident histories and safety records would pay higher fees. USWAG recommends that the fee increase be delayed for at least one more registration year.

Commenters are correct that under Federal hazmat law, PHMSA has the discretion to increase registration fees for both small and large businesses. As

explained in the NPRM, PHMSA considered several alternatives for increasing the funds available for the HMEP grants program. One option was to increase the fee for all businesses offering for transportation or transporting the covered hazardous materials. Another option was to maintain the fee for small businesses and not-for-profit organizations while adjusting the fee for larger businesses. PHMSA continues to believe that this second option is the best approach for meeting our overall objectives for both the registration and HMEP programs. Although there are exceptions, small businesses and not-for-profit organizations generally offer for transportation or transport fewer and smaller hazardous materials shipments as compared to larger companies. Raising the registration fee only for other-than-small businesses rather than for all businesses correlates the fee structure to the level of risk associated with shipments offered for transportation and transported by larger companies. Moreover, increasing the registration fees only for other-than-small businesses will affect significantly fewer entities and will affect entities that can more easily absorb the increase. PHMSA has received approximately 41,000 registrations for the 2008–2009 registration year, and expects approximately the same number for 2009–2010. Small businesses or not-for-profit organizations make up 83%, or 35,025 of the registrants, while large businesses make up 17%, or 6,975 of the registrants.

Since the registration program was first established, PHMSA has considered, and rejected, methods for apportioning registration fees among registrants according to various approximations of the risk imposed. For example, in Docket No. HM–208B, there were overwhelming objections to basing registration fees on risk factors such as the hazard characteristics of specific classes of materials and the consequences of a release during transportation; the quantity of materials shipped or transported, including the type and size of containers (including vehicles); and the number of shipments offered or transported. The agency concluded that trying to distinguish among distinct levels of risk would require the imposition of a complicated system that would necessarily involve significant recordkeeping burdens on the regulated public (60 FR 5822). PHMSA remains convinced that even the simplest of the suggested alternative fee structures would impose significant cost burdens. As a further example, the creation of a third level based on a "waiver" for registrants that do not meet the criteria for a small business but engage in limited hazardous materials activities could impose a greater expense on the registrant to maintain the necessary records to prove its level of activity than the cost of the registration fee. PHMSA believes that the current two-tiered fee schedule based on SBA criteria is the most equitable, simple, and enforceable method for determining and collecting registration fees. The two-tiered fee schedule distributes registration fees according to a well-established measurement of business size and ensures the collection of sufficient funds to support the HMEP grants program at an enhanced level.

C. Oversight and Accountability

ATA, AHS, PMAA, and IME suggest that PHMSA should provide greater oversight and accountability on how the HMEP grant funds are allocated and used. IME questions PHMSA's enforcement of the registration program and suggests that the two-tier system complicates rather than simplifies enforcement efforts. IME also questions PHMSA's data on the number of emergency plans and LEPCs supported by the HMEP grant funds and suggests that training grants are in greater need of funding. IME states, "given the plethora of other viable alternatives to address the needs of the response community, the HMEP is at best inconsequential, and in retrospect, a program that has outlived its relevance and usefulness as a stand alone resource."

In 2008, PHMSA received approval from the Office of Management and Budget (OMB) to collect more detailed information from HMEP grantees to enable the agency more accurately to evaluate the effectiveness of the grant program in meeting emergency response planning and training needs (73 FR 39780). PHMSA is now collecting that detailed information. In addition, the agency is hiring additional staff to provide an enhanced HMEP oversight capability. The HMEP grant program was established over 15 years ago and has continued with few changes since its initial implementation. HMEP grantees have used program funds to train first responders; conduct commodity flow studies; write or update emergency plans; conduct emergency response exercises; and assist local emergency planning committees. Few other resources are available to accomplish these tasks. PHMSA recognizes that, because the HMEP grant program is funded by registration fees paid by hazardous materials shippers and carriers, it is incumbent on the agency administering the grant program as well as the grantees themselves to ascertain that the program is accountable to those who fund it and is as effective as possible in meeting its emergency response planning and training goals.

The information provided by the grantees will provide data to evaluate emergency response planning and training programs conducted by States and Indian Tribes. The development of accurate output information will also summarize the achievements of the HMEP grant program. The information PHMSA seeks from grantees will enhance emergency response preparedness and response by allowing the agency and its State and Tribal partners to target gaps in current planning and training efforts and focus on strategies that have been proven to be effective. PHMSA notes in this regard the comments from NASTPO and OHMERC that "one size does not fit all when it comes to community preparedness." OHMERC states that it is working with grantees to establish priorities and outcome metrics so that program effectiveness can be demonstrated. NASTPO as well states that it is working to address the effectiveness of the HMEP program, including its accountability.

PHMSA believes that funding for both planning and training is critical to the local emergency responders' capability of dealing with hazardous materials transportation incidents. The emergency response community has stressed that rural communities depend on volunteers and their ability to plan, train and exercise for a wide range of potential events. To ensure effective emergency response, communities must continually revise plans, repeat training, and conduct exercises. As NASTPO notes, community preparedness and emergency planning is "a process, not an end point." An effective planning organization will routinely evaluate and update its emergency response plans to account for changing circumstances and conditions.

D. Grants to Non-Profit Hazmat Employee Organizations

DGAC and IME oppose the use of registration fees to fund the training grants authorized under § 5107(e) of Federal hazmat law. IME asserts that this $4 million training program is a double taxation for hazmat employee training since employees trained by third parties would still need to meet the specific and specialized training each company is responsible for

providing under the Hazardous Materials Regulations, and that, "using industry fees for this purpose cannot be justified." DGAC contends that the program does not have industry support and suggests that PHMSA has not explained how, and for what purpose, it plans to use the training grant funds.

According to the law, training grant funds awarded to an organization may be used to train hazmat instructors and, to the extent determined to be appropriate, for such instructors to train hazmat employees. Grant funds are not authorized to fund an organization's existing hazmat training program. The program is open to non-profit hazardous materials employee organizations demonstrating: (1) Expertise in conducting a training program for hazmat employees, and (2) ability to reach a target population of hazmat employees. For the purposes of the grants program, an employee organization is a labor union, association, group, or similar organization the members of which are hazardous materials employees and the stated purpose of which is to represent hazmat employees. Hazmat employees include self-employed persons, including owner-operators of motor vehicles; vessel or aircraft crewmembers and employees; railroad signalmen; and maintenance-of-way employees. Due to budget and other limitations, many hazmat employees cannot leave their employment locations for extended periods of time to attend training courses. Instructors trained under this grant program can offer training to a large number of hazmat employees at locations within close proximity to the hazmat employees' places of employment, thereby significantly minimizing employee travel cost and training time. PHMSA believes the statutorily mandated training grants will benefit the transportation industry by providing this much needed hazmat training.

E. Rising Transportation Costs

COSTHA, NACD, Mr. Fann, Horizon, and VOHMA ask PHMSA to take into consideration the current state of the economy and the high costs of transportation in setting registration fees. These commenters suggest that increasing registration fees will impose additional hardships on businesses already struggling with rising costs. COSTHA notes that the economy is "still in flux after suffering one of the largest recessions in 40 years" and requests a reconsideration of the fee increase in light of current economic conditions. VOHMA requests that PHMSA "consider the fact that vessel operators use large quantities of petroleum fuels and are finding it increasingly difficult to remain competitive and efficient in this costly energy environment." Horizon notes that it is "faced with rising and unstable fuel expenses coupled with weather related delays, damages, and a weak economy" which all affect its ability to operate profitably. Mr. Kovacsi states that in the current economy, "this whopping increase is totally inappropriate when so many drivers are already out of work due to poor revenues by their employers." Mr. Fann states that "[b]usinesses are suffering through these hard times also by having to make cut backs, watch expenses and find less expensive alternatives to their way of doing business." Several commenters note as well that adoption of the proposals in the final rule will require many businesses to incur unbudgeted expenses during the current calendar year.

PHMSA recognizes the concerns of industry relating to the increasing costs of energy and transportation. However, these costs affect many industries, as well as consumers and emergency responders. PHMSA believes that increasing energy and transportation costs reinforce the need to fully fund the HMEP grants program. State emergency planners and responders continue to indicate that these HMEP grants are the only source of funds they receive to fund the continuing need for emergency response planning and training.

F. Surplus in HMEP Grants Fund

Commenters, including COSTHA, NPGA, Mr. Anderson, Mr. Counts, and IME, express concern that the increase in registration fees will result in a surplus in the HMEP grants account. For example, IME contends that "PHMSA is again embarking on a path to generate millions of dollars in excess of the amount authorized." NPGA suggests that "it is conceivable that a surplus could exist in a very short period of time."

As already discussed, the past surplus enabled PHMSA to temporarily reduce registration fees for all persons during the 2003–2006 period. Further, as discussed in the NPRM, in part because of accumulated surpluses, PHMSA was able to fully fund the HMEP program at its authorized limit of $28,318,000 for FY 2009. However, that surplus has now been reduced to $1.5 million. PHMSA estimates that without the proposed increase in fees, the agency will be approximately $8 million short of the authorized grant obligations to be made in 2010. Further, PHMSA has received approximately 2,000 (6%) fewer registrations for the 2008–2009 registration year than for 2007–2008. The number of registrations for the 2009–2010 registration year has only slightly increased over the number for 2008–2009 at this time last year. This may be due to the current economic conditions, even though PHMSA has been aggressively addressing entities who have failed to register.

G. Enforcement of Registration Fee Requirements

COSTHA, IME, AHS, and VOHMA express concern about the industry's compliance with and PHMSA's enforcement of the registration fee requirements. IME states that it has "long questioned PHMSA's ability to provide credible enforcement of the two-tiered registration requirement" and suggests that, extrapolating from a five percent non-compliance rate and using PHMSA's registration statistics, "over $1.5 million in revenue will annually be forgone." Similarly, VOHMA questions whether all entities that are subject to the registration and fee assessment requirements are actually in compliance and recommends that PHMSA "place more emphasis on enforcement of the registration requirements to ensure that all persons subject to these requirements have filed the applicable forms and paid the fees. * * *"

PHMSA takes its responsibility to ensure compliance with the registration requirements very seriously. Integrated as part of every compliance inspection and incident investigation, PHMSA aggressively enforces the requirements for Hazardous Materials Registration. The agency also instituted a nationwide surveillance and compliance operation that identifies, enforces, and collects the unpaid fees of persons (in active status) who have failed to renew or file for registration. In 2009, for example, PHMSA cited 120 companies for registration violations and levied $60,810 in penalties. An additional 23 companies were issued warning letters or are awaiting determination of an appropriate penalty.

H. Multi-Year Registrations

PHMSA allows a person to register for up to three years in one registration statement (49 CFR 107.612(c)). As discussed in the NPRM, PHMSA has received approximately 2,100 advance registrations for the 2010–2011 registration year from other-than-small businesses that have paid the fee previously established for those years. Approximately 1,250 also included advance registrations for the 2011–2012 registration year. PHMSA applies fees according to the fee structure ultimately established by regulation for the

registration year rather than according to the fee set at the time of payment. Thus, when PHMSA adopts an increase in registration fees, additional payments are required for registrations paid in advance at the lower levels in effect at the time of payment.

NPGA recommends that PHMSA clarify that any business that has paid a multi-year registration fee prior to the effective date of this final rule should be deemed as having registered with the agency and not be subject to any form of violation related to non-registration as a result of the difference in the fee structure between the time of the original registration and this final rule. NACD also recommends that any difference between the new fee and prepaid fees should be assessed in the first subsequent registration year for which the fee has yet to be paid.

PHMSA cannot agree to permit multi-year registrants to postpone payment of the increased registration fee until the first subsequent registration year for which the fee has yet to be paid. In order to ensure full funding of the HMEP grants, PHMSA must account for registration fees in the year they are due. PHMSA does not expend monies collected through multi-year registrations until the year for which they were paid. Further, when PHMSA lowered the fees for all registrants in 2003, PHMSA provided more than 7,100 refunds amounting to over $2.3 million within the first year to registrants who had overpaid the newly established fees. However, PHMSA agrees that enforcement action should not be initiated against entities that registered in good faith and paid the fee in effect at the time of registration provided they remit the difference between the fee originally paid and the new registration fee in a timely manner. PHMSA will notify each registrant who will be required to pay additional fees for the 2010–2011 and following registration years.

V. Provisions of This Final Rule

PHMSA shares commenters' concern that the agency should only collect an amount of registration fees necessary to fully fund the HMEP program without the accumulation of a surplus. PHMSA also recognizes the challenging business environment in which hazardous materials shippers and carriers operate. After consideration of the comments received in response to the NPRM, PHMSA re-examined its estimates for funding the HMEP grants program based on updated information from the Department of Treasury on the HMEP account carry-over balance, de-obligations of unused grant and administrative funds, increased enforcement of the registration requirements, and current registrant data. Based on this re-examination, PHMSA has concluded that it will be able to fund the HMEP grants program at the $28.3 million level in Fiscal Year 2010 and for future years with a smaller increase in registration fees than was proposed in the NPRM. For those registrants not qualifying as a small business or not-for-profit organization, the fee will increase to $2,575 (plus a $25 administrative fee) for the 2010–2011 registration year and following years. For registrants qualifying as a small business or not-for-profit organization, the fee will remain at its current level of $250 (plus a $25 administrative fee). This fee increase will fund the HMEP grants program at approximately $28.3 million in accordance with the Administration's Fiscal Year 2010 budget proposal. The cost to industry of increasing registration fees will be approximately $14 million per year. The increased funding for the HMEP grants program will provide essential training to persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. In addition, training at more advanced levels is essential to assure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The increased funding for the HMEP grants will enable us to help meet previously unmet needs of State, local and Tribal governments by providing more adequate funding.

In addition, PHMSA is adopting the proposal in the NPRM to revise § 107.612 to remove information on previous years' registration fees. This fee information is no longer needed. Information on fees in effect for registration years 1992–1993 to 2009–2010 is available in the registration brochure, previous editions of the CFR, and on the registration Web site (*http://www.phmsa.dot.gov/hazmat/registration*). Note that persons subject to registration requirements must pay the annual registration fee, including the processing fee, in effect for the specific registration year for which the person is submitting registration information.

VI. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5108 of the Federal hazmat law authorizes the Secretary of Transportation to establish a registration program to collect fees to fund HMEP grants. The HMEP grants program, as mandated by 49 U.S.C. 5116, authorizes Federal financial and technical assistance to States and Indian Tribes to "develop, improve, and carry out emergency plans" within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C. 11001 *et seq.*

The Federal hazmat law makes available funding for the HMEP grants program at approximately $28,300,000, and directs PHMSA to establish an annual registration fee between a minimum of $250 and a maximum of $3,000.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to formal review by the Office of Management and Budget. This final rule is considered non-significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

The cost to industry of increasing registration fees will be an additional $14 million per year. The funding for the HMEP grants program will provide essential training of persons throughout the nation who are responsible for responding to emergencies involving the release of hazardous materials. In addition, training at more advanced levels is essential to assure emergency response personnel are capable of effectively and safely responding to serious releases of hazardous materials. The funding for the HMEP grants will enable PHMSA to help meet previously unmet needs of State, local and Tribal governments, and public and private trainers by providing funding for activities such as: (1) Planning and training grants for local emergency planning committees; (2) a new program for non-profit hazmat employee organizations to train hazmat instructors that will train hazmat employees; (3) support to certain national organizations to train instructors to conduct hazardous materials response training programs; (4) revising, publishing, and distributing the North American Emergency Response Guidebook; (5) continuing development of a national training curriculum; and (6) monitoring and technical assistance.

While the safety benefits resulting from improved emergency response

programs are difficult to quantify, PHMSA believes these benefits significantly outweigh the annual cost of funding the grants program. The importance of planning and training cannot be overemphasized. To a great extent, we are a nation of small towns and rural communities served by largely volunteer fire departments. In many instances, communities' response resources already are overextended in their efforts to meet routine emergency response needs. The planning and training programs funded by the HMEP grants program enable State and local emergency responders to respond quickly and appropriately to hazardous materials transportation accidents, thereby mitigating potential loss of life and property and environmental damage. The regulatory evaluation to the final rule issued under Docket HM–208 (57 FR 30620) showed that the benefits to the public and to the industry from the emergency response grant program would at least equal, and likely exceed, the annual cost of funding the grant program. Based on estimates of annual damages and losses resulting from hazardous materials transportation accidents, the analysis concluded that the HMEP program would be cost-beneficial if it were only 3% effective in reducing either the frequency or severity of the consequences of hazardous materials transportation accidents. Achieving this level of effectiveness is well within the success rates of training and planning programs to reduce errors and increase the proficiency and productivity of response personnel. A regulatory evaluation for this final rule is available for review in the public docket.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (Federalism). There is no preemption of State fees on transporting hazardous materials that meet the conditions of 49 U.S.C. 5125(f). This final rule does not impose any regulation having substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this final rule does not have adverse Tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to businesses not falling within the small entities category. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act of 1995

This final 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, in the aggregate, to any of the following: State, local, or Native American Tribal governments, or the private sector.

G. Paperwork Reduction Act

Under 49 U.S.C. 5108(i), the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this final rule.

H. 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 may be used to cross-reference this action with the Unified Agenda.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. There are no significant environmental impacts associated with this final rule. PHMSA is amending the requirements in the Hazardous Materials Regulations on the registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. The increase in registration fees will provide additional funding for the HMEP program to help mitigate the safety and environmental consequences of hazardous materials transportation accidents.

J. 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 comments (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.*

List of Subjects in 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Part 107 is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

■ 2. In § 107.612, revise paragraphs (a) and (b) to read as follows:

§ 107.612 Amount of fee.

(a) For the registration year 2010–2011 and subsequent years, each person offering for transportation or transporting in commerce a material listed in § 107.601(a) must pay an annual registration fee, as follows:

(1) *Small business.* Each person that qualifies as a small business, under criteria specified in 13 CFR part 121 applicable to the North American Industry Classification System (NAICS) code that describes that person's primary commercial activity, must pay an annual registration fee of $250 and the processing fee required by paragraph (a)(4) of this section.

(2) *Not-for-profit organization.* Each not-for-profit organization must pay an annual registration fee of $250 and the processing fee required by paragraph (a)(4) of this section. A not-for-profit organization is an organization exempt from taxation under 26 U.S.C. 501(a).

(3) *Other than a small business or not-for-profit organization.* Each person that does not meet the criteria specified in

paragraph (a)(1) or (a)(2) of this section must pay an annual registration fee of $2,575 and the processing fee required by paragraph (a)(4) of this section.

(4) *Processing fee.* The processing fee is $25 for each registration statement filed. A single statement may be filed for one, two, or three registration years as provided in § 107.616(c).

(b) For registration years 2009–2010 and prior years, each person that offered for transportation or transported in commerce a material listed in § 107.601(a) during that year must pay the annual registration fee, including the processing fee, specified under the requirements of this subchapter in effect for the specific registration year.

* * * * *

Issued in Washington, DC, on March 24, under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2010–7035 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2009–0175]

RIN 2127–AK62

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correcting amendments.

SUMMARY: In July 2009, NHTSA published a final rule that amended the Federal motor vehicle safety standard for air brake systems by requiring substantial improvements in stopping distance performance. In November 2009, the agency published a final rule that provided a partial response to petitions for reconsideration of the earlier rule. Today's document corrects errors in the November 2009 final rule.

DATES: This rule is effective April 29, 2010.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Jeff Woods, Office of Crash Avoidance Standards (Telephone: 202–366–5274) (Fax: 202–366–7002). For legal issues, you may call Mr. Edward Glancy, Office of Chief Counsel (Telephone: 202–366–2992). You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On July 27, 2009, NHSTA published a final rule [1] in the **Federal Register** (74 FR 37122) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air *Brake Systems,* to require improved stopping distance performance for truck tractors. The agency provided two years of lead time for typical three-axle tractors, which comprise approximately 82 percent of the truck tractor fleet. The agency concluded that other types of tractors, which are produced in far fewer numbers and may require additional work to fully develop improved brake systems and also to ensure vehicle control and stability while braking, would require more lead time, and the agency provided four years for these vehicles to comply with the new stopping distance requirements.

NHTSA received eight petitions for reconsideration to the July 2009 final rule. The petitions were submitted by manufacturers of truck tractors, an association of truck manufacturers, and heavy truck brake component manufacturers.

On November 13, 2009, NHTSA published in the **Federal Register** (74 FR 58562) a final rule; partial response to petitions for reconsideration.[2] One of the issues we addressed in that document was how typical three-axle tractors should be defined for purposes of determining whether a three axle tractor is subject to the upgraded requirements with two years of leadtime rather than a longer period. In that document, we explained that we intended to limit the definition of typical three axle tractors to those that have a steer axle GAWR of 14,600 pounds or less and a combined drive axle GAWR of 45,000 pounds or less.[3]

The Truck Manufacturers Association (TMA) submitted a petition for reconsideration of the November 2009 final rule, citing an issue that it believed to be an error. TMA noted that the agency used the term "rear axles" instead of "rear drive axles" in two portions of the regulatory text defining the typical three axle tractors subject to the upgraded requirements with two years of leadtime rather than a longer period. TMA stated that based strictly on the regulatory text using the term "rear axles," certain three-axle tractors with one driven rear axle and one non-driven rear axle (a 6x2 tractor configuration) may fall under the two-year leadtime implementation date for the new requirements. That organization stated that 6x2 tractors are specialty vehicles that are manufactured in low volumes. TMA noted statements in the preamble referring to drive axles. TMA requested that the agency revise S5 and the title of Table IIa to use the term "rear drive axles."

NHTSA has reviewed TMA's submission and agrees that the omission of the word "drive" in S5 and the title heading of Table IIa was an error. We are correcting FMVSS No. 121 by adding the word "drive" in those locations.

[1] Docket # NHTSA–2009–0083

[2] Docket # NHTSA–2009–0175.

[3] 74 FR at 58564.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

■ Accordingly, 49 CFR part 571 is corrected by making the following correcting amendments:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.121 is amended by revising S5 and Table IIa to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5. *Requirements.* Each vehicle shall meet the following requirements under the conditions specified in S6. However, at the option of the manufacturer, the following vehicles may meet the stopping distance requirements specified in Table IIa instead of Table II: Three-axle tractors with a front axle that has a GAWR of 14,600 pounds or less, and with two rear drive axles that have a combined GAWR of 45,000 pounds or less, that are manufactured before August 1, 2011; and all other tractors that are manufactured before August 1, 2013.

* * * * *

TABLE IIA—STOPPING DISTANCE IN FEET: OPTIONAL REQUIREMENTS FOR: (1) THREE-AXLE TRACTORS WITH A FRONT AXLE THAT HAS A GAWR OF 14,600 POUNDS OR LESS, AND WITH TWO REAR DRIVE AXLES THAT HAVE A COMBINED GAWR OF 45,000 POUNDS OR LESS, MANUFACTURED BEFORE AUGUST 1, 2011; AND (2) ALL OTHER TRACTORS MANUFACTURED BEFORE AUGUST 1, 2013

Vehicle speed in miles per hour	Service brake				Emergency brake	
	PFC	PFC	PFC	PFC	PFC	PFC
	0.9 (1)	0.9 (2)	0.9 (3)	0.9 (4)	0.9 (5)	0.9 (6)
20	32	35	38	40	83	85
25	49	54	59	62	123	131
30	70	78	84	89	170	186
35	96	106	114	121	225	250
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	299	520	608
60	280	310	335	355	613	720

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaded truck tractors.

* * * * *

Issued on: March 25, 2010.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 2010–7132 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2010–0043]

RIN 2127–AK38

Federal Motor Vehicle Safety Standards; Theft Protection and Rollaway Prevention

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: Pursuant to a statutory mandate in the Cameron Gulbransen Kids Transportation Safety Act of 2007, NHTSA is placing a requirement in Federal Motor Vehicle Safety Standard No. 114 that certain motor vehicles with an automatic transmission that includes a "park" position manufactured for sale on or after September 1, 2010 be equipped with a brake transmission shift interlock (BTSI). This interlock must necessitate that the service brake pedal be depressed before the transmission can be shifted out of "park," and must function in any starting system key position. The BTSI requirement adopted by this final rule is identical in substance to the Congressional requirement.

DATES: This final rule is effective April 29, 2010. *Petitions for reconsideration:* If you wish to petition for reconsideration of this rule, your petition must be received by May 14, 2010.

ADDRESSES: If you submit a petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the public docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, 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).

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Gayle Dalrymple, NVS–123, Office of Rulemaking, by telephone at (202) 366–0098, by fax at (202) 366–7002, or by email to *gayle.dalrymple@dot.gov.* For legal issues, you may contact David Jasinski, Office of the Chief Counsel, NCC–112, by telephone at (202) 366–2992, by fax at (202) 366–3820, or by email to *david.jasinski@dot.gov.* You may send mail to both of these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Statutory Mandate and Background

On February 28, 2008, the "Cameron Gulbransen Kids Transportation Safety Act of 2007" (the K.T. Safety Act, or "Act") was signed into law.[1] This Act relates to several aspects of motor vehicle safety involving incidents where a person, frequently a child, could be hurt in non-traffic situations. The K.T. Safety Act addresses safety concerns related to, among other matters, power windows, rearward visibility, and vehicles rolling away. The latter refers to incidents that typically involve an unattended child managing to shift the vehicle's transmission out of the "park" position when the child is left in a vehicle with the vehicle's key. With a BTSI system, the brake pedal must be depressed before the transmission can be shifted out of park. To reduce the occurrence of roll away incidents, the Act requires that each vehicle that is less than 10,000 pounds "gross vehicular weight," excluding motorcycles and trailers, manufactured for sale after September 1, 2010, that includes an automatic transmission with a "park" position, be equipped with a system that requires the service brake to be depressed before the transmission can be shifted out of "park" (i.e., a BTSI system). The Act further requires the system to function in any

[1] Pub. L. 110–189, 112 Stat. 639 (Feb. 28, 2008).

starting system key position in which the transmission can be shifted out of "park." The Act also requires that a violation of this requirement be treated as a violation of a Federal motor vehicle safety standard.

In August 2006, prior to enactment of the K.T. Safety Act, the Alliance of Automobile Manufacturers and the Association of International Automobile Manufacturers (AIAM) developed a voluntary agreement requiring full implementation of a Brake Transmission Shift Interlock not later than September 1, 2010.[2] This agreement, signed by many major automakers, also defined some of the key terms and required that automakers disclose the percentage of their current production vehicles equipped with BTSI systems, as well as when they reached full compliance. The language of that agreement was substantially the same as the BTSI requirement in the K.T. Safety Act.

II. Summary of the NPRM

In a notice of proposed rulemaking (NPRM) published on August 25, 2009,[3] NHTSA proposed to incorporate the language of the K.T. Safety Act into the text of Federal Motor Vehicle Safety Standard (FMVSS) No. 114, Theft protection and rollaway prevention. Because Congress mandated all vehicles be equipped with BTSI, no action was required by NHTSA for the requirement to take effect. However, we believed it would be helpful to manufacturers and other interested parties to group the BTSI requirement with other rollaway provisions of FMVSS No. 114. That is, the rollaway provisions of the FMVSSs would be easier to ascertain and understand if the provisions were codified together.

In the NPRM, we proposed locating the BTSI requirement in paragraph S5 of FMVSS No. 114. Additionally, we proposed a minor modification of paragraph S3 of the standard, Applicability, to account for the minor differences between the applicability of the BTSI requirement and the applicability of FMVSS No. 114 generally.

In addition to inserting the statutory requirement into the standard, NHTSA offered for public comment four interpretations of the statutory language:

- The last sentence of section 2(d)(1) of the Act states: "This system shall function in any starting system key position in which the transmission can be shifted out of 'park'." We stated that this sentence means that, no matter the starting system position the key is in (*e.g.,* "lock," "accessory," or "start"), the transmission must only shift out of "park" when the service brake is depressed.
- We stated that the BTSI requirement applies to vehicles with all keys, *i.e.,* a physical device or an electronic code, such as those requiring the operator to enter a code or push a button to start the vehicle.
- We understood the term "gross vehicular weight" in section 2(e)(2) to mean "gross vehicle weight rating (GVWR)."
- The phrase "manufactured for sale after September 1, 2010" in section 2(d)(1) of the Act means "manufactured on or after September 1, 2010."

III. Comments and Analysis

NHTSA received two comments in response to the NPRM. One comment, from the Alliance of Automobile Manufacturers, supported NHTSA's proposal to include the BTSI requirement in FMVSS No. 114. A second comment, from AIAM, also supported NHTSA's proposal, but requested that the agency include a gear selection control override option that would allow the vehicle to be shifted out of "park" without depressing the service brake under certain limited conditions. AIAM stated its belief that an override feature would not degrade safety, would promote flexibility, and prevent consumer backlash. AIAM stated its belief that Congress did not intend to require a rigid, inflexible interpretation of the law, while maintaining the safety purpose of the device.

We are not adopting AIAM's suggested override feature in this final rule for the following reasons. First, it is not clear that an override is permissible within the language of the K.T. Safety Act. AIAM noted that the Act neither expressly prohibits nor requires an override system and argued that NHTSA could implement an override. However, we find no indication either in the text of the K.T. Safety Act or its associated legislative history that Congress envisioned any exception to the plain language of the Act. Furthermore, many Congressional actions, including other portions of the K.T. Safety Act, require NHTSA to undertake rulemaking in various areas of concern and permit a degree of agency discretion in their implementation. In the case of BTSI, Congress made this requirement self-effectuating and did not direct that rulemaking be done, indicating that the agency is afforded less leeway in the implementation of the requirement.

Second, NHTSA is concerned that implementing an override would be outside the scope of this rulemaking action. The August 25, 2009 NPRM proposed only the incorporation of the statutory language into the standard for the convenience of manufacturers and other readers of the safety standards. The NPRM did not analyze or propose possible mechanisms to adjust the statutory requirement, such as permitting an override in a limited set of circumstances. Therefore, we believe it would be outside the scope of this rulemaking to include such a change to the BTSI requirement in this final rule.

Third, while AIAM suggested that the lack of an override could create a consumer backlash, they provided no information why this would necessarily be so. In a supplement to its comments, AIAM stated that, in some vehicles, if the battery is dead or at a low state of charge, the shift selector control may not be moved from "park" even with the service brake pedal depressed. AIAM provided no data on the number of vehicles or model lines produced that operate this way, nor did AIAM explain why a decision was made to operate these vehicles in this fashion. In short, we are not convinced that an override feature is necessary. We note that no commenter addressed the four interpretations of the BTSI provision of the K.T. Safety Act. Accordingly, we adopt those interpretations without further discussion.

For the reasons discussed above and in the NPRM, and having considered all of the comments received, NHTSA will adopt without change the amendments proposed in the NPRM.

IV. Effective Date

Section 30111(d) of title 49, United States Code, provides that a Federal motor vehicle safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed except when a different effective date is, for good cause shown, in the public interest. In this instance, the K.T. Safety Act prescribes the effective date of the BTSI requirement. The inclusion of this mandate in the FMVSSs was solely for the convenience of the reader. Therefore, good cause exists for this amendment to FMVSS No. 114 to become effective before the 180th day after the publication of this rule.

[2] The announcement and text of this agreement are available on the NHTSA website, *http://www.nhtsa.dot.gov.*

[3] 74 FR 42837 (Docket No. NHTSA–2009–0049).

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not "significant" under them. This rulemaking document was not reviewed under E.O. 12866.

Today's notice inserts the Congressional mandate into the Federal motor vehicle safety standards for the convenience of users. It does not impose any additional regulatory requirements. We also note that most vehicles are already equipped with a BTSI system. The agency concludes that the impacts of the changes are so minimal that preparation of a full regulatory evaluation is not required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule merely includes in the Federal motor vehicle safety standards a requirement passed by Congress in the K.T. Safety Act. No substantive changes to the Act are being made in this final rule. Small organizations and small government units would not be significantly affected since this action will not affect the price of new motor vehicles. For the vast majority of motor vehicle manufacturers, the BTSI requirement merely codifies a voluntary pledge made by manufacturers to install BTSI systems on all vehicles by September 1, 2010. For any vehicle manufacturers that do not already install a BTSI system in their vehicles, NHTSA does not believe that installing such a system will result in a significant economic impact on those entities. This is because the addition of BTSI requires only a relatively simple mechanical and/or electrical modification.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant either consultation with State and local officials or preparation of a federalism summary impact statement. The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government."

Further, no consultation is needed to discuss the issue of preemption in connection with today's final rule. The issue of preemption can arise in connection with NHTSA rules in two ways.

First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation is unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: in some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of some of the NHTSA safety standards. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

NHTSA has considered the nature (e.g., the language and structure of the regulatory text) and purpose of today's final rule and does not foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of state law, including state tort law.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children,

and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although this final rule is part of a rulemaking expected to have a positive safety impact on children, it is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is no information collection requirement associated with this final rule.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. There are no voluntary consensus standards developed by voluntary consensus standards bodies pertaining to the BTSI requirement. However, we note that currently, most automobile manufacturers incorporate a brake shift transmission interlock in their vehicles. In 2006, most large vehicle manufacturers agreed to a voluntary commitment to include a BTSI system in their vehicles by September 1, 2010. Finally, due to the BTSI provision in the K.T. Safety Act, all manufacturers will be required by statute to include it in their vehicles by September 1, 2010. This final rule incorporates the statutory requirement into FMVSS No. 114 and does not include any additional requirements for manufacturers.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule will not result in any expenditure by State, local, or tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA hereby amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.114 is amended by revising paragraphs S3 and S5 and adding paragraph S5.3 to read as follows:

§ 571.114 Standard No. 114; Theft protection and rollaway prevention.

* * * * *

S3. *Application.* This standard applies to all passenger cars, and to trucks and multipurpose passenger vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to walk-in van-type vehicles. Additionally, paragraph S5.3 of this standard applies to all motor vehicles, except trailers and motorcycles, with a GVWR of 4,536 kilograms (10,000 pounds) or less.

* * * * *

S5 *Requirements.* Each vehicle subject to this standard must meet the requirements of S5.1, S5.2, and S5.3. Open-body type vehicles are not required to comply with S5.1.3.

* * * * *

S5.3 *Brake transmission shift interlock.* Each motor vehicle manufactured on or after September 1, 2010 with a GVWR of 4,536 kilograms (10,000 pounds) or less with an automatic transmission that includes a "park" position shall be equipped with a system that requires the service brake to be depressed before the transmission can be shifted out of "park." This system shall function in any starting system key position in which the transmission can be shifted out of "park." This section does not apply to trailers or motorcycles.

* * * * *

Issued on: March 25, 2010.

David L. Strickland,

Administrator.

[FR Doc. 2010–7078 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 080521698–9067–02]

RIN 0648–XV49

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

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

ACTION: Temporary rule; increase of landing limit.

SUMMARY: This action increases the Georges Bank (GB) yellowtail flounder trip limit to 5,000 lb (2,268 kg) for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and is intended to increase the likelihood of harvesting the total allowable catch (TAC) for GB yellowtail flounder without exceeding it during the 2009 fishing year. This action is being taken to allow vessels to fully harvest the TACs for transboundary stocks of GB cod, haddock, and yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective 0001 hours March 24, 2010, through April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fishery Management Specialist, (978) 675–2153, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2009 fishing year (May 1, 2009—April 30, 2010) was set at 1,617 mt by the 2009 interim final rule (74 FR 17030, April 13, 2009).

The regulations at § 648.85(a)(3)(iv)(D) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to increase or decrease the trip limits of cod, haddock, and yellowtail flounder in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocations. On June 5, 2009, based upon the 2009 TAC for GB yellowtail flounder and projections of harvest rates in the fishery, the trip limit for GB yellowtail flounder was reduced to 2,500 lb (1,134 kg) for the 2009 fishing year (74 FR 27252, June 9, 2009) to slow the rate of harvest and to prevent a premature closure of the Eastern U.S./Canada Area and reduced opportunities to fish for Eastern GB cod and haddock in this area.

According to the most recent Vessel Monitoring System (VMS) reports and other available information, the cumulative GB yellowtail flounder catch is approximately 82 percent of the TAC as of March 18, 2010. Increasing the GB yellowtail flounder trip limit to 5,000 lb (2,268 kg) from 2,500 lb (1,134 kg) is expected to increase landings of GB yellowtail flounder, reduce discards, and result in the achievement of the TAC during the fishing year, without exceeding it. Based on this information, the Regional Administrator is increasing the current 2,500-lb (1,134-kg) yellowtail flounder trip limit in the U.S./Canada Management Area to 5,000 lb (2,268 kg) per trip, effective 0001 hours March 24, 2010, through April 30, 2010.

GB yellowtail flounder landings will continue to be closely monitored. Further inseason adjustments to increase or decrease the trip limit may be considered, based on updated catch data and projections. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, all vessels would be prohibited from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area, and the Eastern U.S./Canada Area would be closed to limited access NE multispecies DAS vessels for the remainder of the fishing year.

Classification

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

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment; as well as the delayed effectiveness for this action, because prior notice and comment, and a delayed effectiveness, would be impracticable and contrary to the public interest. The regulations under § 658.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust the GB yellowtail flounder trip limit to prevent over-harvesting or under-harvesting the TAC allocation. This action would relieve a restriction by increasing the GB yellowtail flounder trip limit for all NE multispecies DAS vessels fishing in the U.S./Canada Management Area through April 30, 2010, to facilitate the harvest of the TAC while ensuring that the TAC will not be exceeded during the 2009 fishing year. This will result in decreased regulatory discards of GB yellowtail flounder, increase revenue for the NE multispecies fishery, and increase the chances of achieving optimum yield in the groundfish fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S/Canada Management Area TACs. It is important to take this action immediately because the current restrictive GB yellowtail flounder trip limit has prevented the NE multispecies fishery from harvesting the TAC at a rate that will result in complete harvest by the end of the 2009 fishing year. Delay in the implementation of this action could result in further wasteful discards of GB yellowtail flounder and decrease the opportunity available for vessels to fully harvest the 2009 GB yellowtail flounder TAC.

The information necessary to take this action became available only recently. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent NE multispecies DAS vessels from efficiently targeting GB yellowtail flounder in the U.S./Canada Management Area. The Regional Administrator's authority to increase trip limits for GB yellowtail flounder in the U.S./Canada Management Area to help ensure that the sharedj U.S./Canada stocks of fish are harvested, but not exceeded, wasconsidered and open to public comment during the development of Amendment 13 to the FMP and Framework Adjustment 42 to the FMP. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: March 24, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–6948 Filed 3–24–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XV54

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 feet (18.3 m) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 Pacific cod total allowable catch allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 25, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI is 2,998 metric tons, as established by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11788, March 12, 2010).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2010 Pacific cod directed fishing allowance allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 23, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 24, 2010.

Emily H. Menashes,

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

[FR Doc. 2010–6946 Filed 3–24–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 60
Tuesday, March 30, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0219; Directorate Identifier 2010–NE–14–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Astazou XIV B and XIV H Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Investigation of an uncommanded in-flight shutdown (IFSD) revealed that a third stage turbine wheel rupture was not contained by the turbine casings. The released portion consisted of a turbine blade together with the rim piece immediately below the blade. The rim piece was bounded by two adjacent axial slots and a fatigue crack that had developed between the holes in which the slots terminate. The slots and holes, which are closed by riveted plugs, were introduced by modification AB 173 in order to improve the vibration characteristics of the turbine wheel. Modification AB 208 brings an improvement to modification AB 173 by changing only the riveting detail. SN 283 72 0805 provides instructions for re-boring the holes at overhaul or repair in order to improve their surface condition. A manufacturing process modification has been introduced to improve the surface condition of these holes in third stage turbine wheels. Wheels subject to the improved manufacturing process have S/Ns outside the range specified in Table 1. Although there is only one known event, and although it resulted only in an uncommanded IFSD, with no damage to the aircraft, the possibility exists that additional events may occur, potentially involving damage to the aircraft.

We are proposing this AD to prevent uncontained failures of the third stage turbine wheel, which could result in damage to the helicopter.

DATES: We must receive comments on this proposed AD by April 29, 2010.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15, for the service information identified in this proposed AD.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0219; Directorate Identifier 2010–NE–14–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on 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 AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0004, dated January 5, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Investigation of an uncommanded IFSD revealed that a third stage turbine wheel rupture was not contained by the turbine casings. The released portion consisted of a turbine blade together with the rim piece immediately below the blade. The rim piece was bounded by two adjacent axial slots and a fatigue crack that had developed between the holes in which the slots terminate. The slots and holes, which are closed by riveted plugs, were introduced by modification AB 173 in order to improve the vibration characteristics of the turbine wheel. Modification AB 208 brings an improvement to modification AB 173 by changing only the riveting detail. SB 283 72 0805 provides instructions for re-boring the holes at overhaul or repair in order to improve their surface condition. A manufacturing process modification has been introduced to improve

the surface condition of these holes in third stage turbine wheels. Wheels subject to the improved manufacturing process have S/Ns outside the range specified in Table 1. Although there is only one known event, and although it resulted only in an uncommanded IFSD, with no damage to the aircraft, the possibility exists that additional events may occur, potentially involving damage to the aircraft.

To address the unsafe condition, EASA issued AD 2009–0136, mandating inspection of certain third stage turbine wheels and removal of any damaged wheel. The wheels to be inspected were those whose cycles since new (CSN) would exceed 2,000 by February 1, 2011. Following additional research by Turbomeca on crack initiation and growth, this AD mandates inspections based on new criteria and removal of any damaged wheel.

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

Relevant Service Information

Turbomeca has issued Mandatory Service Bulletin No. 283 72 0804, Version C, dated October 23, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with France, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing 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 the same type design. This proposed AD would require performing dye penetrant inspections for cracks on the rear face of certain third stage turbine wheels with fewer than 1,200 cycles-since-last-overhaul or repair, or since-new if the engine has never been overhauled, on the effective date of the AD, and removal of the third stage turbine wheel before further flight if found cracked.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about three Astazou engines installed on products of U.S. registry. We also estimate that it would take about 5 work-hours per engine to comply with this proposed AD. The average labor rate is $85 per work-hour. We anticipate no parts to be required. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,275.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Turbomeca: Docket No. FAA–2010–0219; Directorate Identifier 2010–NE–14–AD.

Comments Due Date

(a) We must receive comments by April 29, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Turbomeca Astazou XIV B and XIV H turboshaft engines with the following part number (P/N) third stage turbine wheels that incorporate modification AB 173 (Turbomeca Service Bulletin (SB) No. 283 72 0091) or modification AB 208 (Turbomeca SB No. 283 72 0117), but that do not incorporate Turbomeca SB No. 283 72 805:

(1) Third stage turbine wheels P/N 0265257000, all serial numbers (S/Ns);

(2) Third stage turbine wheels P/N 0265257020, all S/Ns;

(3) Third stage turbine wheels P/N 0265257060, all S/Ns;

(4) Third stage turbine wheels P/N 0265257050, of the S/Ns listed in Appendix 1 of Turbomeca Mandatory Service Bulletin No. 283 72 0804, Version C, dated October 23, 2009.

(5) These engines are installed on, but not limited to, single-engine Aerospatiale AS319B "Alouette III" and AS342J "Gazelle" helicopters.

Reason

(d) European Aviation Safety Agency (EASA) AD No. 2010–0004, dated January 5, 2010, states:

Investigation of an uncommanded in-flight shutdown (IFSD) revealed that a third stage turbine wheel rupture was not contained by the turbine casings. The released portion consisted of a turbine blade together with the rim piece immediately below the blade. The rim piece was bounded by two adjacent axial slots and a fatigue crack that had developed between the holes in which the slots terminate. The slots and holes, which are closed by riveted plugs, were introduced by modification AB 173 in order to improve the vibration characteristics of the turbine wheel. Modification AB 208 brings an improvement to modification AB 173 by changing only the riveting detail. SN 283 72 0805 provides instructions for re-boring the holes at overhaul or repair in order to improve their surface condition. A manufacturing process modification has been introduced to improve the surface condition of these holes in third stage turbine wheels. Wheels subject to the improved manufacturing process have S/Ns outside the range specified in Table 1. Although there is only one known event, and

although it resulted only in an uncommanded IFSD, with no damage to the aircraft, the possibility exists that additional events may occur, potentially involving damage to the aircraft.

To address the unsafe condition, EASA issued AD 2009–0136, mandating inspection of certain third stage turbine wheels and removal of any damaged wheel. The wheels to be inspected were those whose cycles since new (CSN) would exceed 2,000 by February 1, 2011. Following additional research by Turbomeca on crack initiation and growth, this AD mandates inspections based on new criteria and removal of any damaged wheel.

We are issuing this AD to prevent uncontained failures of the third stage turbine wheel, which could result in damage to the helicopter.

Actions and Compliance

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

(1) For any affected third stage turbine wheel that on the effective date of this AD has accumulated fewer than 500 cycles-since-last-overhaul or repair, or since-new if the engine has never been overhauled or repaired:

(i) Within 300 additional cycles, perform a dye penetrant inspection on the rear face of the third stage turbine wheel.

(ii) Use Section 2, Instructions to Be Incorporated, of Turbomeca Mandatory Service Bulletin (MSB) No. 283 72 0804, Version C, dated October 23, 2009, to do the inspection.

(iii) Perform a second dye penetrant inspection when the engine has accumulated between 450 and 550 cycles from the first inspection.

(2) For any affected third stage turbine wheel that on the effective date of this AD, has accumulated 500 or more but fewer than 700 cycles-since-last-overhaul or repair, or since-new if the engine has never been overhauled or repaired:

(i) Within 200 additional cycles, perform a dye penetrant inspection on the rear face of the third stage turbine wheel.

(ii) Use Section 2, Instructions to Be Incorporated, of Turbomeca Mandatory Service Bulletin (MSB) No. 283 72 0804, Version C, dated October 23, 2009, to do the inspection.

(3) For any affected third stage turbine wheel that on the effective date of this AD, has accumulated 700 or more but fewer than 1,200 cycles-since-last-overhaul or repair, or since-new if the engine has never been overhauled or repaired:

(i) Within 150 additional cycles, perform a dye penetrant inspection on the rear face of the third stage turbine wheel.

(ii) Use Section 2, Instructions to Be Incorporated, of Turbomeca Mandatory Service Bulletin (MSB) No. 283 72 0804, Version C, dated October 23, 2009, to do the inspection.

(4) If any crack indication is found, then before further flight, remove the third stage turbine wheel from service.

(5) For any affected third stage turbine wheel that on the effective date of this AD has accumulated 1,200 or more cycles-since-last-overhaul or repair, or since-new if the engine has never been overhauled or repaired, no action is required.

FAA AD Differences

(f) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) and or service information as follows:

(1) EASA AD 2010–0004, dated January 5, 2010, requires removing the engine from service before further flight if a third stage turbine wheel is found cracked.

(2) This AD requires removing the third stage turbine wheel from service before further flight if a third stage turbine wheel is found cracked.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI EASA AD 2010–0004, dated January 5, 2010, and Turbomeca Mandatory Service Bulletin No. 283 72 0804, Version C, dated October 23, 2009, for related information. Contact Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15, for a copy of this service information.

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

Issued in Burlington, Massachusetts, on March 23, 2010.

Robert Ganley,

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

[FR Doc. 2010–7055 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0327; Directorate Identifier 2010–CE–012–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 525A Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2009–24–13, which applies to certain Cessna Aircraft Company (Cessna) Model 525A airplanes. AD 2009–24–13 currently requires you to repetitively inspect the thrust attenuator paddle assemblies for loose and damaged fasteners and for cracks. AD 2009–24–13 also requires you to replace loose or damaged fasteners and replace cracked thrust attenuator paddles found during any inspection. Since we issued AD 2009–24–13, Cessna has developed new design thrust attenuator paddles and universal head rivets as terminating action for the repetitive inspections. Consequently, this proposed AD would retain the requirements of AD 2009–24–13 until replacement of both thrust attenuator paddles and the eight countersunk fasteners with new design thrust attenuator paddles and universal head rivets. We are proposing this AD to detect and correct loose and damaged fasteners and cracks in the thrust attenuator paddles, which could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

DATES: We must receive comments on this proposed AD by May 14, 2010.

ADDRESSES: Use one of the following addresses to comment 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.

For service information identified in this proposed AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–6000; fax: (316) 517–8500; Internet: *http://www.cessna.com.*

FOR FURTHER INFORMATION CONTACT: TN Baktha, Aerospace Engineer, ACE–118W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket

number, "FAA–2010–0327; Directorate Identifier 2010–CE–012–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 we receive concerning this proposed AD.

Discussion

Reports of fatigue cracks found in thrust attenuator paddles on Cessna Model 525A airplanes caused us to issue AD 2009–24–13, Amendment 39–16105 (74 FR 62479, November 30, 2009). AD 2009–24–13 currently requires the following on Cessna Model 525A airplanes:

- Inspect repetitively the thrust attenuator paddle assemblies for loose and damaged fasteners and for cracks; and
- replace loose or damaged fasteners and replace cracked thrust attenuator paddles found during any inspection.

Four incidents of thrust attenuator paddles departing from airplanes have been reported. In two cases, the thrust attenuator paddles hit the rudder and caused structural damage to the rudder.

The thrust attenuator paddles are attached to the aft fuselage. The attachment fasteners fatigue and break.

It is also possible that a failed thrust attenuator paddle could depart the airplane and hit and damage the elevator.

We considered AD 2009–24–13 an interim action while Cessna developed a design improvement to change the attachment fasteners from the currently used counter sunk rivets to universal head rivets. Since we issued AD 2009–24–13, Cessna has developed new design thrust attenuator paddles and universal head rivets to replace the old design thrust attenuator paddle assemblies and the counter sunk fasteners.

This condition, if not corrected, could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

Relevant Service Information

We have reviewed:

- Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009;
- Cessna Citation Service Bulletin SB525A–78–02, dated November 13, 2009, and
- Cessna Citation Service Bulletin SB525A–78–02, Revision 1, dated February 5, 2010.

Cessna Citation Alert Service Letter ASL525A–78–01 describes procedures for inspecting and modifying the thrust attenuator paddle assemblies.

Cessna Citation Service Bulletin SB525A–78–02 describes procedures for replacing the thrust attenuator paddles and attachment hardware.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would supersede AD 2009–24–13 with a new AD that would retain the requirements of AD 2009–24–13 until you replace both thrust attenuator paddles and the eight countersunk fasteners with new design thrust attenuator paddles and universal head rivets. This proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 136 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection (retained from AD 2009–24–13):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $85 per hour = $85	Not Applicable	$85	$11,560

We estimate the following costs to do any necessary installation (retained from AD 2009–24–13) of missing/damaged fasteners that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost for two fasteners	Total cost per airplane
2 work-hours × $85 per hour = $170	$99.90	$269.90

We estimate the following costs to do any necessary replacement (retained from AD 2009–24–13) of a cracked thrust attenuator paddle that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost (per paddle)	Total cost per airplane
3 work-hours × $85 per hour = $255	$1,200	$1,455

We estimate the following costs to do the proposed replacement of both thrust attenuator paddles and the eight countersunk fasteners with new design thrust attenuator paddles and universal head rivets:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
5 work-hours × $85 per hour = $425	$3,464	$3,889	$528,904

As determined by the manufacturer, eligible airplanes may qualify for warranty coverage of parts and labor.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–24–13, Amendment 39–16105 (74 FR 62479, November 30, 2009), and adding the following new AD:

Cessna Aircraft Company: Docket No. FAA–2010–0327; Directorate Identifier 2010–CE–012–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by May 14, 2010.

Affected ADs

(b) This AD supersedes AD 2009–24–13, Amendment 39–16105.

Applicability

(c) This AD applies to Model 525A airplanes, serial numbers 0001 through 0244, that are certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 72: Engine.

Unsafe Condition

(e) This AD results from reports of fatigue cracks found in thrust attenuator paddles on Cessna Model 525A airplanes. We are issuing this AD to detect and correct loose and damaged fasteners and cracks in the thrust attenuator paddles, which could result in in-flight departure of the thrust attenuator paddles. This failure could lead to rudder and elevator damage and result in loss of control.

Compliance

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

Actions	Compliance	Procedures
(1) Visually inspect the left and right thrust attenuator paddle assemblies to determine if there are any missing, loose, or damaged fasteners and to determine if there are any cracks in the paddle.	Within the next 60 days after December 15, 2009 (the effective date of AD 2009–24–13) or within the next 30 hours time-in-service (TIS) after December 15, 2009 (the effective date of AD 2009–24–13), whichever occurs first. Repetitively inspect thereafter at intervals not to exceed 150 hours TIS.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.
(2) If you do not find any cracks in the thrust attenuator paddles during any inspection required in paragraph (f)(1) of this AD, install any missing fasteners, and replace any loose or damaged fasteners.	Before further flight after the inspection required in paragraph (f)(1) of this AD. Continue with the repetitive inspections specified in paragraph (f)(1) of this AD.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.
(3) If cracks are found during any inspection required in paragraph (f)(1) of this AD, do a surface eddy current inspection of the thrust attenuator paddles and the fastener hole(s) to determine the length of the cracks(s).	Before further flight after the inspection required in paragraph (f)(1) of this AD in which cracks are found.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.

Actions	Compliance	Procedures
(4) If the cracks identified in paragraph (f)(3) of this AD meet or exceed the limits specified in paragraph 3 of Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009, replace the thrust attenuator paddle and attachment hardware, as applicable.	(i) If the conditions of paragraph 3.A.(1) of Cessna Citation Alert Service Letter ASL525A-78–01, Revision 1, dated October 27, 2009, are met, replace before further flight after the inspection required in paragraph (f)(3) of this AD. After the replacement, continue with the repetitive inspections specified in paragraph (f)(1) of this AD. (ii) If the conditions of paragraph 3.A.(2) of Cessna Citation Alert Service Letter ASL525A-78–01, Revision 1, dated October 27, 2009, are met, replace within the next 150 hours TIS after the inspection required in paragraph (f)(3) of this AD. After the replacement, continue with the repetitive inspections specified in paragraph (f)(1) of this AD.	Follow Cessna Citation Alert Service Letter ASL525A–78–01, Revision 1, dated October 27, 2009.
(5) Replace both thrust attenuator paddles	Within the next 300 hours TIS after the effective date of this AD or within 1 year after the effective date of this AD, whichever occurs first.	Follow Cessna Citation Service Bulletin SB525A–78–02, Revision 1, dated February 5, 2010.

(g) The replacement required in paragraph (f)(5) of this AD terminates the repetitive inspection requirement of this AD. This replacement may be done at anytime, but must be done no later than 300 hours TIS or within 1 one after the effective date of this AD, whichever occurs first.

(h) If, before the effective date of this AD, you have done all the actions in the original issue of Cessna Citation Service Bulletin SB525A–78–02, dated November 13, 2009, then no further action is required by this AD. This is considered "unless already done" credit for this AD action.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: TN Baktha, Aerospace Engineer, ACE–118W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4155; fax: (316) 946–4107. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(j) AMOCs approved for AD 2009–24–13 are approved for this AD.

Related Information

(k) To get copies of the service information referenced in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–6000; fax: (316) 517–8500; Internet: *http://www.cessna.com*. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on March 23, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–7024 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2009–1050; Airspace Docket No. 09–ASW–3]

RIN 2120–AA66

Proposed Amendment to and Establishment of Restricted Areas and Other Special Use Airspace; Razorback Range Airspace Complex, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to restructure the restricted areas and other special use airspace (SUA) located in the vicinity of Fort Chaffee, AR. The Air National Guard (ANG) requested these modifications to the Razorback Range Airspace Complex, by establishing two new restricted areas, renaming an existing restricted area, and amending the boundaries section of the legal description of the Hog High North military operation area (MOA) that is contained in the airspace complex. Unlike restricted areas which are designated under Title 14 Code of Federal Regulations (14 CFR) part 73, MOAs are not rulemaking airspace actions. However, since the proposed R–2402B infringes on the Hog High North MOA, the FAA is including a discussion of the Hog High North MOA change in this NPRM. The ANG requested these airspace changes to permit more realistic aircrew training in modern tactics to be conducted in the Razorback Range Airspace Complex and to enable more efficient use of the National Airspace System (NAS).

DATES: Comments must be received on or before May 14, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2009–1050 and Airspace Docket No. 09–ASW–3 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2009–1050 and Airspace Docket No. 09–ASW–3) and be submitted in triplicate to the Federal Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2009–1050 and Airspace Docket No. 09–ASW–3." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Federal Docket Management System Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The special use airspace of the Razorback Range Airspace Complex includes restricted areas and MOAs. Restricted areas are regulatory airspace areas that are designated under 14 CFR part 73 rulemaking procedures to contain activities that may present a hazard to nonparticipating aircraft including ground-based and air-delivered weapons employment. No person may operate an aircraft within a restricted area without the advance permission of the using or controlling agency.

The Razorback Range Airspace Complex MOAs are used primarily as maneuvering areas for aircraft conducting air-to-ground and air-to-air training scenarios and may be used in conjunction with the existing restricted areas. MOAs are nonregulatory airspace areas that are established administratively and published in the NFDD. MOAs are established to segregate non-hazardous military flight activities from aircraft operating in accordance with instrument flight rules (IFR), and to advise pilots flying under visual flight rules (VFR) where these activities are conducted. IFR aircraft may be routed through an active MOA only when air traffic control can provide approved separation from the MOA activity. VFR pilots are not restricted from flying in an active MOA, but are advised to exercise caution while doing so. Normally, MOA proposals are not published in an NPRM but, instead, are advertised for public comment through a nonrule circular distributed by the FAA Service Center office to aviation interests in the affected area. When a nonrulemaking action is an integral part of a rulemaking action, FAA procedures allow for the nonrulemaking proposal to be included in the NPRM. Since the proposed restricted area R–2402B infringes on the Hog High North MOA, the FAA is including a description of the Hog High North MOA amendment in this NPRM. Comments on the proposed MOA change may also be submitted as indicated above in the "Comments Invited" section of this NPRM.

The ANG requested modifications to the Razorback Range Airspace Complex to better support essential air-to-ground weapons delivery profiles and advanced tactical training requirements. Driving the request are the technological advances that have been made in aircraft targeting systems that allow accurate weapons delivery from higher altitudes and greater distances from the target. The dimensions of the Razorback Range restricted area (R–2402) have not changed in decades and cannot accommodate the requirements of the modern combat tactics and increased capabilities of today's fighter aircraft. This airspace shortfall resulted in the request for additional restricted airspace at the Razorback Range. The proposed restricted areas, if approved, would accommodate the ANG's training requirements to perform combat missions such as Close Air Support, Destruction of Enemy Air Defenses, Combat Search and Recovery, Time Sensitive Targeting, and Forward Air Controller—Airborne during day and night time conditions.

While the Razorback Range supports training in low to medium altitudes, the lateral boundary of the range's existing restricted area is inadequate for training at medium to high altitudes. The restricted areas R–2402B and R–2402C, as proposed, would expand the lateral boundaries of the Razorback Range restricted area airspace approximately five nautical miles north and east of R–2402, and approximately three nautical miles south of R–2402 into the Hog High North MOA. If approved, the proposed airspace will provide the maneuvering airspace needed to permit air-to-ground training in various tactics that are being used in combat today.

The vertical and lateral boundaries of the Hog High North MOA will not change as a result of this airspace action. However, since the proposed R–2402B restricted area penetrates the MOA, the legal description will be amended to exclude R–2402B when the restricted area is active.

The Razorback Range Airspace Complex is, and will remain, designated as "joint-use" airspace. This means that, during periods when the airspace complex, or parts of the complex, are not needed by the using agency for its designated purposes, the airspace will be returned to the controlling agency for access by other NAS users. The Memphis Air Route Traffic Control Center (ARTCC) is the controlling agency for the Razorback Range Airspace Complex.

The Proposed MOA Change

The FAA is proposing an amendment to the Hog High North MOA boundaries section of the legal description to exclude the proposed restricted area R–2402B, which overlaps airspace with the MOA, when that restricted area is active. The altitude and time of use descriptions for Hog High North MOA will remain unchanged. This change would prevent airspace conflict with the overlapping proposed R–2402B.

Hog High North MOA, AR [Amended]

By removing the current boundaries description and substituting the following: Boundaries. Beginning at lat. 35°13′50″ N., long. 94°12′01″ W.; to lat. 35°11′33″ N., long. 94°12′01″ W.; thence east along Arkansas State Highway 10 to lat. 35°10′20″ N., long. 94°01′01″ W.; to lat. 35°15′00″ N., long. 94°01′01″ W.; to lat. 35°05′00″ N., long. 93°34′01″ W.; at lat. 34°51′00″ N., long. 93°25′01″ W.; to lat. 34°38′12″ N., long. 93°31′18″ W.; to lat. 34°41′30″ N., long. 93°45′53″ W.; to lat. 34°40′58″ N., long. 93°50′18″ W.; to lat. 34°47′19″ N., long. 94°26′52″ W.; to lat. 34°55′00″ N., long. 94°23′08″ W.; to lat. 35°05′31″ N., long. 94°17′57″ W.; to the point of beginning, excluding R–2402B when active.

The MOA change described here will also be published in the National Flight Data Digest (NFDD).

The Restricted Area Proposal

The FAA is proposing an amendment to 14 CFR part 73 to expand the restricted area airspace at the Razorback Range Airspace Complex to permit training in real-world combat tactics. While the ceiling of R–2402, at 30,000 feet MSL, is considered adequate for medium to high altitude weapons employment tactics training scenarios today, the lateral distance from the target area does not support medium to high altitude weapons delivery. Thus, aircrew training that is essential for combat readiness today is limited. This proposal would add two new restricted areas, R–2402B and R–2402C, to provide the vertical and lateral maneuvering airspace needed to practice medium to high altitude standoff weapon delivery profiles. Restricted area R–2402B is proposed to extend approximately five nautical miles to the east and three nautical miles to the south (into Hog High North MOA) of R–2402, from 10,000 feet MSL to FL 220. Restricted area R–2402C is proposed to extend approximately five nautical miles to the east and north of R–2402, from 13,000 feet MSL to FL 220. The proposed restricted areas will be activated when maneuvering airspace is required and cannot be activated without R–2402 being active also. When the proposed R–2402B and R–2402C restricted areas are not required for training requirements, that airspace will be released to Memphis ARTCC for access by nonparticipating aircraft, as appropriate.

Finally, to keep the naming convention of the R–2402 complex standardized, the FAA proposes to change the "R–2402 Fort Chaffee, AR" restricted area name to "R–2402A Fort Chaffee, AR". To ensure the time of designation of all R–2402 restricted areas in the Razorback Range Airspace Complex are consistent and cannot be misinterpreted, the time of designation information for R–2402 (proposed to become R–2402A) would also change the "Monday through Sunday" currently listed in the legal description to "daily." The remaining R–2402 legal description information will remain the same when re-published as R–2402A.

Section 73.24 of Title 14 CFR part 73 was republished in FAA Order 7400.8R, effective February 16, 2009.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would restructure the SUA at the Razorback Range Airspace Complex, Fort Chaffee, AR.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures," prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 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.

§ 73.24 [Amended]

2. § 73.24 is amended as follows:

* * * * *

R–2402 Fort Chaffee, AR [Removed]

R–2402A Fort Chaffee, AR [New]

Boundaries. Beginning at lat. 35°18′09″ N., long. 94°03′01″ W.; to lat. 35°17′00″ N., long. 94°03′01″ W.; to lat. 35°17′00″ N., long. 94°01′01″ W.; to lat. 35°10′20″ N., long. 94°01′01″ W.; thence west along Arkansas State Highway No. 10 to lat. 35°11′33″ N., long. 94°12′01″ W.; to lat. 35°13′50″ N., long. 94°12′01″ W.; to lat. 35°18′10″ N., long. 94°12′01″ W.; to lat. 35°18′12″ N., long. 94°09′52″ W.; thence east along Arkansas State Highway No. 22 to the point of beginning.

Designated altitudes. Surface to and including 30,000 feet MSL.

Time of designation. Sunrise to sunset, daily; other times by NOTAM.

Controlling agency. FAA, Memphis ARTCC.

Using agency. Commanding General, Fort Chaffee, AR.

* * * * *

R–2402B Fort Chaffee, AR [New]

Boundaries. Beginning at lat. 35°18′26″ N., long. 93°55′41″ W.; thence clockwise along a 7–NM radius circle centered at lat. 35°15′26″ N., long. 94°03′24″ W.; to lat. 35°10′55″ N., long. 94°09′57″ W.; thence east along Arkansas State Highway 10 to lat. 35°10′20″ N., long. 94°01′01″ W.; to lat. 35°17′00″ N., long. 94°01′01″ W.; to lat. 35°17′00″ N., long. 94°03′01″ W.; to lat. 35°18′09″ N., long. 94°03′01″ W.; thence east along Arkansas State Highway 22 to the point of beginning.

Designated altitudes. 10,000 feet MSL to, but not including, FL 220.

Time of designation. Sunrise to sunset, daily; other times by NOTAM.

Controlling agency. FAA, Memphis ARTCC.

Using agency. Arkansas Air National Guard, 188th Fighter Wing, Ft. Smith, AR.

R–2402C Fort Chaffee, AR [New]

Boundaries. Beginning at lat. 35°21′48″ N., long. 94°06′59″ W.; thence clockwise along a 7–NM radius circle centered at lat. 35°15′26″ N., long. 94°03′24″ W.; to lat. 35°18′26″ N., long. 93°55′41″ W.; thence west along Arkansas State Highway 22 to lat. 35°18′12″

N., long. 94°09′52″ W.; to the point of beginning.

Designated altitudes. 13,000 feet MSL to, but not including, FL 220.

Time of designation. Sunrise to sunset, daily; other times by NOTAM.

Controlling agency. FAA, Memphis ARTCC.

Using agency. Arkansas Air National Guard, 188th Fighter Wing, Ft. Smith, AR.

Issued in Washington, DC, on March 19, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–7075 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 38 and 140

RIN 3038—AC68

Delegations of Authority To Disclose Confidential Information

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing to amend its regulations governing delegations of authority to disclose confidential information to permit CFTC staff to provide confidential information to "registered entities," including exempt commercial markets offering significant price discovery contracts, and to require that registered entities update their lists of confidential data recipients on an annual basis. The Commission's proposal would also clarify that confidential information provided by the Commission to registered entities may only be used for market surveillance, audit, investigative or rule enforcement purposes and would remove the requirement that disclosures of confidential information to foreign government agencies and foreign futures authorities require the concurrence of the Commission's Division of Enforcement. Finally, the proposal would make certain other technical and conforming amendments to the Commission's rules.

DATES: Comments must be received by April 29, 2010.

ADDRESSES: Comments should be submitted to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5521, or by e-mail to *confidentialinforules@cftc.gov.* Reference should be made to "Delegations of Authority to Disclose Confidential Information." Comments may also be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov.* All comments must be in English.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5041. E-mail: *dheitman@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. The Commodity Exchange Act's Confidentiality Provisions

Section 8(a) of the Commodity Exchange Act ("CEA" or "Act") prohibits the Commission from disclosing information that would separately disclose the business transactions or market positions of any person or trade secrets or names of customers.[1] Despite this general prohibition, the CEA recognizes the need to share confidential information with registered entities and certain other self-regulatory bodies under specified circumstances. Section 8a(6) of the Act therefore authorizes the Commission to communicate to the proper officials of "registered entities"[2] and other self-regulatory bodies[3] the full facts regarding a particular transaction or market operation, "which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of [the] Act." Disclosure under this provision is subject to the caveat that information furnished by the Commission may not be disclosed by the receiving registered entity, registered futures association or self-regulatory organization except in a self-regulatory action or proceeding.

Commission regulation 140.72 implements these statutory provisions, delegates to specified senior staff the authority to make disclosures to "a contract market, registered futures association or self-regulatory organization," and establishes the standards and protocols governing such disclosures. However, regulation 140.72 has never been amended to replace the reference to "contract market" with a reference to the more inclusive defined term, "registered entity," which includes not only designated contract markets, but several other types of entities as well (*see* note 2 above). The term, "registered entity," was added to the Act by the Commodity Futures Modernization Act of 2000 ("CFMA").[4] The registered entity definition was subsequently expanded by the CFTC Reauthorization Act of 2008 ("2008 Reauthorization Act"),[5] which incorporated electronic trading facilities trading significant price discovery contracts into the registered entity definition as section 1a(29)(E).

The CEA also recognizes the need to share confidential information with other Federal or state regulatory authorities, acting within the scope of their jurisdiction, as well as foreign futures authorities, and in section 8(e) authorizes the Commission to make such disclosures on request, provided the Commission is satisfied that the information will not be disclosed except in connection with an action or proceeding brought under the laws governing the receiving authority, to which that receiving authority is a party. Commission regulation 140.73 implements the provisions of CEA section 8(e), delegates to specified senior staff the authority to make disclosures and establishes the standards and protocols governing disclosure to a requesting regulator.

As discussed below, the principal amendments to regulation 140.72 are being proposed: (1) To conform the Commission's rule to the CEA, as amended by the CFMA and the 2008 Reauthorization Act, by applying the regulation to "registered entities;" (2) to require that registered entities update their lists of confidential data recipients on an annual basis and notify the Commission within 10 business days of any changes to the list; and (3) to clarify that confidential information provided by the Commission to registered entities

[1] 7 U.S.C. 12(a).

[2] Section 1a(29) of the Act defines the term registered entity to mean: "(A) a board of trade designated as a contract market under section 5; (B) a derivatives transaction execution facility registered under section 5a; (C) a derivatives clearing organization registered under section 5b; (D) a board of trade designated as a contract market under section 5f; and (E) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded."

[3] In addition to "registered entities," the Commission is authorized to share confidential information with registered futures associations (*see* section 17 of the Act, 7 U.S.C. 21) and self-regulatory organizations as defined in section 3(a)(26) of the Securities Exchange Act of 1934. 7 U.S.C. 12a(6).

[4] Public Law 106–554, 114 Stat. 2763 (2000).

[5] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

may only be used for market surveillance, audit, investigative or rule enforcement responsibilities of the registered entity. The Commission additionally is proposing technical amendments to both regulations 140.72 and 140.73.

B. Part 38 of the Commission's Regulations

As noted above, by its terms, regulation 140.72 includes procedural requirements for DCMs that relate to the receipt and use of information furnished by the CFTC.[6] As a result of the passage of the CFMA, the Commission adopted regulations that exempted DCMs from all Commission regulations that were not specifically reserved in regulation 38.2. Regulation 140.72 was not specifically reserved in regulation 38.2. The Commission, however, believes that regulation 140.72 (both in its current form and as proposed to be amended herein) contains procedural safeguards that are intended to protect furnished information from improper use and disclosure. In that regard, the Commission attaches particular importance to the requirement that registered entities (including DCMs) must formally identify the officials within the organization who are specifically authorized to receive information from Commission staff and update that contact information annually. The Commission therefore proposes to add regulation 140.72 to the list of regulations reserved in regulation 38.2.

II. Discussion

A. Amendments Necessitated by the CFMA and the CFTC Reauthorization Act of 2008

The 2008 Reauthorization Act directs the CFTC to extend its regulatory oversight to the trading of significant price discovery contracts ("SPDCs") on exempt commercial markets ("ECMs") and, among other statutory amendments, adds ECMs with SPDCs to the definition of "registered entity" in section 1(a)(29) of the CEA.[7] Accordingly, with respect to a contract that the Commission determines is a SPDC, the ECM on which it is traded or executed becomes a registered entity subject to all the provisions of the CEA applicable to registered entities—including section 8a(6) of the Act. Consistent with this statutory change, the proposed amendments to regulation 140.72 would make its provisions applicable to "registered entities" and would permit staff to disclose confidential information to ECMs insofar as the disclosures relate to the ECM's SPDCs.

Regulation 140.72(b) provides that disclosures shall only be made to a contract market, registered futures association or self-regulatory organization official who is named in a list filed with the Commission by the chief executive officer of the entity. By amending paragraph (b) to refer to "registered entities" (instead of "contract markets") the proposed amendments would apply the disclosure rules to all such registered entities, including, among others, derivatives clearing organizations ("DCOs") and ECMs with respect to their SPDCs. Thus, for example, all registered entities would be required to provide to the Commission a list of officials within their organization authorized to receive disclosures of confidential information. The proposed rules would also require that the lists of officials authorized to receive disclosures must be updated annually. Finally, the proposed amendments would clarify that the chief executive officer of the registered entity must notify the Commission within ten business days of any additions or deletions to the list.

B. Amendments Regarding the Use of Confidential Information

Recently, questions have arisen regarding the potential use of confidential information provided by the Commission to DCMs. In particular, DCM officials have inquired as to whether they might be allowed to use that information to assess the current composition of a given market with an eye to developing additional types of contracts. Consistent with the Section 8a(6), these proposed rules clarify that confidential information provided by the Commission to registered entities (including DCMs) can only be used for their market surveillance, audit, investigative or rule enforcement responsibilities, which do not include business development purposes. The Commission solicits comments regarding whether similar restrictions should be applied to confidential information generated internally by a registered entity.[8] In addition, registered entities should review their procedures for the handling of confidential information from the Commission to ensure that persons handling such information are properly "walled off" from the rest of the organization.

C. Technical and Conforming Amendments

Regulations 140.72(a) and 140.73(a) currently list, by title, a large number of senior staff members to whom the Commission delegates authority to disclose confidential information to the various regulatory and self-regulatory authorities listed in those respective regulations. Many of these titles have been rendered obsolete by subsequent CFTC organizational changes. In order to simplify the regulations and minimize the need for further regulatory amendments to conform to future organizational changes, the proposed regulations would delegate the authority to disclose confidential information to the heads of the major Commission Divisions or Offices involved and give those individuals the authority to sub-delegate that authority to such other employees of their respective Divisions or Offices as they may designate from time to time.

As noted above, regulation 140.73 delegates to specified senior staff the authority to disclose confidential information to United States, state and foreign government agencies and to foreign futures authorities. Regulation 140.73(b) currently requires that disclosures made pursuant to this section must be made with the concurrence of the Director of the Division of Enforcement or his or her designee. For efficiency, the Commission proposes to delete paragraph (b) of regulation 140.73.

The CFMA added a number of new definitions to section 1a of the CEA. As a result, the definition of "foreign futures authority," formerly found in section 1a(10) of the CEA, has been renumbered as section 1(a)(18). The Commission proposes a conforming amendment to regulation 140.73(a)(3),

[6] The amendments proposed herein would not alter those requirements since the amendments would replace the term, "contract market," with the term, "registered entity," which by definition includes contract markets.

[7] As noted above, the 2008 Reauthorization Act added the following provision to section 1(a)(29)'s definition of registered entity: "(E) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded." 7 U.S.C. 1(a)(29)(E).

[8] For example, Part 17 of the Commission's regulations requires that clearing members, FCMs, and foreign brokers file daily large trader reports with the Commission. The Kansas City Board of Trade (KCBT) and the Minneapolis Grain Exchange (MGX) rely on receiving daily transmissions of large trader reports from the Commission for monitoring speculative position limits and reportable positions. The remaining DCMs have adopted their own large trader reporting rules and independently collect large trader reports. Under this proposed rule, KCBT and MGX would be prohibited from using the confidential large trader reports they receive from the Commission for anything other than market surveillance, audit, investigative or rule enforcement purposes. DCMs that independently collect large trader reports would not be subject to the same prohibitions because they do not receive the data from the Commission.

which is applicable to foreign futures authorities, to correctly identify the definitional section.

III. Related Matters

A. Cost Benefit Analysis

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, section 15(a) requires the Commission to consider the costs and benefits of the subject regulations in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the market for listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, not withstanding its costs, a particular regulation is necessary or appropriate to protect the public interest.

As relevant here, the proposed amendments would extend the information-sharing provisions of regulation 140.72 to registered entities, including DCOs and exempt commercial markets with respect to their SPDCs, among others. The authority and benefits of the provisions regarding disclosure of confidential information derive from a determination that the transaction or market operation to be disclosed disrupts or tends to disrupt any market; or is otherwise harmful or against the best interests of producers, consumers, or investors; or that disclosure is necessary or appropriate to effectuate the purposes of the CEA. The other proposed amendments would clarify, consistent with the language of Section 8a(6) and regulation 140.72(d), that registered entities could only use the information for their market surveillance, audit, investigative or rule enforcement responsibilities and would enhance the reliability of the disclosure system by requiring registered entities to update their lists of confidential data recipients on an annual basis and to notify the Commission of any changes to such lists in a timely fashion. The costs associated with these proposed amendments are minimal. Extending the regulations' confidential disclosure requirements to registered entities, including ECMs with SPDCs, while clarifying the confidentiality protections and improving the reliability of the disclosure system, enhances the Commission's ability to prevent market disruptions and protect the interests of producers, consumers and the public.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.,* requires that agencies, in proposing rules, consider the impact of those rules on small entities. These amendments would extend CFTC staff's ability to share relevant information with additional registered entities, including ECMs with SPDCs, would further protect the confidentiality of disclosed information by requiring that registered entities could only use the information for their market surveillance, audit, investigative or rule enforcement responsibilities and would enhance the reliability of the disclosure system by requiring registered entities to update their lists of confidential data recipients on an annual basis. The proposed rules otherwise would make technical and conforming changes to rules 140.72 and 140.73. The Commission has previously determined that DCMs, derivatives transaction execution facilities ("DTEFs"), ECMs (with or without SPDCs) and DCOs are not small entities for purposes of the RFA.[9] Similarly, the Commission believes that the other type of registered entity listed in section 1a(29) of the Act, a board of trade designated as a contract market under section 5f,[10] is likewise not a small entity for purposes of the RFA. Accordingly, the Commission does not expect that these amendments will have a significant impact on a substantial number of small entities. For this reason, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Commission solicits public comments as to whether a DTEF, a DCM designated under section 5f of the Act or an ECM with a SPDC should be considered a small entity for purposes of the RFA.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.,* imposes certain requirements on Federal agencies, including the Commission, in connection with conducting or sponsoring any collection of information as defined by the PRA. Rules 140.72 and 140.73 are not associated with an information collection as defined by the PRA. Accordingly, the Commission certifies that, for purposes of the PRA, these proposed amendments would not impose any new reporting or recordkeeping requirements.

[9] *See:* 47 FR 18618 at 18619 (April 30, 1982) with respect to DCMs; 66 FR 42255 at 42268 (August 10, 2001) with respect to DTEFs and ECMs; and 66 FR 45604 at 45609 (August 29, 2001) with respect to DCOs.

[10] Section 5f deals with "Designation of Securities Exchanges and Associations as Contract Markets."

List of Subjects

17 CFR Part 38

Block transactions, Commodity futures, Contract markets, Transactions off the centralized market, Reporting and recordkeeping requirements.

17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

Accordingly, the Commission proposes to amend 17 CFR parts 38 and 140 as follows:

PART 38—DESIGNATED CONTRACT MARKETS

1. The authority citation for part 38 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, 7, and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Pub. L. 106–554, 114 Stat. 2763 (2000).

2. Section 38.2 is revised to read as follows:

§ 38.2 Exemption.

Agreements, contracts, or transactions traded on a designated contract market under Section 5 of the Act, the contract market and the contract market's operator are exempt from all Commission regulations for such activity, except for the requirements of this Part 38 and §§ 1.3, 1.12(e), 1.31, 1.37(c)–(d), 1.38, 1.52, 1.59(d), 1.60, 1.63(c), 1.67, 33.10, Part 9, Parts 15 through 21, Part 40, Part 41, § 140.72 and Part 190 of this chapter, including any related definitions and cross-referenced sections.

PART 140—ORGANIZATION, FUNCTIONS AND PROCEDURES OF THE COMMISSION

3. The authority citation for part 140 conitnues to read as follows:

Authority: 7 U.S.C. 2 and 12a.

4. Section 140.72 is revised to read as follows:

§ 140.72 Delegation of authority to disclose confidential information to a registered entity, registered futures association or self-regulatory organization.

(a) Pursuant to the authority granted under sections 2(a)(12), 8a(5) and 8a(6) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight, the Director of the Division of Clearing and Intermediary Oversight, the Director of the Division of Enforcement, the General Counsel, the Chief Economist and the Director of the Office of International Affairs, and to such other employees of their respective Divisions and Offices as they may designate from time to time, the authority to disclose to an official of any registered entity (as defined in section 1a(29) of the Act), registered futures association, or self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934, any information necessary or appropriate to effectuate the purposes of the Act, including, but not limited to, the full facts concerning any transaction or market operation, including the names of the parties thereto. This authority to disclose shall be based on a determination that the transaction or market operation disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors or that disclosure is necessary or appropriate to effectuate the purposes of the Act. The authority to make such a determination is also delegated by the Commission to the Commission employees identified in this section. A Commission employee delegated authority under this section may exercise that authority on his or her own initiative or in response to a request by an official of a registered entity, registered futures association or self-regulatory organization.

(b) Disclosure under this section shall only be made to a registered entity, registered futures association or self-regulatory organization official who is named in a list filed with the Commission by the chief executive officer of the registered entity, registered futures association or self-regulatory organization, which sets forth the official's name, business address and telephone number. The chief executive officer shall provide the Commission with an updated list annually, during the first month of the calendar year, and shall thereafter notify the Commission within 10 business days of any deletions or additions to the list of officials authorized to receive disclosures under this section. The original list, each annual update, and any supplemental list required by his paragraph shall be filed with the Secretary of the Commission, and a copy thereof shall also be filed with the Regional Administrator for the region in which the registered entity is located or in which the registered futures association or self-regulatory organization has its principal office.

(c) Notwithstanding the provisions of paragraph (a) of this section, in any case in which a Commission employee delegated authority under this section believes it appropriate, he or she may submit to the Commission for its consideration the question of whether disclosure of information should be made. Nothing in this section shall prevent the Commission from exercising the authority delegated in paragraph (a) of this section.

(d) For purposes of this section, the term "official" shall mean any officer or member of the staff, management or a committee of a registered entity, registered futures association or self-regulatory organization who is specifically charged with market surveillance, audit, investigative or rule enforcement responsibilities, or their duly authorized representative or agent, who is named on the list filed pursuant to paragraph (b) of this section or any supplement thereto.

(e) For the purposes of this section, the term "self-regulatory organization" shall mean the same as that defined in section 3(a)(26) of the Securities Exchange Act of 1934.

(f) Any registered entity, registered futures association or self-regulatory organization receiving information from the Commission under these provisions may use such information only for its market surveillance, audit, investigative or rule enforcement responsibilities and shall not disclose such information, except that disclosure may be made in any self-regulatory action or proceeding.

5. Section 140.73 is revised to read as follows:

§ 140.73 Delegation of authority to disclose information to United States, State, and foreign government agencies and foreign futures authorities.

(a) Pursuant to sections 2(a)(12), 8a(5) and 8(e) of the Act, the Commission hereby delegates, until such time as the Commission orders otherwise, to the General Counsel, the Director of the Division of Enforcement, the Director of the Division of Market Oversight, the Director of the Division of Clearing and Intermediary Oversight, the Chief Economist and the Director of the Office of International Affairs, and to such other employees of their respective Divisions and Offices as they may designate from time to time, the authority to furnish information in the possession of the Commission obtained in connection with the administration of the Act, upon written request, to:

(1) Any department or agency of the United States, including for this purpose an independent regulatory agency, acting within the scope of its jurisdiction;

(2) Any department or agency of any State or any political subdivision thereof, acting within the scope of its jurisdiction; or

(3) Any foreign futures authority, as that term is defined in section 1a(18) of the Act, or any department or agency of any foreign government or political subdivision thereof, acting within the scope of its jurisdiction, provided that the Commission official making the disclosure is satisfied that the information will not be disclosed except in connection with an adjudicatory action or proceeding brought under the laws of such foreign government or political subdivision to which such foreign government or political subdivision or any department or agency thereof, or foreign futures authority is a party.

(b) In furnishing information under this delegation pursuant to paragraphs (a)(1) and (2) of this section, the Commission official making the disclosure shall remind the department or agency involved that section 8(e) of the Act prohibits the disclosure by such department or agency of information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers except in an action or proceeding under the laws of the United States, the State, or a political subdivision thereof to which the department or the agency of either the state or political subdivision, the Commission, or the United States is a party.

(c) This delegation shall not affect any other delegation that the Commission has made or may make, which authorizes any other officer or employee of the Commission to furnish information to governmental bodies on the Commission's behalf.

(d) Notwithstanding the provisions of paragraph (a) of this section, in any case in which any employee delegated authority therein believes it appropriate, the matter may be submitted to the Commission for its consideration. Nothing in this section shall prohibit the Commission from exercising the authority delegated in paragraph (a) of this section.

Issued in Washington, DC, on March 22, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–6813 Filed 3–29–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 610

[Docket No. FDA–2010–N–0099]

RIN 0910–AG15

Revision of the Requirements for Constituent Materials

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations to permit the Director of the Center for Biologics Evaluation and Research (CBER) or the Director of the Center for Drug Evaluation and Research (CDER), as appropriate, to approve exceptions or alternatives to the regulation for constituent materials. FDA is taking this action due to advances in developing and manufacturing safe, pure, and potent biological products licensed under a section of the Public Health Service Act (the PHS Act) that, in some instances, render the existing constituent materials regulation too prescriptive and unnecessarily restrictive. This rule provides manufacturers of licensed biological products with flexibility, as appropriate, to employ advances in science and technology as they become available, without diminishing public health protections.

DATES: Submit electronic or written comments on the proposed rule on or before June 28, 2010. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by April 29, 2010, (see the "Paperwork Reduction Act of 1995" section of this document).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0099 and/or RIN number 0910–AG15, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the "Paperwork Reduction Act of 1995" section of this document).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Information Collection Provision: The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection by April 29, 2010, to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Constituent materials regulated under § 610.15 (21 CFR 610.15) include ingredients, preservatives, diluents, adjuvants, extraneous protein and antibiotics that are contained in a biological product. FDA is proposing to amend the regulation for constituent materials at § 610.15 to allow the Director of CBER or the Director of CDER, as appropriate, to approve an exception or alternative to the requirements under § 610.15, when data submitted with the exception or alternative establish the safety, purity, and potency of the biological product. This proposed rule provides manufacturers of biological products with flexibility, as appropriate, to employ advances in science and technology as they become available, without diminishing public health protections. Examples of how the proposed rule would provide flexibility to manufacturers in the use of preservatives and aluminum in biological products are provided below. However, the proposed rule would also provide flexibility to the existing requirements regarding extraneous protein and antibiotics (§ 610.15(b) and (c)), provided that each request for an alternative or exception to these requirements is submitted with data that establish the safety, purity, and potency of the biological product.

Standards for certain constituent materials present in biological products are provided under § 610.15. Section 610.15(a) requires that all ingredients used in a licensed product, and any diluent provided as an aid in the administration of the product, meet generally accepted standards of purity and quality. Any preservative used shall be sufficiently nontoxic so that the amount present in the recommended dose of the product will not be toxic to the recipient, and in the combination used it shall not denature the specific substances in the product to result in a decrease below the minimum acceptable potency within the dating period when stored at the recommended temperature. Products in multiple-dose containers shall contain a preservative, except that a preservative need not be added to Yellow Fever Vaccine; Poliovirus Vaccine Live Oral; viral vaccines labeled for use with the jet injector; dried vaccines when the accompanying diluent contains a preservative; or to an Allergenic Product in 50 percent or more volume in volume glycerin. An adjuvant shall not be introduced into a product unless there is satisfactory evidence that it does not affect adversely the safety or potency of the product.

These regulations also require that the amount of aluminum in the recommended individual dose of a biological product not exceed the following:

• 0.85 milligrams if determined by assay;

• 1.14 milligrams if determined by calculation on the basis of the amount of aluminum compound added; or

• 1.25 milligrams determined by assay provided that data demonstrating that the amount of aluminum used is safe and necessary to produce the intended effect are submitted to and approved by the Director of CBER or the Director of CDER.

This regulation establishes requirements for the presence of certain constituent materials in final licensed, biological products and/or strictly limits the amount of certain constituent materials present in licensed biological products. For example, the regulation contains requirements as to preservatives. Preservatives are compounds that kill or prevent the growth of microorganisms, particularly bacteria and fungi. In the **Federal Register** of January 10, 1968 (33 FR 367 at 369), the National Institutes of Health (NIH) issued the precursor regulation to constituent materials (§ 610.15) (the 1968 regulation).[1] This regulation, in part, set forth the requirements for preservatives in biological products in multiple-dose containers and included exceptions to this requirement. Prior to NIH's issuance of the 1968 regulation, there had been reports in the scientific literature of serious injuries and deaths associated with bacterial contamination of multiple-dose containers of vaccines that did not contain a preservative. This concern regarding contamination was the scientific basis for the requirement that products in multiple-dose containers contain a preservative.[2] However, the regulation also provided for certain exceptions from the preservative requirement. These exceptions included live viral vaccines that had been licensed under section 351 of the PHS Act (42 U.S.C. 262) and that were in production when NIH issued the 1968 regulation.[3]

Preservatives in multiple-dose containers have a long record of safe and effective use in preventing microbial growth in the event that the vaccine is accidentally contaminated, as might occur with repeated punctures of multiple-dose containers. The use of preservatives has significantly declined in recent years with the development of new products presented in single-dose containers. However, some biological products, such as inactivated influenza virus vaccines, are still presented in multi-dose containers and contain a preservative.

However, the requirements in connection with preservatives are too prescriptive and unnecessarily restrictive because, for example, state-of-the art technologies, such as the development of devices to ensure aseptic withdrawing, offer an alternative to the use of preservatives in multiple-dose containers. FDA believes that providing the option to manufacture vaccine in multiple-dose containers without use of a preservative would be acceptable, provided that appropriate safeguards, such as adequate storage, aseptic withdrawing techniques and timely use of the product (e.g., use of the vaccine within a defined period of time) are followed to ensure that the safety, purity, and potency of the product are not compromised. Furthermore, the current regulation under § 610.15(a) does not provide FDA with flexibility to consider situations (outside of the listed exceptions) in which to allow the use of preservative-free vaccines in multiple-dose containers. The proposed rule would permit the Director of CBER or the Director of CDER, as appropriate, to approve a request to market a biological product in multiple-dose containers without use of a preservative, if the manufacturer demonstrates the safety, purity, and potency of the product.

Another example where the current requirements are too prescriptive and unnecessarily restrictive pertains to the amount of aluminum permitted under § 610.15(a) in the recommended single human dose of a biological product. Aluminum, in the form of an aluminum salt, is used as an adjuvant in certain biological products. The existing regulation limits the amount of aluminum per dose to no more than 0.85 milligrams (mg) if determined by assay or 1.14 mg if determined by calculation on the basis of the amount of aluminum compound added. In the **Federal Register** of October 23, 1981 (46 FR 51903), FDA published a rule entitled "General Biological Products Standards; Aluminum in Biological Products" (the October 1981 rule). The October 1981 rule amended § 610.15(a) to increase the permissible level of aluminum per dose to 1.25 mg both to make the regulation consistent with World Health Organization standards,[4] and because it appeared that certain groups (such as renal dialysis patients), who were understood to be at high risk of contracting hepatitis, might require a higher dosage of the hepatitis B vaccine, which would in turn, require amounts of aluminum as high as 1.25 mg per dose. (See also "General Biological Products Standards for Aluminum in Biological Products" (46 FR 23765, April 28, 1981)).

The aluminum content per dose in the formulation of a licensed biological product, as specified in § 610.15(a), reflects the NIH Minimum Requirements for Diphtheria Toxoid (1947)[5] and Tetanus Toxoid (1952)[6]. The proposed rule would not alter the existing requirements regarding the amount of aluminum in a biological product. Instead, in a change that is analogous to the one FDA issued in the October 1981 rule, involving the groups who were at high risk of contracting hepatitis, the proposed rule would allow either the Director of CBER or the Director of CDER to approve an exception or alternative when the Director determines that a biological product meets the requirements for safety, purity, and potency but contains an amount of aluminum that is higher than currently permitted by § 610.15, such as a therapeutic vaccine for treating patients with cancer that contains aluminum salts at levels higher than currently allowed, but still meets the requirements of safety, purity, and potency.

The proposed rule enables FDA to assess the constituent materials in these and other products and provides sufficient flexibility for FDA to employ advances in science and technology as they become available, without diminishing public health protection.

Manufacturers seeking approval of an exception or alternative to a requirement under § 610.15 would be required to submit a request in writing.

[1] In 1968, NIH regulated biological products, through its Division of Biologics Standards. In the **Federal Register** of June 29, 1972 (37 FR 12865), an amended Statement of Organization, Functions and Delegations of Authority of the Department of Health, Education and Welfare was published reflecting a transfer of the Division of Biologics Standards to the Food and Drug Administration. In the **Federal Register** of August 9, 1972 (37 FR 15993), FDA published regulations that further reflected these organizational changes. As a result of this organizational change, the regulations pertaining to biological products under Part 73 of Title 42 of the Code of Federal Regulations were transferred to the newly established Part 273 of Title 21 of the Code of Federal Regulations.

[2] See "The National Vaccine Advisory Committee Sponsored Workshop on Thimerosal Vaccines" at 21–24 (August 11, 1999). See also Wilson, Hazards of Immunization, 1967.

[3] Biological products had contained preservatives prior to 1968. "The National Vaccine Advisory Committee Sponsored Workshop on Thimerosal Vaccines" at 24 (August 11, 1999).

[4] More specifically, the amendment permitted the use of up to 1.25 mg of aluminum determined by assay provided that data demonstrating that the amount of aluminum used is safe and necessary to produce the intended effect are submitted to and approved by the Director, Bureau of Biologics.

[5] National Institute of Health, "Minimum Requirements for Diphtheria Toxoid," 4th Revision, 1947.

[6] National Institutes of Health, "Minimum Requirements for Tetanus Toxoid," 4th Revision, 1952.

The request may be submitted as part of the original biologics license application, as an amendment to the original, pending application or as a prior approval supplement to an approved application.

II. Highlights of the Proposed Rule

FDA is proposing to amend § 610.15 by adding new paragraph (d) that would permit the Director of CBER or the Director of CDER, as appropriate, to approve exceptions or alternatives to the regulatory requirements for constituent materials, when the data submitted with the exception or alternative establish the safety, purity, and potency of the biological product. All requirements under § 610.15 would remain in effect, except those for which the Director approves an exception or alternative. Manufacturers seeking approval of an exception or alternative must submit a request in writing, as described in section I of this document.

FDA is proposing this rule to permit the Director of CBER or the Director of CDER, as appropriate, to approve exceptions or alternatives to the regulations for constituent materials, when the data submitted with the exception or alternative establish the safety, purity, and potency of the biological product. All requirements under § 610.15 would remain in effect, except those for which the Director approves an exception or alternative. Manufacturers seeking approval of an exception or alternative must submit a request in writing, as described in section I of this document.

III. Legal Authority

FDA is issuing this regulation under the biological products provisions of the Public Health Service Act (42 U.S.C. 262 and 264) and the drugs and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (sections 201, 301, 501, 502, 503, 505, 510, 701, and 704 (21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 371, and 374)). Under these provisions of the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, pure, and potent; and prevent the introduction, transmission, and spread of communicable disease.

IV. Analysis of Impacts

A. Review Under Executive Order 12866, the Regulatory Flexibility Act, and the Unfunded Mandates Reform Act of 1995

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule would allow the Director of CBER or the Director of CDER, as appropriate, to approve exceptions or alternatives to the regulations for constituent materials, this action would increase flexibility and reduce the regulatory burden for affected entities. Therefore, the agency proposes to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. We request detailed comment regarding any potential economic impact of this proposed rule.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

The benefits of this regulatory action are that the proposed rule would reduce burdens on industry (e.g., developers of biological products) due to greater flexibility and reduced regulatory requirements. These issues are discussed in greater detail in section I of this document.

Any costs associated with this regulatory action are expected to be minimal and widely dispersed among affected entities. Based on FDA experience, we estimate that we would receive a total of approximately three requests annually for an exception or alternative under § 610.15. FDA experience with similar information collection requirements suggests that approximately 1 hour would be required to prepare and submit such a request.

B. Environmental Impact

The agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant adverse effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

C. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Revision of the Requirements for Constituent Materials.

Description: The proposed rule would permit the Director of CBER or the Director of CDER, as appropriate, to approve a manufacturer's request for exceptions or alternatives to the regulation for constituent materials. This proposed rule provides manufacturers of biological products with flexibility, as appropriate, to employ advances in science and technology as they become available, without diminishing public health protections. Manufacturers seeking approval of an exception or alternative must submit a request in writing. The request must be clearly identified with a brief statement describing the basis for the request and supporting data. The request may be submitted as part of the original biologics license application, as an amendment to the original, pending application or as a prior approval supplement to an approved application. The information to be collected will assist FDA in identifying and reviewing requests for an exception or alternative to the requirements for constituent materials.

Description of Respondents: Manufacturers of biological products.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.15	3	1	3	1	3

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA experience, we estimate that we will receive a total of approximately 3 requests annually for an exception or alternative under § 610.15. The hours per response are based on FDA experience with similar information collection requirements.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection to OMB (see **DATES** and **ADDRESSES**).

VI. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written 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.

List of Subjects in 21 CFR Part 610

Biologics, Labeling, Reporting and Recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 610 be amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

2. Amend § 610.15 by adding new paragraph (d) to read as follows:

§ 610.15 Constituent materials.

* * * * *

(d) The Director of the Center for Biologics Evaluation and Research or the Director of the Center for Drug Evaluation and Research may approve an exception or alternative to any requirement in this section. Requests for such exceptions or alternatives must be in writing.

Dated: March 25, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–7073 Filed 3–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–335P]

RIN 1117–AB28

Schedules of Controlled Substances: Exempted Prescription Product; River Edge Pharmaceutical, Servira

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking proposes the amendment of the list of Exempted Prescription Products cited in the Code of Federal Regulations. This action is in response to DEA's review of new applications for exemption. DEA has received one new application for exemption for River Edge Pharmaceutical's Servira®. Having reviewed this application and relevant information, DEA finds that this preparation has no significant potential for abuse. Therefore, DEA hereby proposes that this product be added to the list of Exempted Prescription Products and exempted from the application of certain provisions of the Controlled Substances Act (CSA).

DATES: Written comments must be postmarked and electronic comments must be submitted on or before April 29, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–335" on all written and electronic correspondence. Written comments sent via regular or express mail should be sent to the Drug Enforcement Administration, *Attention:* DEA Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152. Comments may be sent to DEA by sending an electronic message to *dea.diversion.policy@usdoj.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. DEA will accept attachments to electronic comments in Microsoft word, WordPerfect, Adobe PDF, or Excel file formats only. DEA will not accept any file formats other than those specifically listed here.

Please note that DEA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because

http://www.regulations.gov terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

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

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

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

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Drug Enforcement Administration's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, *please see* the **FOR FURTHER INFORMATION CONTACT** paragraph.

Background

The Controlled Substances Act as amended by the Dangerous Drug Diversion Control Act of 1984 authorizes the Attorney General in accordance with 21 U.S.C. 811(g)(3)(A) to exempt from specific provisions of the Act, a preparation or mixture if that preparation or mixture: (1) Contains a nonnarcotic controlled substance; (2) is approved for prescription use; and (3) contains one or more active ingredients that are not listed in any schedule and whose presence vitiates the potential for abuse of the nonnarcotic controlled substance. Such exemptions apply only to a specific prescription product and are only granted following suitable application to the Drug Enforcement Administration per 21 CFR 1308.31.

Exemption of Nonnarcotic Prescription Products

21 CFR 1308.31 provides an application procedure whereby any person may apply for exemption for nonnarcotic prescription products which meet certain criteria. 21 CFR 1308.31(a) further states that any person seeking to have any compound, mixture, or preparation containing any nonnarcotic controlled substance listed in 21 CFR 1308.12(e), or in 21 CFR 1308.13(b) or (c), or in 21 CFR 1308.14, or in 21 CFR 1308.15, exempted from application of all or any part of the CSA pursuant to 21 U.S.C. 811(g)(3)(A) may apply to the Administrator of DEA for such exemption.

21 CFR 1308.31(b) specifies that an application for an exemption shall contain the following information:

(1) The complete quantitative composition of the dosage form.

(2) Description of the unit dosage form together with complete labeling.

(3) A summary of the pharmacology of the product including animal investigations and clinical evaluations and studies, with emphasis on the psychic and/or physiological dependence liability (this must be done for each of the active ingredients separately and for the combination product).

(4) Details of synergisms and antagonisms among ingredients.

(5) Deterrent effects of the noncontrolled ingredients.

(6) Complete copies of all literature in support of claims.

(7) Reported instances of abuse.

(8) Reported and anticipated adverse effects.

(9) Number of dosage units produced for the past 2 years.

Within a reasonable period of time after the receipt of an application for an exemption under this section, 21 CFR 1308.31(c) states that the Administrator shall notify the applicant of the acceptance or non-acceptance of the application, and if not accepted, the reason therefor. The regulation states that the Administrator need not accept an application for filing if any of the requirements prescribed in 21 CFR 1308.31(b) is lacking or is not set forth so as to be readily understood. The regulation states that if accepted for filing, the Administrator shall publish in the **Federal Register** a general notice of proposed rulemaking in granting or denying the application. Such notice shall include a reference to the legal authority under which the rule is proposed, a statement of the proposed rule granting or denying an exemption, and, in the discretion of the Administrator, a summary of the subjects and issues involved.

The regulation further specifies that the Administrator shall permit any interested person to file written comments on or objections to the proposal and shall designate in the notice of proposed rulemaking the time during which such filings may be made. After consideration of the application and any comments on or objections to the proposed rulemaking, the Administrator shall issue and publish in the **Federal Register** a final order on the application, which shall set forth the findings of fact and conclusions of law upon which the order is based. This order shall specify the date on which it shall take effect, which shall not be less than 30 days from the date of publication in the **Federal Register** unless the Administrator finds that conditions of public health or safety necessitate an earlier effective date, in which event the Administrator shall specify in the order his findings as to such conditions.

21 CFR 1308.31(d) further states that the Administrator may revoke any exemption granted pursuant to 21 U.S.C. 811(g)(3)(A) by following the procedures set forth in 21 CFR 1308.31(c).

Redelegation of Authority

The Administrator has redelegated this authority to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, pursuant to 28 CFR 0.104, Appendix to Subpart R. The current Table of Exempted Prescription Products lists those products that have been granted exempt status prior to this

update. That table can be viewed online at: *http://www.deadiversion.usdoj.gov/schedules/exempt/exempt_list.htm.*

Product Exemptions Subject to This Proposed Rulemaking

DEA received one application for exemption pursuant to the provisions of 21 CFR 1308.32 for:

River Edge Pharmaceutical's Servira® (NDC Code 68032–256) tablets containing 48.6 mg phenobarbital in combination with hyoscyamine sulfate, atropine sulfate and scopolamine hydrobromide.

The Deputy Assistant Administrator, Office of Diversion Control, having reviewed this application and relevant information, finds that this preparation contains a nonnarcotic controlled substance listed in 21 CFR 1308.14, also contains an active ingredient not listed in any controlled substance schedule, and has no significant potential for abuse.

The product Servira® contains the drug phenobarbital. Phenobarbital is a schedule IV controlled substance listed in 21 CFR 1308.14. The product also contains the anticholinergic ingredients hyoscyamine sulfate, atropine sulfate and scopolamine hydrobromide. These ingredients are not controlled substances. In the quantities included in the product, these ingredients have deterrent effects upon the product's potential for abuse.

Therefore, the Deputy Assistant Administrator hereby proposes that the following product is to be exempted from the application of sections 302 through 305, 307 through 309, and 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and §§ 1301.13, 1301.22, and 1301.71 through 1301.77 of this chapter. If this rule is finalized as proposed, the table that is available online will be updated to include the exempted prescription product included in this rulemaking.

Any interested person may file written comments or objections to this proposal. After consideration of the application and any comments or objections to the proposed rulemaking, the Deputy Assistant Administrator shall issue and publish in the **Federal Register** the final order of the application. The Deputy Assistant Administrator may revoke any exemption granted pursuant to 21 U.S.C. 811(g)(3)(A) by following the procedures set forth in 21 CFR 1308.31(c).

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This regulation will not have a significant impact upon firms who distribute these products. In fact, the approval of Exempted Prescription status for these products reduces the regulatory requirements for distribution of these materials.

Executive Order 12866

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles of Executive Order 12866 Section 1(b). It has been determined that this is not a significant regulatory action. Therefore, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12988

The Deputy Assistant Administrator further certifies that this regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13132

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

Unfunded Mandates Reform Act of 1995

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

Congressional Review Act

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

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811(g)(3)(B)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice (28 CFR Part 0.100), and redelegated to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, the Deputy Assistant Administrator hereby proposes to amend the Table of Exempted Prescription Products cited in § 1308.32 by adding the following:

Company	Trade name	NDC code	Form	Controlled substance	(mg or mg/ml)
River's Edge Pharmaceutical	Servira	68032–256	TB	Phenobarbital	48.6

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

Dated: March 12, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 2010–6035 Filed 3–29–10; 8:45 am]

BILLING CODE 4410–09–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0147; FRL–9130–4]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading, referred to elsewhere in this notice as the Emission Reduction Credit (ERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The August 16, 2007, submittal amends two sections of the ERC program to update cross-references to recently recodified 30 TAC Chapter 117 provisions. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: Comments must be received on or before *April 29, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2010–0147, by one of the following methods:

(1) *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at *robinson.jeffrey@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) *U.S. EPA Region 6* "*Contact Us*" *Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2010–0147. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD–ROM submitted. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposed rule, please contact Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever, any reference to "we," "us," or "our" is used, we mean EPA.

Table of Contents

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II. What Did Texas Submit?
III. What Is EPA's Evaluation of These SIP Revisions?
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I. What Action Is EPA Taking?

We are proposing to approve severable portions of two revisions to the Texas SIP submitted by the Texas Commission on Environmental Quality (TCEQ) on October 24, 2006, and August 16, 2007, specific to the ERC Program. The ERC Program, SIP-approved by EPA on September 6, 2006, establishes a market-based trading program for the generation and use of emission credits (generated and used at a specified emission rate, tons per year) to provide flexibility for sources in complying with certain State and Federal requirements. The revisions we are proposing to approve amend existing sections and create a new section in the ERC Program at Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 1—Emission Credit Banking and Trading. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to further clarify procedures for using emission protocols and to update the approved list of emission credit uses. The severable portions of the August 16, 2007 submittal that we are proposing to approve non-substantively revise the ERC Program to correctly update the cross-references to the stationary source nitrogen oxide (NO_X) rules found in the Texas SIP at 30 TAC Chapter 117 as a result of the non-substantive recodification of Chapter 117 approved by EPA as part of the Texas SIP on December 3, 2008 (*see* 73 FR 73562). Consequently, we are proposing to approve the revisions to the Texas SIP at 30 TAC sections 101.302(a), 101.302(d)(1)(C)(vi), 101.302(f), and 101.306(a)(5) and the creation of new section 101.305 submitted on October 24, 2006. Additionally, we are proposing to approve revisions to the Texas SIP at 30 TAC sections 101.302(d)(1)(A) and 101.306(b)(3) submitted on August 16, 2007 by the TCEQ.

II. What Did Texas Submit?

We are proposing to approve severable portions of two revisions to the Texas SIP specific to the ERC Program. The first revision we are proposing action on was adopted by the TCEQ on October 4, 2006 and submitted to EPA on October 24, 2006. At the same time that TCEQ adopted and submitted revisions to the ERC Program, revisions were also adopted and submitted for the Discrete Emission Credit Banking and Trading Program (referred to elsewhere in this notice as the Discrete Emission Reduction Credit (DERC) Program) and the Emissions Banking and Trading of Allowances (EBTA) Program. The revisions to the DERC and EBTA Programs are specific to separate, distinct trading programs and, as such, are severable from the ERC Program revisions. We are not proposing to act upon the severable revisions to the DERC Program at 30 TAC Chapter 101, Subchapter H, Division 4, sections 101.372, 101.373, 101.375, 101.376 and 101.378. EPA is processing a separate rulemaking to address the 2006 and 2007 DERC Program revisions (*see* EPA–R06–OAR–2010–0418). EPA has not yet taken action on the EBTA Program at 30 TAC Chapter 101, Subchapter H, Division 2 and therefore is not proposing action today on the repeal and replacement of section 101.338 and the revisions to section 101.339. The second revision upon which we are proposing action was adopted by the TCEQ on July 25, 2007, and submitted to EPA on August 16, 2007. Also at this time TCEQ adopted and submitted revisions to the general air quality definitions, the DERC Program, and the System Cap Trading (SCT) Program. We are not acting today upon revisions to the general air quality definitions at 30 TAC Chapter 101, Subchapter A, section 101.1 because the ERC Program does not rely upon them (therefore the revisions are severable from the ERC Program) and previous revisions to section 101.1 are still pending for review by EPA. We are also not acting today upon the revisions to the DERC Program at 30 TAC Chapter 101, Subchapter H, Division 4, sections 101.372 and 101.376 because these revisions are severable from the ERC program and the October 24, 2006, SIP revision is still under EPA review. EPA intends to take a separate rulemaking action to address the 2006 and 2007 DERC Program revisions (*see* EPA–R06–OAR–2010–0418). EPA has not yet taken action on the System Cap Trading Program at 30 TAC Chapter 101, Subchapter H, Division 5 and therefore is not acting today upon the severable revisions to sections 101.383 and 101.385.

A copy of the October 24, 2006, and August 16, 2007, SIP submittals as well as our Technical Support Document (TSD) can be obtained from the Docket, as discussed in the "Docket" section above. A discussion of the specific Texas rule changes that we are approving is included in the TSD and summarized below.

A. October 24, 2006 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The existing SIP-approved version of section 101.302 was adopted by the TCEQ on December 13, 2002, and approved by EPA on September 6, 2006 (*see* 71 FR 52698). The revisions to sections 101.302(a) and (f) adopted by the TCEQ on October 4, 2006, delete the information pertaining to international emission reductions and move these provisions to new section 101.305. Additionally, section 101.302(d)(1)(C)(vi) is revised to clarify EPA's approval process of the quantification protocols for the ERC Program.

2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.305—Emission Reductions Achieved Outside the United States

On October 4, 2006, TCEQ adopted new section 101.305. This new section contains the previously SIP-approved international emission reduction provisions from sections 101.302(a) and (f) and updates the international provisions consistent with the requirements of Texas Senate Bill 784.

3. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.306—Emission Credit Use

The existing SIP-approved version of section 101.306 was adopted by the TCEQ on December 13, 2002, and approved by EPA on September 6, 2006 (*see* 71 FR 52698). The proposed SIP revision adopted by the TCEQ on October 4, 2006, amends section 101.306(a)(5) to update the list of approved uses of emission credits to include the use of emission credits as allowances in the Highly-Reactive Volatile Organic Compound Emission Cap and Trade (HECT) Program at 30 TAC Chapter 101, Subchapter H, Division 6.

B. August 16, 2007 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The revisions to section 101.302 adopted by the TCEQ on July 25, 2007, further revise the revisions adopted by the TCEQ on October 4, 2002. The 2007 revisions non-substantively amend section 101.302(d)(1)(A) to correctly cross-reference the recodified stationary source nitrogen oxide (NO_X) rules to the Texas SIP at 30 TAC Chapter 117.

2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.306—Emission Credit Use

The revisions to section 101.306 adopted by the TCEQ on July 25, 2007, further revise the revisions adopted by the TCEQ on October 4, 2002. The 2007 revisions non-substantively amend section 101.306(b)(3) to correctly cross-reference the recodified stationary source NO_X rules to the Texas SIP at 30 TAC Chapter 117.

III. What Is EPA's Evaluation of These SIP Revisions?

A. October 24, 2006 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The October 4, 2006, revisions to sections 101.302(a), 101.302(d)(1)(C)(vi) and 101.302(f) are approvable. Sections 101.302(a) and 101.302(f) were revised to delete the information pertaining to international emission reductions and relocate these provisions to new section 101.305. This consolidation of the international emission reduction provisions improves the clarity of the ERC Program by creating a new section specific to international emission reductions. Section 101.302(d)(1)(C)(vi) was revised to clarify EPA's role in the approval of emission quantification protocols. While the previous SIP-approved provisions were accurate and consistent with EPA's Economic Incentive Program (EIP) Guidance ("Improving Air Quality with Economic Incentive Programs" (EPA–452/R–01–001, January 2001)), the revised language has been restructured to more closely follow the provisions for approving emission quantification protocols at section 5.2(c) of the EIP Guidance.

The revisions to section 101.302 described above were made pursuant to TCEQ's September 8, 2005, commitment letter for the DERC Program (included in the docket for this action). In this commitment letter, TCEQ committed to revising, among others things, section 101.302 to more clearly require EPA approval for international emission reduction transactions and to clarify the EPA's role in approving emission quantification protocols. Because EPA granted full approval to the ERC Program on September 6, 2006, the ERC-specific elements in the DERC commitment letter can be decoupled from EPA's analysis of the DERC-specific elements submitted by TCEQ in response to our conditional approval of the DERC Program. Therefore, EPA can propose approval of the revisions to section 101.302 without analyzing the remainder of the DERC conditional approval commitments.

2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.305—Emission Reductions Achieved Outside the United States

New section 101.305 adopted on October 4, 2006, is approvable. EPA finds that in addition to relocating the SIP-approved international emission reduction language from section 101.302, new section 101.305 has expanded the scope of our original ERC Program approval to allow the use of international reductions in lieu of ERCs to occur in attainment areas within 100-km of the Texas-Mexico border, consistent with the requirements of Texas Senate Bill 784. However, the continued requirement at section 101.305 for EPA approval before any such use is consistent with the intent of our ERC Program approval on September 6, 2006. EPA approval continues to be through a case-specific SIP revision that must clearly demonstrate through a detailed CAA section 110(l) analysis that the use of such international reductions will not jeopardize attainment or maintenance of the National Ambient Air Quality Standards or any other applicable standards. As noted in our September 6, 2006, final approval of the ERC Program "* * * international trades present an especially difficult case. For instance, currently there is no approvable mechanism for demonstrating that reductions made in another country are surplus or enforceable. Nonetheless, emission reductions in other countries could potentially offer substantial air quality benefits in the United States." *See* 71 FR 52698, 52699. In approving this revision to the ERC program, EPA is continuing to recognize "the concept of international trading and describing a framework (*i.e.,* the submission of a SIP revision demonstrating among other things the validity and enforceability of foreign reductions) for such trading, in the event that a suitable and approvable mechanism is ever developed for resolving concerns including enforceability and surplus. Until such a mechanism is developed and approved by EPA, however, EPA will not approve international trades under the ERC rule." *See* 71 FR 52698, 52699. Further, it is important to note, that even though we are approving the use of international reductions in lieu of ERCs along the Texas-Mexico border, the use of these reductions must still meet the requirements of the CAA. Therefore, the international reductions are not available for use as Federal NSR offsets since section 173(c)(1) of the CAA requires that offset reductions come from the same nonattainment area as the proposed source or modification or another nonattainment area with an equal or higher nonattainment classification.

3. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.306—Emission Credit Use

The October 4, 2006, revision to section 101.306(a)(5) is approvable. TCEQ correctly updated the list of approved uses of emission credits to include the use of emission credits as allowances in the HECT. EPA approved the use of emission credits as HECT allowances in our September 6, 2006, approval of the HECT (*see* 71 FR 52659).

The revision to section 101.306 described above was also made pursuant to TCEQ's September 8, 2005, commitment letter for the DERC Program (included in the docket for this action). In this commitment letter, TCEQ committed to revising, among others things, section 101.306 to identify that emission credits could be used as HECT allowances. Because EPA granted full approval to the ERC Program on September 6, 2006, the ERC-specific elements in the DERC commitment letter can be decoupled from EPA's analysis of the DERC-specific elements submitted by TCEQ in response to our conditional approval of the DERC Program. Therefore, EPA can propose approval of the revisions to section 101.306 without analyzing the remainder of the DERC conditional approval commitments.

B. August 16, 2007 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The July 25, 2007, revisions to section 101.302(d)(1)(A) are approvable. As demonstrated further in our TSD, these non-substantive revisions correctly cross-reference the recodified stationary source NO_X rules in the Texas SIP at 30 TAC Chapter 117. These non-substantive revisions do not affect the approved emission quantification protocols established for the ERC Program.

2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.306—Emission Credit Use

The July 25, 2007, revisions to section 101.306(b)(3) are approvable. As demonstrated further in our TSD, these non-substantive revisions correctly cross-reference the recodified stationary source NO_X rules in the Texas SIP at 30

TAC Chapter 117. These non-substantive revisions do not affect the emission use calculations established for the ERC Program.

IV. Final Action

EPA is proposing to approve severable revisions to the Texas SIP submitted on October 24, 2006, and August 16, 2007. Specifically from the October 24, 2006 submittal, EPA is approving the amendments to section 101.302(a) and (f) that move the international emission reduction requirements to a new section, the amendments to section 101.302(d)(1)(C)(vi) that clarify EPA's role in approving emission quantification protocols, and the amendment to section 101.306(a)(5) that updates the approved uses for ERCs to include the HECT. EPA is also proposing to approve provisions for international emission reductions at new section 101.305 submitted on October 24, 2006. Additionally, we are proposing to approve the following nonsubstantive revisions to the Texas SIP submitted on August 16, 2007: revisions to sections 101.302(d)(1)(A) and 101.306(b)(3) to update the cross-references to recently recodified provisions in 30 TAC Chapter 117.

In a separate rulemaking, EPA is proposing action on the severable DERC Program revisions at 30 TAC sections 101.372, 101.373, 101.375, 101.376, and 101.378 submitted on October 24, 2006, and 30 TAC sections 101.372 and 101.376 submitted on August 16, 2007 (*see* EPA–R06–OAR–2010–0418).

At this time, EPA is not taking action on the revisions to the Emissions Banking and Trading of Allowances Program at 30 TAC sections 101.338 and 101.339 submitted on October 24, 2006. EPA is also not taking action at this time on the revisions to the general air quality definitions at 30 TAC Section 101.1 or the revisions to the System Cap Trading Program at 30 TAC sections 101.383, and 101.385 submitted on August 16, 2007. These severable revisions remain under review by EPA and will be addressed in separate actions.

V. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 18, 2010.

Lawrence E. Starfied,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–6800 Filed 3–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2010–0148; FRL–9130–5]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to the Discrete Emission Credit Banking and Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve severable portions of two revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas on October 24, 2006, and August 16, 2007. These revisions amend existing sections and create a new section in Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading, referred to elsewhere in this notice as the Discrete Emission Reduction Credit (DERC) Program. The October 24, 2006, submittal creates a new section for international emission reduction provisions and amends existing sections to prohibit the generation and use of DERCs from shutdown activities and further clarify procedures for using emission protocols. The August 16, 2007, submittal amends two sections of the DERC program to update cross-references to recently recodified 30 TAC Chapter 117 provisions. Additionally, EPA is proposing to find that the Texas Commission on Environmental Quality (TCEQ) has satisfied all elements of our September 6, 2006, final conditional approval of the DERC program with the submittal of the October 24, 2006, SIP submittal; and as such, the DERC program conditional approval is proposed for full approval. EPA has determined that these SIP revisions comply with the Clean Air Act and EPA regulations, are consistent with EPA policies, and will improve air quality. This action is being taken under section 110 and parts C and D of the Federal Clean Air Act (the Act or CAA).

DATES: Comments must be received on or before *April 29, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–

OAR–2010–0148, by one of the following methods:

(1) *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

(2) *E-mail:* Mr. Jeff Robinson at *robinson.jeffrey@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below.

(3) U.S. EPA Region 6 "Contact Us" Web site: *http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

(4) *Fax:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), at fax number 214–665–6762.

(5) *Mail:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(6) *Hand or Courier Delivery:* Mr. Jeff Robinson, Chief, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2010–0148. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD–ROM submitted. 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. A 15 cent per page fee will be charged for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area on the seventh floor at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal related to this SIP revision, and which is part of the EPA docket, is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's proposed rule, please contact Ms. Adina Wiley (6PD–R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–R), Suite 1200, Dallas, TX 75202–2733. The telephone number is (214) 665–2115. Ms. Wiley can also be reached via electronic mail at *wiley.adina@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever, any reference to "we," "us," or "our" is used, we mean EPA.

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I. What Action Is EPA Taking?

We are proposing to approve severable portions of two revisions to the Texas SIP submitted by the TCEQ on October 24, 2006 and August 16, 2007, specific to the DERC Program. The DERC Program, conditionally approved by EPA on September 6, 2006, establishes an open market trading program to provide flexibility for sources in complying with certain State and Federal requirements. In an open market trading program, a source generates emission credits by reducing its emissions during a discrete period of time. These credits, called discrete emission credits, or DECs, in the Texas program, are quantified in units of mass. Discrete emission credit (DEC) is a generic term that encompasses reductions from stationary sources (discrete emission reduction credits, or DERCs) and reductions from mobile sources (mobile discrete emission reduction credits, or MDERCs).[1] The revisions we are proposing to approve amend existing sections and create a new section in the DERC Program at Title 30 of the Texas Administrative Code (TAC), Chapter 101—General Air Quality Rules, Subchapter H—Emissions Banking and Trading, Division 4—Discrete Emission Credit Banking and Trading. The October 24, 2006 submittal creates a new section for international emission reduction provisions and amends existing sections to prohibit the generation and use of DERCs from shutdown activities and further clarifies procedures for using emission protocols. Additionally, EPA is proposing to find that the TCEQ has satisfied all elements of our September 6, 2006 final conditional approval of the DERC program with the submittal of the October 24, 2006 SIP submittal; and as such, the DERC program conditional approval is proposed for full approval.[2] The severable portions of the August 16, 2007 submittal that we are proposing to approve non-substantively revise the DERC Program to correctly update the

[1] In this action, when we refer to the program as the "DERC Rule" or the "DERC Program" we are speaking of the entire Discrete Emission Credit Banking and Trading Program, which encompasses both DERCs and MDERCs.

[2] Today's action proposes to find that the TCEQ has satisfied all conditions of the September 6, 2006 final DERC conditional approval. *See* 71 FR 52703. This action is separate from, and unrelated to, the Dallas/Fort Worth 1997 8-hour Ozone Attainment Demonstration conditional approval finalized by EPA on January 14, 2009, at 74 FR 1903.

cross-references to the stationary source nitrogen oxide (NO_X) rules found in the Texas SIP at 30 TAC Chapter 117 as a result of the non-substantive recodification of Chapter 117 approved by EPA as part of the Texas SIP on December 3, 2008 (see 73 FR 73562). Additionally, in both the October 24, 2006 and August 16, 2007 SIP submittals TCEQ has made several non-substantive revisions to update grammar and document style. Consequently, we are proposing to approve the revisions to the Texas SIP at 30 TAC sections 101.372(a), 101.372(d), 101.372(f), 101.372(j), 101.373(a), 101.376(c)(4), and 101.378(b) and the creation of new section 101.375 submitted on October 24, 2006. Additionally, we are proposing to approve revisions to the Texas SIP at 30 TAC sections 101.372(d) and 101.376(d) submitted on August 16, 2007 by the TCEQ.

II. What Did Texas Submit?

We are proposing to approve severable portions of two revisions to the Texas SIP specific to the DERC Program. The first revision we are proposing action on was adopted by the TCEQ on October 4, 2006, and submitted to EPA on October 24, 2006. At the same time that TCEQ adopted and submitted revisions to the DERC Program, revisions were also adopted and submitted for the Emission Credit Banking and Trading Program (referred to elsewhere in this notice as the Emission Reduction Credit (ERC) Program) and the Emissions Banking and Trading of Allowances (EBTA) Program. The revisions to the ERC and EBTA Programs are specific to separate, distinct trading programs and, as such, are severable from the DERC Program revisions. We are not proposing to act upon the severable revisions to the ERC Program at 30 TAC Chapter 101, Subchapter H, Division 1, sections 101.302, 101.305, and 101.306. EPA is processing a separate rulemaking to address the 2006 and 2007 ERC Program revisions (*see* EPA–R06–OAR–2010–0417). EPA has not yet taken action on the EBTA Program at 30 TAC Chapter 101, Subchapter H, Division 2 and therefore is not proposing action today on the repeal and replacement of section 101.338 and the revisions to section 101.339. The second revision upon which we are proposing action was adopted by the TCEQ on July 25, 2007, and submitted to EPA on August 16, 2007. Also at this time TCEQ adopted and submitted revisions to the general air quality definitions, the ERC Program, and the System Cap Trading (SCT) Program. We are not acting today upon revisions to the general air quality definitions at 30 TAC Chapter 101, Subchapter A, section 101.1 because the DERC Program does not rely upon them (therefore the revisions are severable from the DERC Program) and previous revisions to section 101.1 are still pending for review by EPA. We are also not acting today upon the revisions to the ERC Program at 30 TAC Chapter 101, Subchapter H, Division 1, sections 101.302 and 101.306 because these revisions are severable from the DERC program and the October 24, 2006 SIP revision is still under EPA review. EPA intends to take a separate rulemaking action to address the 2006 and 2007 ERC Program revisions (*see* EPA–R06–OAR–2010–0417). EPA has not yet taken action on the System Cap Trading Program at 30 TAC Chapter 101, Subchapter H, Division 5 and therefore is not acting today upon the severable revisions to sections 101.383 and 101.385.

A copy of the October 24, 2006 and August 16, 2007 SIP submittals as well as our Technical Support Document (TSD) can be obtained from the Docket, as discussed in the "Docket" section above. A discussion of the specific Texas rule changes that we are approving is included in the TSD and summarized below.

A. October 24, 2006 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.372—General Provisions

The existing SIP-approved version of section 101.372 was adopted by the TCEQ on December 13, 2002, and conditionally approved by EPA on September 6, 2006 (see 71 FR 52703). The revisions to section 101.372(a) and (f) adopted by the TCEQ on October 4, 2006, delete the information pertaining to international emission reductions and move these provisions to new section 101.375. Additionally, section 101.372(d)(1)(C)(vi) is revised to clarify EPA's approval process of the quantification protocols for the DERC Program. Several non-substantive revisions for grammar and style were also made by the TCEQ in this submittal.

2. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.373—Discrete Emission Reduction Credit Generation and Certification

The existing SIP-approved version of section 101.373 was adopted by the TCEQ on November 10, 2004, and conditionally approved by EPA on September 6, 2006 (see 71 FR 52703). The revisions to section 101.373(a) prohibit the generation of DERCs from shutdown activities; specifically, section 101.373(a)(1) is amended to delete permanent shutdowns as a method of generating DERCs and section 101.373(a)(2) is amended to update the prohibited generation strategy list to include permanent shutdowns.

3. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.375—Emission Reductions Achieved Outside the United States

On October 4, 2006, TCEQ adopted new section 101.375. This new section contains the previously SIP-approved international emission reduction provisions from sections 101.372(a) and (f) and updates the international provisions consistent with the requirements of Texas Senate Bill 784.

4. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.376—Discrete Emission Credit Use

The existing SIP-approved version of section 101.376 was adopted by the TCEQ on November 10, 2004, and conditionally approved by EPA on September 6, 2006 (see 71 FR 52703). The proposed SIP revision adopted by the TCEQ on October 4, 2006, amends section 101.376(c)(4) to update cross-references to 30 TAC Chapter 106 in the list of prohibited DEC use strategies.

5. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.378—Discrete Emission Credit Banking and Trading

The existing SIP-approved version of section 101.378 was adopted by the TCEQ on December 13, 2002, and conditionally approved by EPA on September 6, 2006 (see 71 FR 52703). The revisions to section 101.378(b) revise the lifetime of a discrete emission credit to prohibit the use of discrete emission credits generated from shutdowns; specifically, section 101.378(b)(1) states that discrete emission credits generated from shutdowns prior to September 30, 2002, will be available for use until September 8, 2010, and section 101.378(b)(2) prohibits the use of shutdown discrete emission credits generated after September 30, 2002.

B. August 16, 2007 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.372—General Provisions

The revisions to section 101.372 adopted by the TCEQ on July 25, 2007, further revise the revisions adopted by the TCEQ on October 4, 2002. The 2007 revisions non-substantively amend section 101.372(d)(1)(A) to correctly cross-reference the recodified stationary source nitrogen oxide (NO_X) rules to the

Texas SIP at 30 TAC Chapter 117. Additionally, section 101.372(d)(1)(B) was non-substantively amended to include the correct title for the stationary source volatile organic compound rules to the Texas SIP at 30 TAC Chapter 115.

2. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.376—Discrete Emission Credit Use

The revisions to section 101.376 adopted by the TCEQ on July 25, 2007, further revise the revisions adopted by the TCEQ on October 4, 2002. The 2007 revisions non-substantively amend section 101.376(d)(2)(A) to correctly cross-reference the recodified stationary source NO_X rules to the Texas SIP at 30 TAC Chapter 117.

III. What Is EPA's Evaluation of These SIP Revisions?

A. October 24, 2006 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.302—General Provisions

The October 4, 2006, revisions to sections 101.372(a), 101.372(d), 101.372(f) and 101.372(j) are approvable. Sections 101.372(a) and 101.372(f) were revised to delete the information pertaining to international emission reductions and relocate these provisions to new section 101.375. This consolidation of the international emission reduction provisions improves the clarity of the DERC Program by creating a new section specific to international emission reductions. Section 101.372(d)(1)(C)(vi) was revised to clarify EPA's role in the approval of emission quantification protocols. While the previous SIP-approved provisions were accurate and consistent with EPA's Economic Incentive Program (EIP) Guidance ("Improving Air Quality with Economic Incentive Programs" (EPA–452/R–01–001, January 2001)), the revised language has been restructured to more closely follow the provisions for approving emission quantification protocols at section 5.2(c) of the EIP Guidance. The non-substantive revisions to sections 101.372(d)(1)(C)(iv) and 101.372(j) update the formatting and grammar of the DERC General Provisions.

The revisions to section 101.372 described above were made pursuant to TCEQ's September 8, 2005, commitment letter for the DERC Program conditional approval (included in the docket for this action). In this commitment letter, TCEQ committed to revising, among others things, section 101.372 to more clearly require EPA approval for international emission reduction transactions and to clarify the EPA's role in approving emission quantification protocols. Please see section IV. of this notice for a discussion of how the TCEQ has addressed the elements of DERC conditional approval and the September 8, 2005, commitment letter.

2. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.373—Discrete Emission Reduction Credit Generation and Certification

The October 4, 2006, revisions to sections 101.373(a)(1) and 101.373(a)(2) are approvable. The revisions to section 101.373(a)(1) and (a)(2) amend the allowable and prohibited generation strategy lists to reflect that permanent shutdowns are a prohibited DERC generation strategy. These amendments are consistent with the Open-Market Trading provisions at section 7.5(b) of the EIP Guidance.

The revisions to section 101.373 described above were made pursuant to TCEQ's September 8, 2005, commitment letter for the DERC Program conditional approval (included in the docket for this action). In this commitment letter, TCEQ committed to revising the DERC program to prohibit the future generation of DERCs from shutdowns. Please see section IV. of this notice for a discussion of how the TCEQ has addressed the elements of DERC conditional approval and the September 8, 2005, commitment letter.

3. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.375—Emission Reductions Achieved Outside the United States

New section 101.375 adopted on October 4, 2006, is approvable. EPA finds that in addition to relocating the SIP-approved international emission reduction language from section 101.372, new section 101.375 has expanded the scope of our original DERC program approval to allow the use of international reductions in lieu of DERCs to occur in attainment areas within 100-km of the Texas-Mexico border, consistent with the requirements of Texas Senate Bill 784. However, the continued requirement at section 101.375 for EPA approval before any such use is consistent with the intent of our DERC program conditional approval on September 6, 2006. EPA approval continues to be through a case-specific SIP revision that must clearly demonstrate through a detailed CAA section 110(l) analysis that the use of such international reductions will not jeopardize attainment or maintenance of the National Ambient Air Quality Standards or any other applicable standards. As noted in our September 6, 2006, final conditional approval of the DERC Program "* * * international trades present an especially difficult case. For instance, currently there is no mechanism for demonstrating that reductions made in another country are surplus or enforceable. Nonetheless, emission reductions in other countries could offer substantial air quality benefits in the United States." *See* 71 FR 52703, 52705. In approving this revision to the DERC program, "EPA is recognizing the concept of international trading and describing a framework (*i.e.,* the submission of a SIP revision demonstrating among other things the validity and enforceability of foreign reductions) for such trading, in the event that a suitable and approvable mechanism is ever developed for resolving concerns including enforceability and surplus. Until such a mechanism is developed and approved by EPA, however, EPA will not approve international trades under the DERC rule." See 71 FR 52703, 52705. Further, it is important to note, that even though we are approving the use of international reductions in lieu of DERCs along the Texas-Mexico border, the use of these reductions must still meet the requirements of the CAA. Therefore, the international reductions are not available for use as Federal NSR offsets since section 173(c)(1) of the CAA requires that offset reductions come from the same nonattainment area as the proposed source or modification or another nonattainment area with an equal or higher nonattainment classification.

4. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.376—Discrete Emission Credit Use

The October 4, 2006, revisions to section 101.376(c)(4) are approvable. TCEQ correctly updated the cross-references to Chapter 106 in response to our final conditional approval notice. In our final notice we stated that "*We are not approving section 101.376(c)(4) into the Texas SIP because the cross-references to 30 TAC Chapter 106 Permit by Rule, sections 106.261(3) or (4) or section 106.262(3) are incorrect and do not exist in State law, the Texas SIP, or the Texas Federal Operating Permits program. Consequently, unless and until the State adopts and submits a revision to EPA for approval as a SIP revision and EPA approves it, the use of discrete emission credits to exceed the provisions in certain types of pre-construction permits termed Permits by Rule is not available under the Texas SIP.*"

While EPA has not approved sections 106.261 and 106.262 into the Texas SIP, we are able to approve the revisions to section 101.376(c)(4). By approving the revisions to section 101.376(c)(4) we are not approving a use of DERCs that conflicts with the Texas SIP, rather we are approving a listed prohibition of DERC usage that would further support the Texas SIP. Additionally, if an owner or operator of a facility wished to use DERCs in a manner that exceeded limitations from sections 106.261 or 106.262, the use would have to be approved by TCEQ and EPA; EPA anticipates our approval would only occur through a case-specific SIP revision following a demonstration from the owner/operator that useage of DERCs in this manner would not undermine the attainment strategy of the area or constitute a violation of CAA section 110(l).

5. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.378—Discrete Emission Credit Banking and Trading

The October 4, 2006, revisions to section 101.378 are approvable. The revisions to section 101.378(b)(1) and (b)(2) limit the lifetime of certain discrete emission credits generated from shutdowns. Discrete emission credits generated from shutdowns prior to September 30, 2002, remain available for use until September 8, 2010. Any discrete emission credits certified from shutdowns after September 30, 2002, may not be used. These amendments are consistent with the Open-Market Trading provisions at section 7.5(b) of the EIP Guidance.

The revisions to section 101.378 described above were made pursuant to TCEQ's September 8, 2005 commitment letter for the DERC Program conditional approval (included in the docket for this action). In this commitment letter, TCEQ committed to revising the DERC program to restrict the lifetime of previously generated shutdown DERCs. Please see section IV. of this notice for a discussion of how the TCEQ has addressed the elements of DERC conditional approval and the September 8, 2005 commitment letter.

B. August 16, 2007 SIP Submittal

1. 30 TAC Chapter 101, Subchapter H, Division 4, Section 101.372—General Provisions

The July 25, 2007 revisions to section 101.372(d)(1)(A) and (B) are approvable. As demonstrated further in our TSD, the non-substantive revisions to section 101.372(d)(1)(A) correctly cross-reference the recodified stationary source NO_X rules in the Texas SIP at 30 TAC Chapter 117. The non-substantive revisions to section 101.372(d)(1)(B) correctly update the titles of the stationary source VOC rules in the Texas SIP at 30 TAC Chapter 115. These non-substantive revisions do not affect the approved emission quantification protocols established for the DERC Program.

2. 30 TAC Chapter 101, Subchapter H, Division 1, Section 101.376—Discrete Emission Credit Use

The July 25, 2007 revisions to section 101.376(d)(2)(A) are approvable. As demonstrated further in our TSD, these non-substantive revisions correctly cross-reference the recodified stationary source NO_X rules in the Texas SIP at 30 TAC Chapter 117. These non-substantive revisions do not affect the emission use calculations established for the DERC Program.

IV. What Is EPA's Evaluation of the TCEQ's Response to the DERC Conditional Approval?

A. What is a conditional approval?

Under section 110(k)(4) of the Clean Air Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures within one year from the date of approval. The conditional approval remains in effect until EPA takes its final action—either a final approval or disapproval.

If EPA determines that the revised rule is approvable, EPA will propose approval of the rule through a notice and comment rulemaking. After responding to comments received, EPA will publish a final approval of the rule and the conditional approval is no longer in effect. However, if the State fails to meet its commitment within the one year period, then EPA must proceed with a disapproval action. EPA will propose disapproval of the rule through notice and comment rulemaking, and will finalize the disapproval after responding to all comments received. Note that EPA will conditionally approve a certain rule only once. Subsequent submittals of the same rule that attempt to correct the same specifically identified problems will not be eligible for conditional approval.

B. What are the terms of the DERC program conditional approval?

EPA conditionally approved the DERC program on September 6, 2006. Our conditional approval was based on a commitment letter submitted by the TCEQ on September 8, 2005. The September 8, 2005 commitment letter included the following provisions that the TCEQ agreed to address by December 1, 2006. Additionally, TCEQ agreed to comply with these commitments during the conditional approval period. Specifically, TCEQ agreed to not approve any trades involving the types of reductions described in item (3) below, not approve any use of discrete shutdown credits that were generated after September 30, 2002, and to require the waiver described in item (4) below for generators and users of discrete emission credits.

1. Revise 30 TAC § 101.373 to prohibit the future generation of DERCs from permanent shutdowns and to allow DERCs generated and banked from permanent shutdowns prior to September 30, 2002 to remain available for use for no more than five years from the date of this letter.

2. The TCEQ will perform a credit audit to remove from the emissions bank all DERCs generated from permanent shutdowns after September 30, 2002. Even if the shutdown itself occurred before September 30, 2002, no DERCs can be generated from that event after September 30, 2002.

3. Revise 30 TAC §§ 101.302(f), 101.372(f)(7) and 101.372(f)(8) to clarify that EPA approval is required for individual transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another, or from attainment counties into nonattainment areas. The TCEQ further understands that the EPA would require a state implementation plan revision prior to approving a transaction between another state or nation, as well as, those transactions between counties not located within the same nonattainment area.

4. The TCEQ will revise Form DEC–1, Notice of Generation and Generator Certification of Discrete Emission Credits; Form MDEC–1, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits; and Form DEC–2, Notice of Intent to Use Discrete Emission Credits, to include a waiver to the Federal statute of limitations defense for generators, and users of DERCs and mobile discrete emission reduction credits (MDERCs). Please be reminded that there is currently no applicable state statute of limitations in the State of Texas. In addition, the TCEQ will maintain its current policy of preserving all records relating to DERC and MDERC generation and use for a minimum of five years after the use strategy has ended.

5. Revise 30 TAC §§ 101.302 and 101.372 to clarify that a proposed quantification protocol may not be used

if the TCEQ Executive Director receives a letter from the EPA objecting to the use of the protocol during the 45-day adequacy review period or if the EPA proposes disapproval of the protocol in the **Federal Register.**

6. Revise 30 TAC § 101.306 to specify that Emission Reduction Credits may be used within the highly reactive volatile organic compounds Emissions Cap and Trade program as an annual allocation of allowances as provided under 30 TAC § 101.399.

C. Were the terms of the DERC conditional approval met?

Following is an analysis of each DERC program element of the September 8, 2005, commitment letter and TCEQ's response. EPA is not including the ERC program elements (see commitments 3, 5, and 6 above) in our analysis of the DERC conditional approval. The ERC and DERC programs operate independently of each other and have been approved as separate, stand alone programs by EPA. The submission of these ERC provisions will not impact the functionality of the DERC program nor were these revisions to the ERC program necessary for the DERC program to be considered consistent with EPA regulations, policy and guidance. EPA has evaluated the October 24, 2006, ERC program revisions in a separate rulemaking (see EPA–R06–OAR–2010–0147).

1. Revise 30 TAC § 101.373 to prohibit the future generation of DERCs from permanent shutdowns and to allow DERCs generated and banked from permanent shutdowns prior to September 30, 2002, to remain available for use for no more than five years from the date of this letter.

TCEQ met this commitment of the conditional approval. TCEQ adopted the appropriate provisions and submitted the revised rules as a SIP revision within the time frame. TCEQ adopted revisions to section 101.373 that removed shutdowns as a method of generation and added the following language under the list of prohibited generation activities at section 101.373(a)(2): "permanent or temporary shutdowns or permanent curtailment of an activity at a facility". TCEQ adopted revisions to section 101.378(b)(1) that revise the lifetime of a DEC. Section 101.378(b)(1) states that "Discrete emission credits generated from shutdown strategies prior to September 30, 2002, will be available for use until September 8, 2010."

Note that the DERC calculation procedures at sections 101.373(c)(1), (3), and (4) discuss how DERCs are calculated from shutdowns. Additionally, section 101.373(d)(3)(c) discusses how to certify the generation of DERCs from shutdown activities. EPA believes that the inclusion of this language was an oversight on TCEQ's part when responding to our conditional approval commitments. The DERC program at section 101.373(a)(2)(A) clearly prohibits the generation of DERCs from shutdowns. Therefore, EPA feels that TCEQ should remove this language at their earliest convenience, but that the prohibition on generation of shutdown DERCs is not impacted by this erroneous calculation.

2. The TCEQ will perform a credit audit to remove from the emissions bank all DERCs generated from permanent shutdowns after September 30, 2002. Even if the shutdown itself occurred before September 30, 2002, no DERCs can be generated from that event after September 30, 2002.

TCEQ met this commitment of the conditional approval. TCEQ adopted the appropriate provisions and submitted the revised rules as a SIP revision within the time frame. TCEQ confirmed in a letter dated February 5, 2010, that the credit audit was performed in January 2006 (this letter is available in the docket for this rulemaking). Additionally, TCEQ adopted two revisions to the SIP that will ensure that shutdowns after September 30, 2002, do not generate DERCs. First, the revision to section 101.373(a)(2) prohibits the future generation of DERCs from shutdowns (as discussed in item 1 above). Second, the TCEQ revised section 101.378(b)(2) so that "Discrete emission credits certified from facility shutdowns after September 30, 2002, may not be used."

3. Revise 30 TAC §§ 101.372(f)(7) and 101.372(f)(8) to clarify that EPA approval is required for individual transactions involving emission reductions generated in another state or nation, as well as those transactions from one nonattainment area to another, or from attainment counties into nonattainment areas. The TCEQ further understands that the EPA would require a state implementation plan revision prior to approving a transaction between another state or nation, as well as, those transactions between counties not located within the same nonattainment area.

TCEQ met the DERC-specific portion of this commitment. Section 101.372(f) outlines the geographic scope of the DERC rule and generally provides that, with the exception of international reductions pursuant to section 101.375, only reductions generated in the State of Texas can be certified as DERCs. Section 101.372(f)(7) was unchanged by TCEQ and continues to provide that reductions from other counties, states, or nations can be used in any attainment or nonattainment county provided a demonstration showing improvement in air quality has been approved by the TCEQ ED and EPA. The use of international reductions under section 101.372(f)(7) is further modified by the restrictions at section 101.375.

Section 101.372(f)(8) was moved to new section 101.375. Section 101.375 establishes two ways that a facility could use an international reduction. First, a facility could use reductions of a criteria pollutant or precursor of criteria pollutant to meet requirements of the same criteria pollutant. This option would be used if a facility had a NO_X requirement in Texas and could find NO_X reductions in Mexico or an ozone requirement in Texas and could find VOC reductions in Mexico. Alternately, a facility could use reductions of a criteria pollutant or its precursors to substitute for reductions in other criteria pollutants. For example, this situation would be one in which a source could be subject to a PM2.5 requirement and wants to use CO reductions to satisfy the requirement. Generally, both of these uses (the same criteria pollutant or the substitution) requires approval by EPA and the TCEQ ED; the source must demonstrate that the reduction is real, permanent, enforceable, quantifiable, and surplus to any applicable Mexican, Federal, State, or local law; demonstrate that the use of the reduction does not cause localized health impacts; submit all supporting information for calculations and modeling; and be located within 100km of the Texas-Mexico border.

There are additional requirements for the case where a facility wants to substitute the international reduction of a criteria pollutant or its precursor for the obligations of a different criteria pollutant (the example above in which the facility used CO reductions for a PM2.5 requirement). The facility must either show that the reduction is substituted for the reduction requirement of another criteria pollutant and the substitution results in a greater health benefit and is of equal or greater benefit to the overall air quality of the area; or, the source must show that the reduction of a criteria pollutant (or precursor) for which the area is nonattainment is substituted for another criteria pollutant (or precursor) requirement for which an area is nonattainment.

Even though section 101.372(f)(7) was not revised, EPA approval is clearly required for uses of reductions from other counties, states, or other nations.

Uses of international reductions under section 101.372(f)(7) are further modified by the restrictions at section 101.375, which also clearly require EPA approval.

4. The TCEQ will revise Form DEC–1, Notice of Generation and Generator Certification of Discrete Emission Credits; Form MDEC–1, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits; and Form DEC–2, Notice of Intent to Use Discrete Emission Credits, to include a waiver to the Federal statute of limitations defense for generators, and users of DERCs and mobile discrete emission reduction credits (MDERCs). Please be reminded that there is currently no applicable state statute of limitations in the State of Texas. In addition, the TCEQ will maintain its current policy of preserving all records relating to DERC and MDERC generation and use for a minimum of five years after the use strategy has ended.

TCEQ met this commitment of the conditional approval. In a letter dated February 5, 2010, the TCEQ stated that even though the commitment included modifying Form MDEC–1, such form has never been created. However, Form MDEC–1 will include a waiver of the Federal statute of limitations defense if at any time in the future the TCEQ creates said form. Also in the February 5, 2010, letter, the TCEQ stated that the Forms DEC–1 and DEC–2 were modified in or before February 2007, but that the exact modification date could not be determined since the TCEQ does not keep copies of old versions of the form. Additionally, the TCEQ modified Form DEC–3, Notice of Use of Discrete Emission Credits, to include the same waiver of the Federal statute of limitations defense even though modification of Form DEC–3 was not part of the commitment. Copies of the modified DEC–1, DEC–2, and DEC–3 forms were included with the letter. Note that the February 5, 2010, letter and attachments is available in the FDMS docket for this action.

The TCEQ confirmed that during the time period between September 2006 and February 2007, there were no DERC generations submitted. So, even though Form DEC–1 was not revised until February 2007, there was not an instance where DERC generation did not have the appropriate waiver. However, between September 2006 and February 2007, there were 18 DEC–2 forms submitted to the TCEQ without the waiver of Federal statute of limitations defense language. But, under the DERC program, any notification of intent to use DERCs submitted on a DEC–2 form, must be followed by a notification of use through the submission of a DEC–3 form. All 18 DEC–2 forms were followed by submissions of the DEC–3 forms with the appropriate waiver language.

Even though the DEC–1 and DEC–2 forms were not modified by the December 2006 deadline specified in the commitment letter, EPA finds that the intent of this commitment has been satisfied. The intent of this commitment was to ensure that all DERC generation and use activities were covered by a waiver of the Federal statute of limitations defense. Since no DERCs were generated during this time, there was no need for a DEC–1 form. The 18 DEC–2 forms provide notification that a source intends to use DERCs, the verification that the use occurred is through the submission of a DEC–3 form. TCEQ verified that all 18 DEC–2 forms were followed by the submission of a modified DEC–3 form—thereby covering all DERC usage activities with the waiver of the Federal statute of limitations defense.

5. Revise 30 TAC § 101.372 to clarify that a proposed quantification protocol may not be used if the TCEQ Executive Director receives a letter from the EPA objecting to the use of the protocol during the 45-day adequacy review period or if the EPA proposes disapproval of the protocol in the **Federal Register**.

TCEQ met this commitment of the conditional approval. TCEQ adopted the appropriate provisions and submitted the revised rule as a SIP revision within the time frame. TCEQ revised section 101.372(d)(vi) to state that "quantification protocols shall not be accepted for use with this division if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA proposes disapproval of the protocol in the **Federal Register**."

V. Final Action

EPA is proposing to approve severable revisions to the Texas SIP submitted on October 24, 2006, and August 16, 2007. Specifically from the October 24, 2006 submittal, EPA is approving the amendments to section 101.372(a) and (f) that move the international emission reduction requirements to a new section, the amendments to section 101.372(d)(1)(C)(vi) that clarify EPA's role in approving emission quantification protocols, the amendments to section 101.373 to prohibit the generation of DERCs from shutdowns, the amendment to section 101.376(c)(4) that updates the cross-references to Chapter 106 provisions, the amendments to section 101.378(b) to limit the lifetime of previously generated shutdown DERCs, and non-substantive revisions to sections 101.372(d) and 101.372(j). EPA is also proposing to approve provisions for international emission reductions at new section 101.375 submitted on October 24, 2006. The October 24, 2006, DERC Program revisions satisfy the elements of the September 8, 2005, commitment letter; as such, EPA is proposing the DERC program for full approval. Additionally, we are proposing to approve the following nonsubstantive revisions to the Texas SIP submitted on August 16, 2007: revisions to sections 101.372(d)(1)(A) and 101.376(d)(2)(A) to update the cross-references to recently recodified provisions in 30 TAC Chapter 117 and revisions to section 101.372(d)(1)(B) to update the cross-referenced title to provisions in Chapter 115.

In a separate rulemaking, EPA is proposing action on the severable ERC Program revisions at 30 TAC sections 101.302, 101.305, and 101.306 submitted on October 24, 2006, and 30 TAC sections 101.302 and 101.306 submitted on August 16, 2007 (see EPA–R06–OAR–2010–0417).

At this time, EPA is not taking action on the revisions to the Emissions Banking and Trading of Allowances Program at 30 TAC sections 101.338 and 101.339 submitted on October 24, 2006. EPA is also not taking action at this time on the revisions to the general air quality definitions at 30 TAC Section 101.1 or the revisions to the System Cap Trading Program at 30 TAC sections 101.383, and 101.385 submitted on August 16, 2007. These severable revisions remain under review by EPA and will be addressed in separate actions.

VI. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: March 18, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–6801 Filed 3–29–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2009–0746; FRL–9131–8]

RIN 2060–AP91

Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections, Sections 112(g) and 112(j)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the rule governing case-by-case emission limits for major sources of hazardous air pollutants under section 112(j) of the Clean Air Act. Specifically, we are proposing revisions to the section 112(j) rule to clarify and streamline the process for establishing case-by-case emission limits in the case of the complete vacatur of a section 112(d) rule applicable to a major source category initially listed pursuant to section 112(c)(1). In addition, we are also proposing revisions that would eliminate provisions of the section 112(j) rule that have become obsolete or are redundant.

DATES: Comments must be received on or before April 29, 2010, unless a public hearing is requested by April 14, 2010. If a hearing is requested on the proposed amendments, written comments must be received by May 14, 2010. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before April 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0746, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *Agency Web Site: http://www.epa.gov/oar/docket.html.* Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web Site.

• *E-mail: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2009–0746 in the subject line of the message.

• *Fax:* Fax your comments to: (202) 566–9744, Docket ID No. EPA–HQ–OAR–2009–0746.

• *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Docket ID No. EPA–HQ–OAR–2009–0746. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

• *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0746. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although

listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at EPA Center EPA Docket Center, 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Colyer, Sector Policies and Programs Division, Office of Air Quality Planning and Standards (D205–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (919) 541–5262; fax number: (919) 541–5600; e-mail address: *colyer.rick@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The regulated categories and entities potentially affected by the proposed amendments include:

Category	NAICS * code	Examples of regulated entities
Polyvinyl Chloride and Copolymers Production.	325211	Facilities that polymerize vinyl chloride monomer to produce polyvinyl chloride and/or copolymer products.
Brick and Structural Clay Products	327121	Brick and structural clay tile manufacturing facilities.
Brick and Structural Clay Products; Clay Ceramics.	327122	Ceramic wall and floor tile manufacturing facilities and extruded tile manufacturing facilities.
Brick and Structural Clay Products	327123	Other structural clay products manufacturing facilities.
Clay Ceramics	327111	Vitreous plumbing fixtures (sanitaryware) manufacturing facilities.
Any industry or institution using a boiler or process heater.	321	Manufacturers of lumber and wood products.
	322	Pulp and paper mills.
	325	Chemical manufacturers.
	324	Petroleum refiners and manufacturers of coal products.
	316, 326, 339	Manufacturers of rubber and miscellaneous plastic products.
	331	Steel works, blast furnaces.
	332	Electroplating, plating, polishing, anodizing, and coloring.
	336	Manufacturers of motor vehicle parts and accessories.
	221	Electric, gas, and sanitary services.
	622	Health services.
	611	Educational services.
Industry		Sources in a source category "initially listed" and regulated under any other section 112(d) emission standard for hazardous air pollutants that is completely vacated by the Court of Appeals for the District of Columbia.

* North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity or operation at your facility, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A of this part (General Provisions).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

D. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning the proposed rule by April 14, 2010, we will hold a public hearing on April 19, 2010. If you are interested in attending the

public hearing, contact Ms. Joan Rogers at (919) 541–4487 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, NC, or an alternate site nearby.

II. Background Information for Proposed Amendments

A. What is section 112(j)?

Section 112(j) of the Clean Air Act as amended in 1990 (CAA) provides generally that major sources in a listed category or subcategory for which EPA fails to promulgate section 112(d) MACT (Maximum Achievable Control Technology) standards by deadlines established pursuant to sections 112(e)(1) and (3) of the CAA must submit permit applications beginning 18 months after such deadlines, and that Federal or State permit writers must then determine on a case-by-case basis an emission limitation equivalent to the limitation that would apply if an emission standard had been issued in a timely manner under CAA section 112(d) of the Act. See CAA 112(j)(2)–(5).

States (with approved title V operating permit programs) or EPA will issue permits containing MACT emission limitations determined on a case-by-case basis to be equivalent to what would have been promulgated by EPA. Regulations implementing section 112(j) were originally promulgated by EPA in 1994 and amended several times since then; they are contained in subpart B, 40 CFR 63.50 through 63.56.

B. Applicability of Section 112(j) When a Section 112(d) Rule for Major Sources Is Vacated in Its Entirety

The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the national emission standards for hazardous air pollutants (NESHAP) for the Polyvinyl Chloride and Copolymers Production ("PVC"), Brick and Structural Clay Products Manufacturing ("Brick"), Clay Ceramics Manufacturing ("Clay Ceramics"), and the Industrial, Commercial and Institutional Boilers and Process Heaters ("Boilers") source categories. (*See Mossville Environmental Action Now* v. *EPA,* 370 F.3d. 1232 (D.C.Cir. 2004), *Sierra Club* v. *EPA,* 479 F.3d. 875 (D.C. Cir. 2007) and *NRDC* v. *EPA,* 489 F.3d. 1250 (D.C. Cir. 2007), respectively.) The Court vacated each of these regulations in their entirety and issued the mandate effectuating the vacatur of the PVC standards on May 11, 2005, the mandate effectuating the vacatur of the Brick and Clay Ceramics standards on June 18, 2007, and the mandate effectuating the vacatur of the Boilers standards on July 30, 2007.

EPA's long-standing position is that the "hammer" requirements of CAA section 112(j) apply in the case of a complete vacatur of a section 112(d) rule for a major source initially listed pursuant to section 112(c)(1).[1] This position is supported by Congressional intent reflected in the overall structure of the CAA as amended in 1990.

Congress amended the CAA in 1990 by naming 190 hazardous air pollutants and requiring EPA to promulgate emission standards to reduce emissions of these and any additional hazardous air pollutants subsequently identified by EPA. 42 U.S.C. 7412(b)(1), (d). Congress first directed EPA to list categories and subcategories of major sources that emit one or more hazardous air pollutants. 42 U.S.C. 7412(c). EPA was next required to establish technology-based MACT standards for the listed categories and subcategories of major sources. Id. § 7412(d), (e).

Congress further required that these standards be promulgated "as expeditiously as practicable" on a phased schedule, with standards for all source categories promulgated by November 15, 2000. 42 U.S.C. 7412(e)(1)(E). Section 112(j) was enacted to ensure that these major sources would be subject to case-by-case MACT standards even if no national MACT standards were in place after the deadlines established pursuant to section 112(e).

In light of Congressional intent that sources in listed source categories be subject to either national or case-by-case MACT standards, EPA's view is that when a section 112(d) rule establishing MACT standards is vacated in its entirety after such deadlines, there has been, in effect, a "[f]ailure to promulgate a standard" within the meaning of section 112(j)(2).[2] This view is also supported by case law that establishes that to vacate means to annul or make void and is a reasonable interpretation of section 112(j). *See, e.g., Action on Smoking Health* v. *CAB,* 713 F.2d 795, 797–800 (D.C. Cir. 1983).

C. What source categories would be affected?

These amendments would immediately affect sources in any source category "initially listed" in 1992 (57 FR 31576, 15991; July 16, 1992) for which all applicable MACT standards have been vacated, namely, MACT standards for PVC, Brick, Clay Ceramics, and Boilers. In addition, the amendments would apply to sources in any source category "initially listed" in 1992 (57 FR 31576, 15991; July 16, 1992) for which a section 112(d) rule establishing MACT standards is completely vacated in the future. It is important to note that section 112(j) and EPA's section 112(j) regulations will apply only where there has been or is in the future a vacatur of a section 112(d) rule establishing MACT standards. EPA has issued section 112(d) MACT standards for all source categories "initially listed" and thus a failure to promulgate within the meaning of section 112(j) can only arise in the future if the entire MACT regulation for such a source category is completely vacated. Thus, the provisions in the current section 112(j) regulations that are premised upon schedules established for issuance of MACT standards for "initially listed" source categories are obsolete or unnecessary and are revised or eliminated in today's proposal.

III. Summary of Proposed Amendments

We are proposing these amendments to clarify and streamline the process for sources and permitting authorities to follow in establishing case-by-case emissions limitations under section 112(j) in the case of complete vacatur of a section 112(d) MACT standard. There has been confusion and uncertainty among some permitting authorities and sources as to how section 112(j) and EPA's regulations implementing section 112(j) apply in the case of a complete vacatur of a section 112(d) rule establishing MACT standards, especially with respect to the timing of the application process. The amendments we are proposing today will clarify how the section 112(j) regulations apply in the case of such vacatur. We note that EPA's proposed

[1] *See, e.g.,* Federal Title V permit for Veolia ES, Technical Services L.L.C. with a Section 112(j) limit for a gas-fired boiler to (STATEMENT OF BASIS, Air Pollution Control Title V Permit to Operate Permit No. V–IL–1716300103–08–01, EPA Docket ID No. EPA–R05–OAR–2008–0235–0285.3) and materials developed in support of EPA's request to OMB for renewal of the Section 112(j) Information Collection Request (ICR).("Information Collection Request for Requirements for Control Technology Determinations from Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j)—Supporting Statement" EPA Docket ID No. EPA–HQ–OAR–2002–0038–0092), "Reply in Support of Motion for Voluntary Vacatur and Remand" and "Opposition to Petitioners' Cross-Motion to Establish Deadline to Govern Remand" in *Natural Resources Defense Council, et. al.* v. *EPA* (No. 04–1385 and consolidated cases) and "EPA's Petition for Panel Rehearing" in *Mossville Environmental Action Now and Sierra Club* v. *EPA,* (No. 02–1282).

[2] If only some of the MACT standards within a section 112(d) rule applicable to a source category are vacated, EPA's view is that section 112(j) is not applicable to such source category because there is "a standard" in place.

revisions are limited primarily to revisions that will clarify and streamline the application process when section 112(j) is triggered by a complete vacatur. The proposed revisions will also remove obsolete or redundant regulatory language. EPA is not revising or seeking comment on any other provision of the section 112(j) regulations.

A. Clarification of Applicability of Section 112(j)

As discussed above in Section II.B., EPA's long-standing position is that section 112(j) applies in the case of the complete vacatur of a section 112(d) rule establishing MACT standards for an initially listed major source. We are proposing language changes within the rule to clarify the applicability of section 112(j) in the case of such a complete vacatur. Specifically, we are proposing to revise the definition of the affected source to identify the triggering mechanism for section 112(j) from when "the Administrator has failed to promulgate emission standards by the section 112(j) deadline" to when "there is no section 112(d) standard in place on or after the section 112(j) deadline." This is consistent with EPA's view that when there has been a complete vacatur of a section 112(d) rule establishing MACT standards, there has been in effect a "[f]ailure to promulgate a standard" within the meaning of section 112(j).

We are also proposing minor revisions to the regulations to further clarify the applicability of section 112(j) and to reduce redundancies. For example, where the rule language refers to section 112(d) or (h) standards, as in the definition of "Equivalent Emission Limitation," we are proposing to delete the reference to 112(h) to eliminate redundancy because a 112(h) standard falls within the definition of a 112(d) standard (see section 112(d)(2)(D)).

Further, we are proposing to add a definition of "Listed Source Category or Subcategory" to clarify which source categories would be potentially subject to section 112(j) in the event that a section 112(d) rule for a major source is vacated in its entirety. This definition would specify that only those categories and subcategories on the initial 1992 source category list would be potentially affected. Section 112(j) applies to categories or subcategories of sources that are subject to a schedule for promulgation of MACT standards pursuant to section 112(e)(1) and (3) (*See* section 112(j)(2)). The scheduling requirements of section 112(e)(1) and (e)(3) apply to categories and subcategories of sources "initially listed" for regulation pursuant to section 112(c)(1). Thus, source categories listed after the initial listing (such as coal-and oil-fired electric generating units) that were not initially listed pursuant to section 112(c)(1) and thus are not covered by the schedules in section 112 (e)(1) and (e)(3), are not subject to section 112(j). *See* 57 FR 31576, 15991 (July 16, 1992) (initial source category list) and 58 FR 63941 (Dec. 3, 1993) (schedule establishing deadlines for the promulgation of emission standards for the categories of sources initially listed pursuant to section 112(c)(1) and (3)).

B. Permit Application Content

We are proposing to streamline the permit application by combining the Part 1 and Part 2 permit application. The original section 112(j) rule had a single permit application. We created the bifurcated process in 2003 (68 FR 32586; May 30, 2003) to allow a source additional time to compile the information necessary for the permitting authority to make a MACT floor determination. We find this bifurcation to be unnecessary now that section 112(j) is only applicable to sources in source categories for which a section 112(d) rule has been or will be vacated in its entirety. As discussed below, under the circumstances surrounding complete vacatur of a section 112(d) rule, many sources will have already compiled and submitted to the permitting authority the information required by a section 112(j) application. We are proposing no other changes to the permit application content. However, we are proposing to retain the requirement that sources seeking equivalency determinations pursuant to 63.52(e)(2)(ii) submit information that would be submitted as part of a Part 1 application under the current rule, i.e., the information set out at 63.53(a)(1)–(4). Today's proposal changes that heading for section 63.53(a) from "Part 1 MACT application" to "Section 112(g) equivalency determination request."

C. Section 112(j) Permit Application Deadline

We are proposing to establish the deadline for submittal of a permit application to obtain a section 112(j) limit in the case of a complete vacatur by redefining "Section 112(j) Deadline." For those source categories for which the mandate effectuating the complete vacatur of the MACT rule was issued over 18 months ago, namely the Boilers, Brick, Clay Ceramics, and PVC source categories, we are proposing to revise 40 CFR 63.52(a) [3] to require that sources in those categories submit permit applications the earlier of 90 days after promulgation of these amendments or the date by which the source's permitting authority has requested in writing a section 112(j) Part 2 application.

We have selected 90 days consistent with the timing set forth in 40 CFR 63.52(a)(2) of the current rule.[4] The above proposed approach recognizes that there may have been some uncertainty as to the application of section 112(j) after the complete vacatur of the PVC, Brick, Clay Ceramics, and Boiler MACT standards. Under the existing section 112(j) regulations, where a source subject to section 112(j) as of the section 112(j) deadline is not able to "reasonably determine" that one or more sources at the major source belong in the category or subcategory subject to section 112(j), pursuant to section 40 CFR 63.52(a)(2) of the current regulations, notification by the permitting authority initiates the 30-day period for submittal of a Part 1 application. Under such circumstances, the current rule provides that the Part 2 application is due 60 days after the date that the Part 1 application is due (40 CFR 63.52(e)(1)). EPA is proposing to revise the regulation to provide that for sources in the PVC, Brick, Clay Ceramics and Boiler source categories subject to section 112(j) as of the section 112(j) deadline, a section 112(j) application is due the earlier of 90 days after the date of promulgation of the revisions or by the date specified by the source's permitting authority for submittal of a Part 2 permit application. In either case, sources will have had at least 90 days notice of the obligation to submit a section 112(j) application. If a section 112(d) rule establishing emission standards for a category of major sources is vacated in the future, we are proposing that permit applications be submitted within 18 months after the date of the court mandate effectuating the complete vacatur of the standards applicable to such sources covered by 40 CFR 63.52(a) (sources subject to section 112(j) as of the 112(j) deadline).

We believe that these deadlines would provide sufficient time for the source owner or operator to prepare a permit application for submittal. Sources in the PVC, Brick, Clay Ceramics and Boilers source categories that were unsure of the applicability of section 112(j) have at least 90 days notice of their obligation to complete the permit application process as

[3] 40 CFR 63.52(a) applies to sources subject to section 112(j) as of the section 112(j) deadline.

[4] As explained in section III. D. of this preamble, we are deleting 63.52(a)(2) of the current rule.

contemplated by the current regulations. This proposed rule also serves to provide notice of when applications will be due if these rule amendments are promulgated as proposed. Further, many sources will have had much more notice by virtue of communications with permitting authorities. If a section 112(d) rule establishing emission standards for a major source category is vacated in the future, a source would have up to 18 months after the date of the mandate effectuating the vacatur to prepare its permit application. Eighteen months is consistent with the timing for submittal of section 112(j) permit applications provided for in section 112(j)(2) of the CAA.

In both cases sources and permitting authorities should already have most, if not all, of the information required to be included in the application for a section 112(j) case-by-case limit. Sources that were subject to the vacated PVC, Brick, Clay Ceramics and Boilers standards should have previously compiled and provided information to the permitting authority in the process of obtaining their title V permit conditions for meeting the standards before such standards were vacated. Pulling the existing information together in a permit application for case-by-case MACT and reviewing it prior to submittal to the permitting authority should add little additional burden. This is also likely to be the case in the event of any future vacaturs, especially given the 18 month period for submittal of applications.

EPA seeks comments on the 90 day period and whether a longer or shorter time period for submission of applications is appropriate for the PVC, Brick, Clay Ceramics and Boiler source categories. We also are seeking comments on our proposal to establish an earlier deadline when a permitting authority has notified a source in the PVC, Brick, Clay Ceramics and Boiler source categories that it is obligated to submit a Part 2 application on a date that falls before 90 days after promulgation of the final rule. We further solicit comment on whether the deadline for applications should be 90 days after promulgation of the final rule in every case for the PVC, Brick, Clay Ceramics and Boiler source categories.

D. Elimination of Current Provisions Relating to Questions of Applicability in § 63.52(a)(2), (d)(1), and (e)(2)

The current rule provides for the owner or operator of a source to request an applicability determination from a permitting authority in the event that they are unsure whether or not the source is in a covered category or subcategory.

We are proposing to eliminate applicability determination requests. The provisions governing applicability determinations have become obsolete because they are premised upon and tied to dates and time periods in the section 112(j) regulations that have expired (See § 63.52(e)(2)(i)). Further, we believe requests for applicability determinations are no longer necessary. With the exception of some sources that were subject to the vacated Boilers MACT, sources should know whether or not they are within a source category for a vacated rule because the definition of source in the vacated rule should provide sufficient guidance as to applicability. Some portion of boilers that were subject to the vacated boiler MACT rule, however, may be designated solid waste incineration units if they combust solid waste, as that term is defined in section 129(g). The Agency is in the process of defining the term "solid waste" under Subtitle D of the Resource Conservation and Recovery Act (RCRA). We anticipate that there will be further clarification of that issue by the time sources have to submit section 112(j) permit applications in light of EPA's intent to propose a rule defining the term "solid waste" under Subtitle D of RCRA by April 2010.

Sources are free to consult with permitting authorities to resolve applicability issues before submitting a section 112(j) permit application or can submit a section 112(j) application as a protective measure and work with the permitting authority during the completeness determination phase to resolve applicability issues.

For the same reason, we are eliminating section 63.52(a)(2) of the current rule. As explained above, section 63.52(a)(2) of the current rule provides that, when a source is not able to "reasonably determine" that one or more sources at the major source belong in the category or subcategory subject to section 112(j), notification by the permitting authority initiates the 30-day period for submittal of a Part 1 application. For the reasons explained above, we believe that there should not be uncertainty as to the obligation to submit a section 112(j) permit application. As noted above, if there is uncertainty, the source can consult with the permitting authority to resolve such issues before submittal of a section 112(j) application or submit a section 112(j) application as a protective measure and work with the permitting authority during the completeness determination phase to resolve applicability issues.

E. Other Minor Edits

We have made minor edits and corrections to the definition of "Available Information." One correction identifies "8" information sources instead of the erroneous "5" in the last sentence prior to the list. The second correction is to replace the term "Part 2 MACT" application to "Permit" application to conform with the streamlining discussed in section III.B. Finally, in information source(5), we have revised language from "Aerometric Information Retrieval System (AIRS)" which no longer exists, by providing an example EPA database, the "Air Facility Subsystem."

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action" because it may raise novel legal or policy issues. Accordingly, EPA submitted this action to OMB for review under Executive Order 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1648.07.

The permit application requirements in the proposed rule are required in subpart B of part 63. All information submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and the Agency's implementing regulations at 40 CFR part 2, subpart B. The proposed information collection requirements consist of a title V permit application or revision, or a request for a section 112(g) equivalency determination.

We estimate that these amendments would affect about 19 PVC sources, 122 Brick and Structural Clay sources, 8 Clay Ceramics sources, and 15,500 individual Boilers.

The annual burden for this information collection averaged over the first 3 years of this ICR is estimated to total 83,670 labor hours per year at a cost of $6.59 million for the estimated total number of sources. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2009–0746. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 30, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by April 29, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For the purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business that meets the Small Business Administration size standards for small businesses found at 13 CFR 121.201 (less than 500, 750, or 1,000 employees depending on the category); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These proposed amendments merely clarify the application process for obtaining case-by-case MACT limits in the case of complete vacatur of a 112(d) MACT rule. The requirements of the current rule and the amendments proposed today implement existing CAA requirements and do not impose additional requirements not already required by the CAA. Therefore, this rule does not impose any new costs. Section 112(j) of the Clean Air Act requires sources to submit applications for case-by-case limits and requires permitting authorities to develop case-by-case limits (*See* 112(j)(3)–(5)). These proposed amendments do not establish any new section 112 standards. Case-by-case standards are developed by the permitting authority, which in most cases is a State. In addition, as is explained above, these proposed amendments narrow the applicability of the current section 112(j) regulations to major sources in source categories for which a MACT standard was promulgated and subsequently vacated in its entirety. Further, because this rule only applies to source categories for which a MACT standard was promulgated and subsequently vacated, permitting authorities and sources should already have a significant amount of the information required in the permit application for a case-by-case MACT limit. Sources that were subject to the vacated PVC, Brick, Clay Ceramics and Boilers standards should have previously compiled and provided information to the permitting authority in the process of obtaining their title V permit conditions for meeting the standards before such standards were vacated. Pulling the existing information together in a permit application for case-by-case MACT and reviewing it prior to submittal to the permitting authority should add little additional burden. This is also likely to be the case in the event of any future vacaturs. Sources are allowed to reference previously submitted information. Additional effort could include pulling the information together, reviewing the information, and submitting the application. EPA does not expect this additional effort to be significant. In addition, sources can recommend emission limitations and other requirements, but the proposed amendments do not require this. Finally, this certification is consistent with EPA's certification that the current 112(j) would not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. This action imposes no enforceable duty on any State, local, tribal governments or the private sector.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments not otherwise required by the CAA. The proposed amendments contain no requirements that apply to such governments, and impose no obligations upon them.

E. Executive Order 13132: Federalism

These proposed amendments do not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action implements existing CAA requirements on owners and operators of specified major sources and does not impose additional requirements on State and local governments not specified in the CAA. Thus, Executive Order 13132 does not apply to these proposed amendments.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local government, EPA specifically solicits comments on the proposed amendments from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The action implements existing CAA requirements on owners and operators of specified major sources and does not

impose additional requirements on tribal governments not already required by the CAA. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that these proposed amendments are not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this action 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. The proposed amendments require permitting authorities to develop case-by-case emission limits for all sources in each source category for which standards have been vacated.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 24, 2010.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart B—[Amended]

2. Section 63.50 is amended by:

a. Revising the first sentence of paragraph (a)(2)(i);

b. Revising paragraph (c); and

c. Revising the first sentence of paragraph (d) to read as follows:

§ 63.50 Applicability.

(a) * * *

(2) * * *

(i) The owner or operator of affected sources within a listed source category or subcategory under this part that are located at a major source that is subject to an approved title V permit program and for which there is no section 112(d) emission standard in place on or after the section 112(j) deadline. * * *

* * * * *

(c) The procedures in §§ 63.50 through 63.56 apply for each affected source only after its section 112(j) deadline has passed and there is no generally applicable Federal standard governing that source under section 112(d) of the Act. If a generally applicable Federal standard governing that source is in place, the owner or operator of the affected source and the permitting authority are not required to take further action to develop an equivalent emission limitation under section 112(j) of the Act.

(d) Any final equivalent emission limitation for an affected source which is issued by the permitting authority pursuant to §§ 63.50 through 63.56 prior to promulgation of a generally applicable Federal standard governing that source under section 112(d) of the Act shall be deemed an applicable Federal requirement adopted pursuant to section 112(j) of the Act. * * *

3. Section 63.51 is amended by:

a. Revising the definition of *Affected source;*

b. Revising the definition of *Available information;*

c. Revising the definition of *Equivalent emission limitation;*

d. Revising the definition of *Section 112(j) deadline;* and

e. Adding in alphabetical order a definition for *Listed source category or subcategory* to read as follows:

§ 63.51 Definitions.

* * * * *

Affected source means the collection of equipment, activities, or both within a single contiguous area and under common control that is in a listed source category or subcategory for which there is no section 112(d) emission standard on or after the section 112(j) deadline, and that is addressed by an applicable MACT emission limitation established pursuant to this subpart.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options under this subpart, any information that is available as of the date on which the first permit application under this subpart is filed for a source in the relevant source category or subcategory in the State or jurisdiction; and, pursuant to the requirements of this subpart, is additional relevant information that can be expeditiously provided by the Administrator, is submitted by the applicant or others prior to or during the public comment period on the section 112(j) equivalent emission limitation for that source, or information contained in any of the information sources in paragraphs (1) through (8) of this definition.

(1) A relevant proposed regulation, including all supporting information;

(2) Relevant background information documents for a draft or proposed regulation;

(3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination;

(4) Relevant data and information available from the Clean Air Technology Center developed pursuant to section 112(l)(3) of the Act;

(5) Relevant data and information contained in EPA databases such as the Air Facility Subsystem;

(6) Any additional information that can be expeditiously provided by the Administrator;

(7) Any information provided by applicants in an application for a permit, permit modification, administrative amendment, or Notice of MACT Approval pursuant to the requirements of this subpart; and

(8) Any additional relevant information provided by the applicant.

* * * * *

Equivalent emission limitation means an emission limitation, established under section 112(j) of the Act, which is equivalent to the MACT standard that EPA would have promulgated under section 112(d) of the Act.

Listed source category or subcategory means a source category or subcategory initially listed pursuant to section 112(c)(1) at 57 FR 31576, 15991 (July 16, 1992).

* * * * *

Section 112(j) deadline means:

(1) for a source in the Polyvinyl Chloride and Copolymers Production, Brick and Structural Clay Products Manufacturing, Clay Ceramics Manufacturing, or the Industrial, Commercial and Institutional Boilers and Process Heaters source category, the earlier of [THE DATE 90 DAYS AFTER THE PROMULGATION DATE IN THE **FEDERAL REGISTER**] or the date by which the source's permitting authority has requested in writing a section 112(j) permit application containing the information set out in section 63.53(b); or

(2) for any other major source in a listed source category or subcategory, 18 months after the date of a court mandate effectuating the complete vacatur of a section 112(d) rule applicable to such source.

* * * * *

4. Section 63.52 is amended by:

a. Revising the first sentence of paragraph (a) introductory text;

b. Revising paragraph (a)(1);

c. Removing paragraph (a)(2) and redesignating paragraph (a)(3) as (a)(2);

d. Revising newly designated paragraph (a)(2) introductory text;

e. Revising the first sentence of newly designated paragraph (a)(2)(i);

f. Revising the second sentence of newly designated paragraph (a)(2)(ii);

g. Revising the first sentence of paragraph (b)(1);

h. Revising the third sentence of paragraph (b)(2);

i. Revising the first sentence of paragraph (b)(3);

j. Revising the first sentence of paragraph (b)(4);

k. Revising paragraph (c) introductory text;

l. Revising the first sentence of paragraph (c)(2);

m. Revising paragraph (d);

n. Revising paragraphs (e)(1), (e)(2), (e)(3), and (e)(4); and

o. Revising paragraph (g) to read as follows:

§ 63.52 Approval process for new and existing affected sources.

(a) *Sources subject to section 112(j) as of the section 112(j) deadline.* The requirements of paragraph (a)(1) of this section apply to major sources that include, as of the section 112(j) deadline, one or more sources in a category or subcategory for which there is no section 112(d) emission standard in place on or after the section 112(j) deadline. * * *

(1) The owner or operator must submit an application for a title V permit or for a revision to an existing title V permit or a pending title V permit meeting the requirements of § 63.53(b) by the section 112(j) deadline unless the owner or operator has submitted a request for 112(g) equivalency determination under paragraph (a)(2) of this section.

(2) The requirements in paragraphs (a)(2)(i) through (ii) of this section apply when the owner or operator has obtained a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g) or has submitted a title V permit application for a revision that incorporates a case-by-case MACT determination under section 112(g), but has not submitted an application for a title V permit revision that addresses the emission limitation requirements of section 112(j).

(i) When the owner or operator has a title V permit that incorporates a case-by-case MACT determination by the permitting authority under section 112(g), the owner or operator must submit a request meeting the requirements of § 63.53(a) for a title V permit revision within 30 days of the section 112(j) deadline. * * *

(ii) * * * Within 30 days of issuance of that title V permit, the owner or operator must submit a request meeting the requirements of § 63.53(a) for an equivalency determination. * * *

(b) * * *

(1) When one or more sources in a category or subcategory subject to the requirements of this subpart are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke section 112(g) requirements, the owner or operator must submit an application meeting the requirements of § 63.53(b) within 30 days of startup of the source. * * *

(2) * * * Within 30 days of issuance of that title V permit, the owner or operator must submit a request meeting the requirements of § 63.53(a) for an equivalency determination. * * *

(3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation), increases its potential to emit hazardous air pollutants such that the source becomes a major source that is subject to this subpart, must submit an application meeting the requirements of § 63.53(b) for a title V permit or for an application for a title V permit revision within 30 days after the date that such source becomes a major source. * * *

(4) On or after April 5, 2002, if the Administrator establishes a lesser quantity emission rate under section 112(a)(1) of the Act that results in an area source becoming a major source that is subject to this subpart, then the owner or operator of such a major source must submit an application meeting the requirements of § 63.53(b) for a title V permit or for a change to an existing title V permit or pending title V permit on or before the date 6 months after the date that such source becomes a major source. * * *

(c) *Sources that have a title V permit addressing section 112(j) requirements.* The requirements of paragraphs (c)(1) and (2) of this section apply to major sources within a listed source category or subcategory for which there is no section 112(d) emission standard in place on or after the section 112(j) deadline, and the owner or operator has a permit meeting the section 112(j) requirements, and where changes occur at the major source to equipment, activities, or both, subsequent to the section 112(j) deadline.

* * * * *

(2) If the title V permit does not contain the appropriate requirements

that address the events that occur under paragraph (c) of this section subsequent to the section 112(j) deadline, then the owner or operator must submit an application for a revision to the existing title V permit that meets the requirements of § 63.53(b). * * *

(d) *Requests for notice of MACT approval.* In addition to meeting the requirements of paragraphs (a), (b), and (c) of this section, the owner or operator of a new affected source may submit an application for a Notice of MACT Approval before construction, pursuant to § 63.54.

(e) * * *

(1) Permit applications must be reviewed by the permitting authority according to procedures established in § 63.55. The resulting MACT determination must be incorporated into the source's title V permit according to procedures established under title V, and any other regulations approved under title V in the jurisdiction in which the affected source is located.

(2) As specified in paragraphs (a) and (b) of this section, an owner or operator who has submitted a request meeting the requirements of § 63.53(a) may request a determination by the permitting authority of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under section 112(g) that apply to one or more sources at a major source in a relevant category or subcategory are substantially as effective as the emission limitations which the permitting authority would otherwise adopt pursuant to section 112(j) for the source in question. Each request for an equivalency determination under this paragraph (e)(2) will be construed in the alternative as a complete application for an equivalent emission limitation under section 112(j). The process for determination by the permitting authority of whether the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j) must include the opportunity for full public, EPA, and affected State review prior to a final determination. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations which the permitting authority would otherwise adopt under section 112(j), then the permitting authority must adopt the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) for the source in question. If more than 3 years remain on the current title V permit, the owner or operator must submit an application for a title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the section 112(j) MACT emission limitations. If less than 3 years remain on the current title V permit, any required conforming changes must be made when the permit is renewed. If the permitting authority determines that the emission limitations in the prior case-by-case MACT determination under section 112(g) are not substantially as effective as the emission limitations which the permitting authority would otherwise adopt for the source in question under section 112(j), the permitting authority must make a new MACT determination and adopt a title V permit incorporating an appropriate equivalent emission limitation under section 112(j). Such a determination constitutes final action for purposes of judicial review under 40 CFR 70.4(b)(3)(x) and corresponding State title V program provisions.

(3) Within 60 days of submittal of the permit application, the permitting authority must notify the owner or operator in writing whether the application is complete or incomplete. The permit application shall be deemed complete on the date it was submitted unless the permitting authority notifies the owner or operator in writing within 60 days of the submittal that the permit application is incomplete. A permit application is complete if it is sufficient to begin processing the application for a title V permit addressing section 112(j) requirements. In the event that the permitting authority disapproves a permit application or determines that the application is incomplete, the owner or operator must revise and resubmit the application to meet the objections of the permitting authority. The permitting authority must specify a reasonable period in which the owner or operator is required to remedy the deficiencies in the disapproved or incomplete application. This period may not exceed 6 months from the date the owner or operator is first notified that the application has been disapproved or is incomplete.

(4) Following submittal of a permit application, the permitting authority may request additional information from the owner or operator. The owner or operator must respond to such requests in a timely manner.

* * * * *

(g) *Permit issuance dates.* The permitting authority must issue a title V permit meeting section 112(j) requirements within 18 months after submittal of the complete permit application.

* * * * *

5. Section 63.53 is amended by:

a. Revising the section heading;

b. Revising paragraph (a) introductory text; and

c. Revising paragraphs (b) introductory text, (b)(1), (b)(2), and (b)(3) introductory text.

§ 63.53 Section 112(g) equivalency determination requests and application content for case-by-case MACT determinations.

(a) *Section 112(g) equivalency determination request.* A section 112(g) equivalency determination request must contain the information in paragraphs (a)(1) through (4) of this section.

* * * * *

(b) *Permit application.* (1) In compiling a permit application, the owner or operator may cross-reference specific information in any prior submission by the owner or operator to the permitting authority, but in cross-referencing such information the owner or operator may not presume favorable action on any prior application or request which is still pending. In compiling a permit application, the owner or operator may also cross-reference any part of a standard proposed by the Administrator pursuant to section 112(d) of the Act for any category or subcategory which includes sources to which the permit application applies.

(2) The permit application for a MACT determination must contain the information in paragraphs (b)(2)(i) through (b)(2)(vi) of this section.

(i) The information required by paragraph (a) of this section if a request for 112(g) equivalency was not previously submitted.

(ii) For a new affected source, the anticipated date of startup of operation.

(iii) Each emission point or group of emission points at the affected source which is part of a category or subcategory for which a permit application is required, and each of the hazardous air pollutants emitted at those emission points. When the Administrator has proposed a standard pursuant to section 112(d) of the Act for a category or subcategory, such information may be limited to those emission points and hazardous air pollutants which would be subject to control under the proposed standard.

(iv) Any existing Federal, State, or local limitations or requirements governing emissions of hazardous air pollutants from those emission points which are part of a category or

subcategory for which a permit application is required.

(v) For each identified emission point or group of affected emission points, an identification of control technology in place.

(vi) Any additional emission data or other information specifically requested by the permitting authority.

(3) The permit application for a MACT determination may, but is not required to, contain the following information:

* * * * *

§ 63.54 [Amended]

6. Section 63.54 is amended by removing the first sentence of the introductory text of the section.

7. Section 63.55 is amended by revising paragraphs (a) introductory text and (b) to read as follows:

§ 63.55 Maximum achievable control technology (MACT) determinations for affected sources subject to case-by-case determination of equivalent emission limitations.

(a) *Requirements for permitting authorities.* The permitting authority must determine whether the permit application is complete or an application for a Notice of MACT Approval is approvable. In either case, when the application is complete or approvable, the permitting authority must establish hazardous air pollutant emissions limitations equivalent to the limitations that would apply if an emission standard had been issued in a timely manner under section 112(d) of the Act. The permitting authority must establish these emissions limitations consistent with the following requirements and principles:

* * * * *

(b) *Reporting to EPA.* The owner or operator must submit additional copies of its application for a title V permit, permit revision, or Notice of MACT Approval, whichever is applicable, to the EPA at the same time the material is submitted to the permitting authority.

8. Section 63.56 is amended by revising the first sentence of paragraph (b), and paragraphs (c)(1) and (2) to read as follows:

§ 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.

* * * * *

(b) If the Administrator promulgates a relevant emission standard under section 112(d) of the Act that is applicable to a source after the date a permit is issued pursuant to § 63.52 or § 63.54, the permitting authority must incorporate requirements of that standard in the title V permit upon its next renewal. * * *

(c) * * *

(1) If the Administrator promulgates an emission standard under section 112(d) that is applicable to an affected source after the date a permit application under this paragraph is approved under § 63.52 or § 63.54, the permitting authority is not required to change the emission limitation in the permit to reflect the promulgated standard if the permitting authority determines that the level of control required by the emission limitation in the permit is substantially as effective as that required by the promulgated standard pursuant to § 63.1(e).

(2) If the Administrator promulgates an emission standard under section 112(d) of the Act that is applicable to an affected source after the date a permit application is approved under § 63.52 or § 63.54, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior case-by-case MACT determination, the permitting authority is not required to incorporate any less stringent emission limitation of the promulgated standard in the title V permit and may in its discretion consider any more stringent provisions of the MACT determination to be applicable legal requirements when issuing or revising such a title V permit.

Table 1 to Subpart B of Part 63—[Removed]

9. Table 1 to Subpart B of part 63 is removed.

Table 2 to Subpart B of Part 63—[Removed]

10. Table 2 to Subpart B of part 63 is removed.

[FR Doc. 2010–7041 Filed 3–29–10; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2527, 2551, and 2552

RIN 3045–AA51

Serve America Act Amendments to the National and Community Service Act of 1990 and the Domestic Volunteer Service Act of 1973

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule with request for comments; correction.

SUMMARY: The Corporation for National and Community Service (the Corporation) is correcting a proposed rule to implement changes to the operation of the National Service Trust and the Senior Corps programs under the Serve America Act, that appeared in the **Federal Register** of February 23, 2010 (75 FR 8013). That document incorrectly amended 45 CFR 2527.10(c) by removing current paragraph (c)(2). Additionally, there were two misstatements in the preamble. First, in an example to illustrate the limitation on the value of education awards an individual may receive, the preamble stated that a person who had previously earned the aggregate value of 1.71 awards could enroll in a quarter-time, minimum-time, reduced part-time, or Silver Scholar position. The inclusion of reduced part-time as an option in this example was in error. Second, the preamble incorrectly described the hardship waiver for Senior Companion and Foster Grandparent programs in the preamble. This document corrects the interim final rule by revising the preamble language providing an example of the aggregate value of education awards and the language describing the hardship waiver for Senior Companion and Foster Grandparent programs and by revising the instructions for 45 CFR 2527.10.

DATES: To be sure your comments are considered, they must reach the Corporation on or before April 26, 2010.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Docket Manager, Corporation for National and Community Service, (202) 606–6930, TDD (202) 606–3472. Persons with visual impairments may request this document in an alternate format.

SUPPLEMENTARY INFORMATION: In FR Doc. 2010–3385, beginning on page 8013 in the **Federal Register** of Thursday, February 23, 2010, make the following corrections:

1. In the Supplementary Information section, on page 8019, revise the second paragraph of the second column to read as follows:

> Using the example above, if an individual had received an aggregate value of 1.71 awards in the past, that individual may be eligible to enroll in a quarter-time, minimum-time, or Silver Scholar position, but would not be eligible to enroll in a part-time or full-time position, since the value of a part-time award, .5, plus 1.71, is greater than 2.

2. In the Supplementary Information section, on page 8023, in the second column, revise the paragraph entitled "Hardship Waiver Permitted for Cost Reimbursement Cap for Senior Companion and Foster Grandparent Programs (§§ 2552.92, 2552.92)" to read as follows:

Hardship Waiver Permitted for Cost Reimbursement Requirement for Senior Companion and Foster Grandparent Programs (§§ 2551.92, 2552.92) "Under current regulations, the total of cost reimbursements attributable to Senior Companions or Foster Grandparents, including stipends, insurance, transportation, meals, physical examinations, and recognition, must equal at least 80 percent of the Federal share of the grant award. Because of the financial challenges faced by some organizations as a result of the recent economic downturn and the real potential for a decrease in non-Federal support, the proposed rule permits the Corporation to allow an exception to the 80 percent requirement in cases of demonstrated need. Demonstrated need would include initial difficulties in developing local funding sources in the first three years of operation; an economic downturn, natural disaster, or other similar event that severely reduces sources of local funding support; or the unexpected discontinuation of a long-term local funding source.

3. On page 8027, in the second column, revise paragraph (c) to read as follows:

§ 2527.10 [Corrected]

* * * * *

(c) *Reduced part-time term of service.* The education award for a reduced part-time term of service in an approved AmeriCorps position of fewer than 900 hours is:

(1) An amount equal to the product of:

(i) The number of hours of service required to complete the reduced part-time term of service divided by 900; and

(ii) The amount of the education award for a part-time term of service described in paragraph (b) of this section; or

(2) An amount as otherwise determined by the Corporation.

* * * * *

Dated: March 23, 2010.

Frank R. Trinity,

General Counsel.

[FR Doc. 2010–6962 Filed 3–29–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217094–0115–01]

RIN 0648–AY57

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule that would implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This proposed rule would increase the commercial and recreational quotas for red snapper and provide an estimated closure date for the 2010 recreational red snapper component of the Gulf of Mexico (Gulf) reef fish fishery. The intended effect of the proposed rule is to help achieve optimum yield (OY) by relaxing red snapper harvest limitations consistent with the findings of the recent stock assessment for this species.

DATES: Written comments must be received on or before April 14, 2010.

ADDRESSES: You may submit comments on the proposed rule identified by 0648–AY57 by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- *Fax:* 727–824–5308; Attention: Peter Hood.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail *gulfcouncil@gulfcouncil.org;* or may be downloaded from the Council's Web site at *http://www.gulfcouncil.org/.*

FOR FURTHER INFORMATION CONTACT: Peter Hood, 727–824–5308.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

According to the updated stock assessment for Gulf red snapper, conducted in 2009, the stock is still overfished and rebuilding, but overfishing is projected to have ended in 2009. The rebuilding plan for Gulf red snapper was outlined in Amendment 22 to the FMP, and implemented through regulations in 2005. Actions taken in 2008 through Joint Amendment 27 to the FMP and Amendment 14 to the FMP for the Shrimp Fishery of the Gulf of Mexico revised the red snapper rebuilding strategy with the intent to end overfishing by 2009 or 2010 and rebuild red snapper by 2032 to the biomass levels that can support harvest of the maximum sustainable yield (MSY). The revised rebuilding plan outlined that after 2010, total allowable catch (TAC) would be increased consistent with a fishing mortality rate that produces MSY.

The Southeast Data, Assessment, and Review (SEDAR) update assessment for Gulf red snapper was conducted in August 2009, with the objective of updating the 2005 SEDAR 7 red snapper benchmark assessment. The 2009 assessment updated, reviewed, and incorporated all data included in the SEDAR 7 assessment, as well as new information that became available after the 2005 assessment. The results of the assessment update, as reviewed and approved by the Council's Scientific

and Statistical Committee (SSC), projected overfishing to have ended in 2009. Therefore, NMFS may increase red snapper TAC to help achieve OY for the fishery. The SSC recommended an allowable biological catch (ABC) of 6.945 million lb (3.150 million kg) in 2010, which is greater than the current rebuilding plan's 2010 TAC of 5.00 million lb (2.27 million kg). The ABC recommended by the SSC also follows the guidance established in the National Standard 1 Guidelines (74 FR 3178, January 16, 2009). The SSC's recommended ABC is set 25 percent below the overfishing limit, to account for scientific uncertainty. Additionally, this harvest level is consistent with the Council's OY level.

The recreational and commercial allocations would remain consistent with those established in Amendment 1 to the FMP. Therefore, 51 percent of the TAC would be allocated for the commercial quota and 49 percent of the TAC would be allocated for the recreational quota.

Management Measures Contained in this Proposed Rule

The Gulf red snapper regulatory amendment would set the TAC for 2010 and subsequent fishing years at 6.945 million lb (3.150 million kg). Based on the current commercial and recreational allocations, the TAC would be implemented through this proposed rule by setting the commercial quota for Gulf red snapper at 3.542 million lb (1.607 million kg) and the recreational quota at 3.403 million lb (1.544 million kg). NMFS has made a preliminary projection that this increased TAC would result in an estimated 54-day fishing season for the recreational sector, which corresponds to a preliminary closure date of July 24, 2010. Preliminary estimates indicate the recreational fishery exceeded its quota in 2009 by more than 1.7 million lb (0.77 million kg), and therefore, under the existing 2.45 million lb (1.11 million kg) recreational quota and assuming similar effort and catch rates for 2010, the recreational fishing season would have been 34 to 40 days. However, under the proposed 3.403 million lb (1.544 million kg) quota, the recreational fishing season is preliminarily projected to remain open for 54 days. The Magnuson-Stevens Act requires NMFS to close the recreational red snapper fishery in Federal waters when the quota is met or projected to be met. NMFS will provide a final projection of the 2010 recreational season closure date after finalized 2009 recreational landings data are available. The final closure date of the 2010 Gulf red snapper recreational season based on final data will be announced in the final rule for this action. These management measures would achieve the goal of National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the regulatory amendment, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to set the red snapper total allowable catch and resulting recreational and commercial quotas consistent with the goals and objectives of the Council's red snapper rebuilding plan. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would be expected to directly affect commercial and for-hire fishing vessels that harvest red snapper in the Gulf of Mexico. Based on logbook records, for the period 2007–2008, an average of 312 commercial vessels per year recorded red snapper landings in the Gulf. The total average annual ex-vessel revenues from all logbook-recorded harvests from all species for these vessels during this period was approximately $28.943 million (2008 dollars), of which approximately $9.435 million came from red snapper. The average annual total revenue per vessel for these vessels during this period was approximately $93,000 (2008 dollars).

Some fleet activity occurs in the Gulf commercial reef fish fishery. Based on permit data, the maximum number of permits reported to be owned by the same entity is six, though additional permits may be linked through other affiliations which cannot be identified with current data. Using the average revenue per vessel provided above, the average annual estimated maximum combined revenues for this entity would be approximately $558,000 (2008 dollars).

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. A Gulf reef fish for-hire permit is required to harvest red snapper in the Gulf. On December 23, 2009, there were 1,266 active Gulf reef fish for-hire permits. An active permit is a non-expired permit. Expired reef fish for-hire permits may not be actively fished, but are renewable for up to one year after expiration. Because of the extended renewal period, numerous permits may be expired but renewable at any given time of the year. It is estimated that the total number of permits (and associated vessels) active for some portion of the entire calendar year is a few hundred more than the number of permits active on any given date. Although the permit does not distinguish between headboats and charter boats, an estimated 79 headboats and 1187 charter boats operate in the Gulf. It cannot be determined with available data how many of the for-hire vessels permitted to operate in the Gulf reef fish fishery harvest red snapper, so all permitted vessels are assumed to comprise the universe of potentially affected vessels. The average charterboat is estimated to earn approximately $88,000 (2008 dollars) in annual revenues, while the average headboat is estimated to earn approximately $461,000 (2008 dollars).

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the revenues threshold is $7.0 million (NAICS code 713990, recreational industries). Based on the average revenue estimates provided above, all commercial and for-hire vessels expected to be directly affected by this proposed rule are determined for the purpose of this analysis to be small business entities.

This proposed rule would not establish any new reporting, record-keeping, or other compliance requirements. No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule, if implemented, would be expected to result in an increase in commercial red snapper harvests and a closure date of the recreational red snapper fishing season later in the season than the status quo. The increase in commercial red snapper harvests would be expected to increase commercial annual ex-vessel revenues by as much as $3 million, while a later closure date of the recreational red snapper fishing season would be expected to increase annual net operating revenues to for-hire businesses by as much as $3.8 million. Therefore, all of the expected direct economic impacts of this proposed rule on small entities, if implemented, are positive. No reduction in the revenues or profits of affected entities would be expected.

Because this proposed rule, if implemented, is not expected to have any direct economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 25, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.42, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Red snapper—3.542 million lb (1.607 million kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper.* The recreational quota for red snapper is 3.403 million lb (1.544 million kg), round weight.

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[FR Doc. 2010–7064 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 75, No. 60

Tuesday, March 30, 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

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5159, South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *Fax:* (202) 720–8435. *E-mail: Michele.Brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. *Fax:* (202) 720–8435.

Title: Broadband Grant Program.

OMB Control Number: 0572–0127.

Type of Request: Extension of a currently approved information collection.

Abstract: The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. To further this objective, RUS provides financial assistance in the form of grant to eligible entities that propose, on a "community-oriented connectivity" basis, to provide broadband transmission service that fosters economic growth and delivers enhanced educational, health care, and public safety services to extremely rural, lower income communities. The Agency gives priority to rural areas that it believes have the greatest need for broadband transmission services. Grant authority is utilized to deploy broadband infrastructure to extremely rural, lower income communities on a "community-oriented connectivity" basis. The "community-oriented connectivity" concept integrates the deployment of broadband infrastructure with the practical, everyday uses and applications of the facilities. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. The Agency provides financial assistance to eligible entities that are proposing to deploy broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 154.87 hours per response.

Respondents: Public bodies, commercial companies, cooperatives, nonprofits, Indian tribes, and limited dividend or mutual associations and must be incorporated or a limited liability company.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 48,010.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0812, FAX: (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 24, 2010.

Jonathan Adelstein,

Administrator.

[FR Doc. 2010–7040 Filed 3–29–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development & Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5168, South Building,

Washington, DC 20250–1522. Telephone: (202) 690–1078. FAX: (202) 720–8435. E-mail: *Michele.Brooks@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implanting provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to: Joyce McNeil, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., Room 5166—South Building, STOP 1522, Washington, DC 20250–1522. FAX: (202) 720–8435.

Title: 7 CFR part 1777, Section 306C Water and Waste Disposal (WWD) Loans and Grants.

OMB Control Number: 0572–0109.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) authorizes the Rural Utilities Service to make loans and grants to low-income rural communities whose residents face significant health risks. These communities do not have access to, or are not served by, adequate affordable water supply systems or waste disposal facilities. The loans and grants will be available to provide water and waste disposal facilities and services to these communities, as determined by the Secretary.

The Section 306C WWD Loans and Grants program is administered through 7 CFR part 1777.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 hours per response.

Respondents: Not for profits; State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0812. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 24, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–7043 Filed 3–29–10; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request an extension for the currently approved information collection for the NIFA Current Research Information System (CRIS).

DATES: Written comments on this notice must be received by June 1, 2010, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments concerning this notice and requests for copies of the information collection may be submitted by any of the following methods: *jhitchcock@nifa.usda.gov;* Fax: 202–720–0857; Mail: Information Systems and Technology Management, NIFA, USDA, STOP 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2216; Hand Delivery/Courier: 800 9th Street, SW., Waterfront Centre, Room 4217, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jason Hitchcock, Director of Information, Policy, Planning, and Training; Information Systems and Technology Management; NIFA/USDA; E-mail: *jhitchcock@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: NIFA Current Research Information System.

OMB Number: 0524–0042.

Expiration Date of Current Approval: June 30, 2010.

Type of Request: Intent to extend currently approved information collection for three years.

Abstract: The United States Department of Agriculture (USDA), National Institute of Food and Agriculture (NIFA) administers several competitive, peer-reviewed research, education, and extension programs, under which awards of a high-priority are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*); the Smith-Lever Act (7 U.S.C. 341 *et seq.*); and other legislative authorities. NIFA also administers several formula funded research programs. The programs are authorized pursuant to the authorities contained in the McIntire-Stennis Cooperative Forestry Research Act of October 10, 1962 (16 U.S.C. 582a *et seq.*); the Hatch Act of 1887, as amended (7 U.S.C. 361a–i); Section 1445 of Public Law 95–113, the Food and Agriculture Act of 1977, as amended (7 U.S.C. 3222); and Section 1433 of Subtitle E (Sections 1429–1439), Title XIV of Public Law 95–113, as amended (7 U.S.C. 3191–3201). Each formula funded program is subject to a set of administrative requirements; "Administrative Manual for the McIntire-Stennis Cooperative Forestry Research Program," the "Administrative Manual for the Hatch Research Program," the "Administrative Manual for the Evans-Allen Cooperative Agricultural Research Program," and the "Administrative Manual for the Continuing Animal Health and Disease Research Program."

The Current Research Information System (CRIS) is the USDA's documentation and reporting system (CRIS forms AD–416, AD–417, AD–419, and AD–421) and constitute a necessary information collection for publicly-supported projects as set forth in requirements established in 7 CFR Parts 3400 through 3430 pertaining to the aforementioned authorities. This

information collection is necessary in order to provide descriptive information regarding individual research activities, education activities, extension activities, and integrated activities to document expenditures and staff support for the activities, and to monitor the progress and impact of such activities.

The historical mission of CRIS, broadly stated, is to document the research activities of USDA and the State agricultural research system partners, to satisfy a variety of reporting requirements, and to provide access to research information. This mission supports one of NIFA's primary functions, as stated in the agency strategic plan, of providing program leadership to identify, develop, and manage programs to support university-based and other institutional research. The boundaries and scope of the CRIS mission have been expanded to a more comprehensive purpose of documenting all of the research, education, extension, and integrated activities funded or managed by NIFA. As such, the information collected for CRIS can be utilized in an essentially unlimited number of ways for a wide array of purposes. Generally, CRIS provides ready access to information through public web accessible data as well as individually requested, customized reports and services for agency officials, program leaders, administrators, and managers. The information provided helps users to keep abreast of the latest developments in agricultural, food science, human nutrition and forestry research and education; track resource utilization in specific target areas of work; plan for future activities; plan for resource allocation to research, education, and extension programs; avoid costly duplication of effort; aid in coordination of efforts addressing similar problems in different locations; and aid research, education, and extension workers in establishing valuable contacts within the agricultural community.

Descriptive information pertaining to documented projects is available to the general public as well as the research, education, and extension community contributing to CRIS. Limited financial information is available on individual grants and cooperative agreements as well as summary financial information through the CRIS Web site. A cooperating institution, including a state agricultural experiment station, state forestry school, 1862 land grant institution, or 1890 land grant institution has access to all of the data pertaining to that institution. Many institutions take advantage of this access, utilizing CRIS system facilities to manage the research programs at their institution. In addition, NIFA staff members can request specialized reports directly from the CRIS staff. These requests can include financial disclosure pertaining to a particular subject area or targeted program. The nature of this type of request characterizes one of the strengths of the CRIS information collection. The system collects obligations and expenditures on individual projects; however, information can be retrieved and aggregated based on subject areas or targeted programs, and corresponding financial information can be tabulated accordingly. The inclusion of subject-based classifications and subject specific descriptive fields supports a unique retrieval capability in this system. The information can be utilized nationally, regionally, or at more detailed levels, by program leaders, budget officials, and administrators to identify resource utilization, monitor research, education, and extension activity in specific target areas, and support decision making and resource allocation, not just on individual projects, but also for specific program areas. This combination of system capabilities facilitates program evaluation, accountability, and decision making processes.

Out of an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science (CoS), a committee of the National Science and Technology Council (NSTC), came the Research Performance Progress Report (RPPR). The RPPR is a new uniform format for reporting performance progress on Federally-funded research projects. Upon implementation, the RPPR will be used by agencies that support research and research-related activities for use in submission of interim progress reports. It is intended to replace other interim performance reporting formats currently in use by agencies. In anticipation of the RPPR's implementation, NIFA is working to align activities with that effort. Currently, NIFA plans to begin an incremental transition from CRIS to REEport, a new reporting system which format is based on the RPPR, beginning October 1, 2010. A separate information collection **Federal Register** notice will be prepared and published in the near future for REEport.

Estimate of Burden: NIFA is increasing the number of respondents for each component of the previous information collection to account for increased use of this system by new and existing programs. No changes have been made to the burden per response from the previous approval. NIFA estimates the number of respondents for the AD–416 form to be 4,096 with an estimated response time of 3.9 hours, representing a total annual burden of 15,974 hours. It is estimated the AD–417 will have 4,096 respondents with an estimated response time of .7 hours, representing a total annual burden of 2,867 hours. NIFA estimates that the number of respondents for the AD–419 will be 15,199 with an estimated response time of 1.4 hours, representing a total annual burden of 21,279 hours. The AD–421 is estimated to have 12,584 respondents and an estimated response time of 2.7 hours, representing a total annual burden of 33,977 hours. For this CRIS information collection NIFA estimates a total of 74,097 annual burden hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (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; and (e) the expanded use of CRIS forms for education and extension programs, particularly programs that are competitive, project-based, and funded under section 3(d) of the Smith-Lever Act.

Done at Washington, DC, this March 23, 2010.

Molly Jahn,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 2010–6978 Filed 3–29–10; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0008]

Notice of Request for Extension of Approval of an Information Collection; Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of live poultry, poultry meat, and other poultry products from specified regions.

DATES: We will consider all comments that we receive on or before June 1, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0008*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2010-0008, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0008.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of live poultry, poultry meat, and other poultry products from specified regions, contact Dr. Bettina Cooper, Staff Veterinarian, Technical Trade Services Team—Animals, NCIE, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734-3400; or Dr. Tracye Butler, Assistant Director, Technical Trade Services Team—Products, NCIE, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734-3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Live Poultry, Poultry Meat, and Other Poultry Products From Specified Regions.

OMB Number: 0579-0228.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 92 through 98, of the Code of Federal Regulations.

Part 94, § 94.26, allows the importation, subject to certain conditions, of live poultry, poultry meat, and other poultry products from certain regions, including Argentina and the Mexican States of Campeche, Quintana Roo, and Yucatan, that are free of exotic Newcastle disease (END). The conditions for importation require, among other things, certification from a full-time salaried veterinary officer of the national government of the exporting region that poultry and poultry products exported from one of these regions originated in that region (or in another region recognized by APHIS as free of END) and that before export to the United States, the poultry and poultry products were not commingled with poultry and poultry products from regions where END exists.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities of certain regions that export live poultry, poultry meat, and other poultry products; importers.

Estimated annual number of respondents: 25.

Estimated annual number of responses per respondent: 9.6.

Estimated annual number of responses: 240.

Estimated total annual burden on respondents: 240 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 24th day of March 2010.

Gregory L. Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–7050 Filed 3–29–10: 9:46 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0012]

Notice of Request for Extension of Approval of an Information Collection; Importation of Table Eggs From Regions Where Exotic Newcastle Disease Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of table eggs from regions where Exotic Newcastle Disease exists.

DATES: We will consider all comments that we receive on or before June 1, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0012*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2010-0012, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0012.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of table eggs, contact Dr. Lynette Williams-McDuffie, Senior Staff Veterinarian, Technical Trade Services Team—Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734-3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Table Eggs From Regions Where Exotic Newcastle Disease Exists.

OMB Number: 0579-0328.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 92 through 98, of the Code of Federal Regulations.

Part 94, § 94.6, governs the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds to prevent the introduction of exotic Newcastle disease (END) and highly pathogenic avian influenza subtype H5N1 into the United States. Various conditions for the importation of table eggs from regions where END exists apply and involve information collection activities, including the issuance of certificates and seals by foreign national or accredited veterinarians.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.25 hours per response.

Respondents: Salaried veterinary officer of the national government of the region of origin or a veterinarian accredited by the national Government of Mexico.

Estimated annual number of respondents: 1.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 2.

Estimated total annual burden on respondents: 2.5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 24th day of March 2010.

Gregory L. Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–7048 Filed 3–29ndash;10: 9:46 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0013]

Notice of Revision and Request for Extension of Approval of an Information Collection; Highly Pathogenic Avian Influenza; Subtype H5N1

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise an information collection associated with regulations to prevent the introduction of the H5N1 subtype of highly pathogenic avian influenza through imported birds, poultry, and unprocessed bird and poultry products and to request extension of approval of the information collection.

DATES: We will consider all comments that we receive on or before June 1, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0013*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2010-0013, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0013.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on regulations to prevent the introduction of highly pathogenic avian influenza, subtype H5N1, contact Dr. Bettina Cooper, Staff Veterinarian, Technical Trade Services Team—Animals, NCIE, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734-3400; or Dr. Tracye Butler, Assistant Director, Technical Trade Services Team—Products, NCIE, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734-3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Highly Pathogenic Avian Influenza; Subtype H5N1.

OMB Number: 0579-0245.

Type of Request: Revision and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 92 through 98, of the Code of Federal Regulations.

The regulations in 9 CFR parts 93, 94, and 95 govern, among other things, the importation of certain birds, poultry, and unprocessed bird and poultry products and byproducts to prevent the introduction of the H5N1 subtype of highly pathogenic avian influenza (HPAI H5N1).

HPAI H5N1 is an extremely infectious and fatal form of the disease for poultry. HPAI can strike poultry quickly without any warning signs of infection and, once established, can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. One gram of contaminated manure can contain enough virus to infect 1 million poultry.

APHIS' regulations prohibit or restrict the importation of unprocessed bird and poultry products and byproducts from regions that have reported the presence of the H5N1 subtype of HPAI, and contain permit and quarantine requirements for U.S. origin pet birds and performing or theatrical birds and poultry returning to the United States after being in such regions. The provisions necessitate the use of several information collection activities, including an Application to Import Controlled Materials or Transport Organisms and Vectors (VS Form 16-3), an Application for Import or In-Transit Permit (VS Form 17-129), a notarized declaration or affirmation, a Pet Bird Owner Agreement (VS Form 17-8), and notification of signs of disease in a recently imported bird. We are revising the currently approved information collection (0579-0245) to include an Import Permit (VS Form 16-6).

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2935 hours per response.

Respondents: U.S. importers of unprocessed bird and poultry products from regions where HPAI subtype H5N1 has been reported, and owners of U.S.-origin pet birds and U.S. performing or theatrical birds or poultry returning to the United States.

Estimated annual number of respondents: 270.

Estimated annual number of responses per respondent: 2.0852.

Estimated annual number of responses: 563.

Estimated total annual burden on respondents: 165.26 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 24th day of March 2010.

Gregory L. Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–7046 Filed 3–29–10: 9:46 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0014]

Notice of Request for Extension of Approval of an Information Collection; Export Health Certificate for Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the export of animal products from the United States.

DATES: We will consider all comments that we receive on or before June 1, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-*

2010-0014) to submit or view comments and to view supporting and related materials available electronically.

● Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2010-0014, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0014.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on the export of animal products from the United States, contact Dr. Joyce Bowling-Heyward, Assistant Director, Technical Trade Services Team—Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734-3278. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

SUPPLEMENTARY INFORMATION:

Title: Export Health Certificate for Animal Products.

OMB Number: 0579-0256.

Type of Request: Extension of approval of an information collection.

Abstract: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and products, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Many countries that import animal products from the United States require a certification from APHIS that the United States is free of certain diseases. These countries may also require that our certification statement contain additional declarations regarding the U.S. animal products being exported. This certification must carry the USDA seal and be endorsed by an APHIS representative (e.g., a Veterinary Medical Officer). The certification process involves the use of information collection activities, including Veterinary Services (VS) Forms 16-4 (Export Health Certificate for Animal Products) and 16-4A (Continuation Sheet) and, if a certificate is denied or withdrawn by VS, an exporter can request a hearing to appeal VS' decision.

Regulations pertaining to export certification of animals and animal products are contained in 9 CFR parts 91 and 156.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.4958 hours per response.

Respondents: Exporters of U.S. animal products.

Estimated annual number of respondents: 33,000.

Estimated annual number of responses per respondent: 4.05.

Estimated annual number of responses: 133,652.

Estimated total annual burden on respondents: 66,266 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 24th day of March 2010.

Gregory L. Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–7044 Filed 3–29–10: 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to GENETICS & IVF INSTITUTE of FAIRFAX, VIRGINIA, an exclusive license to U.S. Patent No. 5,985,216; "FLOW CYTOMETRY NOZZLE FOR HIGH EFFICIENCY CELL SORTING", issued on NOVEMBER 16, 1999.

DATES: Comments must be received on or before April 29, 2010.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; *telephone:* 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as GENETICS & IVF INSTITUTE of FAIRFAX, VIRGINIA has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2010–7038 Filed 3–29–10; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Columbia County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000, as amended, (Pub. L. 110–343), the Umatilla National Forest, Columbia County Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATES: Monday April 5, 2010, beginning at 6:30 p.m.

ADDRESSES: U.S. Post Office, 202 South Second Street, Dayton, Washington.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Designated Federal Official, at (509) 843–1891 or e-mail *mfujishin@fs.fed.us.*

Dated: March 24, 2010.

Monte Fujishin,

District Ranger, Pomeroy Ranger District, Umatilla National Forest.

[FR Doc. 2010–7068 Filed 3–29–10; 8:45 am]

BILLING CODE 3410–BH–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 100311134–0141–01]

Professional Research Experience Program in Chemical Science and Technology Laboratory; Availability of Funds

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) Chemical Science and Technology Laboratory (CSTL) announces that the Professional Research Experience Program (PREP–CSTL) is soliciting applications for financial assistance from accredited colleges and universities to enable those institutions to provide laboratory experiences and financial assistance to undergraduate and graduate students and post-doctoral associates in the Chemical Science and Technology Laboratory (CSTL) at the NIST, Gaithersburg Laboratories in Gaithersburg, Maryland or the NIST, Hollings Marine Laboratory in Charleston, South Carolina.

DATES: All applications, paper and electronic, must be received no later than 5 p.m. Eastern Daylight Time on June 19, 2010. Applications received after this deadline will not be reviewed or considered.

ADDRESSES: Hard copies of full proposals must be submitted to: Donna Kimball; Grants Coordinator, NIST Chemical Science and Technology Laboratory; National Institute of Standards and Technology; 100 Bureau Drive, Stop 8300; Gaithersburg, MD 20899–8300. Electronic submissions of full proposals should be submitted at *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A paper copy of the Federal Funding Opportunity (FFO) announcement may be obtained by calling (301) 975–8362. Technical questions should be addressed to: Donna Kimball at the address listed in the Addresses section above, or at Tel: (301) 975–8362; E-mail: *donna.kimball@nist.gov* or Web site: *http://www.nist.gov/cstl.* Grants Administration questions should be addressed to: Grants and Agreements Management Division; National Institute of Standards and Technology; 100 Bureau Drive, Stop 1650; Gaithersburg, MD 20899–1650; Tel: (301) 975–6328. For assistance with using Grants.gov contact *support@grants.gov* or call 800–518–4726.

SUPPLEMENTARY INFORMATION:

Electronic access: Applicants are strongly encouraged to read the Federal Funding Opportunity (FFO) available at *http://www.grants.gov* for complete information about this program, all program requirements, and instructions for applying by paper or electronically.

Authority: The authority for the *Professional Research Experience Program in Chemical Science and Technology Laboratory (PREP–CSTL)* is as follows: As authorized by 15 U.S.C. 278g–1(a), NIST conducts directly, and supports through grants, awards of research fellowships and other forms of financial assistance to students at institutions of higher learning within the U.S. whose research is relevant to the mission and programs of NIST.

Catalog of Federal Domestic Assistance Name and Number: Measurement and Engineering Research and Standards—11.609.

Program Description: The National Institute of Standards and Technology (NIST) Chemical Science and Technology Laboratory (CSTL) announces that the Professional Research Experience Program (PREP–CSTL) is soliciting applications for financial assistance from accredited colleges and universities to enable those institutions to provide laboratory experiences and financial assistance to undergraduate and graduate students and post-doctoral associates in the CSTL at the NIST, Gaithersburg Laboratories in Gaithersburg, Maryland or at the NIST Hollings Marine Laboratory in Charleston, South Carolina. In Gaithersburg, the CSTL carries out programs in the following fields of measurement science research, focused on reference methods, reference materials and reference data: Biochemical Science, Chemical and Biochemical Reference Data, Process Measurements, Surface and Microanalysis Science, Thermophysical Properties, and Analytical Chemistry. In Charleston, the CSTL carries out programs in the following fields of measurement science research, focused on reference methods, reference materials, and reference data: Biochemical Science, Chemical and Biochemical Reference Data, and Analytical Chemistry. Financial assistance may be provided for research support and professional development opportunities that include conferences, workshops, or other technical research meetings that are relevant to the mission of the CSTL.

The objectives of the PREP–CSTL are to encourage the growth and progress of science and engineering in the United States by providing research opportunities for students and post-doctoral associates, enabling them to collaborate with internationally known NIST scientists, exposing them to cutting-edge research. The PREP–CSTL will promote students' pursuit of degrees in science and engineering, and post-doctoral associates' professional development in science and engineering. The PREP–CSTL Coordinator and NIST/CSTL scientists will coordinate with appropriate division chiefs, outreach coordinators, and directors of multi-disciplinary academic organizations to identify students and programs that would benefit from the PREP–CSTL experience. Applicants must be able to ensure the availability of students for on-site collaborative research experiences at the NIST/CSTL Laboratories in Gaithersburg, Maryland and Charleston, South Carolina, concurrent with their university studies. Any participating student must also be enrolled in an academic program acceptable to both the sponsoring institution and NIST/CSTL.

Funding Availability: Funding for the PREP–CSTL will be provided as fellows are identified by the successful applicant and approved by NIST/CSTL. Fellowship support from NIST/CSTL under the PREP–CSTL is contingent upon the availability of NIST/CSTL program funds, NIST/CSTL program objectives, and the discretion of NIST/CSTL advisors.

NIST anticipates awarding one or more cooperative agreements to eligible institution(s).

In no event will NIST or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of agency priorities. Publication of this announcement does not oblige NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Successful applicants will be eligible, but are not required, to participate in the PREP–CSTL for up to a 5-year period beginning at the time of award.

NIST plans to fund the awards as cooperative agreements.

Cost Share Requirements: Cost sharing and matching are not required under this program.

Indirect costs also are eligible project costs and applicants are encouraged to propose to cover them as cost share under this program. Any indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated with the applicant's cognizant or oversight Federal agency prior to the proposed effective date of the award.

Eligibility: Eligible applicants are accredited institutions of higher education in the United States and its territories that offer undergraduate and graduate degrees in physics, chemistry, mathematics, computer science, or engineering. Institutions should have a 4-year degree plan. Undergraduate and graduate students who receive fellowships under the PREP–CSTL must show evidence of a 3.0 or higher grade point average in a curriculum acceptable to the sponsoring educational institution and NIST/CSTL and must be enrolled full-time at a sponsoring institution. Post-doctoral associates must be affiliated with a sponsoring institution of higher education and be no more than 5 years beyond receiving their Ph.D. The program provides fellowships to undergraduate and graduates for a maximum of 5 years duration.

When a proposal for a multi-year award is approved, funding will generally be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Continuation of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, continued relevance to the mission of CSTL and the availability of funds. The multi-year awards must have scopes of work that can be easily separated into annual increments of meaningful work that represent solid accomplishments if prospective funding is not made available to the applicant, (*i.e.,* the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

Each proposal should include necessary costs to provide oversight of the program. All successful applicants will be required to have a PREP–CSTL coordinator. Responsibilities of the successful applicant's PREP–CSTL coordinator include: serving as a single point of contact for University staff, PREP–CSTL applicants and participants, and NIST/CSTL research scientists and engineers; assisting students, University sponsors, and NIST/CSTL advisors in implementing the program and resolving any difficulties that may arise, and serving as the signatory on all agreements between NIST/CSTL, the University, and each fellow.

Evaluation Criteria: The applications will be evaluated and scored on the basis of the following evaluation criteria:

(a) Soundness of the applicant's academic program, proposed project objectives, and appropriateness of proposed student work assignments in light of ongoing research at NIST/CSTL and the students' academic programs. (30 points.)

(b) Experience in providing students pursuing degrees in physics, chemistry, mathematics, computer science, or engineering with work experiences in laboratories or other settings consistent with furthering the students' education. (30 points.)

(c) Adequacy and reasonableness of plans for administering the project and coordinating with the NIST/CSTL Director and PREP–CSTL Administrative Coordinator in Gaithersburg, Maryland. (20 points.)

(d) Costs of the proposed project budget (proposed fellowships and other proposed costs) in light of the activities proposed and the objectives of the sponsoring institution and NIST. Voluntary cost sharing may include, but is not limited to, cash contributions for direct costs, contributions of indirect costs, or third-party in-kind contributions. (20 points.)

Review and Selection Process: Screening of Applications: All PREP–CSTL proposals must be submitted to the NIST/CSTL PREP–CSTL Administrative Coordinator. Each proposal is examined for completeness and responsiveness to the scope of the stated objectives of the PREP–CSTL. Substantially incomplete or non-responsive proposals will not be reviewed for technical merit nor considered for funding, and the applicant will be notified. The NIST/CSTL PREP–CSTL Administrative Coordinator will retain one copy of each non-responsive application for three years for recordkeeping purposes. The remaining copies will be destroyed.

Each complete and responsive PREP–CSTL application packet will be reviewed by at least three independent, objective NIST scientists, all of whom are NIST employees, who are knowledgeable in the subject matter of this announcement and its objectives and who are able to conduct a review based on the Evaluation Criteria for the PREP–CSTL as described in this notice.

The merit review ratings shall provide a rank order to a Selecting Official for final funding recommendations. The Selecting Official will be the Director of the NIST Chemical Science and Technology Laboratory in Gaithersburg, Maryland. A Federal Program Officer may first make recommendations to the Selecting Official. The Selecting Official shall recommend for award in the rank order unless the proposal is justified to be selected out of rank order. Justification for award order different from the rank order shall be based upon one or more of the following factors:

1. Availability of funds.
2. Applicant's prior award performance.

The final selection of applications and award of cooperative agreements will be made by the NIST Grants Officer in Gaithersburg, Maryland, based on compliance with application requirements as published in this notice, compliance with applicable legal and regulatory requirements, and whether the recommended applicants appear to be responsible. Unsatisfactory performance on any previous Federal award may result in an application not being considered for funding. Applicants may be asked to modify objectives, work plans, or budgets, and provide supplemental information required by the agency prior to award. The decision of the Grants Officer is final. Applicants should allow up to 60 days processing time.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements are contained in, 73 FR 7696 (February 11, 2008), apply to this notice. On the form SF–424 items 8.b. and 8.c., the applicant's 9-digit Employer/Taxpayer Identification Number (EIN/TIN) and 9-digit Dun and Bradstreet Data Universal Numbering System (DUNS) number must be consistent with the information on the Central Contractor Registration (CCR) (*http://www.ccr.gov*) and Automated Standard Application for Payment System (ASAP). For complex organizations with multiple EIN/TIN and DUNS numbers, the EIN/TIN and DUNS number MUST be the numbers for the applying organization. Organizations that provide incorrect/inconsistent EIN/TIN and DUNS numbers may experience significant delays in receiving funds if their proposal is selected for funding. Please confirm that the EIN/TIN and DUNS number are consistent with the information on the CCR and ASAP.

Collaborations with NIST Employees: Collaboration with NIST is presumed in PREP–CSTL. If any applicant proposes any activities involving specific NIST employees, the statement of work should include a statement of this intention, a description of the collaboration, and prominently identify the NIST employee(s) involved. Any collaboration by a NIST employee must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the approval of the proposed collaboration. Any unapproved collaboration will be stricken from the proposal prior to the merit review.

Use of NIST Intellectual Property: If the applicant anticipates using any NIST-owned intellectual property to carry out the work proposed, the applicant should identify such intellectual property. This information will be used to ensure that no NIST employee involved in the development of the intellectual property will participate in the review process for that competition. In addition, if the applicant intends to use NIST-owned intellectual property, the applicant must comply with all statutes and regulations governing the licensing of Federal government patents and inventions, described at 35 U.S.C. 200–212, 37 CFR Part 401, 15 CFR Part 14.36, and in Section B.21 of the Department of Commerce Pre-Award Notification Requirements, 73 FR 7696 (February 11, 2008). Questions about these requirements may be directed to the Counsel for NIST, 301–975–2803.

Any use of NIST-owned intellectual property by a proposer is at the sole discretion of NIST and will be negotiated on a case-by-case basis if a project is deemed meritorious. The applicant should indicate within the statement of work whether it already has a license to use such intellectual property or whether it intends to seek one.

If any inventions made in whole or in part by a NIST employee arise in the course of an award made pursuant to this notice, the United States government may retain its ownership rights in any such invention. Disposition of NIST's retained rights in such inventions will be determined solely by NIST, and may include, but is not limited to, the grant of a license(s) to parties other than the applicant to practice such invention, or placing NIST's retained rights into the public domain.

Collaborations Making Use of Federal Facilities: All applications should include a description of any work proposed to be performed using Federal Facilities. If an applicant proposes use of NIST facilities, the statement of work should include a statement of this intention and a description of the facilities. Any use of NIST facilities must be approved by appropriate NIST management and is at the sole discretion of NIST. Prior to beginning the merit review process, NIST will verify the availability of the facilities and approval of the proposed usage. Any unapproved facility use will be stricken from the proposal prior to the merit review. Examples of some facilities that may be available for collaborations are listed on the NIST Technology Services Web site, *http://ts.nist.gov/*.

Paperwork Reduction Act: The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, 424 (R&R), SF–LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 4040–0001, 0348–0046, and 0605–0001.

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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Research Projects Involving Human Subjects, Human Tissue, Data or Recordings Involving Human Subjects: Any proposal that includes research involving human subjects, human tissue, data or recordings involving human subjects must meet the requirements of the Common Rule for the Protection of Human Subjects, codified for the Department of Commerce at 15 CFR Part 27. In addition, any proposal that includes research on these topics must be in compliance with any statutory requirements imposed upon the Department of Health and Human Services (DHHS) and other Federal agencies regarding these topics, all regulatory policies and guidance adopted by DHHS, the Food and Drug Administration, and other Federal agencies on these topics, and all Presidential statements of policy on these topics.

NIST will accept the submission of proposals containing research activities involving human subjects. The human subjects research activities in a proposal will require approval by Institutional Review Boards (IRBs) possessing a current registration filed with DHHS and to be performed by institutions possessing a current, valid Federal-wide Assurance (FWA) from DHHS that is linked to the cognizant IRB. In addition, NIST as an institution requires that IRB approval documentation go through a NIST administrative review; therefore, research activities involving human subjects are not authorized to start within an award until approval for the activity is issued in writing from the NIST Grants Officer. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

President Obama has issued Executive Order No. 13,505 (74 FR 10667, March 9, 2009), revoking previous Executive Orders and Presidential statements regarding the use of human embryonic stem cells in research. On July 30, 2009, President Obama issued a memorandum directing that agencies that support and conduct stem cell research adopt the "National Institutes of Health Guidelines for Human Stem Cell Research" (NIH Guidelines), which became effective on July 7, 2009, "to the fullest extent practicable in light of legal authorities and obligations." On September 21, 2009, the Department of Commerce submitted to the Office of Management and Budget a statement of compliance with the NIH Guidelines. In accordance with the President's memorandum, the NIH Guidelines, and the Department of Commerce statement of compliance, NIST will support and conduct research

using only human embryonic stem cell lines that have been approved by NIH in accordance with the NIH Guidelines and will review such research in accordance with the Common Rule and NIST implementing procedures, as appropriate. NIST will not support or conduct any type of research that the NIH Guidelines prohibit NIH from funding. NIST will follow any additional polices or guidance issued by the current Administration on this topic.

Research Projects Involving Vertebrate Animals: Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR Parts 1, 2, and 3, and if appropriate, 21 CFR Part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

Limitation of Liability: NIST anticipates making awards for the program listed in this notice. In no event will NIST or the Department of Commerce be responsible for proposal preparation cost if these programs(s) fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not obligate NIST or the Department of Commerce to award any specific project or to obligate any available funds.

Executive Order 12866: This funding notice was 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.

Executive Order 12372: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/ Regulatory Flexibility Act: Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: March 25, 2010.

Marc G. Stanley,

Acting Deputy Director.

[FR Doc. 2010–7051 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–811]

Certain Purified Carboxymethylcellulose from the Netherlands: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from the Netherlands. The period of review is July 1, 2008, through June 30, 2009. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: March 30, 2010.

FOR FURTHER INFORMATION CONTACT: Olga Carter, Edythe Artman, or Angelica Mendoza, Office 7, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–8221, (202) 482–3931, or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 25, 2009, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on purified CMC from the Netherlands. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 42873 (August 25, 2009). This review covers the period July 1, 2008, through June 30, 2009. The preliminary results for this administrative review were scheduled for April 2, 2010. As explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of the administrative review of purified CMC from the Netherlands became April 9, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Act requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 245 day time period for the preliminary results up to 365 days.

The Department has determined it is not practicable to complete this review within the statutory time limit because we require additional time to conduct a sales below–cost investigation of respondent Akzo Nobel Functional Chemicals B.V. (ANFC) and to collect and analyze additional information needed for our preliminary results (*e.g.*, information regarding ANFC as succesor–in-interest of Akzo Nobel Surface Chemistry B.V. and respondent CP Kelco B.V.'s factoring expenses and freight revenue). Accordingly, the Department is extending the time limits for completion of the preliminary results of this administrative review until no later than July 31, 2010, which is 365 days from the last day of the anniversary month of this order. Because July 31, 2010, falls on Saturday, the new deadline for the final results will be next business day, Monday, August 2, 2010. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). We intend to issue the final results in this review no

later than 120 days after publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7069 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21–2010]

Foreign-Trade Zone 272—Lehigh Valley, Pennsylvania Application for Subzone Grundfos Pumps Manufacturing Corporation (Multi-Stage Centrifugal Pumps); Allentown, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lehigh Valley Economic Development Corporation, grantee of FTZ 272, requesting special-purpose subzone status for the multi-stage centrifugal pump manufacturing facility of Grundfos Pumps Manufacturing Corporation (Grundfos), located in Allentown, Pennsylvania. 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 March 24, 2010.

The Grundfos facility (15 employees, 7.4 acres, capacity—20,000 pumps annually) is located at 2200 Hangar Place, Allentown, Pennsylvania. The facility is used for the manufacture and assembly of multi-stage centrifugal pumps used in commercial, residential, heating/ventilation, and waste water applications. Components and materials sourced from abroad (representing 65% of the value of the finished pumps) include: Pump parts, electric motors, plastic closures and o-rings, rubber o-rings and gaskets, labels, pipe fittings, fasteners, motor couplings, and paper gaskets (duty rates range from free to 8.5 percent).

FTZ procedures could exempt Grundfos from customs duty payments on the foreign components used in export production. The company anticipates that some 20 percent of the plant's shipments will be exported. On its domestic sales, Grundfos would be able to choose the duty rates during customs entry procedures that apply to finished centrifugal pumps (duty free) for the foreign inputs noted above. FTZ designation would further allow Grundfos to 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, Pierre Duy 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 June 1, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 14, 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 *www.trade.gov/ftz.* For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: March 24, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–7072 Filed 3–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 14–2010]

Foreign-Trade Zone 70—Detroit, MI: Application for Expansion Correction

*The **Federal Register** notice published on March 11, 2010 (75 FR 11514) describing the expansion of FTZ 70, Detroit, Michigan, is corrected as follows:*

In paragraph 3, Proposed Site 34 should be Proposed Site 35 and Proposed Site 35 should be Proposed Site 36.

Dated: March 23, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–7074 Filed 3–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department received a request to revoke one antidumping duty order in part.

DATES: *Effective Date:* March 30, 2010.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. With respect to the antidumping duty orders on Frozen Warmwater Shrimp from Brazil, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam, the initiation of the antidumping duty administrative review for these cases will be published in a separate initiation notice. The Department also received a timely request to revoke in part the antidumping duty order on Stainless Steel Bars from India with respect to one exporter.

Notice of No Sales

Under 19 CFR 351.213(d)(3), the Department may rescind a review where there are no exports, sales, or entries of subject merchandise during the respective period of review ("POR") listed below. If a producer or exporter

named in this notice of initiation had no exports, sales, or entries during the POR, it should notify the Department within 30 days of publication of this notice in the **Federal Register**. The Department will consider rescinding the review only if the producer or exporter, as appropriate, submits a properly filed and timely statement certifying that it had no exports, sales, or entries of subject merchandise during the POR. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended ("the Act"). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of this initiation notice and to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of this **Federal Register** notice.

Separate Rates

In proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2,1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2011.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil:	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (e.g., an ongoing administrative review, new shipper review, etc.) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Frozen Warmwater Shrimp,[3] A–351–838	2/1/09–1/31/10
Stainless Steel Bar, A–351–825	2/1/09–1/31/10
Villares Metals S.A.	
India:	
Certain Preserved Mushrooms, A–533–813	2/1/09–1/31/10
Agro Dutch Foods Limited (Agro Dutch Industries Limited)	
Himalya International Ltd.	
Hindustan Lever Ltd. (formerly Ponds India, Ltd.)	
Transchem, Ltd.	
Weikfield Foods Pvt. Ltd.	
Stainless Steel Bar, A–533–810	2/1/09–1/31/10
Facor Steels Ltd./Ferro Alloys Corporation, Ltd.	
Venus Wire Industries Pvt. Ltd./Precision Metals/Sieves Manufacturers (India) Private Limited	
India Steel Works, Limited	
Mukand, Ltd.	
Frozen Warmwater Shrimp,[4] A–533–840	2/1/09–1/31/10
Indonesia:	
Certain Preserved Mushrooms, A–560–802	2/1/09–1/31/10
PT Eka Timur Raya (ETIRA)	
PT Indo Evergreen Agro Business Corp.	
PT Karya Kompos Bagas	
Tuwuh Agung PT	
Republic of Korea:	
Certain Cut-to-Length Carbon-Quality Steel Plate, A–580–836	2/1/09–1/31/10
Dongkuk Steel Mill Co., Ltd.	
Hyosung Corporation	
Thailand:	
Frozen Warmwater Shrimp,[5] A–549–822	2/1/09–1/31/10
The People's Republic of China:	
Certain Preserved Mushrooms,[6] A–570–851	2/1/09–1/31/10
Ayecue (Liaocheng) Foodstuff Co., Ltd.	
Blue Field (Sichuan) Food Industrial Co., Ltd.	
China National Cereals, Oils & Foodstuffs Import & Export Corp.	
China Processed Food Import & Export Co.	
Dujiangyan Xingda Foodstuff Co., Ltd.	
Fujian Golden Banyan Foodstuffs Co., Ltd.	
Fujian Pinghe Baofeng Canned Foods	
Fujian Yuxing Fruits and Vegetables Foodstuffs Development Co., Ltd.	
Fujian Zishan Group Co., Ltd.	
Golden Banyan Foodstuffs Co., Ltd.	
Guangxi Eastwing Trading Co., Ltd.	
Guangxi Jisheng Foods, Inc.	
Longhai Guangfa Food Co., Ltd.	
Primera Harvest (Xiangfan) Co., Ltd.	
Shandong Fengyu Edible Fungus Corporation Ltd.	
Shandong Jiufa Edible Fungus Corporation, Ltd.	
Sun Wave Trading Co., Ltd.	
Xiamen Greenland Import & Export Co., Ltd.	
Xiamen Gulong Import & Export Co., Ltd.	
Xiamen International Trade & Industrial Co., Ltd.	
Xiamen Jiahua Import & Export Trading Co., Ltd.	
Xiamen Longhuai Import & Export Co., Ltd.	
Zhangzhou Ganchang Canned Foods Co., Ltd.	
Zhangzhou Golden Banyan Foodstuffs Industrial Co., Ltd.	
Zhangzhou Tongfa Foods Industry Co., Ltd.	
Zhejiang Iceman Food Co., Ltd.	
Frozen Warmwater Shrimp,[7] A–570–893	2/1/09–1/31/10
Small Diameter Graphite Electrodes,[8] A–570–929	8/21/08–1/31/10
5-Continent Imp. & Exp. Co., Ltd. (aka Sichuan 5-Continent Imp. & Exp. Co., Ltd.)	
Acclcarbon Co., Ltd.	
Allied Carbon (China) Co., Limited	
Anssen Metallurgy Group Co., Ltd. (aka AMGL)	
Beijing Fangda Carbon Tech Co., Ltd.	
Beijing Xincheng Sci-Tech. Development Inc. (formerly Beijing Xinchengze Inc.) (subsidiary of XC Carbon Group)	
Brilliant Charter Limited	
Chengdelh Carbonaceouse Elements Factory	
Chengdu Jia Tang Corp.	
Chengdu Rongguang Carbon Co., Ltd. (subsidiary of Liaoning Fangda Group Industrial Co., Ltd.)	
China Shaanxi Richbond Imp. & Exp. Industrial Corp. Ltd.	
China Xingyong Carbon Co., Ltd. (aka Xinghe Xingyong Carbon Co., Ltd.)	
CIMM Group Co., Ltd. (formerly China Industrial Mineral & Metals Group)	
Dalian Carbon & Graphite Corporation	
Dalian Hongrui Carbon Co., Ltd.	

	Period to be reviewed
Dalian Horton International Trading Co., Ltd.	
Dalian LST Metallurgy Co., Ltd.	
Dalian Shuangji Co., Ltd.	
Dalian Thrive Metallurgy Imp. & Exp. Co., Ltd.	
Datong Xincheng Carbon Co., Ltd.	
Dechang Shida Carbon Co., Ltd. (aka Sichuan Dechang Shida Co., Ltd.; and subsidiary of Shida Carbon Group)	
Dignity Success Investment Trading Co., Ltd.	
Double Dragon Metals and Mineral Tools Co., Ltd.	
Fangda Carbon New Material Co., Ltd. (subsidiary of Liaoning Fangda Group Industrial Co., Ltd. and formerly Lanzhou Hailong New Material Co)	
Foset Co., Ltd. (aka Shanxi Foset Carbon Co. Ltd.)	
Fushun Carbon Co., Ltd. (subsidiary of Liaoning Fangda Group Industrial Co., Ltd. and formerly Fushun Carbon Plant)	
Fushun Jinli Petrochemical Carbon Co., Ltd. (aka Fushun Jinly Petrochemical Carbon Co., Ltd.)	
GES (China) Co., Ltd. (aka Shanghai GC Co., Ltd.)	
Guangdong Highsun Yongye (Group) Co., Ltd. (formerly Moaming Yongye (Group) Co., Ltd.)	
Guanghan Shida Carbon Co., Ltd. (aka Sichuan Guanghan Shida Carbon Co., Ltd.; a subsidiary of Shida Carbon Group)	
Haimen Shuguang Carbon Industry Co., Ltd.	
Handan Hanbo Material Co., Ltd.	
Hebei Long Great Wall Electrode Co., Ltd. (aka Chang Cheng Chang Electrode Co., Ltd. and Laishui Long Great Wall Electrode Co. Ltd.)	
Hefei Carbon Co., Ltd. (subsidiary of Liaoning Fangda Group Industrial Co., Ltd.)	
Heilongjiang Xinyuan Metacarbon Company, Ltd. (Heilongjiang Xinyuan Carbon Products Co., Ltd.)	
Henan Sanli Carbon Products Co., Ltd.	
Hopes (Beijing) International Co., Ltd.	
Hunan Mec Machinery and Electronics Imp. & Exp. Corp.	
Hunan Yinguang Carbon Factory Co., Ltd.	
Inner Mongolia Xinghe County Hongyuan Electrical Carbon Factory	
Jiang Long Carbon	
Jiangsu Yafei Carbon Co., Ltd.	
Jiaozuo Zhongzhou Carbon Products Co., Ltd.	
Jichun International Trade Co., Ltd. of Jilin Province	
Jiexiu Juyuan Carbon Co., Ltd./Jiexiu Ju-Yuan & Coaly Co., Ltd.	
Jilin Carbon Graphite Material Co., Ltd. (exporter for Sinosteel Jilin Carbon Plant)	
Jilin Carbon Import and Export Company (aka Sinosteel Jilin Carbon Co., Ltd.)	
Jilin Songjiang Carbon Co Ltd.	
Jinyu Thermo-Electric Material Co., Ltd.	
Kaifeng Carbon Company Ltd.	
Kingstone Industrial Group Ltd.	
L & T Group Co., Ltd.	
Lanzhou Carbon Co., Ltd./Lanzhou Carbon Import & Export Corp. (aka Fangda Lanzhou Carbon Joint Stock Company Co. Ltd.; Lanzhou Hailong Technology; Lanzhou Hailong New Material Co.)	
Lanzhou Ruixin Industrial Material Co., Ltd.	
LH Carbon Factory of Chengde	
Lianyungang Jinli Carbon Co., Ltd. (aka Lianyungang Jianglida Co., Ltd.)	
Liaoyang Carbon Co. Ltd.	
Linghai Hongfeng Carbon Products Co., Ltd.	
Linyi County Lubei Carbon Co., Ltd.	
Nantong Falter New Energy Co., Ltd.	
Nantong River-East Carbon Joint Stock Co., Ltd. (aka Nantong River-East Carbon Co., Ltd.)	
Nantong Yangtze Carbon Corp. Ltd.	
Orient (Dalian) Carbon Resouces Developing Co., Ltd.	
Peixian Longxiang Foreign Trade Co. Ltd.	
Qingdao Grand Graphite Products Co., Ltd.	
Qingdao Haosheng Metals Imp. & Exp. Co., Ltd. (aka Quingdao Haosheng Metals & Minerals Imp. & Exp. Co., Ltd.)	
Qingdao Liyikun Carbon Development Co., Ltd. (aka Qingdao Likun Graphite Co., Ltd.)	
Qingdao Ruizhen Carbon Co., Ltd.	
Rt Carbon Co., Ltd.	
Ruitong Carbon Co., Ltd.	
Shandong Basan Carbon Plant	
Shanghai Carbon International Trade Co., Ltd. (affiliate of Xuzhou Jianglong Carbon Manufacture Co., Ltd.)	
Shanghai GC Co., Ltd. (affiliated with GES (China) Co., Ltd.)	
Shanghai Jinneng International Trade Co., Ltd. (affiliated with Jinneng Group)	
Shanghai P.W. International Ltd.	
Shanghai Topstate International Trading Co., Ltd.	
Shanxi Datong Energy Development Co., Ltd. (aka Datong Carbon; subsidiary of Shanxi Jinneng Group Co., Ltd.)	
Shanxi Jiexiu Import and Export Co., Ltd.	
Shanxi Jinneng Group Co., Ltd.	
Shanxi Yunheng Graphite Electrode Co., Ltd. (affiliated with Datong Carbon Plant)	
Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.	
Shida Carbon Group	

	Period to be reviewed
Shijaizhuang Carbon Co., Ltd.	
Shijiazhuang Huanan Carbon Factory (aka Huanan Carbon Factory)	
Sichuan Shida Trading Co., Ltd. (subsidiary of Shida Carbon Group)	
Sichuan GMT International Inc.	
Sinosteel Anhui Co., Ltd. (subsidiary of Sinosteel Corp.)	
Sinosteel Jilin Carbon Co., Ltd./Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd. (subsidiary of Sinosteel Corp.)	
Sinosteel Sichuan Co., Ltd. (subsidiary of Sinosteel Corp.)	
SMMC Group Co., Ltd.	
Tangshan Kimwan Special Carbon & Graphite Co., Ltd.	
Tengchong Carbon Co., Ltd.	
Tianjin (Teda) Iron & Steel Trade Co., Ltd.	
Tianjin Yue Yang Industrial & Trading Co., Ltd.	
Tianzhen Jintian Graphite Electrodes Co., Ltd.	
Tielong (Chengdu) Carbon Co., Ltd.	
UK Carbon & Graphite	
United Carbon Ltd.	
World Trade Metals & Minerals Co., Ltd.	
Xinghe County Muzi Carbon Co., Ltd. (aka Xinghe County Muzi Carbon Plant)	
Xinghe Xinyuan Carbon Products Co., Ltd.	
Xinyuan Carbon Co., Ltd.	
Xuanhua Hongli Refractory and Mineral Company	
Xuchang Minmetals & Industry Co., Ltd.	
Xuzhou Jianglong Carbon Manufacture Co., Ltd. (aka Xuzhou Carbon Co., Ltd.; formerly Xuzhou Electrode Factory)	
Yangzhou Qionghua Carbon Trading Ltd.	
Yixing Huaxin Imp & Exp Co. Ltd.	
Youth Industry Co., Ltd.	
Zhengzhou Jinyu Thermo-Electric Material Co., Ltd.	
Zibo Continent Carbon Factory (aka Shandong Zibo Continent Carbon Factory, aka Zibo Wuzhou Tanshun Carbon Co., Ltd.)	
Zibo DuoCheng Trading Co., Ltd.	
Zibo Lianxing Carbon Co., Ltd. (affiliated with Lianxing Carbon (Shandong) Co., Ltd., Weifang Lianxing Carbon Co., Ltd., Lianxing Carbon Qinghai Co., Ltd., and Lianxing Carbon Science Institute)	
Uncovered Innerspring Units,[9] A–570–928	2/2/09–1/31/10
Foshan Jingxin Steel Wire & Spring Co., Ltd.	
Top One Manufacturing Factory	
Socialist Republic of Vietnam:	
Frozen Warmwater Shrimp,[10] A–552–802	2/1/09–1/31/10

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

[3] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

[4] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

[5] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

[6] If the above-named companies do not qualify for a separate rate, all other exporters of Certain Preserved Mushrooms from the People's Republic of China ("PRC") who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

[8] If the above-named companies do not qualify for a separate rate, all other exporters of Small Diameter Graphite Electrodes from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] If the above-named companies do not qualify for a separate rate, all other exporters of Uncovered Innerspring Units from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[10] The initiation of the administrative review for the above referenced case will be published in a separate initiation notice.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 19, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–7070 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU71

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject Exempted Fishing Permit (EFP) application for the Study Fleet Program contains all of the required information and warrants further consideration. Study Fleet projects are managed by the University of Massachusetts Dartmouth School of Marine Science and Technology (SMAST). The EFP would grant exemptions from minimum fish sizes, and possession and landing limits.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 14, 2010.

ADDRESSES: Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *NERO.EFP@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments on SMAST Study Fleet EFP." Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on SMAST Study Fleet EFP." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, (978) 281–9177.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted by SMAST on February 5, 2010. The EFP would exempt federally permitted commercial fishing vessels from the regulations detailed herein while participating in the following projects managed by SMAST:

(1) Georges Bank (GB) Multispecies Otter Trawl Net Study Fleet (seven vessels);

(2) Monkfish Age Validation Research (six vessels).

The primary goal of the GB Multispecies Otter Trawl Net Study Fleet project is to characterize catch on an effort level and collect size distributions of kept and discarded catch by: 1) Training fishermen to representatively sample their NE multispecies and monkfish catch, measuring 100 kept and 100 discarded fish for each statistical area fished per trip for each species that is assessed using an analytical stock assessment; 2) developing data protocols to integrate biological sampling into study fleet databases, including application of electronic measuring onboard; 3) measuring 100 kept and 100 discarded skates for each statistical area fished, per trip, for each species; and 4) measuring Atlantic wolffish when available.

The project is a continuation of research conducted since 2000 by SMAST, which is now in its third phase of incorporating electronic reporting for vessels collecting data. While fishing under Northeast (NE) multispecies days-at-sea (DAS), catch estimations would be derived by one of three methods: 1) Measuring actual weight using an electronic scale; 2) using basket weight, calculated by using a standard weight for a basket and counting the number of baskets filled; or 3) by using hail weight that is estimated by the crew. Length and weight measurements of 100 kept and 100 discarded fish, by statistical area, would be taken from a predetermined list of species (see Table 1). The landing of fish for sale at authorized dealers would be conducted according to each vessel's fishing permits and within current regulations. Temporary exemptions from proposed Amendment 16 to the NE Multispecies Fishery Management Plan (FMP) NE multispecies zero retention stocks at § 648.86(n) (74 FR 69454, December 31, 2009), and NE multispecies minimum fish sizes at § 648.83(a)(3) (74 FR 69454, December 31, 2009), would be necessary to obtain the proposed data from undersized individuals, prohibited species, and/or fish in excess of trip limits. Similarly, temporary exemptions from monkfish possession limits at § 648.94(a) and (b), and monkfish minimum fish sizes at § 648.93, would be necessary to obtain data from undersized individuals in excess of trip limits. Exemptions from skate possession restrictions at § 648.322(a)(1), and prohibitions on possession of skates at § 648.322(c)(1), would also be necessary, as these species may be encountered when catch estimation is being completed. With the exception of vessels conducting monkfish age validation research, as described in the following section, vessels would be prohibited from landing undersized fish or amounts of fish greater than the allowable landing limits.

The participating vessels would be required to comply with all other applicable requirements and restrictions specified at 50 CFR part 648, unless specifically exempted in this EFP. Pending implementation of approved measures in Amendment 16 to the multispecies FMP, all participating vessels would be required to comply with any other applicable requirements in regulations implementing the amendment. This includes the proposed regulation, at § 648.87(b)(1)(v) (74 FR 69454, December 31, 2009), that all catches of stocks allocated to Sectors by vessels on a Sector trip shall be deducted from the Sector's Annual Catch Entitlement (ACE) for each NE multispecies stock, regardless of what fishery the vessel was participating in when the fish was caught. Additionally, when Amendment 16 is implemented, this EFP may be revised to reflect any changes in regulatory citations and to address any exemptions that may no longer be necessary.

TABLE 1. LIST OF SPECIES FOR BIOLOGICAL LENGTH FREQUENCY SAMPLES

Species	Maximum Sample Size Per Trip
Southern New England (SNE) Yellowtail Flounder	Up to 200 fish per statistical area
Georges Bank (GB) Yellowtail Flounder	Up to 200 fish per statistical area

TABLE 1. LIST OF SPECIES FOR BIOLOGICAL LENGTH FREQUENCY SAMPLES—Continued

Species	Maximum Sample Size Per Trip
Cape Cod/GOM Yellowtail Flounder	Up to 200 fish per statistical area
SNE Winter Flounder	Up to 200 fish per statistical area
GB Winter Flounder	Up to 200 fish per statistical area
GB Haddock	Up to 200 fish per statistical area
GB Atlantic Cod	Up to 200 fish per statistical area
GOM Atlantic Cod	Up to 200 fish per statistical area
Monkfish	Up to 200 fish per statistical area
American Plaice	Up to 200 fish per statistical area
Witch Flounder	Up to 200 fish per statistical area
Atlantic Wolffish	Up to 200 fish per statistical area
Northeast Skate Complex (each species)	Up to 200 fish per statistical area

Sampling would be conducted aboard seven fishing vessels that intend to fish in GB, SNE, and GOM throughout the 2010 NE multispecies fishing year beginning May 1, 2010, with a minimum of two trips per month and an average trip duration of 7 days. All vessels would utilize otter trawl gear, with gear configuration and mesh size dictated by current fishery regulations.

The primary goal of the monkfish age validation laboratory research is to maintain live specimens in a holding study to allow time for oxytetracycline to mark calcified structures for age-growth validation. Monkfish (see Table 2) would be collected by the study fleet fishing under a monkfish DAS, and transport techniques would be tested. A target of 10 fish per month from both the Northern and Southern monkfish stocks, totaling 20 fish per month, would be caught and maintained in the SMAST seawater laboratory, and given an injection of oxytetracycline. Monkfish would be marked with oxytetracycline, and most would be cultured for 1 year to allow for growth, with subsamples sacrificed quarterly to confirm that tetracycline marks were laid down.

Exemptions from monkfish possession limits at § 648.94(a) and (b), and monkfish minimum fish sizes at § 648.93, would be necessary to obtain specimens for laboratory research.

TABLE 2. LIST OF SPECIES FOR BIOLOGICAL LENGTH FREQUENCY SAMPLES

Common Name/ Stock	Proposed Sample Size
Northern Monkfish	10 fish/month total
Southern Monkfish	10 fish/month total

Sampling would be conducted aboard six fishing vessels that intend to fish in GB, Southern New England, and the Gulf of Maine throughout the 2010 NE multispecies fishing year beginning May 1, 2010, with a minimum of two trips per month and an average trip duration of 7 days. All vessels would utilize otter trawl gear, with gear configuration and mesh size dictated by current fishery regulations. Monkfish in excess of trip limits and undersized monkfish that are being landed would not be sold.

Based on preliminary review of this project, and in accordance with NOAA Administrative Order 216–6, a Categorical Exclusion from requirements to prepare either an Environmental Impact Statement or an Environmental Assessment under the National Environmental Policy Act appears to be justified. The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

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

Dated: March 25, 2010.

James P. Burgess,

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

[FR Doc. 2010–7066 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV53

Marine Mammals; Issuance of Permits

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

ACTION: Notice; issuance of permits.

SUMMARY: Notice is hereby given that individuals and institutions have been issued Letters of Confirmation for activities conducted under the General Authorization for Scientific Research on marine mammals. See **SUPPLEMENTARY INFORMATION** for a list of names and address of recipients.

ADDRESSES: The Letters of Confirmation and related documents are available for review upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Office of Protected Resources, Permits Division, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested Letters of Confirmation (LOC) have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The General Authorization allows for bona fide scientific research that may result only in taking by level B harassment of marine mammals. The following Letters of Confirmation were issued in Fiscal Year 2009.

File No. 13729: Issued to The Wild Dolphin Project, 612 N. Orange Ave. Suite A–12, Jupiter, FL 33458 on February 13, 2009, to study abundance, distribution, and residency of bottlenose dolphins (*Tursiops truncatus*) in the Intracoastal Waterway of Palm Beach County, Florida, and to determine species diversity, abundance, and distribution of cetaceans offshore of Palm Beach County, Florida. The LOC expires February 28, 2014.

File No. 14227: Issued to Dr. Robert H. Day, ABR, Inc. Environmental Research and Services, Fairbanks, AK 99708 on February 13, 2009, to study seasonal abundance and distribution of marine mammals in Cook Inlet, Alaska. Aerial surveys will be conducted to census harbor seals (Phoca vitulina), harbor

porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), minke whales (*Balaenoptera acutorstrata*), gray whales (*Eschrichtius robustus*), and killer whales (*Orcinus orca*). The LOC expires on February 17, 2014.

File No. 14157: Issued to Marilyn Mazzoil, Harbor Branch Oceanographic Institute at Florida Atlantic University, 5600 U.S. 1 North, Fort Pierce, FL 34946 on February 23, 2009, for vessel surveys, photo-identification, and behavioral observations of bottlenose dolphins from the Florida-Georgia border south to New Smyrna Beach, Florida. The objectives of the research are to examine the abundance and distribution of bottlenose dolphins in the study area. Activities may be conducted through March 1, 2014.

File No. 14219: Issued to Dr. Tara Cox, Savannah State University, PO Box 20467, Savannah, GA 31404 on February 23, 2009, for surveys, photo-identification, and behavioral observations of bottlenose dolphins. The purpose of the research is to investigate foraging ecology, social structure, and population structure of dolphins in the estuarine and coastal waters of Georgia and southern South Carolina. Activities may be conducted through March 1, 2014.

File No. 14275: Issued to Dr. Gregory Bossart, Georgia Aquarium, 225 Baker Street, NW, Atlanta, GA 30313 on February 23, 2009, for surveys, photo-identification and behavioral observations of bottlenose dolphins. The purpose of the research is to examine the abundance, distribution, and stock structure of dolphins in the Indian River Lagoon, Florida and adjacent Atlantic waters. Activities may be conducted through March 1, 2014.

File No. 808–1798–01: Issued to Dr. Andrew Read at Duke University Marine Laboratory, 135 Duke Marine Lab Road, Beaufort, NC 28516 on May 1, 2009, for aerial and vessel surveys, photo-identification, behavioral observations, and passive acoustics on a variety of cetacean species through September 30, 2010. The original study area was from the North Carolina/Virginia border south to North Charleston, South Carolina. The study area was expanded to allow researchers to work further south, to 29 degrees N. Also, 13 species of dolphins and whales were added to the LOC. This amended LOC supercedes version 808–1798 issued on September 20, 2005.

File No. 14348: Issued to the National Ocean Service's Center for Coastal Environmental Health and Biomolecular Research [Principal Investigator: Eric Zolman], 219 Fort Johnson Road, Charleston, SC 29412 on July 1, 2009 for photo-identification and behavioral observations of bottlenose dolphins through June 30, 2014. The purpose of the research is to investigate the residency, stock identity, range, distribution, abundance, and health of dolphins in the estuarine and coastal waters of Georgia and South Carolina.

File No. 14590: Issued to the National Marine Mammal Laboratory [Principal Investigator: Peter Boveng, Ph.D], 7600 Sand Point Way NE, Seattle, WA 98115 on July 24, 2009 for aerial surveys of harbor seals through August 1, 2014. The results of the surverys for the basis of the NMFS Stock Assessment Reports as well as provide information on the haul-out behavior and habitat requirements of harbor seals in Alaska. The LOC expires August 1, 2014.

File No. 14475: Issued to The Dolphin Project (TDP) [Principal Investigator: Francis Lapolla], P.O. Box 60753, Savannah, GA 31420, on August 7, 2009 for photo-identification and behavioral observations of bottlenose dolphins through July 30, 2014. The purpose of the research is to: (1) monitor the resident bottlenose dolphin population in the contiguous inland waters of Georgia and the southern South Carolina estuarine system and (2) continue to develop TDP's dorsal fin photograph catalogue and database to document site fidelity, home range movement, immigration/emigration and social behaviors exhibited by the Georgia estuarine population.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: March 23, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–7062 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Middle East Public Health Mission; Application Deadline Extended

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. CS Saudi Arabia and CS Qatar will work in conjunction with Global Trade Programs, which will serve as a key facilitator in establishing strong commercial ties to the U.S. companies in the targeted sectors nationwide.

Recruitment for the mission will begin immediately and conclude no later than Wednesday, April 9, 2010. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after April 9, 2010. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Contacts

Ms. Jeanne Townsend, Baltimore U.S. Export Assistance Center, Tel: 410–962–4518, Fax: 410–962–4529, *E-mail: Jeanne.Townsend@trade.gov.*

Ms. Lisa C. Huot, U.S. Department of Commerce, Washington, DC 20230, Tel: 202–482–2796, Fax: 202–482–0115, *E–Mail: Lisa.Huot@trade.gov* .

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–6990 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100324167–0167–01]

NOAA'S Office of Ocean Exploration and Research (OER) Strategic Plan FY 2011–FY 2015

AGENCY: Office of Ocean Exploration and Research (OER), Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for public comment.

SUMMARY: NOAA'S Office of Ocean Exploration and Research (OER) is seeking comments on the draft OER STRATEGIC PLAN Fiscal Year (FY) 2011–2015, submitted to meet the requirement for program direction under Public Law 111–11, Section 12104(b). The draft OER STRATEGIC PLAN describes the vision, mission, core activities, and organization of the Office of Ocean Exploration and Research.

DATES: Comments on this draft report must be received by 5 p.m. September 30, 2010.

ADDRESSES: You may submit comments, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.* Identifier is XRIN 0648–XV56.
- *Fax:* (703) 713–1967, Attn: Yvette Jefferson.
- *Mail:* NOAA Office of Ocean Exploration and Research (OER) ATTN: OER Plan Comments, 1315 East-West Highway, R/OER, Silver Spring, Maryland 20910.
- *Hand Delivery to Silver Spring Metro Center 3:* 1315 East-West Highway, Room 10151, Silver Spring, Maryland.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. OAR will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. This is a non-regulatory request for comment.

Electronic copies of the draft OER Strategic Plan and Public Law 111–11 Chapter XII may be obtained from *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *OERPlan.Questions@noaa.gov* or NOAA Office of Ocean Exploration and Research (OER), ATTN: OER Plan Questions, 1315 East-West Highway, R/OER, Silver Spring, Maryland 20910.

SUPPLEMENTARY INFORMATION: NOAA'S Office of Ocean Exploration and Research (OER) is seeking comments on the draft OER STRATEGIC PLAN Fiscal Year (FY) 2011–2015, submitted to meet the requirement for program direction under Public Law 111–11, Section 12104(b). The preparation of the report was also directed by the Appropriations Committee in the Joint Explanatory Statement and Senate Report (S. Rept. 110–124) accompanying the Consolidated Fiscal Year 2008 Appropriations (Pub. L. 110–161).

OER seeks to better understand our ocean frontiers through bold and innovative exploration, research and technology development. The Office explores, maps, observes, detects and characterizes ocean areas and phenomena, obtaining archiving, and distributing ocean data in new ways to describe the ocean's living and nonliving resources and physical, chemical and biological characteristics. Data and observations resulting from OER investments will result in new discoveries, insights, knowledge and identification of new frontiers, and will likely lead to new or revised understandings of our largely unknown ocean. The draft OER STRATEGIC PLAN describes how NOAA will implement Chapter XII of Public Law 111–11 through the vision, mission, core activities, and organization of the Office of Ocean Exploration and Research.

NOAA welcomes all comments on the content of the draft report, especially with respect to implementation of the research aspect of the organization. We also request comments on any inconsistencies perceived within the report, and possible omissions of important topics or issues. This draft report is being issued for comment only and is not intended for interim use. For any shortcoming noted within the report, please propose specific remedies. Suggested changes will be incorporated where appropriate, and a final report will be posted on the OER Web site. Please follow these instructions for preparing and submitting comments. Overview comments should be provided first and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the section should follow any overview comments and should identify the page and line numbers to which they apply. Please number each page of your comments. Following these instructions will facilitate the processing of comments and assure that all comments are appropriately considered.

Dated: March 25, 2010.

Mark E. Brown,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–7020 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

International Trade Administration

Safety and Security Equipment and Services Trade Mission to Brazil

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce's International Trade Administration, U.S. and Foreign Commercial Service, is organizing a Trade Mission to Brazil, to be led by a senior Commerce official. This event is intended to tap immediate opportunities in the private and public security areas in Rio de Janeiro, Brasilia and Sao Paulo. The mission will include representatives from a variety of U.S. safety and security equipment firms interested in gaining a foothold in the fast-growing Brazilian markets.

Commercial Setting

Brazil is the largest economy and population in Latin America, and offers considerable export opportunities for the United States. The Brazilian market for public and private security equipment and services in 2009 was valued at approximately $ 20 billion. Due to an increasing level of crime rates in Brazil, local trade contacts believe that the market will expand by 20 percent in 2010.

According to the Brazilian Association of Electronic Security Companies (ABESE), approximately 5,000 companies serve the electronic security sector in Brazil, including equipment manufacturers, distributors, retailers, and services providers. The increase of security monitoring services and security devices in residences contributed to the fast expansion of the sector.

U.S. products enjoy good receptivity among large Brazilian and multinational companies that demand quality, durability and state-of-the-art technology. However, Chinese manufacturers are challenging the U.S. market share by offering similar products at lower prices. They are

reportedly stepping up aggressive marketing techniques.

The federal government plans to invest in areas such as building and refurbishing existing prisons and police stations, training, communications systems improvements, vehicles, helicopters, airport security equipment, bullet proof vests, cameras, ammunition, guns, GPS systems, cellular phone blocking systems (for prisons), fire protection systems, and intelligence equipment. The Brazilian government will also invest heavily in high-tech equipment to provide adequate security for the 2014 World Cup and the 2016 Olympics, both to be held in Brazil. The Brazilian federal government will be in charge of managing World Cup security, and anticipates numerous investments in security improvements for the Games and the host cities.

In private security alone, Brazil spent over US$ 17 billion in 2008. In electronic security, the market is estimated at US$ 1.5 billion. Today, electronic security equipment is not limited only to banks and commercial or industrial buildings. The increase in security monitoring services and security devices for residences is contributing to the fast expansion of this market. The U.S. manufacturers of security equipment have been operating successfully in Brazil, holding approximately 50% of the import market, mainly for electronic security.

Mission Goals

The mission's goal is to provide first-hand market information and to provide access to key government officials and potential business partners for U.S. security firms desiring to expand their presence in the Brazilian market. The need to protect individuals, property and the government from losses and to protect assets is creating new opportunities for U.S. firms in this market.

Mission Scenario

The mission will include meetings with individuals from both the public sector (*e.g.,* public security authorities and officials) and private business (*e.g.,* local security systems companies). Participants will receive a briefing that will include market intelligence, as well as an overview of the country's economic and political environment. A networking reception is planned at each stop.

The mission will also include a brief about the Soccer World Cup 2014 and 2016 Olympics organizations, briefings by public security authorities on planned projects and expected infrastructure and security needs, and one-on-one business meetings between U.S. participants and potential end-users and partners. Follow-on business meetings in other cities in the region can be set up before or after the trade mission for an additional price, depending on participants' wishes.

Proposed Mission Timetable

The proposed schedule allows for about a day and a half in Rio de Janeiro and São Paulo and a visit to Brasilia for companies interested in introducing their products to the Brazilian Government. Efforts will be made to accommodate participating companies with particular interests that require individual schedules within one stop.

Sunday, September 26 ..... Rio de Janeiro, Brazil	Mission arrives in Rio de Janeiro, Brazil.
Monday, September 27	Welcome briefing and technical visit. Meeting with the Brazilian Soccer Federation. Networking reception.
Tuesday, September 28	Business matchmaking: 1 full day of appointments. Participants will depart Rio de Janeiro the afternoon of Tuesday, September 28, by air, and proceed to Sao Paulo.
Wednesday, September 29 ..... Sao Paulo, Brazil	The Mission's second stop—Sao Paulo. Welcome briefing. Business matchmaking: 1 full day of appointments. The delegation will depart Sao Paulo; participants are free to depart for their home destinations the evening of September 29.
Thursday, September 30 ..... Brasilia, Brazil (optional)	The Mission's third and last stop—Brasilia. Welcome briefing and business matchmaking with Brazilian Federal government authorities. End of Mission.

Participation Requirements

All parties interested in participating in the Safety Security Trade Mission to Brazil must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of twelve U.S. companies and maximum of 15 companies will be selected to participate in the mission from the applicant pool.

The target participants will include U.S. companies specializing in the following areas:

Best Sales Prospects—Public Security: • Radio and Communications Devices • Bullet Proof Vests • Investigation Software • Biometric Equipment (facial, fingerprint, and iris recognition) • Cameras and Associated Software • GPS Systems • Fire Protection Systems • Prison Management • Criminal Investigation and Police Intelligence Systems	Best Sales Prospects—Private Security: • Car Armoring and Theft Protection • Electronic Security • Cargo Tracking Systems • Access Control Systems • Burglar Alarms • Fire Sensors and Alarms • Closed-Circuit TV (CCTV) Systems • Residential Security Devices

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee is $3,700 per company for small or medium enterprises (SME [1]) and $5,200 per company for large firms. If a company chooses not to participate in the Brasilia option, $400 will be deducted from the participation fee. The fee for each additional firm representative (large firm or SME) is $500 per person. Expenses for lodging, transportation between stops, most meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

Selection Criteria for Participation

- Suitability of the company's products or services to the target sectors and markets;
- Applicant's potential for business in the target markets, including likelihood of exports resulting from the mission; and
- Relevance of the company's business line to the mission's goals.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar *http://www.trade.gov/doctm/tmcal.html* and other Internet web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The U.S. Commercial Service office in Brazil in cooperation with the International Trade Administration's Global Safety and Security Team will lead recruitment activities.

Recruitment will begin immediately and conclude no later than Monday, July 1, 2010. The U.S. Department of Commerce will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after July 1, 2010. Applications received after the deadline will be considered only if space and scheduling constraints permit.

Interested U.S. firms may contact the mission project officer listed below or visit the mission Web site: *http://www.buyusa.gov/florida/brazilmission.html.*

Contacts

Genard Burity, Business Development Specialist, U.S. Commercial Service, U.S. Consulate, Av. Presidente Wilson, 147—4 Floor, Rio de Janeiro, Brazil, Phone: (55 21) 3823–2401, Fax: (55 21) 3823–2424, E-mail: *genard.burity@trade.gov.*

Stephanie Heckel, International Trade Specialist, U.S. Commercial Service, Ft. Lauderdale U.S. Export Assistance Center, 200 E. Las Olas Blvd., Suite 1600, Ft. Lauderdale, FL 33301, Tel: 954–356–6640, ext. 19, Fax: 954–356–6644, E-mail: *stephanie.heckel@trade.gov.*

Sean Timmins,

Global Trade Programs, Commercial Service Trade Missions Program.

[FR Doc. 2010–6988 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–FP–P

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contractingopportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO–P–2010–0026]

Streamlined Procedure for Appeal Brief Review

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is streamlining the procedure for the review of appeal briefs to increase the efficiency of the appeal process and reduce pendency of appeals. The Chief Judge of the Board of Patent Appeals and Interferences (BPAI) or his designee (collectively, "Chief Judge"), will have the sole responsibility for determining whether appeal briefs filed in patent applications comply with the applicable regulations, and will complete the determination before the appeal brief is forwarded to the examiner for consideration. The Patent Appeal Center and the examiner will no longer review appeal briefs for compliance with the applicable regulations. The USPTO expects to achieve a reduction in appeal pendency as measured from the filing of a notice of appeal to docketing of the appeal by eliminating duplicate reviews by the examiner, Patent Appeal Center, and the BPAI. We are expecting further reduction in pendency because the streamlined procedure will increase consistency in the determination, and thereby reduce the number of notices of noncompliant appeal brief and non-substantive returns from the BPAI that require appellants to file corrected appeal briefs.

DATES: *Effective Date:* The procedure set forth in this notice is effective on March 30, 2010.

Applicability Date: The procedure set forth in this notice is applicable to appeal briefs filed in patent applications on or after *March 30, 2010.*

FOR FURTHER INFORMATION CONTACT: Krista Zele, Case Management Administrator, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797 or by electronic mail at *BPAI.Review@uspto.gov.*

SUPPLEMENTARY INFORMATION: Under the streamlined procedure, upon the filing of an appeal brief in a patent application, the Chief Judge will review the appeal brief to determine whether the appeal brief complies with 37 CFR 41.37 before it is forwarded to the examiner for consideration. The Chief Judge will endeavor to complete this

determination within one month from the filing of the appeal brief. To assist appellants in complying with 37 CFR 41.37, the BPAI has posted checklists for notices of appeal and appeal briefs and a list of eight reasons appeal briefs have been previously held to be noncompliant, on the USPTO Web site at *http://www.uspto.gov/ip/boards/bpai/procedures/guidance_noncompliant_briefs.jsp*. If the appeal brief is determined to be compliant with 37 CFR 41.37, the Chief Judge will accept the appeal brief and forward it to the examiner for consideration. If the Chief Judge determines that the appeal brief is not compliant with 37 CFR 41.37 and sends appellant a notice of noncompliant brief requiring a corrected brief, appellant will be required to file a corrected brief within the time period set forth in the notice to avoid the dismissal of the appeal. *See* 37 CFR 41.37(d). The Chief Judge will also have the sole responsibility for determining whether corrected briefs comply with 37 CFR 41.37, and will address any inquiries and petitions regarding notices of noncompliant briefs.

The Chief Judge's responsibility for determining whether appeal briefs comply with 37 CFR 41.37 is not considered a transfer of jurisdiction when an appeal brief is filed, but rather is only a transfer of the specific responsibility of notifying appellant under 37 CFR 41.37(d) of the reasons for non-compliance. The Patent Examining Corps retains the jurisdiction over the application to consider the appeal brief, conduct an appeal conference, draft an examiner's answer, and decide the entry of amendments, evidence, and information disclosure statements filed after final or after the filing of a notice of appeal. Furthermore, petitions concerning the refusal to enter amendments and/or evidence remain delegated to the Patent Examining Corps as provided in the Manual of Patent Examining Procedure (MPEP) §§ 1002.02(b) and (c).

Once the Chief Judge accepts the appeal brief as compliant, an examiner's answer will be provided in the application if the examiner determines that the appeal should be maintained after an appeal conference is conducted. *See* MPEP §§ 1207–1207.02. The examiner will treat all pending, rejected claims as being on appeal. If the notice of appeal or appeal brief identifies fewer than all of the rejected claims as being appealed, the issue will be addressed by the BPAI panel. The jurisdiction of the application will be transferred to the BPAI when a docketing notice is entered after the time period for filing a reply brief expires or the examiner acknowledges the receipt and entry of the reply brief. After taking jurisdiction, the BPAI will not return or remand the application to the Patent Examining Corps for issues related to a noncompliant appeal brief.

This notice does not apply to reexamination proceedings. The Office is considering a streamlined procedure for review of briefs filed in reexamination proceedings, in which the Chief Judge will also have the sole responsibility for determining whether briefs filed in ex parte reexamination proceedings comply with 37 CFR 41.37 and briefs filed in inter partes reexamination proceedings comply with 37 CFR 41.67, 41.68, and 41.71.

Dated: March 24, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–7034 Filed 3–29–10; 8:45 am]

BILLING CODE 3510–16–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted a public information collection request (ICR) entitled the Learn and Serve America Progress Report to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Meredith Archer Hatch at (202) 606–7513. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, *e.g.,* permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on December 24, 2009. This comment period ended February 22, 2010. No public comments were received from this Notice.

Description: The Corporation is seeking approval of its proposed renewal of its Learn and Serve America Progress Report. These reports must be completed by all Learn and Serve America grantees in order to ensure appropriate Federal oversight, determine progress toward meeting program objectives and make decisions related to continuation funding.

Learn and Serve America provides grants to state education agencies, higher education institutions, tribes, and U.S. Territories, national nonprofits and state commissions on nation and community service to implement service-learning programs. To ensure appropriate oversight of Federal funds, Learn and Serve America requires all grant recipients to submit Progress Reports describing grant activities and progress toward approved program objectives. Information received from the reports informs continuation funding decisions and how to target training and technical assistance.

Copies of the information collection requests can be obtained by contacting

the office listed in the addresses section of this notice.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Progress Report.

OMB Number: 3045–0089.

Agency Number: None.

Affected Public: State and Local Government, Not-for-profit institutions.

Total Respondents: 175.

Frequency: Twice Annually.

Average Time per Response: Averages 2 hours.

Estimated Total Burden Hours: 700 (annual).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: March 23, 2010.

Cara Patrick,

Learn and Serve America.

[FR Doc. 2010–6953 Filed 3–29–10; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of "Application for the President's Higher Education Community Service Honor Roll" which will involve the collection of information from institutions of higher education concerning community service activities and will provide the basis for the national honor roll and awards program. Each year the Honor Roll program includes a Special Focus Area that awards excellence in a specific category of community service work. This Special Focus Area will fall within the Administration's and Edward M. Kennedy Serve America Act's (Pub. L. 111–13) national service priorities: Education, health, clean energy, veteran and economic opportunity.

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by June 1, 2010.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Learn and Serve America; Attention: Kevin Michael Days, Advisor, Higher Education Special Initiatives, Room 9616A; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3477, Attention: Kevin Michael Days, Advisor, Higher Education Special Initiatives.

(4) Electronically through *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kevin Michael Days, (202) 606–6899, or by e-mail at *kdays@cns.gov.*

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected 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 submissions of responses).

Background

The President's Higher Education Community Service Honor Roll program is designed to identify and reward exemplary higher education community service programs and practices. This program helps fulfill the Corporation's strategic goals of engaging Americans, particularly millions of college students, in service, and ensuring that all higher education institutions provide, or stimulate the creation of resources to coordinate service, service-learning, and community partnerships. Beginning with the fifth year of the Honor Roll program, the application will include a special focus area that will highlight the national service priorities of the Administration and the Edward M. Kennedy Serve America Act, by encouraging higher education institutions' efforts to tackle priorities ranging from increasing high school graduation rates to fostering economic opportunity.

Current Action

The Corporation seeks to renew the current information collection. The Corporation is making the following changes to the application and guidance for two reasons. First, to better align the program with the current Administration's goals for service, (*i.e.*, measuring the impact of service in the community, strengthening of civic infrastructures, and building the capacities of nonprofits) the focus of the application is moving away from individual project descriptions toward institutional and long-term support of community service. The Corporation is also revising the Special Focus area competition to align with the current Administration's and Edward M. Kennedy Serve America Act's national service priorities.

Second, as a result of feedback from respondents from the higher education field, we are reducing the number of project descriptions within the application and instructing applicants to align their project/program descriptions to their institution's overall support for community service. These changes will reduce the number of project/program descriptions from five to three but will include expanded opportunity for applicants to demonstrate the connection of this service to their larger institutional commitment to service, and the impact

of this service in the targeted community.

The information collection will otherwise be used in the same manner as the existing application. The current application is due to expire on June 30, 2010.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Application for the President's Higher Education Community Service Honor Roll.

OMB Number: 3045–0120.

Agency Number: None.

Affected Public: Degree-granting colleges and universities located in the U.S. and its territories.

Total Respondents: 4,500.

Frequency: Annual.

Average Time per Response: Averages 1 hour.

Estimated Total Burden Hours: 4,500 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 24, 2010.

Cara Patrick,

Acting Director, Learn and Serve America.

[FR Doc. 2010–6959 Filed 3–29–10; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of the Learn and Serve America Programs and Performance Reporting System, also referred to as the Learn and Serve Systems and Information Exchange (LASSIE). The system collects annual program data from organizations that receive grants or subgrants through the Learn and Serve America program. Data collected through the system is used for grants management and annual reporting requirements.

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by June 1, 2010.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service, Learn and Serve America; Attention: Meredith Archer Hatch, Program Coordinator for Knowledge Management, Room 9613–C; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3477, Meredith Archer Hatch, Program Coordinator for Knowledge Management.

(4) Electronically through the Corporation's e-mail address system *mhatch@cns.gov* or through the government-wide comment system *http://www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 606–3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Meredith Archer Hatch, (202) 606–7513, fax (202) 606–3477, or by e-mail at *mhatch@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected 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 submissions of responses).

Background

The Learn and Serve America Program supports efforts in schools, higher education institutions, and community-based organizations to involve young people in meaningful service to their communities while improving academic, civic, social, and career-related skills. The Learn and Serve program is administered by the Corporation for National and Community Service and is funded through grants to states, national organizations, and institutions of higher education, and through them to individual schools, local education agencies, community-based organizations, and colleges and universities. Approximately 1,800 organizations receive Learn and Serve funding each year and report on their Learn and Serve-funded activities through the Learn and Serve America Programs and Performance Reporting System. All data is collected electronically and accessed via the Web site, *http://www.lsareports.org.*

Current Action

The Corporation seeks to renew the current information collection. The system collects annual data from those organizations that receive Learn and Serve America grants and subgrants. Data collected includes information on the scope and structure of service-learning activities funded through the grants; participants and hours; community partnerships; and institutional policies and practices that support service-learning. Minor modifications and adjustments will be made for the renewal to accommodate changes resulting for the Edward M. Kennedy Serve America Act (2009) and to minimize burden, improve reliability, and streamline reporting.

The information collection will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using

the current application until the revised application is approved by OMB. The current application is due to expire on November 30, 2010.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Programs and Performance Reporting System.

OMB Number: 3045–0089.

Agency Number: None.

Affected Public: Learn and Serve America grantees and subgrantees.

Total Respondents: Approximately 1,800.

Frequency: Annual.

Average Time per Response: Averages one hour.

Estimated Total Burden Hours: 1,800 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 23, 2010.

Cara Patrick,

Learn and Serve America.

[FR Doc. 2010–6955 Filed 3–29–10; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Extension of Web-Based TRICARE Assistance Program Demonstration Project

AGENCY: Department of Defense (DoD).

ACTION: Notice of a Web-Based TRICARE Assistance Program demonstration project extension.

SUMMARY: This notice is to advise interested parties of an extension to the Military Health System (MHS) demonstration project, under authority of Title 10, United States Code, Section 1092, entitled Web-Based TRICARE Assistance Program. This demonstration was effective August 1, 2009, as referenced in the original **Federal Register** (FR) Notice, 74 FR 3667, dated July 24, 2009. The demonstration project uses existing managed care support contracts (MCSC) to allow Web-based behavioral health and related services, including non-medical counseling and advice services to Active Duty Service members (ADSM), their families, and members and their dependents enrolled in TRICARE Reserve Select, and those eligible for the Transitional Assistance Management Program (TAMP) who reside in the continental United States. The extension is necessary to allow more time to measure the effectiveness of the demonstration in meeting its goal of improving beneficiary access to behavioral health care by incorporating Web-based technology.

DATES: This extension will be effective April 1, 2010. The demonstration project will continue until March 31, 2011.

ADDRESSES: TRICARE Management Activity (TMA), TRICARE Policy and Operations, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: For questions pertaining to this demonstration project contact Mr. Richard Hart at (703) 681–0047.

SUPPLEMENTARY INFORMATION:

Background

On page 405 of House Report 2638, the Department of Defense Appropriations Act for Fiscal Year (FY) 2009 Joint Explanatory Statement, Congress stated: "The Department of Defense Appropriations Act for Fiscal Year 2009 stated: "An area of particular interest is the provision of appropriate and accessible counseling to Service members and their families who live in locations that are not close to Military Treatment Facilities (MTFs), other MHS facilities, or TRICARE providers. Web-based delivery of counseling has significant potential to offer counseling to personnel who otherwise might not be able to access it. Therefore, the Department is directed to establish and use a Web-based Clinical Mental Health Services Program as a way to deliver critical clinical mental health services to Service members and families in rural areas."

The TRICARE Assistance Program (TRIAP) demonstration as outlined in 74 FR 3667 of July 24, 2009, launched August 1, 2009, to provide the capability for short-term, problem solving counseling between eligible beneficiaries and licensed counselors utilizing video technology and software such as Skype or iChat. Regional contractors were tasked with formulating and initiating the programs. TRIAP services are available 24/7. Active Duty Service members, their spouses of any age, and other family members 18 years of age or older, who reside in the United States are eligible to participate. Enrollees in Reserve Select and TAMP also may use the program. TRIAP provides assistance to beneficiaries dealing with personal problems that might adversely impact their work performance, health, and well-being. It includes assessment, short-term counseling, and referrals to more comprehensive levels of care if needed. TRIAP is based on commercial employee assistance models and provides counseling in a virtual face-to-face environment. There is no diagnosis made, are no limits to usage, and no notification about those seeking counseling will be made to their primary care managers or others, unless required by the counselor's licensure (spouse abuse, *etc.*). Participant confidentiality is protected, as no medical record entry is made.

There were initial challenges in making beneficiaries aware of the program when implemented in August 2009. These challenges included:

- Short turnaround with behavioral health (BH) programs launching on the same day, both using video, but with distinct differences—one a demonstration (TRIAP), the other a permanent benefit (Telemental Health).
- Significant program changes days prior to launch: Age and confidentiality.
- The regional contractors implemented the program in admirably short time, but have varying accessibility and visibility.
- Primary means of communication with Prime beneficiaries (newsletter) has significant lead time (4 months).
- Dozens of "competing" programs already geared to assisting Service members in a similar forum (employee assistance/counseling format) with BH issues, notably Defense Center of Excellence (Psychological Health) and Military OneSource.
- Limited research on Service members' willingness to use video as a means of counseling or their belief in confidentiality.

Despite concerted media and outreach effort on the part of regional contractors and extensive media coverage, usage remains very low. In an effort to increase awareness and encourage beneficiary use of TRIAP and Tele-Behavioral Health Care Services, TRICARE has launched aggressive external communications initiatives, to include but not limited to:

- Article in Prime newsletter (December) delivered to beneficiaries via direct mail. Advance copy sent to 30,000 subscribers.
- In production: Leadership video broadening the message to motivate beneficiaries to get help. Includes messages by line spokespersons. Wide distribution to MTFs, installations, and service leadership.
- Senior leader talking points.

- Updated briefings slide library.
- Fact sheet on TRIAP.
- Behavioral health flyer updated for 2010: Orders for several hundred thousand in the queue now for distribution by approximately 2,000 points of contact, including the TRICARE Service Centers, Family Support Offices, Wounded Warrior case managers, and nearly 700 Reserve and Guard unit representatives.
- Behavioral Resources Guide updated for 2010: Orders for several hundred thousand in the queue now for distribution by approximately 2,000 points of contact including the TRICARE Service Centers, Family Support Offices, Wounded Warrior case managers, and nearly 700 Reserve and Guard unit representatives.
- Partnering with Chaplain Corps, all services—new effort.
- MHS conference (January 2010)—three breakouts on mental health.
- Additional partnering efforts with TMA regions/contractors—MHS conference.

In order to allow enough time for marketing efforts to take effect and provide enough time to gather adequate data on the feasibility of utilizing audio and visual technologies, including Web-based services, to our Active Duty Service members, their families and other beneficiaries on a permanent basis, an extension of the demonstration is necessary.

Implementation

This demonstration extension will be effective April 1, 2010.

Evaluation

As noted in the original FR Notice, 74 FR 3667, July 24, 2009, an independent evaluation of the demonstration will be conducted. It will be performed retrospectively and use a combination of administrative measures of behavioral health care access to provide analysis and comment on the effectiveness of the demonstration in meeting its goal of improving beneficiary access to behavioral health care by incorporating Web-based technology.

Dated: March 25, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–7009 Filed 3–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Department of Defense Wage Committee

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a closed meeting of the Department of Defense Wage Committee will be held on Tuesday, April 20, 2010.

DATES: The meeting will be held on Tuesday, April 20, 2010, at 10 a.m.

ADDRESSES: The meeting will be held at 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meeting meets the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: March 24, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–7011 Filed 3–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0035]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency proposes to delete a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 29, 2010 unless comments are received which result in a contrary determination.

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

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

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

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

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

The Defense Logistics Agency proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 25, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

S700.10

SYSTEM NAME:

Travel Input Records (September 4, 2007; 72 FR 50666).

REASON:

Travel records collected and maintained by the Defense Logistics Agency are covered under the DFAS DoD-wide system of records notice identified as T7334, Defense Travel System last published in the **Federal Register** on September 8, 2004, at 69 FR 54272.

[FR Doc. 2010–7057 Filed 3–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committee; Board of Visitors National Defense University

AGENCY: Office of the Secretary, DoD.

ACTION: Renewal of Federal advisory committee.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(d), the Department of Defense gives notice that it is renewing the charter for the Board of Visitors National Defense University (hereafter referred to as the Board).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board shall provide independent advice and recommendations on the overall management and governance of the National Defense University.

The Board shall provide the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff and the President of the National Defense University, independent advice and recommendations on organization management, curricula, methods of instruction, facilities and other matters of interest to the National Defense University.

The Board shall be composed of not more than 21 members, who are appointed by the Secretary of Defense. The Secretary of Defense has appointed three of the 21 members: (a) The Under Secretary of Defense for Personnel and Readiness; (b) the Assistant Secretary of Defense for Networks and Information Integration; and (c) the Department of State Director General. These appointments are based upon their DoD ex officio position, and their appointments shall remain in effect for the life of the Council.

The other Board members shall be eminent authorities in the field of national defense, academia, business, national security affairs, and the defense industry; their appointments will be renewed on an annual basis; and members shall serve no more than fifteen years on the Board.

Board members, who are not full-time or permanent part-time Federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees. With the exception of travel and per diem for official travel, Board Members shall serve without compensation.

The Board's membership shall select the Board's Chairperson and the Co-Chairperson from the total Board membership, and this individual shall serve at the discretion of the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff.

In addition, the Chairman of the Joint Chiefs of Staff or designated representative, may invite other distinguished Government officers to serve as non-voting observers of the Board and appoint, pursuant to 5 U.S.C. 3109, non-voting consultants, with special expertise, to assist the Board on an ad hoc basis.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other appropriate Federal statutes and regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members.

The Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the President of the National Defense University and the Board's Chairperson. The estimated number of Board meetings is two per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all meetings, however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board of Visitors National Defense University's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board of Visitors National Defense University.

All written statements shall be submitted to the Designated Federal Officer for the Board of Visitors National Defense University, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Visitors National Defense University Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Visitors National Defense University. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: March 25, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–7060 Filed 3–29–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 1, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 25, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Identifying Potentially Successful Approaches to Turning Around Chronically Low Performing Schools.

Frequency: Once.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 1,746.

Burden Hours: 743.

Abstract: This study seeks to identify schools that have achieved rapid improvements in student outcomes in a short period of time; illuminate the complex range of policies, programs, and practices used by these turnaround schools; and compare them to strategies employed by not improving, chronically low-performing schools. The ultimate goal of the study is to specify replicable policies, programs, and practices that hold greatest promise for further rigorous analysis. To this end, the study will collect data from school principals as well as school staff through a web-based and telephone survey and on-site interviews in selected schools. The data will be used by the U.S. Department of Education to identify policies, programs, and practices associated with school turnaround that can be rigorously tested in a future impact evaluation study.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4260. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–7090 Filed 3–29–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information; Migrant Education Even Start Family Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.214A.

Dates:

Applications Available: March 30, 2010.

Deadline for Transmittal of Applications: May 14, 2010.

Deadline for Intergovernmental Review: July 13, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Migrant Education Even Start (MEES) Family Literacy program is intended to help break the cycle of poverty and illiteracy of migratory agricultural or fishing families by improving the educational opportunities of these families through the integration of early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program. This program is implemented through cooperative activities that build on high-quality existing community resources to create a new range of educational services for the most-in-need migratory agricultural or fishing families, promote the academic achievement of migratory children and adults, assist migratory children in meeting challenging State content standards and challenging State achievement standards, and use instructional programs based on scientifically based reading research on preventing and overcoming reading difficulties for children and adults. The application package contains a description of the 15 program elements that MEES projects must implement, as required by Title I, Part B, section 1235 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

Priority: This notice includes one competitive preference priority. This priority is from the Education Department General Administrative Regulations (EDGAR) that apply to this program (34 CFR 75.225).

Competitive Preference Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets this priority.

This priority is:

Novice Applicant

The applicant must be a "novice applicant." Under 34 CFR 75.225 a novice applicant is an applicant that has never received a grant or subgrant under the MEES program; has never been a participant in a group application, submitted in accordance with §§ 75.127 through 75.129 of EDGAR, that received a grant under the MEES program; and has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the MEES program.

Program Authority: 20 U.S.C. 6381a(a)(1)(A).

Applicable Regulations: EDGAR in 34 CFR parts 74, 75, 77, 79, 80, 81, 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 only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,196,500.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2011 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000–$400,000 per year.

Estimated Average Size of Awards: $325,000 per year.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

III. Eligibility Information

1. *Eligible Applicants:* Any State or local government entity, institution of higher education or non-profit organization is eligible to apply for a grant under the MEES Program. For example, the following types of entities are eligible to apply: State educational agencies (SEAs) that administer migrant education programs; local educational agencies (LEAs) that have a high percentage of migratory students; nonprofit community-based organizations that work with migratory agricultural or fishing families; and faith-based organizations that work with migratory agricultural or fishing families.

2. *Cost Sharing or Matching:* See section 1234(b) of the ESEA. MEES grants are funded for 48 months. The matching requirement for a new MEES program begins at 10 percent of the total cost of the project in the project's first year and increases incrementally as the project continues to receive Federal support, through 40 percent in its fourth budget cycle. Previously funded MEES projects may apply for a second 48-month cycle, where, in years 5 through 8, the project must provide a 50 percent cost share of the total cost of the project. Further, a current or former MEES project may apply for a third project cycle that would fund their ninth year and beyond. Those projects, beginning in year 9, must maintain a 65 percent cost share of the total cost of the project. See ESEA section 1234(b).

3. *Other:* Eligible MEES participants consist of migratory children and their parents who meet the definitions of a migratory child, a migratory agricultural worker, or a migratory fisher in 34 CFR 200.81, and who also meet the additional conditions specified in section 1236(a) of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* DonnaMarie Fekete, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E313, Washington, DC 20202–6135. Telephone: (202) 260–2815 or by e-mail: *DonnaMarie.Fekete@ed.gov.*

The application package content also can be viewed electronically at the following address: *http://www.ed.gov/programs/MEES/applicant.html.*

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 a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to no more than 30 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative (Part 4), including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch) throughout the entire application package.

Appendices must be limited to a total of 20 pages for all content and must include the following: Resumes, job descriptions of key personnel, and citations for the scientifically based reading research upon which your instructional programs are based. Job descriptions must include duties and minimum qualifications. Items in the appendices will only be used by the program office for the purpose of approving any future personnel changes.

The 30-page limit for the project narrative does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the page limit does apply to all of the application narrative section.

Our reviewers will not read any pages of your application that exceed the page limit.

(3) Additionally, please limit other application materials to the specific materials indicated in the application package and do not include any video or other non-print materials.

3. *Submission Dates and Times:*

Applications Available: March 30, 2010.

Deadline for Transmittal of Applications: May 14, 2010.

Deadline for Intergovernmental Review: July 13, 2010. Applications for grants under this competition 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.

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:* Recipients of a MEES Family Literacy program grant may not use funds awarded under this competition for the indirect costs of a project or claim indirect costs as part of the local project share. ((section 1234(b)(3)) of the ESEA) We reference regulations outlining additional funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the MEES Family Literacy Program, CFDA number 84.214A, 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 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorized 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 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: DonnaMarie Fekete, U.S. Department of Education, 400 Maryland Avenue, SW., 3E313, Washington, DC 20202–6135. FAX: (202) 205–0089.

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 84.214A), 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 84.214A), 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

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs in order to assess their performance and effectiveness. The Department has established a set of measures to assess the effectiveness of the Even Start program. The MEES Family Literacy projects will report data on the following measures: (1) The percentage of adults showing significant learning gains on measures of reading; (2) the percentage of limited English proficient (LEP) adults showing significant learning gains on measures of English language acquisition; (3) the percentage of school-age adults who earn a high school diploma or GED; (4) the percentage of non-school-age adults who earn a high school diploma or GED; (5) the percentage of children entering kindergarten who are achieving significant learning gains on measures of language development; (6) the average number of letters preschool-age children can identify; (7) the percentage of school-age children who are reading on grade level; and (8) percentage of parents who show improvement on measures of parental support for children's learning in the home, school environment, and through interactive learning activities.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: DonnaMarie Fekete, U.S. Department of Education, Office of Migrant Education, 400 Maryland Avenue, SW., room 3E313, Washington, DC 20202–6135. Telephone Number: (202) 260–2815, or by e-mail: *DonnaMarie.Fekete@ed.gov.*

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: *http://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: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 25, 2010.

Thelma Meléndez de Santa Ana,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2010–7112 Filed 3–29–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1267–089]

Greenwood County, SC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 23, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 1267–089.

c. *Date Filed:* January 26, 2010.

d. *Applicant:* Greenwood County, South Carolina.

e. *Name of Project:* Buzzards Roost Hydroelectric Project.

f. *Location:* On the Saluda River, in Greenwood, Laurens, and Newberry Counties, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Charles M. Watson Jr., County Attorney, County of Greenwood, 600 Monument St., Suite 102, Greenwood, SC 29646, (864) 942–3140.

i. *FERC Contact:* Christopher Chaney, (202) 502–6778, *christopher.chaney@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 21, 2010.

All documents may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears 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.

k. *Description of Application:* The applicant seeks approval to amend Article 407 of its project license to revise the schedule for management of lake levels (rule curve). Under the licensed rule curve, the reservoir level is maintained at an elevation of 439 feet mean sea level (msl) between April 15 and August 31 of each year. Beginning on September 1, the reservoir level is then reduced until it reaches 437 feet msl by October 1. The level is maintained at 437 feet msl until January 1, and then is further reduced to 434.5 feet msl by February 1. At that time, the reservoir level starts increasing until it reaches 439 feet msl, and the annual cycle is repeated.

Now the licensee proposes to maintain the reservoir level at 439 feet msl from April 15 until November 1. Between November 1 and December 1 the reservoir level would gradually descend to 437 feet msl, then continue descending to 434.5 feet msl between December 1 and January 15, and be maintained at 434.5 feet msl until January 31. Between February 1 and April 15, the reservoir level would gradually increase from 434.5 feet msl to 439 feet msl. In addition, the reservoir levels may be occasionally modified to the extent necessary to comply with the minimum downstream releases required by Article 408. In summary, the licensee proposes to maintain the upper reservoir level of 439 feet msl for two additional months through November 1, and to attain the low reservoir level of 434.5 feet msl by January 15 instead of February 1. The licensee states that these proposed changes to the operating rule curve would allow greater recreational access to the lake during the fall and, in the winter, allow additional time to complete maintenance work which requires lower water levels.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. 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.

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.

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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *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. 2010–6982 Filed 3–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–169]

Georgia Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 23, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 1951–169.

c. *Date Filed:* February 22, 2010.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Sinclair Hydroelectric Project.

f. *Location:* The proposed facilities would be located on Lake Sinclair, along Crooked Creek Drive, in Putnam County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a–825r.

h. *Applicant Contact:* Mr. Herbie N. Johnson, Oconee-Sinclair Lake Resources Manager, Georgia Power Company, 125 Wallace Dam Road, NE., Eatonton, Georgia, 31024; 706–485–8704.

i. *FERC Contact:* Any questions regarding this notice should be directed to Isis Johnson, Telephone (202) 502–6346, and e-mail: *isis.johnson@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* April 23, 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 at *http://www.ferc.gov* under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings, please so to the Commission's Web site located at *http://www.ferc.gov.filing-comments.asp.*

Please include the project number (P–1951–169) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears 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 Request:* Georgia Power Company requests Commission authorization to permit Classic City Marinas, LLC., to construct and install new facilities associated with the Crooked Creek Marina. The new facilities include two 10-slip community docks; a concrete ramp and boat lift pier, with 2 associated launching docks; 2 concrete boat ramps, with a single launching dock; and an additional 326 linear feet of wooden seawall. The proposal also includes removal of an existing trailer, wooden deck, and a 42-foot-long section of the existing wooden sea wall; and dredging of 212 cubic yards of sediment. The amount of concrete and asphalt paving in the project boundary would increase, however, a bio-retention area would be established, fish habitat structures would be installed, and native vegetation would be planted in disturbed areas.

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. 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 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. 2010–6984 Filed 3–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13638–000]

City of Keene, NH; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

March 23, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* P–13638–000.

c. *Date filed:* December 7, 2009.

d. *Applicant:* City of Keene, NH.

e. *Name of Project:* Keene Water Treatment Facility Hydro Power Project.

f. *Location:* The Keene Water Treatment Facility Hydro Power Project would be located at the Keene, New Hampshire Water Treatment Facility, in Cheshire County, New Hampshire. The land in which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. John MacLean, City Manager, City of Keene,

3 Washington Street, Keene, NH 03431; (603) 357–9804; *JMacLean@ci.keene.nh.us.*

i. *FERC Contact:* Kelly Houff, (202) 502–6393, *Kelly.Houff@ferc.gov.*

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* Due to the small size and location of the proposed project in a closed system, as well as the resource agency consultation letters filed with the application, the 60-day timeframe specified in 18 CFR 4.43(b) for filing all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions is shortened to 30 days from the issuance date of this notice. All reply comments filed in response to comments submitted by any resource agency, Indian tribe, or person, must be filed with the Commission within 45 days from the issuance date of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in 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.

l. *Description of Project:* The proposed Keene Water Treatment Facility Hydro Power Project consists of: (1) Two proposed turbine generating units, with nameplate capacities of 40 kilowatts and 22 kilowatts, for a maximum installed capacity of 62 kilowatts, which will be installed in parallel with the pressure reducing valve at the Keene, New Hampshire Water Treatment Facility; and (2) appurtenant facilities. The project would have an estimated annual generation of 350,000 kilowatt-hours that would be sold to a local utility.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, here P–13638–000, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h above.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "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 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. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6983 Filed 3–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 23, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–53–000.

Applicants: Sharyland Utilities, L.P.

Description: Sharyland Utilities, L.P., Joint Application for Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act.

Filed Date: 03/18/2010.

Accession Number: 20100318–5078.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 2010.

Docket Numbers: EC10–54–000.

Applicants: Larswind, LLC.

Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Larswind, LLC.

Filed Date: 03/22/2010.

Accession Number: 20100322–5110

Comment Date: 5 p.m. Eastern Time on Monday, April 12, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–2551–005.

Applicants: Cargill Power Markets, LLC.

Description: Cargill Power Markets, LLC submits additional information re their 1/29/10 notification of change in status filing and a substitute page of their market-based rate wholesale power sales tariff.

Filed Date: 03/19/2010.

Accession Number: 20100322–0001.

Comment Date: 5 p.m. Eastern Time on Friday, April 9, 2010.

Docket Numbers: ER09–1063–003.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits Sixth Revised Sheet No. 571 *et al* to its Open Access Transmission Tariff etc.

Filed Date: 03/18/2010.

Accession Number: 20100319–0214.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 2010.

Docket Numbers: ER10–572–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits Study Service Agreement, Service Agreement No. 1432 with San Diego Gas & Electric Company.

Filed Date: 03/18/2010.

Accession Number: 20100319–0207.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 2010.

Docket Numbers: ER10–668–001.

Applicants: Medicine Bow Power Partners, LLC.

Description: Medicine Bow Power Partners, LLC submits a Notice of Cancellation of its market-based rate tariff, effective as of 1/29/2010.

Filed Date: 03/18/2010.

Accession Number: 20100319–0208.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 2010.

Docket Numbers: ER10–712–001.

Applicants: AES ES WESTOVER, LLC.

Description: AES ES Westover, LLC submits explanation that they should be designated as a Category 1 Seller in the Northwest Regions *et al*, as indicated in the Tariff submitted with its Application etc.

Filed Date: 03/18/2010.

Accession Number: 20100319–0209.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 2010.

Docket Numbers: ER10–769–001.

Applicants: Glenwood Energy Partners, LTD.

Description: Glenwood Energy Partners, LTD submits Amended Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority.

Filed Date: 03/15/2010.

Accession Number: 20100315–0155.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–895–001.

Applicants: The Detroit Edison Company.

Description: The Detroit Edison Company submits supplement to the Notice of Cancellation and Second Revised Service Agreement 12 to FERC Electric Tariff, Original Volume 1 to be effective 5/15/10.

Filed Date: 03/22/2010.

Accession Number: 20100322–0207.

Comment Date: 5 p.m. Eastern Time on Monday, April 12, 2010.

Docket Numbers: ER10–907–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits amendments to Schedule 12 Appendix of the PJM Tariff to incorporate cost responsibility assignments for 110 baseline upgrades etc.

Filed Date: 03/18/2010.

Accession Number: 20100319–0203.

Comment Date: 5 p.m. Eastern Time on Monday, April 19, 2010.

Docket Numbers: ER10–915–000.

Applicants: CPN Pryor Funding Corporation.

Description: CPN Pryor Funding Corporation submits notice of cancellation of its market-based rate tariff.

Filed Date: 03/19/2010.

Accession Number: 20100322–0202.

Comment Date: 5 p.m. Eastern Time on Friday, April 9, 2010.

Docket Numbers: ER10–916–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy, Inc submits an executed Cost-Based Agreement for Wholesale Power Sales Service from Generating Assets Likely to Participate etc.

Filed Date: 03/22/2010.

Accession Number: 20100322–0210.

Comment Date: 5 p.m. Eastern Time on Monday, April 12, 2010.

Docket Numbers: ER10–917–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed interim interconnection service agreement *et al* with P.H. Glatfelter Company *et al.*

Filed Date: 03/22/2010.

Accession Number: 20100322–0209.

Comment Date: 5 p.m. Eastern Time on Monday, April 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 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. 2010–7007 Filed 3–29–10; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 22, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2469–005

Applicants: Williams Flexible Generation, LLC

Description: Notice of Non-Material Change in Status of Williams Flexible Generation, LLC.

Filed Date: 03/19/2010.

Accession Number: 20100319–5093.

Comment Date: 5 p.m. Eastern Time on Friday, April 9, 2010.

Docket Numbers: ER10–892–000.

Applicants: Southern Turner Cimarron I, LLC.

Description: Southern Turner Cimarron I, LLC submits a Market-Based Rate Tariff, etc.

Filed Date: 03/19/2010.

Accession Number: 20100319–0217.

Comment Date: 5 p.m. Eastern Time on Friday, April 9, 2010.

Docket Numbers: ER10–903–000.

Applicants: Patriot Power LLC.

Description: Patriot Power LLC submits the Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.

Filed Date: 03/19/2010.

Accession Number: 20100319–0216.

Comment Date: 5 p.m. Eastern Time on Friday, April 9, 2010.

Docket Numbers: ER10–904–000.

Applicants: NFI Solar, LLC.

Description: Application for market-based rate authority, request for waivers and authorizations, and request for finding of qualification as Category 1 Seller, and for expedited consideration re NFI Solar, LLC.

Filed Date: 03/19/2010.

Accession Number: 20100322–0201.

Comment Date: 5 p.m. Eastern Time on Monday, April 5, 2010.

Docket Numbers: ER10–906–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a revised rate sheet to the Service Agreement for Wholesale Distribution Service and an amended Interconnection Facilities Agreement with BP West Coast Products etc.

Filed Date: 03/18/2010.

Accession Number: 20100318–0205.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 2010.

Docket Numbers: ER10–908–000.

Applicants: FirstEnergy Service Company.

Description: Jersey Central Power & Light Company *et al.* submits Notice of Cancellation of the Capacity, Energy and Capacity Credit Sales Tariff currently on file with the Commission, FERC Electric Tariff, Second Revised Volume 1.

Filed Date: 03/18/2010.

Accession Number: 20100319–0202.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 2010.

Docket Numbers: ER10–909–000.

Applicants: Gilroy Energy Center, LLC.

Description: Gilroy Energy Center, LLC submits its Reliability Must-Run Agreement. Part 1 of 3.

Filed Date: 03/18/2010.

Accession Number: 20100319–0204.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 2010.

Docket Numbers: ER10–910–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits executed interim interconnection service agreement with Exelon Generation Company, LLC *et al.*

Filed Date: 03/18/2010.

Accession Number: 20100319–0201.

Comment Date: 5 p.m. Eastern Time on Thursday, April 8, 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 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. 2010–7008 Filed 3–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–49–000]

Old Dominion Electric Cooperative; North Carolina Electric Membership Corporation, Complainants v. Virginia Electric and Power Company, Respondent; Notice of Complaint

March 23, 2010.

Take notice that on March 17, 2010, pursuant to section 206 of the Rules and Practice and Procedure, 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), Old Dominion Electric Cooperative and North Carolina Electric Membership Corporation (Complainants) filed a formal complaint against Virginia Electric and Power Company (Respondent) alleging that, Respondent's 2010 Annual Update to its formula rate is unjust, unreasonable, unduly discriminatory and preferential because Respondent has included in its 2010 Annual Transmission Revenue Requirement (ATRR) costs related to projects and facilities that are not appropriate for recovery in Respondent's wholesale transmission rates. Complainants request that the Commission direct Respondent to remove the challenged costs from its 2010 ATRR and from future Annual Updates; and to the extent necessary, initiate an evidentiary proceeding limited to a determination of the precise amount of costs for each project that should be removed from Respondent's transmission rates.

The Complainants states that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 April 6, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6985 Filed 3–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12555–004–PA]

Mahoning Creek Hydroelectric Company, LLC; Notice of Availability of Environmental Assessment

March 23, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47879), the Office of Energy Projects has reviewed the application for an original license for the Mahoning Creek Hydroelectric Project, to be located on Mahoning Creek in Armstrong County, Pennsylvania, and prepared an environmental assessment (EA). In the EA, Commission staff analyze the potential environmental effects of licensing the project and conclude that issuing a license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Because the Commission's headquarters was closed from February 8 to 11, 2010, due to severe weather, staff was delayed in preparing the EA. Therefore, we are waiving § 5.22 of the Commission's regulations which updated the schedule for EA issuance to March 1, 2010, as the target date for EA issuance.

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 the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments 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 "Mahoning Creek Project No. 12555–004" 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 Kristen Murphy at (202) 502–6236.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6981 Filed 3–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF10–6–000]

Columbia Gas Transmission LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Line 1278—Line K Expansion Project and Request for Comments on Environmental Issues

March 23, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line 1278–Line K Project involving construction and operation of facilities by Columbia Gas Transmission LLC's (Columbia) in Pike County, Pennsylvania and Orange County, New York. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on April 23, 2010.

This notice is being sent to the Commission's current environmental mailing list for this project, which includes affected landowners; federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas

Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (*http://www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Columbia plans to remove and replace approximately 17 miles of existing pipeline and related facilities in Pike County, Pennsylvania and Orange County, New York. The majority of the planned facilities would be constructed within the same ditch or right-of-way of the existing pipeline. The Line 1278–Line K Project would consist of the following facilities:

Pike County, Pennsylvania

- The abandonment and removal of 11.49 miles of 14-inch-diameter Line 1278 pipeline with the installation of 11.25 miles of 20-inch-diameter pipeline and 0.24 mile of two 10-inch-diameter pipelines; and
- Upgrade of existing valves and traps.

Orange County, New York

- The abandonment and removal of 4.65 miles of 14-inch-diameter Line K pipeline with the installation of a 20-inch-diameter pipeline replacement;
- The abandonment and removal of 0.1 mile of 4-inch-diameter Line U pipeline with the installation of a 4-inch-diameter pipeline replacement within Columbia's existing Port Jervis Facility;
- The removal of three existing compressors and related facilities at Columbia's Sparrowbush Compressor Station; and
- The upgrade of existing valves and traps.

The general location of the project facilities is shown in Appendix 1.[1]

Land Requirements for Construction

Construction of the planned facilities would disturb approximately 150 acres of land for the aboveground facilities and the pipeline. Following construction, approximately 98 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses. Approximately 98.5 percent of the planned pipeline would be replaced within the same ditch.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Blasting
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some Federal and State agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the Army Corps of Engineers has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for the section 106 process, we are using this notice to solicit the views of the public on the project's potential effects on historic properties.[3] We will document our findings on the impacts on cultural resources and summarize the status of consultations under section 106 of the National Historic Preservation Act in our EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before April 23, 2010.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800.2(d).

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "*Documents and Filings*". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "*Documents and Filings*" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "*Sign up*" or "*eRegister*". You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Columbia files its application with the Commission, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that you may not request intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* PF10–6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6979 Filed 3–29–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Southwest Power Pool Board of Directors/Members Committee Meeting

March 23, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting of the Southwest Power Pool (SPP) Board of Directors/Members, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

SPP Board of Directors/Members Committee Meeting

March 31, 2010 (10:30 a.m.–2:30 p.m.), Hyatt Regency DFW, N. International Parkway Terminal C, DFW Airport, TX 75261. 972–453–1234.

The discussions may address matters at issue in the following proceedings:

Docket No. EL09–40, *Southwest Power Pool, Inc.*
Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket No. ER08–923, *Xcel Energy Services, Inc.*
Docket No. ER08–1307, *Southwest Power Pool, Inc.*
Docket No. ER08–1308, *Southwest Power Pool, Inc.*
Docket No. ER08–1357, *Southwest Power Pool, Inc.*
Docket No. ER08–1358, *Southwest Power Pool, Inc.*
Docket No. ER08–1359, *Southwest Power Pool, Inc.*
Docket No. ER08–1419, *Southwest Power Pool, Inc.*
Docket No. ER09–35, *Tallgrass Transmission LLC*
Docket No. ER09–36, *Prairie Wind Transmission LLC*
Docket No. ER09–659, *Southwest Power Pool, Inc.*
Docket No. ER09–1050, *Southwest Power Pool, Inc.*
Docket No. ER09–1254, *Southwest Power Pool, Inc.*
Docket No. ER09–1255, *Southwest Power Pool, Inc.*
Docket No. ER09–1397, *Southwest Power Pool, Inc.*
Docket No. ER09–1716, *Southwest Power Pool, Inc.,*
Docket No. ER10–352, *Southwest Power Pool, Inc.*
Docket No. OA08–5, *Southwest Power Pool, Inc.*
Docket No. OA08–60, *Southwest Power Pool, Inc.*
Docket No. OA08–61, *Southwest Power Pool, Inc.*

Docket No. OA08–104, *Southwest Power Pool, Inc.*
Docket No. ER10–664, *Southwest Power Pool, Inc.*
Docket No. ER10–678, *Southwest Power Pool, Inc.*
Docket No. ER10–680, *Southwest Power Pool, Inc.*
Docket No. ER10–681, *Southwest Power Pool, Inc.*
Docket No. ER10–692, *Southwest Power Pool, Inc.*
Docket No. ER10–693, *Southwest Power Pool, Inc.*
Docket No. ER10–694, *Southwest Power Pool, Inc.*
Docket No. ER10–696, *Southwest Power Pool, Inc.*
Docket No. ER10–697, *Southwest Power Pool, Inc.*
Docket No. ER10–698, *Southwest Power Pool, Inc.*
Docket No. ER10–700, *Southwest Power Pool, Inc.*
Docket No. ER10–738, *Southwest Power Pool, Inc.*
Docket No. ER10–739, *Southwest Power Pool, Inc.*
Docket No. ER10–754, *Southwest Power Pool, Inc.*
Docket No. ER10–760, *Southwest Power Pool, Inc.*
Docket No. ER10–761, *Southwest Power Pool, Inc.*
Docket No. ER10–762, *Southwest Power Pool, Inc.*
Docket No. ER10–773, *Southwest Power Pool, Inc.*
Docket No. ER10–795, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6980 Filed 3–29–10; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Michelle Shore, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829)

OMB Desk Officer—Shagufta Ahmed, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the implementation of the following survey:

Report title: Senior Credit Officer Opinion Survey on Dealer Financing Terms.

Agency form number: FR 2034.

OMB control number: 7100– to be assigned.

Frequency: Up to six times a year.

Reporters: U.S. banking institutions and U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 450 hours.

Estimated average hours per response: 3 hours.

Number of respondents: 25.

General description of report: This information collection will be voluntary (12 U.S.C. 225a, 248(a)(2), 1844(c), and 3105(c)(2)) and will be given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This voluntary survey will be conducted with a senior credit officer at each respondent financial institution up to six times a year. The reporting panel consists of up to 25 U.S. banking institutions and U.S. branches and agencies of foreign banks, the majority of which are affiliated with a Primary Government Securities Dealer.[1] The purpose of the survey is to provide qualitative and limited quantitative information on (1) stringency of credit terms, (2) credit availability and demand across the entire range of securities financing and over-the-counter derivatives transactions, and (3) the evolution of market conditions and conventions applicable to such activities. The FR 2034 survey is significantly modeled after the long-established Senior Loan Officer Opinion Survey (FR 2018; OMB No. 7100–0058), which provides qualitative information on changes in the supply of, and demand for, bank loans to businesses and households. A portion of the questions in each administration of the FR 2034 survey will typically cover special topics of timely interest; however, the survey form also includes 47 core questions.

Although the Federal Reserve seeks the authority to conduct the survey up to six times a year, the survey is expected to be conducted only four times a year consistent with the FR 2018. Consistent with the FR 2018, other types of respondents, such as other depository institutions, bank holding companies, or other financial entities, may be surveyed if appropriate.

The respondents' answers are intended to provide information critical to the Federal Reserve's monitoring of credit markets and capital market activity. As is currently the case with FR 2018, aggregate results from this survey are expected to be made available to the public on the Federal Reserve Board website. Selected aggregate information from the surveys may also be published annually in *Federal Reserve Bulletin* articles and in the Monetary Policy Report to the Congress.

Current Actions: On December 15, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 66359) requesting public comment for 60 days on implementation of the FR 2034 survey. The comment period for this notice expired on February 16, 2010. The Federal Reserve received one comment letter on this proposal.

Summary of Comments

The comment letter was based on a series of informal discussions in early January 2010 between Federal Reserve staff and several dealer firms which are potential respondents to the new survey. These discussions helped the Federal Reserve to assess the clarity, utility, and burden of the FR 2034 survey, and led to changes to the content of the survey and formulation of particular questions as described below:

Increased focus on the maturity of trades was suggested, as this is an important dimension on which the stringency of credit terms is routinely adjusted, as was the inclusion of

[1] A list of the current Primary Dealers in Government Securities is available at *http://www.newyorkfed.org/markets/pridealers_current.html.*

questions relating to certain other instruments such as stock loan and total return swaps. Market participants suggested additional attention should be accorded to the volume of disputes with clients and the degree to which clients seek through negotiation to elicit more favorable terms.

Feedback from these discussions also led to the elimination or consolidation of questions regarding the credit terms applicable to other dealers, or to the funding of Treasury securities, as these terms do not vary markedly across the normal credit cycle.

Adoption of a more granular classification of "clients by type" was recommended in order to draw a clearer distinction between hedge funds and other types of institutional investors, such as insurance companies and pension funds. Finally, in several instances alternate language was suggested, including (1) using the term vendor financing to describe a situation where a dealer provides more favorable terms for funding securities in which it has played an underwriting role and (2) eliminating words in one possible response (to a survey question) that might be construed as reflecting adversely on a dealer's own access to funding.

Board of Governors of the Federal Reserve System, March 24, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–6949 Filed 3–29–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

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

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The 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 April 23, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. SmartFinancial, Inc., Pigeon Forge, Tennessee; to become a bank holding company by acquiring 100 percent of the outstanding shares of SmartBank, Pigeon Forge, Tennessee.

Board of Governors of the Federal Reserve System, March 25, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–7017 Filed 3–29–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–0217]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Vital Statistics Training Application (OMB No. 0920–0217 exp. 7/31/2010)—Extension—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, legal authority for the registration of vital events, *i.e.,* births, deaths, marriages, divorces, fetal deaths, and induced terminations of pregnancy, resides individually with the States (as well as cities in the case of New York City and Washington, DC) and Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. These governmental entities are the full legal proprietors of vital records and the information contained therein. As a result of this State authority, the collection of registration-based vital statistics at the national level, referred to as the U.S. National Vital Statistics System (NVSS), depends on a cooperative relationship between the States and the Federal government. This data collection, authorized by 42 U.S.C. 242k, has been carried out by NCHS since it was created in 1960.

NCHS assists in achieving the comparability needed for combining data from all States into national statistics, by conducting a training program for State and local vital statistics staff to assist in developing expertise in all aspects of vital registration and vital statistics. The training offered under this program includes courses for registration staff, statisticians, and coding specialists, all designed to bring about a high degree of uniformity and quality in the data provided by the States. This training program is authorized by 42 U.S.C. 242b, section 304(a). In order to offer the types of training that would be most useful to vital registration staff members, NCHS requests information from State and local vital registration officials about their projected needs for training. NCHS also asks individual candidates for training to submit an application form containing name, address, occupation, work experience, education, and previous training. These data enable NCHS to determine those individuals whose needs can best be met through the available training resources. NCHS is requesting 3 years of OMB clearance for this project. There is no cost to respondents in providing these data other than their time. The total estimated annualized burden hours are 44.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State, local, and territory registration officials (Annual Survey of Training Needs)	57	1	20/60
Training applicants (Application for Training)	100	1	15/60

Dated: March 23, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–7065 Filed 3–29–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Process Evaluation of the NIH's Roadmap Interdisciplinary Research Work Group Initiatives

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the (insert name of NIH Institute or IC), the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 5, 2010 (p. 382) and allowed 60 days for public comment. One comment was received, which included a request for additional information, and additional information was provided. No additional questions were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: The National Institute of Dental and Craniofacial Research of the National Institutes of Heath requests a two-year clearance for *Title:* "Process Evaluation of the NIH Roadmap Interdisciplinary Research Work Group Initiatives," *Type of information collection:* New. *Need and use of information collection:* This study will be used to determine whether the NIH's Interdisciplinary Research Work Group initiatives have been, and are being, conducted as planned, whether the expected outputs are being produced, and how the activities and processes associated with the initiatives can be improved. Information collected during the evaluation will be used to assess whether and how these initiatives differed from existing initiatives to determine whether these unique initiatives or mechanisms are necessary, to make decisions about whether to continue and/or to modify the programs, and to make decisions about structural or procedural changes within NIH that may be necessary to support cross-cutting interdisciplinary programs. *Frequency of response:* The frequency of response is once for most respondents, and twice for a limited group. *Affected public:* The affected public includes a limited number of individuals; *Type of respondents:* principal investigators, other grant investigators, and Initiative trainees. The annual reporting burden is as follows: *Estimated number of respondents:* 450; *Estimated number of responses per respondent:* PIs, 2; Other Investigators, 1; Trainees, 1; *Average burden hours per response:* 30 minutes; and *Estimated total annual burden hours requested:* 250 hours. The total annualized cost to respondents (calculated as the number of respondents * frequency of response * average time per response * approximate hourly wage rate) is estimated to be $7,450. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Sue Hamann, PhD, Science Evaluation Officer, Office of Science Policy Officer and Analysis, National Institute of Dental and Craniofacial Research (NIDCR), NIH. You may reach Dr. Hamann by telephone on 301–594–4849 (this is not a toll-free number), or you may e-mail your request to Dr. Hamann at *Sue.Hamann@nih.hhs.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: March 24, 2010.

Sue Hamann,

Science Evaluation Officer, OSPA, NIDCR, National Institutes of Health.

[FR Doc. 2010–7086 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: OCSE–75 Tribal Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0320.

Description: The data collected by form OCSE–75 are used to prepare the OCSE preliminary and annual data reports. In addition, Tribes administering CSE programs under Title IV–D of the Social Security Act are required to report program status and accomplishments in an annual narrative

report and submit the OCSE–75 report annually.

Respondents: Tribal Child Support Enforcement Organizations or the Department/Agency/Bureau responsible for Child Support Enforcement in each Tribe.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–75	37	1	60	2,220

Estimated Total Annual Burden Hours: 2,220.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project. *Fax:* 202–395–7285. *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV*. *Attn:* Desk Officer for the Administration for Children and Families.

Dated: March 25, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–7042 Filed 3–29–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Zscan4, a Therapeutic Target for Cancer, Regenerative Medicine and Aging

Description of Invention: This technology has broad potential for the development of therapeutics for cancer, diseases of aging, and regenerative medicine, and targets Zscan4, a gene that regulates telomere length and genomic stability in embryonic stem (ES) cells.

The ability to maintain genomic stability in ES cells and other stem cells is critical for the development of stem cell-based therapies; genomic stability and telomere length are also active areas of cancer and aging research. NIA investigators have discovered that the Zscan4 gene regulates telomere length and genomic stability in ES cells, and plays an essential role in early embryonic development; this activity is independent of telomerase activity. The investigators have shown that ablation of Zscan4 results in shortened telomere length and deterioration of the karyotype of ES cells, and that Zscan4 overexpression increases telomere length.

This technology discloses methods for increasing genome stability or increasing telomere length in an ES cell, and methods of treating a subject in need of ES cell therapy. Also disclosed are methods of promoting blastocyst outgrowth of embryonic stem cells, as well as Zscan4 expression vectors and methods of identifying stem cells expressing Zscan4.

Applications

- Development of therapeutics for cancer treatment, aging, and regenerative medicine.
- Development of assisted reproduction technologies.
- Studies of early embryonic development.

Development Status: In vitro and *in vivo* studies have been performed.

Inventors: Minoru S. H. Ko *et al.* (NIA).

Publications

1. M Zalzman *et al.* Zscan4 regulates telomere elongation and genomic stability in ES cells. Nature 2010 Mar 24; advance online publication, doi 10.1038/nature08882.

2. G Falco *et al.* Zscan4: A novel gene expressed exclusively in late 2-cell embryos and embryonic stem cells. Dev Biol. 2007 Jul 15;307(2):539–550. [PubMed: 17553482.]

Patent Status

HHS Reference No. E–088–2007/0—

- PCT Application No. PCT/US2008/058261 filed 26 Mar 2008.
- US Application No. 12/529,004 filed 27 Aug 2009.
- Foreign counterparts in Europe, Australia, Canada, and Japan

HHS Reference No. E–172–2009/0—

- U.S. Provisional Application No. 61/275,983 filed 04 Sep 2009.

Licensing Status: Available for licensing.

Licensing Contact: Tara Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute on Aging, Laboratory of Genetics, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Nicole Guyton, PhD at 301–435–

3101 or *darakn@mail.nih.gov* for more information.

mFPR2 Transgenic and Knockout Mouse Models for Alzheimer's and Other Inflammatory Diseases

Description of Invention: Human Formyl Peptide-Like Receptor 1 (hFPLR1) has been implicated in host defense for disease processes including Alzheimer's disease, infection, and other inflammatory diseases. hFPLR1 and its mouse homologue Formyl Peptide Receptor 2 (mFPR2) are G-protein coupled receptors that are expressed at high levels on phagocytic leukocytes, mediating leukocyte chemotaxis and activation in response to a number of pathogen- and host-derived peptides. Activation of hFPRL1/mFPR2 by lipoxin A4 may play a role in preventing and resolving inflammation. Also, hFPRL1/mFPR2 has been shown to mediate the chemotactic activity of amyloid beta 1-42, a key pathogenic peptide in Alzheimer's disease.

Available for licensing are mice expressing the mFPR2 transgene on either the FVB or C58BL background, as well as mFPR2 knockout mice on the C57BL background. These mice are anticipated to be highly useful in the study of a wide variety of inflammatory, infectious, immunologic and neurodegenerative diseases.

Applications

- Drug development model for Alzheimer's disease and other inflammatory diseases.
- Tool to probe the role of hFPRL1/mFPR2 in host responses in a variety of disease processes, including inflammatory, infectious, immunologic, and neurodegenerative disease.

Inventors: Ji Ming Wang *et al.* (NCI)

Publications

1. K Chen, Y Le, Y Liu, W Gong, G Ying, J Huang, T Yoshimura, L Tessarollo, JM Wang. Cutting Edge: A Critical Role for the G Protein-Coupled Receptor mFPR2 in Airway Inflammation and Immune Responses. J Immunol. 2010 Mar 3. Epub ahead of print. [PubMed: 20200280.]

2. K Chen, P Iribarren, J Hu, J Chen, W Gong, EH Cho, S Lockett, NM Dunlop, and JM Wang. Activation of Toll-like receptor 2 on microglia promotes cell uptake of Alzheimer disease-associated amyloid beta peptide. J Biol Chem. 2006 Feb 10;281(6):3651–3659. [PubMed: 16339765.]

3. H Yazawa, ZX Yu, Takeda, Y Le, W Gong, VJ Ferrans, JJ Oppenheim, CC Li, and JM Wang. Beta amyloid peptide (Abeta42) is internalized via the G-protein-coupled receptor FPRL1 and forms fibrillar aggregates in macrophages. FASEB J. 2001 Nov;15(13):2454–2462. [PubMed: 11689470.]

4. YH Cui, Y Le, W Gong, P Proost, J Van Damme, WJ Murphy, and JM Wang. Bacterial lipopolysaccharide selectively up-regulates the function of the chemotactic peptide receptor formyl peptide receptor 2 in murine microglial cells. J Immunol. 2002 Jan 1;168(1):434–442. [PubMed: 11751990.]

Patent Status: HHS Reference No. E–303–2006/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Tara Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute—Frederick, Laboratory of Molecular Immunoregulation, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize mFPR2 Transgenic and Knockout Mouse Models for Alzheimer's and Other Inflammatory Diseases. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: March 23, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–6966 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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 Allergy and Infectious Diseases Special Emphasis Panel; Ancillary Studies in Immunomodulation Clinical Trials.

Date: April 22, 2010.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7089 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID, AIDS Vaccine Research Subcommittee.

Date: May 25–26, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To discuss follow-up studies to the recent RV144 vaccine efficacy trial, and to discuss the use of the nonhuman primate model in AIDS vaccine research.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: James A. Bradac, PhD, Program Official, Preclinical Research and Development Branch, Division of AIDS, Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628. 301–435–3754. *jbradac@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7119 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Cancer Biology.

Date: April 26, 2010.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Manzoor Zarger, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7087 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Subcommittee for Planning the Annual Strategic Planning Process of the Interagency Autism Coordinating Committee (IACC).

The purpose of the Subcommittee for Planning the Annual Strategic Planning Process is to plan the process for updating the IACC Strategic Plan for Autism Spectrum Disorder Research. The Subcommittee meeting will be conducted as a telephone conference call. This meeting is open to the public through a conference call phone number.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Type of Meeting: Subcommittee for Planning the Annual Strategic Planning Process.

Date: April 19, 2010.

Time: 10 a.m. to 12 p.m. Eastern Time.

Agenda: The IACC Subcommittee for Planning the Annual Strategic Planning Process will discuss plans for updating the IACC Strategic Plan for ASD Research.

Place: No in-person meeting; conference call only.

Conference Call: Dial: 888–577–8995, Access code: 1991506.

Contact Person: Ms. Lina Perez, Office of Autism Research Coordination, Office of the Director, National Institute of Mental Health, NIH, 6001 Executive Boulevard, NSC, Room 8200, Bethesda, MD 20892–9669, Phone: (301) 443–6040, *IACCPublicInquiries@mail.nih.gov.*

Please Note:

The meeting will be open to the public through a conference call phone number. Individuals who participate using this service and who need special assistance, such as captioning of the conference call or other reasonable accommodations, should submit a request at least 10 days prior to the meeting.

Members of the public who participate using the conference call phone number will be able to listen to the meeting but will not be heard.

Information about the IACC is available on the Web site: *http://www.iacc.hhs.gov.*

Dated: March 23, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6972 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities; Office of Science Policy; Office of the Director; Notice of a Meeting of the NIH Blue Ribbon Panel

The purpose of this notice is to inform the public about a meeting of the NIH Blue Ribbon Panel to Advise on the Risk Assessment of the National Emerging Infectious Diseases Laboratories at Boston University Medical Center. The meeting will be held on Wednesday, April 28, 2010, at the Boston Marriott Copley Place, 110 Huntington Avenue, Boston, Massachusetts 02116 from approximately 6:30 p.m. to 9:45 p.m.

The Blue Ribbon Panel is holding a public meeting to update the community on the status and proposed approach of the study. The meeting program will include presentations providing an overview of the risk assessment process, as well as breakout sessions in which more detailed presentations and dialogue about the proposed approach will take place.

Members of the public may, at any time, file written comments to the following address: NIH Blue Ribbon Panel, Office of the Director, National Institutes of Health, Mail Stop Code 7985, Bethesda, MD 20892–7985 or by sending an e-mail to: *nih_brp@od.nih.gov.*

An agenda and slides for the meeting may be obtained prior to the meeting by connecting to *http://nihblueribbonpanel-bumc-neidl.od.nih.gov/.* For additional information concerning this meeting, please contact Ms. Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, Office of Science Policy, Office of the Director, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985; telephone 301–496–9838; e-mail *lewallenl@od.nih.gov.*

Dated: March 24, 2010.

Amy P. Patterson,

Director, Office of Biotechnology Activities, National Institutes of Health.

[FR Doc. 2010–6970 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Voting and Nonvoting Consumer Representative Members on Public Advisory Committees and Panels; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

The Food and Drug Administration (FDA) is announcing a public meeting for individuals and groups interested in nominating voting and nonvoting consumer representatives to FDA advisory committees and panels. This public meeting also is for individuals interested in serving as voting and nonvoting representatives of FDA advisory committees and panels. The purpose of the public meeting is to inform individuals and groups with consumer interests on how to participate in the nomination and selection process for members representing consumer interests on advisory committees, provide information on the structure and function of advisory committees seeking individuals to serve as consumer representatives, and update individuals and consumer groups and individuals on current committee vacancies.

Date and Time: The public meeting will be held on April 30, 2010, from 8:15 a.m. to approximately 4:30 p.m.

Location: The public meeting will be held at the Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD. Please use the lower entrance, which faces Parklawn Drive. Visitor badges will be held at the guard station at the entrance to the building. Participants will need a picture identification to pick up their badge. Public parking is not available at the 5630 Fishers Lane location. A public parking lot is available on Fishers Lane across from the Parklawn Building at 5600 Fishers Lane, and additional public parking is available at the Twinbrook Metro Station located several blocks west of the meeting location.

Contact Person: Doreen Brandes, Office of the Commissioner (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–8858, FAX: 301–827–1041, or e-mail: *Doreen.Brandes@fda.hhs.gov*. After April 15, 2010, the contact person's location and contact information will change. All correspondence should be mailed to Doreen Brandes, Office of the Commissioner, 10903 New Hampshire Ave., Bldg. 32, rm. 5103, Silver Spring, MD 20993–0002, 301–796–8858, FAX: 301–847–8640, or e-mail: *Doreen.Brandes@fda.hhs.gov*.

Registration: Register by e-mail or fax to the contact person no later than April 23, 2010. Provide complete information for each attendee, including name, title, organization's name, address, e-mail, and telephone and fax numbers

If you need special accommodations due to a disability, please contact Doreen Brandes (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION:

I. Criteria for Members

FDA believes that persons nominated for membership as a consumer representative on the committee/panels should meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) be able to discuss benefits and risks, and (5) be able to evaluate the safety and efficacy of products under review. The consumer representative represents the consumer perspective on issues and actions before the advisory committee; serves as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitates dialogue with the advisory committees on scientific issues that affect consumers.

II. Nomination Procedures

When individuals are nominated to serve as consumer representatives on FDA advisory committee and panels, all nominations should include a cover letter, a curriculum vita or resume (that includes the nominee's office address, telephone number, and e-mail address), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation. Nominations will specify the advisory committee(s)or panel(s) for which the nominee is recommended. Any interested person or organization may nominate one or more qualified persons for membership as consumer representatives on the advisory committee/panels. Self-nominations are also accepted. Potential candidates will be required to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of a conflict of interest. The nomination should specify the committees/panels of interest. The term of office is up to 4 years, depending on the appointment date.

Additional background information regarding the topics for the public meeting will be available 5 days before the meeting and may be found at: *http://www.fda.gov/AdvisoryCommittees/default.htm* (look for link to Advisory Committee Public Meeting for Consumer Representatives.)

Dated: March 24, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–6967 Filed 3–29–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: BSCH.

Date: April 1, 2010.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 22, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6957 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Degeneration and Repair.

Date: April 16, 2010.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Daniel F. McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892. (301) 435–1215. *mcdonald@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neuroadaptations.

Date: April 19–20, 2010.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. (301) 435–1242. *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR09–027: Raid Meeting.

Date: April 20–21, 2010.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting.)

Contact Person: Steven J. Zullo, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7849, Bethesda, MD 20892. 301–435–2810. *zullost@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 22, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–6956 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of 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 Biomedical Imaging and Bioengineering Special Emphasis Panel—PHASE II QUANTUM.

Date: July 15, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: March 24, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–7123 Filed 3–29–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2493–10; DHS Docket No. USCIS–2010–0005]

RIN 1615–ZA97

Filing Procedures and Automatic Extension of Employment Authorization and Related Documentation for Liberians Provided Deferred Enforced Departure

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: On March 18, 2010, President Obama issued a memorandum to the Secretary of Homeland Security (the Secretary), Janet Napolitano, directing the Secretary to extend for an additional 18 months the deferred enforced departure (DED) of certain Liberians and to provide for work authorization during that period. The extension runs from April 1, 2010, through September 30, 2011. This notice announces an automatic 6-month extension of current employment authorization documents (EADs) held by Liberians whose DED has been extended under the presidential memorandum and informs eligible Liberians and their employers how to determine which EADs are automatically extended. This notice also provides instructions for eligible Liberians on how to apply for the full 18-month extension of employment authorization. Finally, this notice provides instructions for DED-eligible Liberians on how to apply for permission to travel outside the United States during the 18-month DED period.

DATES: This notice is effective April 1, 2010. The 6-month automatic extension of employment authorization for Liberians who are eligible for DED, including the extension of their EADs, as specified in this notice, is effective on April 1, 2010. This automatic extension will expire on September 30, 2010. The 18-month extension of DED is valid through September 30, 2011.

FOR FURTHER INFORMATION CONTACT:

- For further information on DED, including guidance on the application process for employment authorization and additional information on eligibility, please visit the USCIS Web site at *http://www.uscis.gov.* Under the heading "Humanitarian" select "Temporary Protected Status" from the homepage. You can then choose the DED page or the Liberian-specific page.

You can find detailed information about this DED extension on our Web site at the Liberian Questions & Answers Section.

• You can also contact the DED Operations Program Manager, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2060, telephone (202) 272–1533. This is not a toll-free call. Note: the phone number provided here is solely for questions regarding this **Federal Register** notice. It is not for individual case status inquiries. Applicants seeking information about the status of individual cases can check Case Status Online available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

• Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Presidential Memorandum Extending DED for Certain Liberians

In accordance with his constitutional authority to conduct the foreign relations of the United States, President Obama has directed that Liberians (and eligible persons without nationality who last resided in Liberia) who are physically present in the United States and who held TPS on September 30, 2007, and are under a grant of DED through March 31, 2010, be provided DED for an additional 18-month period after their current DED status ends. *See* Memorandum from President Obama to the Secretary of Homeland Security dated March 18, 2010 ("Presidential Memorandum"). The President also directed the Secretary to implement the necessary steps to authorize employment authorization for eligible Liberians for 18 months from April 1, 2010, through September 30, 2011.

Employment Authorization and Filing Requirements

How Will I Know if I Am Eligible for Employment Authorization Under the Presidential Memorandum That Extended DED for Certain Liberians for 18 Months?

The DED extension and the procedures for employment authorization in this notice apply to Liberian nationals (and persons without nationality who last habitually resided in Liberia) who were covered by DED through March 31, 2010. Such individuals include only Liberians who are physically present in the United States, held TPS on September 30, 2007, and are under a grant of DED through March 31, 2010.

This DED extension does not include any individual:

• Who would be ineligible for TPS for the reasons provided in section 244(c)(2)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1254a(c)(2)(B);

• Whose removal the Secretary of Homeland Security determines is in the interest of the United States;

• Whose presence or activities in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States;

• Who has voluntarily returned to Liberia or his or her country of last habitual residence outside the United States;

• Who was deported, excluded, or removed prior to March 18, 2010; or

• Who is subject to extradition.

What Will I Need To File if I Am Covered by DED and Would Like To Have Evidence of Employment Authorization?

If you are covered under DED for Liberia, and would like employment authorization during the 18-month extension of DED, you must apply for an Employment Authorization Document (EAD) on Form I–765, Application for Employment Authorization. You must file Form I–765 with USCIS during the DED extension period that begins on April 1, 2010. Please carefully follow the Form I–765 instructions when completing the application for an EAD. On Form I–765, you must:

• Indicate that you are eligible for DED; and

• Include a copy of your last Form I–797, Notice of Action, showing that you were approved for TPS as of September 30, 2007, if such copy is available. (Please note that evidence of TPS as of September 30, 2007, is necessary to show that you were covered under the previous DED for Liberia through March 31, 2010.

How Will I Know if I Will Need To Obtain Biometrics?

If biometrics are required to produce the secure EAD, you will be notified by USCIS and scheduled for an appointment at a USCIS Application Support Center. The new EAD will be valid through September 30, 2011.

Where Do I Submit My Completed Form I–765?

Please submit your completed Form I–765 and supporting documentation to: USCIS, Attn: DED Liberia, P.O. Box 8677, Chicago, IL 60680–8677.

Can I File My Form I–765 Electronically?

No. Electronic filing is not available for filing Form I–765 based on DED.

Extension of Employment Authorization and EADs

May I Request an Interim EAD at My Local Office?

No. Local USCIS offices will not issue interim EADs to individuals eligible for DED under the Presidential Memorandum.

Am I Eligible To Receive an Automatic 6-Month EAD Extension From April 1, 2010, Through September 30, 2010?

You are eligible for an automatic 6-month extension of your EAD if you are a national of Liberia (or person having no nationality who last habitually resided in Liberia), and you are currently covered by DED through March 31, 2010.

This automatic extension covers EADs issued on Form I–766, Employment Authorization Document, bearing an expiration date of March 31, 2010. These EADs must also bear the notation "A–11" on the face of the card under "Category."

What Documents May a Qualified Individual Show to His or Her Employer through September 30, 2010, as Proof of Employment Authorization and Identity When Completing Form I–9?

During the first 6 months, qualified individuals who have received a 6-month automatic extension of their EADs covered under this **Federal Register** notice may present their automatically extended Form I–766 with an expiration date of March 31, 2010, to their employers as proof of employment authorization and identity. The EAD must bear the notation "A–11" on the face of the card under "Category." To minimize confusion over this automatic extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** notice regarding the automatic extension of EADs through September 30, 2010.

What Documents May a Qualified Individual Show to His or Her Employer After September 30, 2010, as Proof of Employment Authorization and Identity When Completing Form I–9?

After September 30, 2010, individuals covered under this notice may present their EADs on Form I–766 with an expiration date of September 30, 2011, to their employers as proof of employment authorization and identity.

The EAD will bear the notation "A–11" on the face of the card under "Category." After September 30, 2010, employers may not accept EADs without a valid date.

Employers should not request proof of Liberian citizenship. Employers should accept EADs as valid "List A" documents. Employers should not ask for additional Form I–9 documentation if presented with an EAD that is valid pursuant to this **Federal Register** notice, and the EAD reasonably appears on its face to be genuine and to relate to the employee. Employees also may present any other legally acceptable document or combination of documents listed on Form I–9 as proof of identity and employment eligibility.

Note to Employers: Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth re-verification requirements. For questions, employers may call the USCIS Customer Assistance Office at 1–800–357–2099. Employers may also call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/.*

Note to Employees: Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 for information. Additional information is available on the OSC Web site at *http://www.justice.gov/crt/osc/.*

Travel Authorization and Advance Parole

Individuals covered under DED who want to travel outside of the United States must apply for and receive advance parole by filing Form I–131, Application for Travel Document, with required fees before departing the United States. *See* 8 CFR 223.2(a). The determination whether to grant advance parole is within the discretion of the Department of Homeland Security and is not guaranteed in all cases. If you seek advance parole in order to go to Liberia, you may risk being found ineligible to re-enter the United States under DED because the President's memorandum excludes persons "who have voluntarily returned to Liberia."

You may submit your completed Form I–131 with your Form I–765. If you choose to file a Form I–131 separately, please submit the application along with supporting documentation that you qualify for DED to: USCIS, Attn: DED Liberia, P.O. Box 8677, Chicago, IL 60680–8677.

If you have a pending or approved I–765, please submit the I–797 notice of receipt or approval along with your Form I–131 and supporting documentation.

Dated: March 24, 2010.

Alejandro Mayorkas,

Director, U.S. Citzenship and Immigration Services.

[FR Doc. 2010–7115 Filed 3–29–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0117

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information found in 30 CFR part 778.

DATES: Comments on the proposed information collection must be received by June 1, 2010, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or by e-mail at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0117 and is displayed at 30 CFR 778.8.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection request to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 30 CFR part 778—Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information.

OMB Control Number: 1029–0117.

Summary: Section 507(b) of Public Law 95–87 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their compliance status and history. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Division of Regulatory Support

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 2,554.

Total Annual Burden Hours: 7,623.

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: March 23, 2010.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 2010–7005 Filed 3–29–10; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2010–OMM–0012]

MMS Information Collection Activity: 1010–0086, Sulphur Operations, Extension of a Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0086).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart P, "Sulphur Operations."

DATES: Submit written comments by June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* Go to *http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter docket ID MMS–2010–OMM–0012, then click search. Follow the instructions to submit public comments and view supporting and related materials available for this collection. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ICR 1010–0086 in your comment and include your name and return address.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart P, Sulphur Operations.

OMB Control Number: 1010–0086.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.,* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 5(a) of the OCS Lands Act requires the Secretary to prescribe rules and regulations "to provide for the prevention of waste, and conservation of the natural resources of the Outer Continental Shelf, and the protection of correlative rights therein" and to include provisions "for the prompt and efficient exploration and development of a lease area." These authorities and responsibilities are among those delegated to the Minerals Management Service (MMS) to ensure that operations in the OCS will meet statutory requirements; provide for safety and protection of the environment; and result in diligent exploration, development, and production of OCS leases. This information collection request addresses the regulations at 30 CFR 250, Subpart P, Sulphur Operations, and the associated supplementary Notices to Lessees and Operators (NTLs) intended to provide clarification, description, or explanation of these regulations.

Regulations at 30 CFR 250, Subpart P, implement these statutory requirements. The MMS uses the information collected to ascertain the condition of drilling sites for the purpose of preventing hazards inherent in drilling and production operations and to evaluate the adequacy of equipment and/or procedures to be used during the conduct of drilling, well-completion, well-workover, and production operations. The MMS uses the information to:

- Ascertain that a discovered sulphur deposit can be classified as capable of production in paying quantities.
- Ensure accurate and complete measurement of production to determine the amount of sulphur royalty payments due the United States; and that the sale locations are secure, production has been measured accurately, and appropriate follow-up actions are initiated.
- Review expected oceanographic and meteorological conditions to ensure the integrity of the drilling unit (this information is submitted only if it is not otherwise available).
- Review hazard survey data to ensure that the lessee will not encounter geological conditions that present a hazard to operations.
- Ensure the adequacy and safety of firefighting plans; the drilling unit is fit for the intended purpose; and the adequacy of casing for anticipated conditions.
- Review log entries of crew meetings to verify that crew members are properly trained.
- Review drilling, well-completion, well-workover diagrams and procedures, as well as production operation procedures to ensure the safety of the proposed drilling, well-completion, well-workover and proposed production operations.
- Monitor environmental data during operations in offshore areas where such data are not already available to provide a valuable source of information to evaluate the performance of drilling rigs under various weather and ocean conditions. This information is necessary to make reasonable determinations regarding safety of operations and environmental protection.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.197, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: Varies by section, but information concerning drilling, well-completion, and well-workover operations and production is collected only once for each particular activity.

Estimated Number and Description of Respondents: Approximately 1 Federal OCS sulphur lessee.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 903 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of

their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250	Reporting and recordkeeping requirement	Hour burden
	Submittals/Notifications	
1600; 1617	Submit exploration or development and production plan	Burden covered under (1010–0151).
1617; 1618; 1619(b); 1622.	Submit forms MMS–123 (Application for Permit to Drill), MMS–124 (Application for Permit to Modify), Form MMS–125 (End of Operations Report).	Burden covered under (1010–0141).
1605(b)(3)	Submit and/or resubmit data and information on fitness of drilling unit	4
1605(d)	Submit results of additional surveys and soil borings upon request.*	1
1605(f)	Submit application for installation of fixed drilling platforms or structures	Burden covered under (1010–0149).
1608	Submit well casing and cementing plan or modification	5
1619(c), (d), (e)	Submit copies of records, logs, reports, charts, etc., upon request	1
1628(b), (d)	Submit application for design and installation features of sulphur production facilities and fuel gas safety system; certify new installation conforms to approved design.	4
1630(a)(6)	Notify MMS of pre-production test and inspection of safety system and commencement of production.	30 minutes.
1633(b)	Submit application for method of production measurement	2
	Requests	
1603(a)	Request determination whether sulphur deposit can produce in paying quantities	1
1605(e)(5)	Request copy of directional survey (by holder of adjoining lease).*	1
1607	Request establishment, amendment, or cancellation of field rules for drilling, well-completion, or well-workover.	8
1610(d)(7+8)	Request exception to ram-type blowout preventer (BOP) system components rated working pressure.	1
1611(b); 1625(b)	Request exception to water-rated working pressure to test ram-type and annular BOPs and choke manifold.	1
1611(f); 1625(f)	Request exception to recording pressure conditions during BOP tests on pressure charts.*	1
1612	Request exception to §§ 250.408/250.462 requirements for well-control drills.*	1
1615	Request exception to blind-shear ram or pipe rams and inside BOP to secure wells	1
1629(b)(3)	Request approval of firefighting systems; post firefighting system diagram	4
1600 thru 1634	General departure and/or alternative compliance requests not specifically covered elsewhere in subpart P.	2
	Record/Retain	
1604(f)	Check traveling-block safety device for proper operation weekly and after each drill-line slipping; enter results in log.	15 minutes.
1605(c)	Report oceanographic, meteorological, and drilling unit performance data upon request.*	1
1609(a)	Pressure test casing; record time, conditions of testing, and test results in log	2
1611(d)(3); 1625(d)(3)	Record in driller's report the date, time, and reason for postponing pressure testing	10 minutes.
1611(f), (g); 1625(f), (g)	Conduct tests, actuations, inspections, maintenance, and crew drills of BOP systems at least weekly; record results in driller's report; retain records for 2 years following completion of drilling activity.	6
1613(d)	Pressure test diverter sealing element/valves weekly; actuate diverter sealing element/valves/control system every 24 hours; test diverter line for flow every 24 hours; record test times and results in driller's report.	2
1616(c)	Retain training records for lessee and drilling contractor personnel	Burden covered under (1010–0128).
1619(a); 1623(c)	Retain records for each well and all well operations for 2 years; calculate well-control fluid volume and post near operators' station.	12
1621	Conduct safety meetings prior to well-completion or well-workover operations; record date and time.	1
1628(b), (d)	Maintain information on approved design and installation features for the life of the facility	1
1629(b)(1)(ii)	Retain pressure-recording charts used to determine operating pressure ranges for 2 years	12
1630(b)	Maintain records for each safety device installed for 2 years; make available for review	1
1631	Conduct safety device training prior to production operations and periodically thereafter; record date and time.	1
1634(b)	Report evidence of mishandling of produced sulphur or tampering or falsifying any measurement of production.	1
	Total Burden	

*We included a minimal burden, but it has not been necessary to request these data and/or no submissions received for many years.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no "non-hour cost" burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: March 24, 2010.

Sharon Buffington,

Acting Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2010–6989 Filed 3–29–10; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO270000. L10300000.EG0000; OMB Control Number 1004–0001]

Information Collection; Free Use Application and Permit for Vegetative or Mineral Materials

AGENCY: Bureau of Land Management.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0001 under the Paperwork Reduction Act. The respondents are individuals and households who provide information to the BLM in support of applications which pertain to the free use of, respectively, petrified wood, timber, *et al.*

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before April 29, 2010 in order to be assured of consideration.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0001), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: McKinley-Ben Miller, Bureau of Land Management, Division of Forestry, at (202) 912–7165. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to contact Mr. Miller.

SUPPLEMENTARY INFORMATION:

Title: Form 5510–1, Free Use Application and Permit (43 CFR 3620 and 5510).

OMB Number: 1004–0001.

Forms: 5510–1, Free Use Application and Permit.

Abstract: The Bureau of Land Management proposes to extend the currently approved collection of information, which enables the agency to manage the collection of limited quantities of petrified wood and timber for noncommercial purposes.

60-Day Notice: On January 12, 2010, the BLM published a 60-day notice (75 FR 1647) requesting comments on the proposed information collection. The comment period ended on March 15, 2010. We did not receive any comments from the public in response to this notice or unsolicited comments from respondents covered under these regulations.

Current Action: This proposal is being submitted to extend the expiration date of March 31, 2010.

Type of Review: 3-year extension.

Affected Public: Individuals and households.

Obligation To Respond: Required to obtain or retain benefits.

Annual Responses: 476.

Annual Burden Hours: 238.

There is no filing fee associated with these information collections. The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to

respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0001 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–6987 Filed 3–29–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2008–N0242; BAC–4311–K9–S3]

Back Bay National Wildlife Refuge, City of Virginia Beach, VA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the draft comprehensive conservation plan (CCP) and draft environmental assessment (EA) for Back Bay National Wildlife Refuge (NWR) for a 30-day public review and comment period. In this draft CCP/EA, we describe three alternatives, including our Service-preferred Alternative B, for managing this refuge for the next 15 years. Also available for public review and comment are the draft compatibility determinations, which are included as Appendix A in the draft CCP/EA.

DATES: To ensure our consideration of your written comments, we must receive them by April 29, 2010. We will also hold public meetings in Virginia Beach, Virginia during the 30-day review period to receive comments and provide information on the draft plan. We will announce and post details about public meetings in local news media, via our project mailing list, and on our regional planning Web site, *http://www.fws.gov/northeast/planning/back bay/ccphome.html.*

ADDRESSES: Send your comments or requests for copies of the draft CCP/EA by any of the following methods. You may also drop off comments in person at Back Bay NWR, 4005 Sandpiper Road, Virginia Beach, Virginia.

U.S. Postal Service: Thomas Bonetti, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035.

Facsimile: Attention: Thomas Bonetti, 413–253–8307.

Electronic mail: northeastplanning@fws.gov. Include "Back Bay NWR CCP" in the subject line of your e-mail.

Agency Web site: View or download the draft document at *http://www.fws.gov/backbay/.*

FOR FURTHER INFORMATION CONTACT: Jared Brandwein, Project Leader, Back Bay NWR, 4005 Sandpiper Road, Virginia Beach, VA 23456–4325; 757–721–2412 (phone); 757–721–6141 (facsimile).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Back Bay NWR. We started the CCP process by publishing a notice in the **Federal Register** (67 FR 30950) on May 8, 2002, and then updating that notice (72 FR 8196) on February 23, 2007. We prepared the draft CCP in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347, as amended) (NEPA) and the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act).

Back Bay NWR, currently 9,035 acres, was established in 1938 by Executive Order #7907 "* * * as a Refuge and breeding ground for migratory birds and other wildlife." Another of the refuge's primary purposes (for lands acquired under the Migratory Bird Conservation Act) is "* * * use as an inviolate sanctuary, or for any other management purpose, for migratory birds." The Emergency Wetlands Resources Act of 1986 also authorizes purchase of wetlands for the purpose of "* * * the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions * * *," using money from the Land and Water Conservation Fund. In 1939, 4,600 acres of open bay waters within the refuge boundary were closed to the taking of migratory birds by Presidential proclamation.

The refuge includes five miles of oceanfront beach, a 900-acre freshwater impoundment complex, numerous bay islands, bottomland mixed forests, old fields, and freshwater wetlands adjacent to Back Bay and its tributary shorelines. The Back Bay NWR Station Management Plan in 1993 expanded the role of the refuge to include management emphases on other migratory bird groups, including threatened and endangered species, shorebirds, wading birds, marsh birds and songbirds/land birds.

Although wildlife and habitat conservation come first on the refuge, the public can enjoy excellent opportunities to observe and photograph wildlife, fish, hunt, or participate in environmental education and interpretation. Current visitor facilities are primarily located in the eastern, barrier island portion of the refuge, where annual visitation is greater than 100,000. Back Bay NWR provides scenic trails, a visitor contact station, and, with advance scheduling, group educational opportunities. Outdoor facilities are open daily dawn to dusk.

Background

The CCP Process

The Improvement Act requires us to develop a CCP for each national wildlife refuge. The purpose for developing CCPs is to provide refuge managers with 15-year plans for achieving refuge purposes and the mission of the National Wildlife Refuge System (NWRS), in conformance 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 and photography, and environmental education and interpretation. We will review and update each CCP at least every 15 years, in accordance with the Improvement Act.

Public Outreach

In conjunction with our **Federal Register** notice announcing our intent to begin the CCP process, open houses and public information meetings were held throughout the Virginia Beach area at three different locations during January 2002. Meetings were advertised locally through news releases, paid

advertisements, and our mailing list. Participants were encouraged to actively express their opinions and suggestions. The public meetings allowed us to gather information and ideas from local residents, adjacent landowners, and various organizations and agencies.

An "Issues Workbook" was developed to encourage written comments on topics such as wildlife habitats, nuisance species, and public access to the refuge. These workbooks were mailed to a diverse group of over 1,500 people on our mailing list, given to people who attended a public meeting, and distributed to anyone who requested one. More than 100 people returned completed workbooks.

Throughout the process, we have conducted additional outreach via newsletters and participation in meetings, and continued to request public input on refuge management and programs. Some of the comments we received pertained to issues that included managing various invasive and pest species, providing access to and through the refuge, providing desired facilities and activities, and searching for ways to improve opportunities for public use while ensuring the restoration and protection of priority resources. We considered and evaluated all of those comments, and incorporated many of them into the varied alternatives in the draft CCP/EA.

CCP Actions We Are Considering, Including the Service-Preferred Alternative

We developed three management alternatives based on the purposes for establishing the refuge, its vision and goals, and the issues and concerns the public, State agencies, and the Service identified during the planning process. The alternatives have some actions in common, such as protecting cultural resources, developing step-down management plans, encouraging research that benefits our resource decisions, maintaining a proactive law enforcement program, continuing to acquire land from willing sellers within our approved refuge boundary, and distributing refuge revenue sharing payments to Virginia Beach.

Other actions distinguish the alternatives. The draft CCP/EA describes the alternatives in detail, and relates them to the issues and concerns we identified. Highlights follow.

Alternative A (Current Management)

This alternative is the "No Action" alternative, as required by NEPA. Alternative A defines our current management activities, and serves as the baseline against which to compare the other alternatives. A selection of this alternative would maintain the status quo in managing the refuge for the next 15 years. No major changes would be made to current management practices. This alternative provides a basis for comparing the other two alternatives.

Under current management, we manage a series of wetland and moist-soil impoundments, forested and shrub-scrub habitats, and coastal beach and dune habitats. Under Alternative A, we would continue to conduct land bird, marsh bird, and migratory waterfowl surveys, continue to conduct nesting and stranded sea turtle patrols, and continue current methods of nuisance and non-native species control. We would maintain existing opportunities for visitors to engage in wildlife observation, photography, and environmental education and interpretation, as well as maintain existing hunting and fishing opportunities on the refuge. We would maintain existing infrastructure and buildings, and maintain current staffing levels.

Alternative B (Service-Preferred Alternative)

This alternative is the one we propose as the best way to manage this refuge over the next 15 years. It includes an array of management actions that, in our professional judgment, works best toward achieving the refuge purposes, our vision and goals, and the goals of other State and regional conservation plans. We also believe it most effectively addresses the key issues raised during the planning process.

This alternative focuses on enhancing the conservation of wildlife through habitat management, as well as providing additional visitor opportunities on the refuge. Alternative B incorporates existing management activities and/or provides new initiatives or actions, aimed at improving efficiency and progress towards refuge goals and objectives. Some of the major strategies proposed include: Opening up forest canopy by selectively removing loblolly pine, sweetgum, and red maple; withdrawing the 1974 wilderness designation proposal for Long Island, Green Hills, and Landing Cove (2,165 acres); developing a canoe/kayak trail on the west side of Back Bay NWR; expanding the deer hunt and developing new hiking trails; and developing and designing a new headquarters/visitor contact station. We would also expand opportunities for the six priority public uses of the NWRS, and emphasize wildlife observation and photography, and interpretation.

The expansion of visitor facilities and services, as well as the projected increase in visitation, would require additional staffing support to meet public expectations, and provide for public safety, convenience, and a high quality experience for refuge visitors. Partnering, interagency agreements, service contracting, internships, and volunteer opportunities would increase in order to help provide this staffing support.

We would also continue our monitoring and inventory program, and regularly evaluate the results to help us better understand the implications of our management actions and identify ways to improve their effectiveness.

Alternative C (Improved Biological Integrity)

Alternative C prominently features additional management that aims to restore (or mimic) natural ecosystem processes or functions to achieve refuge purposes.

Alternative C focuses on using management techniques that would encourage forest growth and includes an increased focus toward the previously proposed wilderness areas. Some of the major strategies proposed include: Developing an interagency agreement that would allow the 1974 proposed wilderness areas at Long Island, Green Hills, and Landing Cove (2,165 acres) to again meet minimum criteria, and then manage accordingly; and, creating conditions that allow us to shift more resources from intensive management of the refuge impoundment system to the restoration of Back Bay-Currituck Sound. In addition, we propose to continue enhancing visitor services by: Developing a hiking trail along Nanney's Creek; initiating actions to open the Colchester impoundment for fishing opportunities; considering additional waterfowl hunting areas; developing and designing a new headquarters/visitor contact station that provides more office space than proposed for Alternative B; and working with partners to provide a shuttle (for a fee) service from the new headquarters site to the barrier spit.

Public Meetings

We will give the public opportunities to provide input at two public meetings in Virginia Beach, Virginia. You can obtain the schedule from the project leader or natural resource planner (*see* **ADDRESSES** or **FOR FURTHER INFORMATION CONTACT,** above). You may also submit comments at any time during the planning process by any means shown in the **ADDRESSES** section.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: March 2, 2010.

Wendi Weber,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service.

[FR Doc. 2010–7058 Filed 3–29–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N207; 10120–1113–0000–C2]

Endangered and Threatened Wildlife and Plants; Draft Revised Recovery Plan for the Mariana Fruit Bat or Fanihi (Pteropus mariannus mariannus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment; draft revised recovery plan.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Revised Recovery Plan for the Mariana Fruit Bat or Fanihi (*Pteropus mariannus mariannus*), for public review and comment.

DATES: Comments on the recovery plan must be received on or before June 28, 2010.

ADDRESSES: An electronic copy of the recovery plan is available at *http://endangered.fws.gov/recovery/index.html#plans.* The recovery plan is also available by request from the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850 (phone: 808/792–9400). Requests for copies of the recovery plan and written comments and materials regarding this plan should be addressed to the Field Supervisor, Ecological Services, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Holly Freifeld, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria in section 4(a)(1) of the Act.

The Act requires the development of recovery plans for endangered or threatened species unless such a plan would not promote the conservation of the species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery. This draft revised recovery plan was developed with the input and assistance of a Recovery Team appointed by the U.S. Fish and Wildlife Service.

Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information presented during the public comment period, and substantive comments may result in changes to the recovery plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to the appropriate Federal agency or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

This subspecies of the Mariana fruit bat or fanihi (*Pteropus mariannus mariannus*) is endemic to the Mariana archipelago (the Territory of Guam and the Commonwealth of the Northern Mariana Islands [CNMI]), where it is known from most of the 15 major islands. The subspecies was federally listed as endangered on the island of Guam in 1984, and was reclassified as threatened throughout its range in 2005 (70 FR 1190). Surveys on most or all islands in the archipelago were conducted in 1983, 2000, and 2001. A conservative interpretation of these data indicates a steep decline in fruit bat numbers has taken place since 1983. Available information indicates the chief threats to the fanihi are hunting, chronic habitat degradation by ungulates, predation by brown treesnakes, and risk factors associated with small population size (bats are highly vulnerable to extirpation on islands where they persist in chronically low numbers). Therefore, the recovery strategy in this plan focuses on the following actions: (1) Reduction or elimination of hunting to allow increase in fanihi numbers throughout the archipelago; (2) protection of the best existing habitat and enhancement of additional suitable habitat; (3) effective control and interdiction of the brown treesnake; and (4) population monitoring and modeling to (a) assess the fanihi's sensitivity to specific threats and management actions and (b) forecast the species' persistence.

Implementing these actions requires building long-term support for and participation in the recovery effort through outreach and education; enhancing existing survey methodologies; developing research and monitoring projects to address gaps in our scientific knowledge of fanihi and provide new information for effective conservation and recovery; and application of this research and monitoring through adaptive management. The recovery strategy will be implemented as a collaborative effort among technical experts, agencies, the governments of the CNMI and Guam, and other participants and stakeholders. Owing to the limitations in our current knowledge of fanihi life history and ecology, this recovery plan focuses on the first 10 years of the recovery process. As additional information is gained about the fanihi through management, monitoring, and research, recovery strategies and measures should be reassessed to determine the appropriate steps toward recovery and delisting.

Request for Public Comments

We solicit written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 2, 2009.

David J. Wesley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2010–6991 Filed 3–29–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of Public Meeting, Dakotas Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas Resource Advisory Council (RAC) will meet as indicated below.

DATES: The next regular meeting of the Dakotas Resource Advisory Council will be held on May 6, 2010, in Spearfish, South Dakota. The meeting will start at 8 a.m. and adjourn at approximately 3:30 p.m. When determined, the meeting location will be announced in a news release.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana 59301 (406–233–2831).

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior through the Bureau of Land Management on a variety of planning and management issues associated with public land management in the Dakotas. At these meetings, topics will include: North Dakota and South Dakota Field Office manager updates, subcommittee briefings, work sessions, and other issues that the council may raise. All meetings are open to the public, and the public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation, or other reasonable accommodations should contact the BLM as provided above.

Gene R. Terland,

State Director.

[FR Doc. 2010–7052 Filed 3–29–10; 8:45 am]

BILLING CODE 4310–DN–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 January 11 to January 15, 2010.

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: March 24, 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

ILLINOIS

Cook County

Berger Park, 6205–47 N. Sheridan Rd., Chicago, 09001225, LISTED, 1/12/10 (Chicago Park District MPS)

MISSOURI

Greene County

Springfield Public Square Historic District (Boundary Increase), E. side Public Square, part of the 300 block Park Central E., N. side of 200 block of W. Olive, Springfield, 09000281, LISTED, 1/13/10 (Springfield MPS)

St. Louis Independent City

Federal Cold Storage Company Building, 1800–28 N. Broadway, St. Louis, 09001226, LISTED, 1/12/10

NEW YORK

Dutchess County

Trinity Methodist Church, 8 Mattie Cooper Square, Beacon, 09001227, LISTED, 1/12/10

Herkimer County

Masonic Temple—Newport Lodge No. 445 F. & A.M., 7408 NY 28, Newport vicinity, 09001228, LISTED, 1/13/10

Orange County

Dock Hill Road Extension Stone Arch Bridge, Dock Hill Rd. Extension, Cornwall-on-Hudson, 09001230, LISTED, 1/13/10 (Stone Arch Bridges of the Village of Cornwall-on-Hudson MPS)

NORTH DAKOTA

Grand Forks County

University of North Dakota Historic District, University of North Dakota, Grand Forks, 08001233, LISTED, 1/13/10

PENNSYLVANIA

Chester County

Chandler Mill Bridge, Kennett Township, Kennett, 09001213, LISTED, 1/11/10

Cheyney Squire, Farm, 1255 Cheyney Thornton Rd., Thornbury, 09001214, LISTED, 1/11/10

Hopewell Farm, 1751 Valley Rd., Valley, 09001215, LISTED, 1/11/10

RHODE ISLAND

Providence County

Central Diner, 777 Elmwood Ave., Providence, 09001231, LISTED, 1/13/10

VIRGINIA

Alexandria Independent City

Uptown-Parker-Gray Historic District, Roughly Cameron St. N. to 1st St. and N. Columbus St. W. to the following sts forming W. line, Buchanan, N. West, Alexandria, 09001232, LISTED, 1/12/10

WASHINGTON

Pierce County

Blue Mouse Theatre, 2611 N. Proctor St., Tacoma, 09001235, LISTED, 1/13/10 (Movie Theaters in Washington State MPS)

Whatcom County

Cissna Cottages Historic District, Area roughly bounded by H., Halleck, G., and Girard Sts., Bellingham, 09001219, LISTED, 1/11/10

[FR Doc. 2010–7153 Filed 3–29–10; 8:45 am]

BILLING CODE 4312–51–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 March 13, 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 April 14, 2010.

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.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

ALABAMA

Elmore County

Tallassee Falls Manufacturing Company, 1844 Old Mill Rd, Tallassee, 10000198

Jefferson County

Tarrant City Downtown Historic District, Parts of E. Lake Blvd., Ford Ave., Jackson Blvd., Pinson St., Wharton Ave., Tarrant, 10000199

Madison County

Lincoln Mill and Mill Village Historic District, Bounded by Meridian St., Oakwood Ave., Front St., Mountain View Dr., Davidson St., Cottage St., and King Ave., Huntsville, 10000200

ARIZONA

Pima County

Menlo Park Historic District, 13 Subdivisions irregularly bounded around Grande Ave. and W. Congress St. intersection, Tucson, 10000201

FLORIDA

Palm Beach County

Palm Beach Hotel, 235–251 Sunrise Ave., Palm Beach, 10000212

IOWA

Marion County

Peoples Nationals Bank, 717 Main St., Pella, 10000202

MISSOURI

Grundy County

Trenton High School, 1312 E. 9th St., Trenton, 10000203

Jackson County

Sherwood Manufacturing Company Building, (Lee's Summit, Missouri MPS) 123 SE 3rd St., Lees' Summit, 10000204

Saline County

Sweet Springs Historic District Boundary Decrease, (Sweet Springs MPS) 200–217 W. Lexington Ave., and 211 Marshall St., Sweet Springs, 10000206

St. Louis Independent City

Sligo Iron Store Co. Buildings, 1301 N. Sixth St., St. Louis, 10000205

NORTH CAROLINA

Harnett County

Johnson Farm, 2095 Kipling Rd., (S side SR 1403, .2 mi E of SR 1425), Kipling, 10000207

Rowan County

J.C. Price High School, 1300–1400 W. Bank St., Salisbury, 10000208

UTAH

Salt Lake County

Wells Historic District, Roughly bounded by 700 E., State St., 1300 S., and 2100 S., Salt Lake City, 10000210

WISCONSIN

Sauk County

Man Mound Boundary Increase, Address Restricted (Late Woodland Stage in Archeological Region 8 MPS) Man Mound Road, Town of Greenfield, 10000211

[FR Doc. 2010–7152 Filed 3–29–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2009–MRM–0014]

Termination of Royalty-in-Kind (RIK) Eligible Refiner Program

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice for the termination of the RIK Eligible Refiner Program.

SUMMARY: On behalf of the Secretary of the Interior (Secretary), the Minerals Management Service (MMS) has conducted a determination of need for the RIK Eligible Refiner Program under 30 CFR 208.4 and has concluded that a need for the program no longer exists.

DATES: As a result of this determination, MMS will discontinue the sales of Federal royalty production to eligible refiners under the Eligible Refiner Program until further notice.

FOR FURTHER INFORMATION CONTACT: Colin Bosworth, telephone (303) 231–3186, FAX (303) 231–3846, or e-mail *colin.bosworth@mms.gov.*

SUPPLEMENTARY INFORMATION: The regulations at 30 CFR 208.4(a) provide that the Secretary may evaluate crude oil market conditions from time to time. The evaluation will include, among other things, the availability of crude oil and the crude oil requirements of the Federal Government, primarily those requirements concerning matters of national interest and defense. Furthermore, the regulations at 30 CFR 208.4(b) state that, upon a determination by the Secretary under paragraph (a) of this section that defined eligible refiners do not have access to adequate supplies of crude oil at equitable prices, the Secretary, at his or her discretion, may elect to take in kind some or all of the royalty oil accruing to the United States from oil and gas leases on Federal lands onshore and the Outer Continental Shelf for sale to eligible refiners.

On September 16, 2009, the Secretary announced a phased-in termination of the RIK Program. The termination of the RIK Program precludes future sales of Federal royalty oil to eligible refiners as part of the Eligible Refiner Program. The MMS will honor all existing RIK sales contracts as defined in the contract terms.

The MMS's determination is supported by decreased participation in the RIK Eligible Refiner Program as well as eligible refiners demonstrating a successful ability to compete in the open market. In 1999, six eligible refiners participated in the program, compared to only two in 2009. Over the past few years, eligible refiners have been successfully competing in the RIK Unrestricted Oil Sales Program as well as in the open market. The RIK unrestricted oil sales were open to any bidder who met prequalification requirements, and bidders included many of the major oil companies operating in the United States. On average, 50 percent of the volumes that MMS offered in the RIK Unrestricted Oil Sales Program during the past year have been awarded to eligible refiners. In the most recent unrestricted oil sale, one eligible refiner bid successfully on 80 percent of the volumes that MMS offered for sale. The decreased participation in the Eligible Refiner Program, in conjunction with the increased success of eligible refiners in the RIK Unrestricted Oil Sales Program, clearly demonstrates that an RIK Eligible Refiner Program is not needed at this time.

Dated: March 18, 2010.

Gregory J. Gould,

Associate Director for Minerals Revenue Management.

[FR Doc. 2010–7032 Filed 3–29–10; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1088 (Preliminary) (Remand)]

Polyvinyl Alcohol From Taiwan; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of polyvinyl alcohol provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).[2]

Commencement of Final Phase of Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Pearson and Commissioners Okun and Lane dissented, having determined that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of allegedly LTFV imports of polyvinyl alcohol from Taiwan.

Background

On September 7, 2004, a petition was filed with the Commission and Commerce by domestic producer Celanese Chemicals, Ltd., Dallas, TX, alleging that an industry in the United States is materially injured and threatened with further material injury by reason of LTFV imports of polyvinyl alcohol from Taiwan. Accordingly, effective September 7, 2004, the Commission instituted antidumping duty investigation No. 731–TA–1088 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 15, 2004 (69 FR 55653). The conference was held in Washington, DC, on September 28, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

On October 24, 2004, the Commission determined by a vote of 3 to 2, that there was no reasonable indication that a U.S. industry was materially injured or threatened with material injury by reason of imports of PVA from Taiwan.[3] Notice of that determination was published on October 29, 2004. 69 FR 63177. The Commission transmitted its determination to the Secretary of Commerce on October 22, 2004. The Commission's views were contained in USITC Publication 3732 (October 2004), entitled *Polyvinyl Alcohol from Taiwan: Investigation No. 731–TA–1088 (Preliminary).* Domestic producer/petitioner Celanese appealed the Commission's negative preliminary determination to the U.S. Court of International Trade ("CIT").

On January 29, 2007, the CIT remanded the determination to the Commission for further proceedings. *Celanese Chemicals, Ltd.* v. *United States,* Slip Op. 07–16, 29 ITRD 1985 (Ct. Int'l Trade 2007). On remand, the Commission determined, by a vote of 3 to 3, that there was a reasonable indication that a U.S. industry was materially injured by reason of imports of subject imports of PVA from Taiwan. Chairman Aranoff and Commissioners Williamson and Pinkert, who had commenced their service as Commissioners in the intervening time, voted in the affirmative. On remand, Vice Chairman Pearson and Commissioners Okun and Lane reaffirmed their negative preliminary determinations. *Polyvinyl Alcohol from Taiwan:* Investigation No. 731–TA–1088 (Preliminary) (Remand), USITC Publication 3920 (April 2007). The tie vote yielded an affirmative determination by operation of 19 U.S.C. 1677(11).

On November 19, 2008, the CIT affirmed the Commission's affirmative preliminary determination on remand. *Celanese Chemicals Ltd.* v. *United States,* Slip Op. 08–125, 30 ITRD 2352 ("*Celanese II*"). On January 16, 2009, DuPont appealed to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit").

On December 23, 2009, the Federal Circuit affirmed, without opinion, the CIT's decision in *Celanese II,* and issued its mandate on February 18, 2010. No party has applied under 28 U.S.C. 2101(c) to the U.S. Supreme Court for a *writ of certiorari.* The judicial proceedings having now ended, the Commission now publishes notice of its preliminary determination on remand.

By order of the Commission.
Issued: March 25, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–7071 Filed 3–29–10; 8:45 am]

BILLING CODE 7020–02–P

[3] Commissioners Miller and Koplan dissented, having determined that there was a reasonable indication that an industry in the United States was materially injured by reason of allegedly LTFV imports of polyvinyl alcohol from Taiwan. Commissioner Hillman did not participate in the investigation.

DEPARTMENT OF LABOR

Comment Request for Information Collection for Quick Turnaround Surveys of the Workforce Investment Act (Extension Without Revisions)

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently, the Employment and Training

Administration is soliciting comments concerning the collection of data about quick turnaround surveys of the Workforce Investment Act (due to expire in May 2010).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before June 1, 2010.

ADDRESSES: Submit written comments to US Department of Labor, Employment and Training Administration, Office of Policy Development and Research, Attention: Richard Muller, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210. Telephone number: (202) 693–3680 (this is not a toll-free number). Fax: (202) 693–2766. E-mail: *muller.richard@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Muller, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5637, Washington, DC 20210; (202) 693–3680 (this is not a toll-free number); e-mail: *Muller.Richard@dol.gov;* fax: (202) 693–2766 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Employment and Training Administration (ETA) is soliciting comments regarding an extension of a current Office of Management and Budget (OMB) clearance for a series of quick turnaround surveys in which data will be collected from state workforce agencies and local workforce investment areas. The surveys will focus on issues relating to the governance, administration, funding, service design, and delivery structure of workforce programs authorized by the Workforce Investment Act (WIA). Enacted in 1998, WIA has sought to redesign the workforce investment system by linking over a dozen separately funded Federal programs, streamlining services, and establishing new accountability requirements.

ETA has a continuing need for information on WIA operations and is seeking a further extension of the clearance for conducting a series of 8 to 20 separate surveys over the next three years. Each survey will be relatively short (10–30 questions) and, depending on the nature of the survey, may be administered to state workforce agencies, local workforce boards, One-Stop Career Centers, employment service offices, or other local-area WIA partners. Each survey will be designed on an ad hoc basis and will focus on emerging topics of pressing policy interest. Each survey will either cover the universe of respondents (for state level information) or a properly drawn random sample (for local level information). Examples of broad topic areas include:

- Local management information system developments.
- New processes and procedures.
- Services to different target groups.
- Integration and coordination with other programs.
- Local workforce investment board membership and training.

Quick turnaround surveys are needed for a number of reasons. The most pressing concerns the need to understand key operational issues in light of challenges deriving from the Administration's policy priorities and from the upcoming reauthorization of WIA and of other partner programs. Timely information, that identifies the scope and magnitude of various practices or problems, is needed for ETA to fulfill its obligations to develop high quality policy, administrative guidance, regulations, and technical assistance.

The data that will be requested in the quick turnaround surveys is not otherwise available. Other research and evaluation efforts, including case studies or long-range evaluations, either cover only a limited number of sites or take many years for data to be gathered and analyzed. Administrative information and data are too limited: The five-year Workforce Investment Plans, developed by states and local areas, are too general in nature to meet ETA's specific informational needs. Quarterly or annual data reported by states and local areas do not provide information on key operational practices and issues. Thus, ETA has no alternative mechanism for collecting information that both identifies the scope and magnitude of emerging WIA implementation issues and provides the information on a quick turnaround basis.

ETA will make every effort to coordinate the quick turnaround surveys with other research it is conducting, in order to ease the burden on local and state respondents, to avoid duplication, and to fully explore how interim data and information from each study can be used to inform other studies. Information from the quick response surveys will complement but not duplicate other ETA reporting requirements or evaluation studies.

II. Review Focus

The Department of Labor is particularly interested in comments which:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility and clarity of the information to be collected; and

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Agency: Employment and Training Administration.

Title: Quick Turnaround Surveys of WIA.

OMB Number: 1205–0436.

Affected Public: State and local workforce agencies and workforce investment boards, and WIA partner program agencies at the state and local levels.

Total Respondents: Varies by survey, from 54 to 250 respondents per survey, for up to 20 surveys. *See* Summary Burden chart below:

	Sample Size	Number of questions	Average time per question (minutes)	Aggregate burden hours per survey (hours)	Estimated number of surveys	Total annual burden hours
Lower-Bound	54	10	1	9	8	72
Upper-Bound	250	30	3	375	20	7,500

Total Burden Cost for capital and startup: $0.

Total Burden Cost for operation and maintenance: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 24, 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–6997 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Office of Apprenticeship and the Women's Bureau; Notice of Availability of Funds and Solicitation for Grant Applications for Women in Apprenticeship and Nontraditional Occupations (WANTO) Grants

AGENCY: Employment and Training Administration, U.S. Department of Labor.

Announcement Type: Notice of Solicitation for Grant Announcement (SGA).

Funding Opportunity Number: SGA/DFA–PY–09–03.

Catalog of Federal Domestic Assistance Number: 17.201.

SUMMARY: The Women's Bureau (WB) and the Employment and Training Administration's (ETA) Office of Apprenticeship (OA), U.S. Department of Labor (DOL or Department), announce the availability of approximately $1,800,000 to establish a grant program for the purpose of assisting employers and labor management organizations in the placement and retention of women in apprenticeship and nontraditional occupations as defined in Section VIII.F., Acronyms and Definitions. This Program Year (PY) 2009 and 2010 SGA is authorized under the WANTO Act of 1992, Public Law 102–530, 29 USC 2501 *et seq.* To that end, the OA and WB plan to disburse PY 2009 and 2010 WANTO grant funds to six community-based organization (CBO)/registered apprenticeship program (RAP) consortia to conduct innovative projects to improve outreach, recruitment, hiring, training, employment, and retention of women in apprenticeships in the nontraditional occupations, as defined in Section VIII.F. This SGA focuses upon recruitment, training, placement and retention in the industries described in Section I.B of this SGA.

Each CBO/RAP consortium must consist of a minimum of two components: (1) An industry RAP sponsor (which can be an individual employer, association of employers, or an apprenticeship committee designated by the sponsor to administer and operate an apprenticeship program and in whose name the apprenticeship program is registered or approved), and (2) a CBO (which may be a faith-based organization (FBO)) that has demonstrated experience in providing women with job-training services, as described in the definitions of apprenticeship committee, CBO, CBO/RAP consortium, and registered apprenticeship program sponsors in Section VIII.F. It is anticipated that awards will be in the amount of up to $300,000 over the two-year grant period. The grants will be awarded in June 2010, and will be funded incrementally.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie Williams, Grants Management Specialist, Reference SGA/DFA PY 09–03, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. For complete "Application and Submission Information," please refer to Section IV.

DATES: *Key Dates:* The closing date for receipt of applications is April 29, 2010.

SUPPLEMENTARY INFORMATION: This SGA consists of eight sections:

- Section I provides the funding opportunity description.
- Section II describes the size and nature of the anticipated awards.
- Section III describes applicant eligibility criteria.
- Section IV outlines the application submission and withdrawal requirements.
- Section V describes the application review information.
- Section VI outlines additional award administration information.
- Section VII lists the agency contact.
- Section VIII provides other information, including acronyms and definitions.

I. Funding Opportunity Description

A. Background: The WANTO Act of 1992, Public Law 102–530, 29 U.S.C. 2501 *et seq.* authorizes DOL to disburse competitive technical assistance grants to community-based organizations that, in turn, assist employers and labor unions in the recruitment, training, placement, and retention of women into apprenticeship and nontraditional occupations. The WANTO Act Technical Assistance Grants program was funded and implemented beginning in fiscal year 1994. The WB and OA co-administer the WANTO Technical Assistance Grants program, and have the joint responsibility for implementing this grant process and may award grants up to the annually-appropriated funding levels.

B. Purpose: The WANTO Act's purpose is to provide technical assistance to employers and labor unions to assist them in placing women into apprenticeable and nontraditional occupations (A/NTO). Apprenticeable occupations are described in Section VIII.F. One of the means of providing this technical assistance is through competitive grants awarded to CBOs that focus on conducting innovative projects to improve the recruitment, selection, training, employment, and retention of women into apprenticeable occupations.

DOL has found that placement and retention of women into A/NTO poses significant challenges. For example, on average, only three percent of all newly registered and active apprentices in construction occupations currently are women, although approximately 75 percent of all registered apprenticeship programs are in the construction industry. From 1994 to 2002, DOL awarded WANTO grants annually to CBOs. The outcomes of these prior WANTO grants consisted largely of producing training and resource manuals, as well as recruitment videos. The numbers of women placed in registered apprenticeships through WANTO grant activities were lower than expected.

Studies such as the *American Behavioral Scientist* article, "Occupational Barriers for Women," by Thomas Ruble, Renae Cohen, and Diane Ruble (Vol. 27, No. 3, 339–356 (1984)), and a 2009 study by Australia's National Center for Vocational Education Research [1] have shown that some of the primary barriers to women in nontraditional occupations (NTO) have included a lack of specialized support services, such as dependent care resources (children and dependent adults) and on-the-job mentoring and support from teachers and instructors. Few of these resources for supportive services are available to employers and labor organizations that need assistance

[1] Shewring, Fiona. 2009. *The female "tradie": Challenging employment perceptions in non-traditional trades for women.* National Center for Vocational Education Research (NCVER): Adelaide, Australia. *http://www.ncver.edu.au/publications/2100.html.*

in recruiting, training, and retaining women in apprenticeable occupations and other nontraditional occupations. Additionally, through the experience of recent WANTO grants the Department has found that mature women, those who are at least 40 years of age, may in particular experience barriers to employment in nontraditional occupations. Other WANTO grants and finding from studies such as the June 2006 report, *Construction Equity: Promising Practices for Recruiting and Retaining Students in Career and Technical Education Programs that Nontraditional for Their Gender,*[2] have demonstrated that the active participation of tradeswomen or women in nontraditional occupations serving as active members of the consortium as either employed staff or as board members has positive impacts on WANTO participants. The Department encourages potential applicants to review the findings from these research studies and best practices from prior WANTO grants when considering whether to develop proposals for this funding opportunity. For information about prior WANTO grants go to *http://www.dol.gov/wb/programs/family2.htm* and *http://www.dol.gov/wb/03awards.htm.*

To ensure that women served by WANTO grants have access to a full range of supportive services and training, as well as to specific employment opportunities, the WANTO Technical Assistance Grants program has adopted a consortium-based approach. This SGA requires applicants to demonstrate the clear establishment of a consortium consisting of CBOs and RAP sponsors whereby the RAP sponsors will be responsible partners for placing and retaining women into their programs. CBOs will provide job training services including "hard skills" such as the basics of a skilled occupation, core industry skills training such as tool identification, industry math/science, and industry-related reading/literacy; English as a Second Language instruction, as appropriate for WANTO participants; "soft skills" such as work readiness training, team building, and work-place culture; and supportive services such as mentoring, networking events, on-going support groups, drivers' license recovery programming, and leadership development workshops.

DOL first adopted this consortium approach in 2007 and continued it through 2009, as consortia of CBOs and RAP sponsors focused on aligning supportive services, training and employment opportunities for women in construction industry occupations. Under prior SGAs, the consortium approach also required grantees to place 100 grant program participants in apprenticeships, thereby demonstrating the linkages between CBOs and RAP sponsors. Although the current economic downturn has negatively impacted the projected outcomes of these recent grants, ETA's on-site reviews of these grants indicate that the consortia approach does provide a broad array of supportive services and training and linkages to employment opportunities with RAP sponsors participating in these projects. In recognition of the increased challenges associated with placing WANTO program participants into apprenticeships in these economic conditions, this SGA reduces the requirement for consortia to place program 100 participants to a more achievable level of placement of at least 50 participants annually into apprenticeships. However, DOL encourages applicants to develop projects designed to serve more than the minimum level of 50 participants placed annually into apprenticeships.

Unlike recent WANTO SGAs which were limited to the construction industry, this SGA expands the focus to include recruitment, training, placement and retention in A/NTO in a broader range of industries including advanced manufacturing, transportation, and construction, and "green" jobs in industries related to these three industries. Wages in these three NTO industries tend to be higher than other NTO industries. For the purposes of this SGA, all apprenticeable occupations in the industries above meet the definition of NTO, which are defined in the WANTO Act as those in which women make up 25 percent or less of the total number of workers in that occupation. The SGA's focus on these industries supports the Department's strategic emphasis on assuring workers have the skills and knowledge to succeed in the knowledge-based economy, including high growth and emerging industry sectors like "green" jobs. The Occupational Information Network (O*NET) project has drafted a research paper titled, *Greening of the World of Work: Implications for O*NET–SOC and New and Emerging Occupations.* This study reflects three general categories of occupations, based on different consequences of green economy activities and technologies: (1) Existing occupations expected to experience primarily an increase in employment demand; (2) existing occupations with significant change to the work and worker requirements; and (3) new and emerging green occupations. This research may be helpful in identifying green occupations related to the targeted NTO industries of advanced manufacturing, transportation, and construction. For a copy of the O*NET report and a listing of the identified occupations go to *http://www.onetcenter.org/reports/Green.html.*

As part of the Department's emphasis on funding projects that reflect a well-thought out strategy that makes use of all available resources, applicants are also strongly encouraged to incorporate leveraged resources in their proposals. Up to five bonus points may be awarded to applications that incorporate leveraged resources. To receive these five bonus points, applicants must provide a detailed explanation about the source and use of leveraged funds, and the extent to which they are integrated into the project in support of grant outcomes.

II. Award Information

A. Award Amount: Under this SGA, ETA will fund approximately six grants in the amount of up to $300,000 each for a total of $1,800.000. No other funding is available for this competition. Grant awards through this SGA will be limited to $300,000, and applicants requesting more than $300,000 will be considered non-responsive. The grants will be awarded in June 2010, and will be funded incrementally.

The OA and WB anticipate awarding approximately $300,000 each to no more than six CBO/RAP consortia over a two-year period, with each consortium consisting of at least one of each: (1) A RAP sponsor in the industries described in Section I.B above; and (2) a CBO (which may be faith-based) with demonstrated experience in providing job training services (work readiness as well as industry-specific training), placement, and support services to women for seeking employment in A/NTO. The CBO must be the lead applicant and the fiscal agent for the grant. Applicants are strongly encouraged, but not required, to develop projects that incorporate more than one RAP sponsor in the consortium and provide training and placement in more than one A/NTO.

B. Cost Sharing: Cost sharing or matching funds are not required as a

[2] *Programs and Practices That Work: Preparing Student for Nontradtional Careers Project.* 2006. Washington, DC: Joint project sponsored by the Association of Career and Technical Education, the National Alliance for Partnerships in Equity, the National Association of State Directors of Career Technical Education Consortium, and the National Women's Law Center. *http://www.napequity.org/pdf/Constructing%20Equity.pdf.*

condition for application. However, up to five bonus points may be awarded for proposals that describe any funds and other resources that will be leveraged to support grant activities. *See* Section V.A. 4.

C. Period of Performance: The period of performance will be up to 24 months from the date of execution of the grant documents. DOL ETA may approve a request for a no cost extension to grantees for an additional period of time based on the success of the project and other relevant factors.

D. Veterans Priority: The Jobs for Veterans Act (Public Law 107–288) requires grantees to provide priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. The regulations implementing priority of service for veterans and eligible spouses in DOL job training programs under the Jobs for Veterans Act can be found at Title 20 Code of Federal Regulations (CFR) part 1010. In circumstances where the WANTO grant recipient must choose between two equally qualified candidates for a service, one of whom is a veteran or eligible spouse, the veterans priority of service provisions require that WANTO grant recipients give the veteran or eligible spouse priority of service by first providing her that service. Please note that to obtain priority of service a veteran or spouse must meet the program's eligibility requirement. ETA Training and Employment Guidance Letter (TEGL) No. 10–09 (November 10, 2009) provides guidance on implementing priority of service for veterans and eligible spouses in all qualified job training programs funded in whole or in part by the DOL. TEGL No. 10–09 is available at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816.*

III. Eligibility Information

A. Eligible Applicants: Under this announcement, only CBO/RAP consortia, as defined in Section VIII.F of this SGA, may apply for and receive a grant award. The eligible applicant for the CBO/RAP consortia for the grant must be the CBO, as defined in Section VIII.F. The CBO has the fiscal and administrative responsibility for the grant. ETA will verify that RAP sponsors are registered with ETA or an ETA-recognized State Apprenticeship Agency.

The Department has recently extended funding for current WANTO grantees, therefore these grantees are not eligible to receive funding under this announcement. While a CBO and a RAP are required members of the consortium, DOL ETA encourages applicants to include additional consortium members which can provide expertise or services to enhance the consortium's ability to meet the goals of this SGA. For example, other CBOs or educational institutions may provide supportive services to program participants.

IV. Application and Submission Information

A. How to Obtain an Application Package: This SGA contains all the information needed to apply for this funding opportunity. Additionally, all application materials are available on the following Web sites: *http://www.doleta.gov/grants/find_grants.cfm* and *http://www.grants.gov.*

B. Content and Form of Application: The application must consist of three separate and distinct parts: (I) The Cost Proposal, (II) the Technical Proposal, and (III) Attachments to the Technical Proposal. Applications that fail to adhere to the instructions in this section may be deemed non-responsive and if they are deemed non-responsive they will not be considered for award. Please note that it is the applicant's responsibility to ensure that the amount of funds requested is consistent across all parts and sub-parts of the application.

1. Requirements for Part I, the Cost Proposal. The Cost Proposal must include the following four items.

- *Application for Federal Assistance SF–424:* The Standard Form (SF)–424, "Application for Federal Assistance" is available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm.* The SF–424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the authorized representative of the applicant.
- *Data Universal Number System (D–U–N–S®) Number:* Applicants must supply their D–U–N–S® on the SF–424. All applicants for Federal grant and funding opportunities are required to have a D–U–N–S® Number. *See* Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402, Jun. 27, 2003. The lead applicant, the CBO, must supply their D–U–N–S® number on the SF–424. The D–U–N–S® Number is a non-indicative, nine-digit number assigned to each business location in the Dun and Bradstreet (D&B) database having a unique, separate, and distinct operation, and is maintained solely by D&B entities. The D–U–N–S® Number is used by industries and organizations around the world as a global standard for business identification and tracking. Obtaining a D–U–N–S® Number is easy and there is no charge. To obtain a D–U–N–S® number, access this Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.
- *The SF–424A Budget Information Form:* The SF–424A Budget Information Form is available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm.* In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request, explained in detail below.
- *Budget Narrative:* The budget narrative must provide a description of costs associated with each line item on the SF–424A. In addition, the applicant should address precisely how the administrative costs support the project goals. The entire Federal grant amount requested should be included on both the SF–424 and SF–424A.

Please note that applicants that fail to provide a SF–424, a SF–424A, a D–U–N–S® Number, and a budget narrative will be removed from consideration before the technical review process.

Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Applicants must include in their Cost Proposal the cost of travel to Washington, DC, for one or two members of the lead applicant organization to attend up to two meetings: (1) The Post-Award Conference in which OA and WB will discuss the project, related components, technical assistance (TA), timelines, and outcomes, as detailed in Section VIII.C of this SGA; and (2) a peer-to-peer TA and training conference with other WANTO grantees, OA, and WB which may be scheduled during the grant period of performance.

2. Part II, the Technical Proposal. The Technical Proposal will demonstrate the applicant's capability to implement the grant project in accordance with the provisions of this solicitation. The Technical Proposal must provide information specified in Section V.A of this SGA. The Technical Proposal is limited to twenty double-spaced, single-

sided 8.5 inch by 11 inch pages with 12 point text font and one-inch margins. Any materials beyond the twenty-page limit will not be reviewed. Applicants should number the Technical Proposal beginning with page number 1. Only those attachments listed below as "Required Attachments" will be excluded from the page limit. Applicants that do not provide Part II, the Technical Proposal, will be removed from consideration before the technical review process.

3. Part III. Attachments to the Technical Proposal. In addition to the twenty-page Technical Proposal, the applicant must submit the following "Required Attachments." Only those attachments listed below as "Required Attachments" will be excluded from the page limit. The "Required Attachments" must be affixed as separate, clearly identified appendices to the application. Additional materials such as resumes or general letters of support or commitment will not be read. The "Required Attachments" are as follows:

(a) A two-page abstract summarizing the proposed project, including but not limited to a description of the consortium members, the scope of the project and proposed outcomes.

(b) A copy of a consortium agreement identifying the roles and responsibilities of each consortium member. The consortium agreement must be signed by a representative for every RAP sponsor and CBO listed in the CBO/RAP consortium. No member of a consortium may make a separate application under this SGA.

Applications may be submitted electronically on Grants.gov or in hardcopy by mail or hand delivery. These processes are described in further detail in Section IV.C. Applicants submitting proposals in hardcopy must submit an original signed application (including the SF–424) and one (1) "copy-ready" version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hardcopy are also required to provide an identical electronic copy of the proposal on compact disc (CD).

C. Submission Dates, Times and Addresses: The closing date for receipt of applications under this announcement is April 29, 2010. Applications must be received at the address below no later than 4 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Mamie Williams, Grants Management Specialist, Reference SGA/DFA, PY 09–03, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time.

Applicants may apply online through Grants.gov (*http://www.grants.gov*); however, due to the expected increase in system activity applicants are encouraged to use an alternate method to submit grant applications during this heightened period of demand. While not mandatory, DOL encourages the submission of applications through professional overnight delivery service.

Applications that are submitted through Grants.gov must be successfully submitted at *http://www.grants.gov* no later than 4 p.m. Eastern Time by the closing date, and then subsequently validated by Grants.gov. The submission and validation process is described in more detail below. The process can be complicated and time-consuming. Applicants are strongly advised to initiate the process as soon as possible and to plan for time to resolve technical problems if necessary.

ETA strongly recommends that before the applicant begins to write the proposal, applicants should immediately initiate and complete the "Get Registered" registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic submission in order to avoid unexpected delays that could result in the rejection of an application. It is strongly recommended that applicants use the "Organization Registration Checklist"' at *http://www.grants.gov/assets/Organization_Steps_Complete_Registration.pdf* to ensure the registration process is complete.

Within two business days of application submission, Grants.gov will send the applicant two e-mail messages to provide the status of application progress through the system. The first e-mail, almost immediate, will confirm receipt of the application by Grants.gov. The second e-mail will indicate the application has either been successfully validated or has been rejected due to errors. Only applications that have been successfully submitted by the deadline and subsequently successfully validated will be considered. It is the sole responsibility of the applicant to ensure a timely submission. While it is not required that an application be successfully validated before the deadline for submission, it is prudent to reserve time before the deadline in case it is necessary to resubmit an application that has not been successfully validated. Therefore sufficient time should be allotted for submission (two business days) and, if applicable, subsequent time to address errors and receive validation upon resubmission (an additional two business days for each ensuing submission). It is important to note that if sufficient time is not allotted and a rejection notice is received after the due date and time, the application will not be considered.

To ensure consideration, the components of the application must be saved as either .doc, .xls or .pdf files. If submitted in any other format, the applicant bears the risk that compatibility or other issues will prevent our ability to consider the application. ETA will attempt to open the document but will not take any additional measures in the event of issues with opening. In such cases, the non-conforming application will not be considered for funding.

Applicants are strongly advised to use the tools and documents, including Frequently Asked Questions (FAQs), that are available on the "Applicant Resources" page at *http://www.grants.gov/applicants/app_help_reso.jsp#faqs.* To receive updated information about critical issues, new tips for users and other time sensitive updates as information is available, applicants may subscribe to "Grants.gov Updates" at *http://www.grants.gov/applicants/email_subscription_signup.jsp.*

If applicants encounter a problem with Grants.gov and do not find an answer in any of the other resources, call 1–800–518–4726 to speak to a Customer Support Representative or e-mail *support@grants.gov.*

Late Applications: For applications submitted on Grants.gov, only applications that have been successfully submitted no later than 4 p.m. Eastern Time on the closing date and subsequently successfully validated will be considered.

Any application received after the exact date and time specified for receipt

at the office designated in this notice will not be considered, unless it is received before awards are made, it was properly addressed, and it was: (a) Sent by U.S. Postal Service mail, postmarked not later than the fifth calendar day before the date specified for receipt of applications (*e.g.,* an application required to be received by the 20th of the month must be postmarked by the 15th of that month); or (b) sent by professional overnight delivery service to the addressee not later than one working day prior to the date specified for receipt of applications. "Postmarked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review: This funding opportunity is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

E. Other Submission Requirements: Withdrawal of Applications. Applications may be withdrawn by written notice at any time before an award is made.

F. Funding Restrictions: Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal cost principles or other conditions contained in the grant. Successful and unsuccessful applicants will not be entitled to reimbursement of pre-award costs.

1. *Administrative Costs.* Under this SGA, an entity that receives a grant to carry out a project or program may not use more than ten percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be direct or indirect costs, and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate Agreement from its Federal cognizant agency.

2. *Indirect Cost Rate.* As specified in OMB Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. In order to use grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal cognizant agency either before or shortly after grant award.

3. *Allowable Costs.* The Department determines what constitutes allowable costs in accordance with the following Federal cost principles, as applicable: (1) State and Local Government—OMB Circular A–87; (2) Educational Institutions—OMB Circular A–21; (3) Nonprofit Organizations—OMB Circular A–122; and (4) Profit-making Commercial Firms—48 CFR Part 31.

4. *Legal rules pertaining to inherently religious activities by organizations that receive Federal financial assistance.* The government is generally prohibited from providing direct Federal financial assistance for inherently religious activities. *See* 29 CFR part 2, Subpart D. Grants under this solicitation may not be used for religious instruction, worship, prayer, proselytizing, or other inherently religious activities. Neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of grant recipients and must be employed by grantees in the selection of sub-recipients.

5. *Salary and Bonus Limitations.* Under Public Law 109–234, none of the funds appropriated in Public Law 109–149, or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, shall be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. Public Laws 111–8 and 111–117 contain the same limitations with respect to funds appropriated under each of those Laws. These limitations also apply to grants funded under this SGA. The salary and bonus limitation does not apply to vendors providing goods and services as defined in OMB Circular A–133 (codified at 29 CFR parts 96 and 99). *See* Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DCON=2262.*

6. *Intellectual Property Rights.* The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal purposes: (i) The copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and (ii) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which is limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, the following needs to be on all products developed in whole or in part with grant funds:

"This workforce solution was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. The solution was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This solution is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for non-commercial purposes are permissible. All other uses require the prior authorization of the copyright owner."

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate the grant proposals. These criteria and point values are:

(1) Organizational Overview—20 points.

(2) Placement and Retention of Women in Registered Apprenticeship Programs—30 points.

(3) Scope of WANTO Project and Projected Outcomes—50 points.

(4) Bonus Points for Leveraged Resources—5 points.

1. Organizational Overview (20 Points)

To be considered fully responsive, the CBO/RAP consortium applicant must fully and clearly describe all of the following elements in a manner that will demonstrate the organization's experience, capability and qualifications for administering a grant project.

(a) Describe the consortium members' experience and leadership in recruiting, selecting, training, placing and retaining women in apprenticeable nontraditional occupations (5 points).

(b) Describe how the management structure and staffing of the proposed project will enable the CBO/RAP consortium to meet the grant requirements, vision, and goals; and how the management structure and staffing are designed to assure responsible general management of the organization (5 points).

(c) Describe all key tasks associated with the proposal, including the identification of consortium members, and any proposed consultants or subcontractors responsible for completing each task (5 points).

(d) Demonstrate how tradeswomen or women in nontraditional occupations serve as active members of the consortium as either employed staff or as board members (5 points).

2. Placement and Retention of Women in Registered Apprenticeship Programs (30 Points)

The consortium must fully and clearly describe its knowledge of the labor market and how this will help the consortium to place at least 50 women in RAP(s) each year of the grant. The applicant must provide detailed information for the following:

(a) An analysis of labor market information and other information such as survey information from regional employers or trade associations, that demonstrates the demand for skilled workers and the sufficient numbers of suitable and appropriate apprenticeships in the industries described in Section I.B of this SGA in which RAP(s) plan to train, employ, and retain women (10 points).

(b) A description of the apprenticeable occupations in the industries described in Section I.B of this SGA in which the CBO/RAP consortium plans to train, employ, and retain women (10 points).

(c) A description of activities demonstrating previous success with apprentices registered per year for the last five years with the RAP sponsors participating in the CBO/RAP consortium (10 points).

3. Scope of WANTO Project and Projected Outcomes (50 Points)

The applicant must fully and clearly describe the type(s) of technical assistance (TA) to be provided to the RAP(s) with WANTO funding, as well as how the TA will be delivered. The OA and WB consider the successful annual placement of at least 50 women into apprenticeships in the industries specified in Section I.B. to be the primary successful outcome that a grantee can achieve with WANTO funding.

To be considered fully responsive to this element, the applicant must clearly and fully address the following:

(a) *Plan of Action for TA (25 Points):* Fully and clearly describe in detail the types of TA that will be provided to the RAP(s), and the types of systemic change anticipated by the TA strategies that will be incorporated into ongoing employer recruitment, hiring, training, and promotion of women in A/NTO. Examples of such TA may include, but are not limited to: (1) Outreach strategies and orientation sessions to recruit women into the RAP(s) occupations and specific openings in RAP(s); (2) pre-apprentice programs as defined in Section VIII.F of this SGA, to prepare women for apprenticeship, including English as a Second Language instruction; (3) ongoing orientations for the RAP(s) and workers on creating a successful environment for women in apprenticeship; (4) supportive services such as child care and transportation, support groups, and facilitation of networks for women in apprenticeship, on or off the job site, to improve their retention; (5) liaison services between tradeswomen and the RAP(s) to facilitate retention of the women placed into apprenticeships as a result of the proposed project, as well as retention in apprenticeship of other women who may be already enrolled as registered apprentices with the RAP(s); and (6) conducting exit interviews with tradeswomen who may complete their apprenticeship or leave their apprenticeship before completion, including women placed in the apprenticeship as a result of the proposed project, or other women who may be already enrolled as registered apprentices. These interviews can inform the development, assessment, and improvement of TA strategies provided either through this project or other similar efforts designed to prepare and support tradeswomen for on-the-job experiences in an A/NTO.

(b) *Outcomes (25 points):* Fully and clearly describe the outcomes the applicant anticipates as a result of WANTO funding. Outcomes must include, but are not limited to: (1) Number of women to be placed in pre-apprenticeships; (2) number of women placed in apprenticeships; and (3) of the women placed in apprenticeships, the percent who retain these apprenticeships through the grant period of performance. Other outcomes could include the number of women achieving skill gains, earning industry-recognized credentials, or meeting other benchmarks appropriate for the particular project.

4. Bonus Points (5 Points)

Bonus points will be awarded for proposals that fully and clearly describe any funds and other resources leveraged to support grant activities and how these funds and other resources will be used to contribute to the proposed outcomes for the project, including any leveraged resources related to the provision of supportive services for program participants. This includes funds and other resources leveraged from businesses, labor organizations, education and training providers, and/or Federal, State, and local government programs. Bonus points will be awarded based on the extent to which the applicant fully demonstrates the amount of leveraged resources provided, the type(s) of leveraged resources provided, the strength of commitment to provide these resources, the breadth and depth of the resources provided, and how well these resources support the proposed grant activities.

In order to receive full credit, applicants must provide quality information that does more than reiterate the requirement statement or provide a brief overview of how the proposed project will address the requirements. Applicants should clearly and fully state how the proposed program will meet the requirements of this SGA. Therefore, responses must be thoughtful and reflect a strategic vision for how these requirements will be achieved. In addition, an applicant that describes only what has been accomplished in the past but lacks full description of what it will do during the grant period will not receive credit for the response.

B. Review and Selection Process

Selection Process. Applications for grants under this solicitation will be accepted after the publication of this

announcement until the closing date. A technical review panel will make careful evaluation of applications against the criteria. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 105 points may be awarded to an application, based on the required information described in Section V.A. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as technical quality, geographic balance, occupational and/or industry representation, availability of funds and uniqueness of project. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his/her attention. The government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF–424, which constitutes a binding offer by the applicant including electronic signature via E-Authentication on *http://www.grants.gov.* The Grant Officer's determination of award under this SGA is the final agency action.

VI. Additional Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA Homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution and non-selected applicants will be notified by mail. Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, ETA may enter into negotiations about such items as program components, staffing and funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees, including FBOs, will be subject to all applicable Federal laws, regulations (available at *http://gpoaccess.gov/cfr*) and the applicable OMB Circulars (available at *http://www.whitehouse.gov/omb/circulars*). The grants awarded under this SGA are subject to the applicable administrative standards and provisions, including, but not limited to, the following:

- All Grant Recipients—20 CFR part 667.220 (Administrative Costs).
- Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).
- Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).
- State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).
- Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles), and 29 CFR part 95 (Administrative Requirements).
- 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.
- 29 CFR parts 29 and 30—Labor Standards for Registration of Apprenticeship Programs, and Equal Employment Opportunity in Apprenticeship and Training.
- 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.
- 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.
- 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.
- 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.
- 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.
- All entities must comply with 29 CFR parts 37, 93, and 98, and where applicable 29 CFR parts 96 and 99.

The Department notes that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. sec. 2000bb, applies to all Federal law and its implementation. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive Federal financial assistance under Title I of the Workforce Investment Act and maintain that hiring practice even though Section 188 of the Workforce Investment Act contains a general ban on religious discrimination in employment. If you are awarded a grant, you will be provided with information on how to request such an exemption.

In accordance with Section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) and 29 CFR part 93, non-profit entities that engage in lobbying activities are not eligible to receive Federal funds and grants.

2. Administrative Standards and Provisions

Except as specifically provided, DOL ETA acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB circulars require, and an entity's procurement procedures must require, that all procurement transactions will be conducted, as practical, to provide full and open competition. If a proposal identifies a specific entity to provide the services, the DOL ETA award does not provide the justification or basis to sole-source the procurement, *i.e.,* avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

C. Reporting

The grantee is required to provide the reports and documentation listed below.

1. *Quarterly Financial Reports.* A Quarterly Financial Status Report (ETA 9130) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use DOL ETA's On-Line Electronic Reporting System. A Closeout Financial Status Report is due 90 days after the end of the grant period.

2. *Quarterly Progress Reports.* The grantee must submit a quarterly progress report to the designated Federal Project Officer within 45 days after the end of each calendar year quarter. Two copies are to be submitted providing a detailed account of activities undertaken during that quarter. DOL ETA may require additional data elements to be collected and reported on either a regular basis or special request basis. Grantees must agree to meet DOL ETA reporting requirements. The quarterly progress report should be in narrative form and should include:

(a) A comparison of actual accomplishments with the goals and objectives established for the period. This must include discussion of placements in pre-apprenticeship programs, apprenticeships and nontraditional jobs, giving the name and

address of each workplace and company involved; and TA provided to RAP(s) as well as the nature of the TA provided.

(b) Reasons why established goals were not met, if appropriate, or descriptions of strategies that were particularly effective and allowed goals to be exceeded.

(c) Any problems that may impede the performance of the grant and the proposed corrective action.

(d) Any changes in the proposed work to be performed during the next reporting period.

In addition, between scheduled reporting dates, the grantee(s) must immediately inform the designated Federal Project Officer of significant developments affecting the ability to accomplish the work.

3. *Final Report.* No later than 90 days after the expiration of the grant award, the grantee must submit two copies of the camera-ready final report, each bound in a professional manner in a loose-leaf notebook. These materials must be paid for with grant funds. Instructions for the final report will be issued and may include performance data; outcome results such as placement in apprenticeship and retention of women placed in apprenticeship; an assessment of the grant project, any employer or labor organization plans for follow-up of participants, such as strategies to help retain participants in the apprenticeships; and an Executive Summary of no more than three (3) pages. Upon request of either the OA or WB, the grantee must submit a draft final report no more than 60 days after the expiration date of the grant. The OA and the WB will then review the draft report, and provide written comments to the grantee within 15 days of receipt.

Applicants should be aware of Federal guidelines on record retention, which require grantees to maintain all records pertaining to grant activities for a period of not less than three years from the time of final grant close-out.

VII. Agency Contacts

For further information about this SGA, please contact Mamie Williams, Grants Management Specialist, Division of Federal Assistance at (202) 693–3341. This is not a toll-free number. Applicants may fax questions about the program or information in this SGA to (202) 693–2879, and must specifically address the fax to the attention of Mamie Williams, and should include SGA/DFA PY09–03, a contact name, fax and phone number, and an e-mail address. Applicants may e-mail questions to *Williams.mamie@dol.gov,* and include a contact name, fax and phone number, and an e-mail address. The mailing address is: U.S. Department of Labor, Employment and Training Administration, Attention: Mamie Williams, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210.

VIII. Other Information

A. OMB Information Collection No. 1225–0086 Expires November 30, 2012

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, to the attention of Darrin A. King, Departmental Clearance Officer, 200 Constitution Avenue, NW., Room N–1310, Washington, DC 20210. Comments may also be e-mailed to *DOL_PRA_PUBLIC@dol.gov.* Please do not return the completed application to this address. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this SGA will be used by the Department to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential, and will be available to the public. Applications filed in response to this SGA may be posted on the Department's Web site.

B. Questions About the Program or SGA

Address all questions to the Grant Specialist specified in Part VII of this SGA. Please do not direct questions to the OA or WB.

C. Post Grant Award Conference

No later than eight weeks after an award, the grantees must meet with the OA and the WB at the Post-Award Conference to discuss the project, related components and TA; timelines; TA outcomes; assessment comments and final approval. The grantees, the OA and WB will discuss and make decisions on the following program activities:

- The proposed TA commitments for registered apprenticeship, and related skilled nontraditional occupation activities and responsibilities; the number of targeted RAP(s); and the number of women who will be placed in a registered apprenticeship program.
- The methodology the proposed partnership will use to support/change management and employee attitudes to promote female workers in A/NTO.
- The types of systemic change anticipated by the TA strategies that will be incorporated into ongoing employer recruitment, hiring, training, and promotion of women in A/NTO.
- The occupational, industrial, and geographical impact anticipated.
- The supportive services to be provided to employers and women after successful placement into A/NTO.

The OA and WB will provide further input orally or in writing, if necessary, within ten working days after the Post-Award Conference.

D. Grant Plan of Action

If, as a result of the Post-Award Conference, revisions are necessary, the grantee must submit its proposed revisions to the designated Federal Project Office within ten weeks after an award. The grantee, the designated Federal Project Officer, OA and WB will discuss, adjust as necessary, and confirm the "plan of action for TA" included in the applicant's Technical Proposals in response to Section V.A.3(a) of this SGA, and provide a detailed timeline for program implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

E. Grant Implementation

No later than twelve weeks after an award, the grantee(s) must have begun to recruit, train, place, retain, and otherwise prepare women for registered apprenticeships in the industries set forth in this SGA, with progress to be measured in terms of numbers of women placed and retained in registered apprenticeships and nontraditional occupations.

F. Acronyms and Definitions

For the purposes of this SGA, the following terms are defined for the convenience of prospective applicants:

A/NTO refers to apprenticeship and nontraditional occupations.

Apprenticeship Committee, as defined in 29 CFR 29.2, means those persons designated by the sponsor to administer the program. A committee may be either joint or non-joint, as follows:

(a) A joint committee is composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s).

(b) A non-joint committee, which may also be known as a unilateral or group non-joint (which may include employees) committee, has employer representatives but does not have a bona fide collective bargaining agent as a participant.

Apprenticeable occupations, as defined in 29 CFR 29.4, are specified by industry and which (a) involve skills that are customarily learned in a practical way through a structured, systematic program of on-the-job supervised learning; (b) be clearly identified and commonly recognized throughout an industry; (c) involve the progressive attainment of manual, mechanical or technical skills and knowledge which, in accordance with the industry standard for the occupation, would require the completion of at least 2,000 hours of on-the-job learning to attain; and (d) require related instruction to supplement the on-the-job learning.

CBO (Community-Based Organization) is a private nonprofit organization (*i.e.,* incorporated under IRS Section 501(c)(3) or 501(c)(4) (except for section 501(c)(4) organizations that engage in lobbying as described in Section VI. B. of this SGA), or is actively pursuing IRS nonprofit tax exempt status) which may be faith-based, that is representative of a community or a significant segment of a community, and which provides job training services and has demonstrated experience administering programs that train women for A/NTO. A CBO, as defined in the WANTO Act, means a "community-based organization as defined in [section 101(7) of WIA (29 U.S.C. 2801 7)], that has demonstrated experience administering programs that train women for apprenticeable occupations or other nontraditional occupations." WIA states, "The term 'community-based organizations' means 'private nonprofit organizations which are representative of communities or significant segments of communities and which provide job training services.' " The WIA definition provides examples of organizations which meet the definition, including "union-related organizations" and "employer-related nonprofit organizations.")

CBO/RAP Consortium refers to a group consisting of a minimum of: (1) A RAP sponsor; and (2) a CBO (which may be faith-based) with demonstrated experience in providing job training services ("hard skills" such as the basics of a skilled occupation, core industry skills training such as tool identification, industry math/science, and industry-related reading/literacy; "soft skills" such as work readiness training, team building, work-place culture; and supportive services such as English as a Second Language, mentoring, networking events, on-going support groups, drivers' license recovery programming, and leadership development workshops.

NTO (Nontraditional Occupations) are those where women account for less than 25 percent of all persons employed in a single occupational group. For the most recent listing of nontraditional occupations, *see* the WB Web site at *http://www.dol.gov/wb/stats/main.htm.*

OA refers to the Office of Apprenticeship, U.S. Department of Labor, Employment and Training Administration.

Pre-Apprenticeship Programs are those programs that prepare individuals for registered apprenticeship. Depending on the apprenticeable occupation for which the program is preparing students, the curriculum would vary. For example, a curriculum for a construction industry occupation may include pre-vocational identification and use of tools, blueprint reading, basic shop skills, safety procedures, math skills, and physical conditioning. English as a Second Language and team-building skills might also be included.

Registered Apprenticeship is a formal employment relationship designed to promote skill training and learning on the job. "Hands on" learning takes place in conjunction with related theoretical instruction (often in a classroom setting). An apprentice who successfully completes an OA registered program, which usually requires 3 to 5 years, is awarded a certificate of completion of apprenticeship. An OA registered program is one in which employers, or groups of employers, and unions design, organize, manage, and finance apprenticeship programs under the standards developed and registered with OA or a DOL ETA-recognized State Apprenticeship Agency. Employers, or groups of employers, and unions also select apprentices who are trained to meet certain predetermined occupational standards. For more information, *see* the OA Web site at *http://www.doleta.gov/oa/.*

RAP refers to Registered Apprenticeship Program.

Registered Apprenticeship Program Sponsor refers to any person, association, committee, or organization operating an apprenticeship program in whose name the program is (or is to be) registered or approved.

TA refers to technical assistance.

WANTO refers to Women in Apprenticeship and Nontraditional Occupations.

WB refers to the Women's Bureau, U.S. Department of Labor.

Please be advised that the Grant Officer for this competition is B. Jai Johnson.

Signed, at Washington, DC, this 24th day of March 2010.

Eric D. Luetkenhaus,

Grant Officer.

[FR Doc. 2010–6950 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 9, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 9, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of March 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 2/22/10 and 2/26/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73523	Vertis Communications (Wkrs)	Minneapolis, MN	02/22/10	01/31/10
73524	Evansville Association for the Blind (Comp)	Evansville, IN	02/22/10	02/02/10
73525	Haliburton Energy Services—Field Camps (State)	Duncan, OK	02/22/10	02/17/10
73526	Advanced Recycling Equipment (Wkrs)	St. Mary's, PA	02/22/10	02/16/10
73527	TGKY Corporation (Wkrs)	Lebanon, KY	02/22/10	02/18/10
73528	Sara Lee Corporation (Comp)	Mason, OH	02/22/10	02/03/09
73529	ACS Information Tech Solutions (State)	Waite Park, MN	02/22/10	12/16/09
73530	Astreya Partners (Wkrs)	Santa Clara, CA	02/22/10	02/07/10
73531	Titanium Metal Corporation (Wkrs)	Toronto, OH	02/22/10	02/09/10
73532	Rotodie Company, Inc. (Wkrs)	Meadows of Dan, VA	02/22/10	02/16/10
73533	Bontex, Inc. (Comp)	Buena Vista, VA	02/22/10	02/17/10
73534	US Natural Resources, Inc. (Union)	Woodland, WA	02/22/10	02/01/10
73535	Little Rock Express (Comp)	Houlton, ME	02/22/10	02/19/10
73536	Allstate Insurance Company (Wkrs)	Altoona, PA	02/22/10	02/19/10
73537	Peter Wolters of America (Wkrs)	West Springfield, MA	02/22/10	02/10/10
73538	JT Sports LLC (Comp)	Bentonville, AR	02/22/10	02/12/10
73539	Georgia-Pacific Consumer Products, LP (Union)	Green Bay, WI	02/22/10	02/16/10
73540	Keiper, LLC (Comp)	Eldon, MO	02/22/10	02/18/10
73541	TTC (Comp)	Knoxville, TN	02/22/10	02/18/10
73542	Sanofi-Aventis Pharmaceuticals (Comp)	Kansas City, MO	02/22/10	02/10/10
73543	Bumble Bee Foods, LLC (Comp)	Prospect Harbor, ME	02/23/10	02/22/10
73544	Premier Manufacturing (Union)	Fremont, CA	02/23/10	02/16/10
73545	TG California Automotive Sealing, Inc. (State)	Hayward, CA	02/23/10	02/22/10
73546	Beiersdorf, Inc. (State)	Norwalk, CT	02/23/10	02/18/10
73547	Acxiom Corporation (State)	Little Rock, AR	02/23/10	02/22/10
73548	RG Barry Corporation (Comp)	Pickerington, OH	02/23/10	02/12/10
73549	Caterpillar Inc. dba Dyersburg Transmission Facility (Comp)	Dyersburg, TN	02/23/10	02/22/10
73550	IBM (Wkrs)	Charlotte, NC	02/23/10	02/16/10
73551	Cemex, Inc. (Wkrs)	Davenport, CA	02/23/10	02/12/10
73552	Lincoln Foodservice Products, LLC (Union)	Fort Wayne, IN	02/23/10	02/22/10
73553	Concise Fabricators, Inc. (State)	Tucson, AZ	02/24/10	02/23/10
73554	Dixie Belle Textiles (Wkrs)	Elkin, NC	02/24/10	02/20/10
73555	Hewlett Packard Cooperation (Wkrs)	Omaha, NE	02/24/10	02/17/10
73556	Flextronics (Comp)	Creedmoor, NC	02/24/10	02/23/10
73557	Narriot Industries, LLC (Comp)	Boykins, VA	02/24/10	02/22/10
73558	Robert Bosch, LLC (Comp)	Johnson City, TN	02/24/10	02/23/10
73559	APM Terminals (Wkrs)	Charlotte, NC	02/24/10	02/22/10
73560	BCD Travel, Siemens World Travel (Wkrs)	Boise, ID	02/24/10	02/23/10
73561	Musashi Auto Parts (State)	Battle Creek, MI	02/24/10	02/23/10
73562	Colville Indian Plywood and Veneer (Comp)	Omak, WA	02/25/10	02/24/10
73563	IBM (Wkrs)	Sterling Forest, NY	02/25/10	02/24/10
73564	Thieman Stamping Company (Wkrs)	New Bremen, OH	02/25/10	02/23/10
73565	Fred Martin Motors (Wkrs)	Barberton, OH	02/25/10	02/22/10
73566	Precision Etchings & Findings, Inc. (Comp)	Warwick, RI	02/25/10	02/24/10
73567	Hirschler Manufacturing (State)	Kirkland, WA	02/25/10	02/22/10
73568	Scioto Plastics (Wkrs)	Franklin Furnace, OH	02/25/10	02/24/10
73569	Triton Holdings Inc./Bayview Edison Industries (State)	Mount Vernon, WA	02/25/10	02/23/10
73570	The Wichita Eagle (Wkrs)	Wichita, KS	02/25/10	02/15/10
73571	Halliburton Energy Services—Field Camps (State)	Duncan, OK	02/26/10	02/17/10
73572	Track Corporation (State)	Spring Lake, MI	02/26/10	02/13/10
73573	Lacie Limited (Wkrs)	Hillsboro, OR	02/26/10	02/22/10
73574	Kohler Company (Union)	Kohler, WI	02/26/10	02/24/10
73575	Springs Window Fashions, LLC (Comp)	Middleton, WI	02/26/10	02/24/10
73576	B/E Aerospace, Inc. (Wkrs)	Winston Salem, NC	02/26/10	02/17/10
73577	Aigis Mechtronics, Inc. (Wkrs)	Winston Salem, NC	02/26/10	02/22/10
73578	Burns Industrial Group (Comp)	Strongsville, OH	02/26/10	02/19/10
73579	Consolidated Glass and Mirror Corporation (Comp)	Galax, VA	02/26/10	02/25/10
73580	Rotometrics Virginia (Comp)	Meadows of Dan, VA	02/26/10	02/23/10
73581	Dell, Inc. (Wkrs)	Nashville, TN	02/26/10	02/16/10
73582	EDAG, LLC (Wkrs)	Auburn Hills, MI	02/26/10	02/04/10
73583	JPMorgan Chase (Wkrs)	Columbus, OH	02/26/10	02/12/10

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 9, 2010.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 9, 2010.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 12th day of March 2010.

Elliott Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 3/1/10 and 3/5/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73584	Analog Devices, Inc. (State)	Cambridge, MA	03/01/10	03/01/10
73585	Shop Vac Corporation (Wkrs)	Williamsport, PA	03/01/10	02/26/10
73586	Norcross Safety Products (Comp)	Nashua, NH	03/01/10	02/22/10
73587	ArcelorMittal Weirton, Inc. (Union)	Weirton, WV	03/01/10	02/26/10
73588	AGC Chemicals Americas, Inc. (Union)	Exton, PA	03/01/10	02/01/10
73589	Chrysler Corporation (Wkrs)	Fenton, MO	03/01/10	02/01/10
73590	Hi-Tech Duravent (State)	Georgetown, MA	03/02/10	02/26/10
73591	Chrysler Group (Union)	Fenton, MO	03/02/10	02/25/10
73592	Schneider Electric (Wrks)	Columbia, MO	03/02/10	03/01/10
73593	IBM (Wkrs)	Boulder, CO	03/02/10	02/24/10
73594	Glaston America, Inc. (State)	Cinnaminson, NJ	03/02/10	03/01/10
73595	BT Americas, Inc. (Wkrs)	El Segundo, CA	03/02/10	03/01/10
73596	Colville Indian Precision Pine (Comp)	Omak, WA	03/02/10	02/24/10
73597	Tandy Brandis Accessories, Inc. (Comp)	Yoakum, TX	03/02/10	02/22/10
73598	Biotech Industries (Comp)	Newton, NC	03/02/10	02/28/10
73599	Forreston Tool, Inc. (Comp)	Forreston, IL	03/02/10	03/01/10
73600	Kyowa America Corporation (State)	Westminster, CA	03/02/10	03/01/10
73601	Semperian (State)	Greeley, CO	03/02/10	03/01/10
73602	Apria Healthcare (Comp)	Jackson, TX	03/03/10	03/01/10
73603	Apria Healthcare (Comp)	Morrisville, NC	03/03/10	03/01/10
73604	Apria Healthcare (Comp)	Minster, OH	03/03/10	03/01/10
73605	Apria Healthcare (Comp)	Indianapolis, IN	03/03/10	03/01/10
73606	TEK Systems (State)	Brooklyn Park, MN	03/03/10	03/01/10
73607	Armstrong Hardwood Flooring Company (State)	Oneida, TN	03/03/10	02/26/10
73608	Pricewaterhouse Coopers, LLP (Wkrs)	Charlotte, NC	03/03/10	01/29/10
73609	Faurecia Emissions Control Technologies (Comp)	Troy, MI	03/03/10	02/22/10
73610	Visteon Corporation Regional Assembly and Manufacturing, LLC (Comp).	Springfield, OH	03/03/10	03/02/10
73611	Pricewaterhouse Coopers, LLP (Wkrs)	Boston, MA	03/03/10	03/02/10
73612	Weiman Upholstery (Wkrs)	Christiansburg, VA	03/03/10	02/22/10
73613	Drimark Products, Inc. (Comp)	Port Washington, NY	03/03/10	03/01/10
73614	Technimark, LLC (Comp)	Fayetteville, NC	03/03/10	02/26/10
73615	Smurfit-Stone Container (Union)	Jefferson, OH	03/03/10	03/01/10
73616	Experian (Comp)	Costa Mesa, CA	03/03/10	03/01/10
73617	Air Products & Chemicals, Inc. (Wkrs)	Allentown, PA	03/03/10	02/18/10
73618	Quincy Castings, Inc. (Comp)	Quincy, OH	03/03/10	02/23/10
73619	Charles Craft, Inc. (Comp)	Laurinburg, NC	03/03/10	02/23/10
73620	Ticona Polymers (Wkrs)	Grover, NC	03/03/10	02/22/10
73621	Thermo Fisher Hilton Products Division (Union)	Two Rivers, WI	03/03/10	03/02/10
73622	Kilburn's Plating Company, Inc. (Wkrs)	Adamsville, TN	03/04/10	02/25/10
73623	LSI Corporation (Wkrs)	Fort Collins, CO	03/04/10	03/03/10
73624	YRC (Wkrs)	Columbus, OH	03/04/10	03/03/10
73625	Compuware Corporation (Wkrs)	Detroit, MI	03/04/10	02/10/10
73626	Magna Powertrain (State)	Troy, MI	03/04/10	02/10/10
73627	Pratt and Whitney International Aerospace Tubes, LLC (Comp).	Indianapolis, IN	03/04/10	03/01/10
73628	AF Services, Inc. (State)	Torrance, CA	03/04/10	02/26/10

APPENDIX—Continued

[TAA petitions instituted between 3/1/10 and 3/5/10]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
73629	Plycraft Industries (State)	Huntington Park, CA	03/04/10	03/02/10
73630	Pricewaterhouse Coopers, LLP (Wkrs)	Atlanta, GA	03/04/10	03/02/10
73631	Matsu Ohio (Wkrs)	Edgerton, OH	03/04/10	03/01/10
73632	Simdar Interconnect Technologies (Wkrs)	Ozark, MO	03/04/10	03/01/10
73633	Meridian Automotive Systems (State)	Allen Park, MI	03/04/10	02/10/10
73634	Republic Engineered Products, Inc. (Union)	Canton, OH	03/04/10	03/03/10
73635	The Boeing Company (Wkrs)	St. Louis, MO	03/04/10	02/24/10
73636	1–2–1 Direct Response (State)	Philadelphia, PA	03/04/10	03/01/10
73637	Aerotek (Wkrs)	Lexington, KY	03/04/10	02/26/10
73638	Tritex, LLC (Wkrs)	Independence, VA	03/05/10	03/01/10
73639	Bimbo Bakeries USA, Inc. (Comp)	Houston, TX	03/05/10	01/28/10
73640	Wacker Chemical Corporation (Comp)	Duncan, SC	03/05/10	03/04/10
73641	Mitsuba Bardstown, Inc. (Comp)	Bardstown, KY	03/05/10	02/25/10
73642	Intel Corporation (Comp)	Hillsboro, OR	03/05/10	03/03/10
73643	IBM Global Services (State)	Southbury, CT	03/05/10	03/04/10
73644	Cinram Distribution, LLC (Comp)	La Vergne, TN	03/05/10	03/04/10
73645	Bimbo Bakeries USA, Inc. (Comp)	Montebello, CA	03/05/10	01/28/10
73646	International Automotive Components (Comp)	Warren, MI	03/05/10	03/01/10
73647	Cut Loose Inc. (Wkrs)	San Francisco, CA	03/05/10	03/03/10
73648	Gelita USA (Comp)	Sgt Bluff, IA	03/05/10	03/03/10
73649	STOPS, Inc. (Wkrs)	Titusville, FL	03/05/10	03/04/10
73650	Cole Pattern & Engineering (Wkrs)	Fort Wayne, IN	03/05/10	03/03/10

[FR Doc. 2010–6917 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,894]

U.S. Axle Inc.: Pottstown, PA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 19, 2009 by a company official on behalf of workers of U.S. Axle Inc., Pottstown, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 11th day of March, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6929 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–73,284]

Lockheed Martin: Cleveland, OH; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on January 14, 2010 by a company official on behalf of workers of Lockheed Martin, Cleveland, Ohio.

The petitioner(s) has (have) requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 9th day of March, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6915 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,580]

International Business Machines Corporation: Armonk, NY; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on May 21, 2009 on behalf of workers of International Business Machines Corporation, Armonk, New York.

The petitioning group of workers is covered by a certification, (TA–W–71,248) which expires on July 31, 2011. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 4th day of March, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6918 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,622]

Vision Custom Tooling, Inc., Birdsboro, PA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 9, 2009 on behalf of workers of Vision Custom Tooling, Inc., Birdsboro, Pennsylvania.

The applicable regulation states that a group of workers may file a petition for a certification of eligibility to apply for Trade Adjustment Assistance (TAA).

The regulation defines a group as "three or more workers in a firm or an appropriate subdivision thereof."

On the TAA petition, the petitioner placed a line through "three" and placed the Arabic number "one" aside the strike-through, indicating that the petition was filed by one worker and not three workers.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC this 10th day of March, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6921 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,731]

Valentine Tool and Stamping, Inc.: Norton, MA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on July 20, 2009 in response to a worker petition filed by a company official on behalf of workers of Valentine Tool and Stamping, Inc., Norton, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of March, 2010.

Del Min Amy Chen

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6923 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,176]

Euclid Industries, Inc.: Bay City, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated on June 12, 2009 in response to a worker petition filed by a company official on behalf of workers of Euclid Industries, Inc., Bay City, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of March, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6919 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,945]

Bluementhal Print Works, New Orleans, LA; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 25, 2009 on behalf of workers of Bluementhal Print Works, New Orleans, Louisiana.

The petition has been deemed invalid. The petition does not contain a group of three workers who work at the same location. In order to be considered an affected worker group, a group of three workers must work at the same location. Consequently, the investigation has been terminated.

Signed at Washington, DC this 19th day of February, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6931 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,907]

Gallery Leather Company, Inc., Trenton, ME; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 20, 2009, by a company official on behalf of workers of Gallery Leather Company, Inc., Trenton, Maine.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 10th day of March, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6930 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,598]

Nittsu Shoji U.S.A., Inc. Troy, OH; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on October 16, 2009 by a company official on behalf of workers of Nittsu Shoji U.S.A., Inc., Troy, Ohio.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated. Signed at Washington, DC this 9th day of March, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6928 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,588]

Pavco Industries, Inc., Pascagoula, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on October 15, 2009, by a company official on behalf of workers of Pavco Industries, Inc., Pascagoula, Mississippi.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC this 9th day of March, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6927 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,418]

Electronic Data Systems, a Hewlett-Packard Company: Montvale, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on September 28, 2009, by the State Workforce Office, on behalf of workers of Electronic Data Systems, a Hewlett-Packard Company, Montvale, New Jersey.

The petitioner has requested to withdraw the petition. Therefore, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 10th of March, 2010.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6926 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,415]

Ohio American Energy, Inc.: Brilliant, OH; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on September 25, 2009 by a company official on behalf of workers of Ohio American Energy, Inc., Brilliant, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 26th day of February, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6925 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,401]

Jastev Casework Company, Columbia, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on September 24, 2009, by a company official on behalf of workers of Jastev Casework Company, Columbia, Tennessee.

The petitioner has requested that the petition be withdrawn. Accordingly, the investigation has been terminated.

Signed at Washington, DC, this 9th day of March, 2010

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6924 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,630]

Sheet Metal Workers Internationl Association, Local 292: Troy, MI; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on July 13, 2009 on behalf of workers of Steel Metal Workers International Association, Local 292, Troy, Michigan.

The petitioning workers were filing on behalf of workers employed by several unaffiliated firms.

The petition regarding the investigation has been deemed invalid. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of February, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6922 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,443]

Applied Materials; Boise, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed June 29, 2009 on behalf of workers of Applied Materials, Boise, Idaho.

The petitioning group of workers is covered by an active certification, (TA–W–71,296) which expires on March 4, 2012. Therefore, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC this 4th day of March, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6920 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,965]

Hickory Dyeing and Winding Co., Inc.: Hickory, NC; Notice of Termination of Investigation

Pursuant to Section 223 of the Trade Act of 1974, as amended, an investigation was initiated in response to a petition filed on November 27, 2009, by a company official on behalf of workers of Hickory Dyeing and Winding Co., Inc., Hickory, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 23rd day of February, 2010.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2010–6932 Filed 3–29–10; 8:45 am]

BILLING CODE 4510–FN–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection; Request for Public Comments

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on a revision of an approved information form (SF–SAC) that is used to report audit results, audit findings, and questioned costs as required by the Single Audit Act Amendments of 1996 (31 U.S.C. 7501, *et seq.*) and OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

In compliance with the American Recovery and Reinvestment Act of 2009 (ARRA), the proposed change is to add a new data element on Part III of the SF–SAC Form to identify ARRA expenditures. The current Form SF–SAC was designed for audit periods ending in 2008, 2009 and 2010. The proposed revised Form SF–SAC will replace the current form for audit periods ending 2010 and will also be used for audit periods ending in 2011 and 2012.

DATES: Submit comments on or before April 29, 2010. Late comments will be considered to the extent practicable.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that mailed comments will be received before the comment closing date.

Electronic mail comments may be submitted to: Gilbert Tran at *hai_m._tran@omb.eop.gov.* Please include "Form SF–SAC Comments" in the subject line and the full body of your comments in the text of the electronic message, not as an attachment. Please include your name, title, organization, postal address, telephone number and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

All responses will be summarized and included in the request for OMB approval. All comments will also be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3052. The proposed revisions to the Information Collection Form, Form SF–SAC can be obtained by contacting the Office of Federal Financial Management as indicated above or by download from the OMB Grants Management home page on the Internet at *http://www.whitehouse.gov/omb/grants_forms/.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 0348–0057.

Title: Data Collection Form.

Form No: SF–SAC.

Type of Review: Revision of a currently approved collection

Respondents: States, local governments, non-profit organizations (Non-Federal entities) and their auditors.

Estimated Number of Respondents: 76,000 (38,000 from auditors and 38,000 from auditees). The respondents' information is collected by the Federal Audit Clearinghouse (maintained by the U.S. Bureau of the Census).

Estimated Time per Respondent: 59 hours for each of 400 large respondents and 17 hours for each of 75,600 small respondents for estimated annual burden hours of 1,308,800.

Estimated Number of Responses per Respondent: 1.

Frequency of Response: Annually.

Needs and Uses: Reports from auditors to auditees and reports from auditees to the Federal government are used by non-Federal entities, pass-through entities and Federal agencies to ensure that Federal awards are expended in accordance with applicable laws and regulations. The Federal Audit Clearinghouse (FAC) (maintained by the U.S. Bureau of the Census) uses the information on the SF–SAC to ensure proper distribution of audit reports to Federal agencies and identify non-Federal entities who have not filed the required reports. The FAC also uses the information on the SF–SAC to create a government-wide database, which contains information on audit results. This database is publicly accessible on the Internet at *http://harvester.census.gov/fac/.* It is used by Federal agencies, pass-through entities, non-Federal entities, auditors, the Government Accountability Office, OMB and the general public for management of and information about Federal awards and the results of audits. Comments are invited on: (a) Whether the proposed information collection 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 estimate of the burden of the collection of the 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 those who respond, including through the use of automated collection techniques or other forms of information technology.

Debra Bond,

Deputy Controller.

[FR Doc. 2010–6965 Filed 3–29–10; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (10–035)]

NASA Advisory Council; Ad-Hoc Task Force on Planetary Defense; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Ad-Hoc Task Force on Planetary Defense of the NASA Advisory Council.

DATES: Thursday, April 15, 2010, 11:30 a.m.–5:30 p.m., and Friday, April 16, 2010, 9 a.m.–1 p.m. (times are EDT).

ADDRESSES: Boston Marriott Cambridge Hotel; Two Cambridge Center, 50 Broadway; Cambridge, Massachusetts 02142; (617) 494–6600.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Parham, Exploration Systems Mission Directorate, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, 202/358–1715; *jane.parham@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Ad-Hoc Task Force on Planetary Defense Terms of Reference.
- NASA Near Earth Object (NEO) Program Status.
- Viewpoints of various scientific organizations on NEO activities.
- Ad-Hoc Task Force Planning.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to sign in and show a valid government-issued picture identification such as driver's license or passport.

For questions, please call Ms. Jane Parham, at (202) 358–1715.

Dated: March 25, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–7124 Filed 3–29–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–034)]

NASA Advisory Council; Exploration Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Exploration Committee of the NASA Advisory Council.

DATES: Monday, April 26, 2010, 1 p.m.–5 p.m., and Tuesday, April 27, 2010, 9 a.m.–5 p.m. (All times are Central Daylight Saving Time).

ADDRESSES: Lunar and Planetary Institute, 3600 Bay Area Blvd., Houston, Texas 77058.

FOR FURTHER INFORMATION CONTACT: Ms. Jane Parham, Exploration, Exploration Systems Mission Directorate, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, 202–358–1715; *jane.parham@nasa.gov.*

SUPPLEMENTARY INFORMATION: The agenda topics for the meeting will include:

- Federal Advisory Committee Act Briefing.
- Ethics Briefing.
- Exploration Systems Mission Directorate (ESMD) Background.
- ESMD Status Overview.
- Exploration Committee 2010 Work Plan Content Overview and Implementation.

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will need to sign in and show a valid government-issued picture identification such as driver's license or passport.

For questions, please call Jane Parham at (202) 358–1715.

Dated: March 24, 2010.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–7126 Filed 3–29–10; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

Application for a License To Export High-Enriched Uranium

Pursuant to 10 CFR 110.70(c) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least five days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant Date of application Date received Application No. Docket No.	Description of material			
	Material type	Total quantity	End use	Recipient country
DOE/NNSA–Y–12 National Security Complex, March 3, 2010. March 9, 2010 XSNM3633 11005854	High-Enriched Uranium (93.35%).	160.0 kilograms uranium (149.36 kilograms U–235).	To fabricate fuel elements in France for use as fuel in the Institut Laue—Langevin (ILL) High Flux Reactor (HFR) in France.	France.

For the Nuclear Regulatory Commission.

Dated this 24th day of March 2010 at Rockville, Maryland.

Scott W. Moore,

Deputy Director, Office of International Programs.

[FR Doc. 2010–7023 Filed 3–29–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2010–0087]

Omaha Public Power District; Fort Calhoun Station, Unit 1; Exemption

1.0 Background

Omaha Public Power District (OPPD, the licensee) is the holder of Renewed Facility Operating License No. DPR–40 which authorizes operation of the Fort Calhoun Station, Unit 1 (FCS). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in Washington County, Nebraska.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published in the **Federal Register** on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from three of these new requirements that OPPD now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated December 31, 2009, as supplemented by letter dated January 21, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the licensee's letters dated December 31, 2009, and January 21, 2010, contain security-related information and, accordingly, those portions are being withheld from public disclosure. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is for three requirements that would be met by October 5, 2011, instead of the March 31, 2010, deadline. Granting this exemption for the three items would allow the licensee to complete the necessary security system upgrades to meet or exceed regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, until October 5, 2011, of the implementation date for three specific requirements of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule sent to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date as documented in the letter from R. W. Borchardt (NRC) to M. S. Fertel (Nuclear Energy Institute) dated June 4, 2009. The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

FCS Schedule Exemption Request

The licensee provided detailed information in the Attachments to its letters dated December 31, 2009, and January 21, 2010, requesting an exemption. The licensee is requesting additional time to implement certain new requirements due to the amount of engineering and design, material procurement, and construction and installation activities. The licensee describes a comprehensive plan to upgrade the security capabilities of the FCS site and provides a timeline for achieving full compliance with the new regulation. The Attachments to the licensee's letters contain security-related information regarding the site security plan, details of specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline, and a timeline with critical path activities that would enable the licensee to achieve full compliance by October 5, 2011. The timeline provides milestone dates for engineering, planning and procurement, implementation, startup and testing, engineering closeout, and project closeout. A redacted version of the licensee's letter dated December 31, 2009, is publicly available in Agencywide Documents Management and Access System (ADAMS) Accession No. ML100050032.

Notwithstanding the schedule exemptions for these limited requirements, the licensee will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By October 5, 2011, FCS will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to three specified requirements of 10 CFR 73.55 until October 5, 2011.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC has determined that the long-term benefits, that will be realized when the FCS modifications are complete, justify extending the full compliance date in the case of this particular licensee. The significant security measures for which FCS needs additional time to complete are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the three items specified in the Attachments to FCS's letters dated December 31, 2009, and January 21, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by October 5, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment [75 FR 10835; March 9, 2010].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7025 Filed 3–29–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530 NRC–2010–0114]

Arizona Public Service Company, et al. Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Exemption

1.0 Background

The Arizona Public Service Company (APS, the licensee) is the holder of Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, which authorize operation of the Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, or the Commission) now or hereafter in effect.

The facility consists of three pressurized-water reactors located in Maricopa County, Arizona.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published in the **Federal Register** on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks on September 11, 2001, and implemented by the licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from two of these additional requirements that APS now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated December 21, 2009, as supplemented by letters dated February 16 and March 5, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letters can be found in the Agencywide Documents Access and Management System (ADAMS), at Accession Nos. ML100040088, ML100550875, and ML100680760, respectively. The licensee's letters dated December 21, 2009, and March 5, 2010, contain security-related information and, accordingly, those portions of the letters are being withheld from public disclosure. The licensee has requested an exemption from the March 31, 2010, implementation date stating that a number of issues will present a significant challenge to the timely completion of the projects related to certain specific requirements in 10 CFR Part 73. Specifically, the request is to extend the implementation date from the current March 31, 2010, deadline to June 30, 2010, for one specified item, and to December 17, 2010, for the second specified item. Granting this exemption for the two items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet the noted regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension of the implementation date from March 31, 2010, to June 30, 2010, for one specific requirement to December 17, 2010, for the second specific requirement of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. The NRC staff has determined that granting the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date as documented in a letter from R.W. Borchardt, (NRC), to M.S. Fertel, (Nuclear Energy Institute) dated June 4, 2009. The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

PVNGS Schedule Exemption Request

The licensee provided detailed information in the enclosure to its letter dated December 21, 2009, requesting an exemption, and provided further clarification in its letters dated February 16 and March 5, 2010. In those letters, the licensee described a comprehensive plan to study, design, construct, test, and turn over the new equipment for the enhancement of the security capabilities at the PVNGS site and provided a timeline for achieving full compliance with the new regulation. The licensee's letters dated December 21, 2009, and March 5, 2010, contain security-related information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot achieve compliance by the March 31, 2010, deadline, justification for the extension request, a description of the required changes to the site's security configuration, and a detailed timeline with critical path activities that would enable the licensee to achieve full compliance by December 17, 2010. The timeline provides dates indicating when (1) construction will begin on various phases of the project, (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedule exemptions for these limited requirements, the licensee would continue to be in compliance with all other applicable physical security requirements, as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By December 17, 2010, PVNGS would be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to June 30, 2010, and to December 17, 2010, respectively, for two specified requirements.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the PVNGS security modifications are completed justify exceeding the full compliance date with regard to the specified requirements of 10 CFR 73.55. The significant security enhancements PVNGS needs additional time to complete are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the two items specified in the enclosure to the APS letter dated December 21, 2009, as supplemented by the APS letters dated February 16 and March 5, 2010, the licensee is required to be in full compliance by December 17, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 13606; dated March 22, 2010). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2010.

For The Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7029 Filed 3–29–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382; NRC–2010–0110]

Entergy Operations, Inc., Waterford Steam Electric Station, Unit 3; Exemption

1.0 Background

Entergy Operations, Inc. (the licensee), is the holder of Facility Operating License No. NPF–38 which authorizes operation of the Waterford Steam Electric Station, Unit 3 (Waterford 3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one pressurized-water reactor located in St. Charles Parish, Louisiana.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for

physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from one of these new requirements that Waterford 3 now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated January 19, 2010, as supplemented by letter dated February 17, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." Portions of the letters dated January 19 and February 17, 2010, contain security-related information and, accordingly, redacted versions of the letters dated January 19 and February 17, 2010, are available for public review in the Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML100210193 and ML100500999, respectively. The licensee has requested an exemption from the March 31, 2010, implementation date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the implementation date from the current March 31, 2010, deadline to November 15, 2010, for one requirement. Granting this exemption for the one item would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the noted regulatory requirement.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

This exemption, as noted above, would allow an extension from March 31, 2010, until November 15, 2010, of the implementation date with the new rule in one specified area. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR 73. The NRC staff has determined that granting the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to reach full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (*Reference:* June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Waterford 3 Schedule Exemption Request

The licensee provided detailed information in attachments to its application dated January 19, 2010, and supplemental letter dated February 17, 2010, requesting an exemption. The licensee describes a comprehensive plan to upgrade to the security capabilities of its Waterford 3 site and provides a timeline for achieving full compliance with the new regulation. Attachments to the letters contain proprietary information regarding the site security plan, details of specific portions of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline, and why, the required changes to the site's security configuration, and a timeline with critical path activities that would enable the licensee to achieve full compliance by November 15, 2010. The timeline provides dates indicating when critical equipment will be ordered, receipt of the equipment, installation, testing, and training.

Notwithstanding the scheduler exemptions for these limited requirements, the licensee would continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By November 15, 2010, Waterford 3 would be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to one specified requirement of 10 CFR 73.55 until November 15, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The long-term benefits that will be realized when the complete system is in place justifies exceeding the full compliance date in the case of this particular licensee. The security measures Waterford 3 needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the

events of September 11, 2001. Therefore, the NRC staff concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the March 31, 2010, deadline for the one item specified in the attachment to the Entergy letter dated January 19, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by November 15, 2010. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 13798, dated March 23, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7026 Filed 3–29–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; NRC–2010–0099]

Detroit Edison Company; Fermi 2; Exemption

1.0 Background

Detroit Edison Company (the licensee) is the holder of Facility Operating License No. NPF–43, which authorizes operation of Fermi 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of one boiling-water reactor located in Monroe County, Michigan.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from five of these new requirements that Fermi 2 now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated November 19, 2009, as supplemented by letter dated December 23, 2009, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's November 19, 2009, and December 23, 2009, letters, have certain portions which contain proprietary and safeguards information and, accordingly, are not available to the public. The licensee has requested an exemption from the March 31, 2010, compliance date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the compliance date for five requirements that would be in place by May 31, 2011, versus the March 31, 2010, deadline. Being granted this exemption for the five requirements would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the noted regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of exemption, as noted above, would allow an extension from March 31, 2010, to May 31, 2011, for the implementation date for five specified areas of the new rule. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that any such changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: June 4, 2009, letter, from R. W. Borchardt, NRC, to M.S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

Fermi 2 Schedule Exemption Request

The licensee provided detailed information in Enclosures 1 and 2 of its supplemental submittal to its November 19, 2009, letter, requesting an exemption. It describes a comprehensive plan which provides a

timeline for achieving full compliance with the new regulation. Enclosures 1 and 2 contain proprietary information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and why, the required changes to the site's security configuration, and a timeline with "critical path" activities that will enable the licensee to achieve full compliance by May 31, 2011. The timeline provides dates indicating when (1) construction will begin on various phases of the project (*i.e.,* new buildings and fences), and (2) critical equipment will be installed, tested and become operational.

Notwithstanding the schedule exemptions of these limited requirements, the licensee indicated that it will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By May 31, 2011, the licensee also stated that Fermi 2 will be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to May 31, 2011, with regard to five specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption. The NRC staff has determined that the long-term benefits that will be realized when the Fermi 2 modifications are completed justifies exceeding the full compliance date in the case of this particular licensee. The security measures Fermi 2 needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those currently required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the five requirements specified in Enclosure 1 of the Detroit Edison letter dated December 23, 2009, the licensee is required to be in full compliance by May 31, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (i.e., 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment [75 FR 11946; dated March 12, 2010].

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of March 2010.

For the Nuclear Regulatory Commission.

Allen G. Howe,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7030 Filed 3–29–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–416; NRC–2010–0082]

Entergy Operations, Inc., Grand Gulf Nuclear Station, Unit 1; Exemption

1.0 Background

Entergy Operations, Inc. (Entergy or the licensee), is the holder of Facility Operating License No. NPF–29 which authorizes operation of the Grand Gulf Nuclear Station, Unit 1 (GGNS). The license provides, among other things, that the facility is subject to the rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a boiling-water reactor located in Claiborne County, Mississippi.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published in the **Federal Register** on March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from two of these additional requirements that Entergy now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By application dated January 14, 2010, as supplemented by letters dated January 18 and February 4, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letters dated January 14 and February 4, 2010, contain security-related information and, accordingly, are being withheld from public disclosure. The licensee's letter dated January 18, 2010, is publicly available in Agencywide Documents Access and Management System (ADAMS) Accession No. ML100190852. The licensee has requested an exemption from the March 31, 2010, implementation date, stating that it must complete a number of modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the implementation date from the current March 31, 2010, deadline to July 30, 2010, for one requirement and to March 31, 2011, for a second requirement. Granting this exemption for the two requirements would allow the licensee to complete the modifications designed to provide significant upgrades to meet the noted regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively

hereafter as 'security plans.' " Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, would allow an extension from March 31, 2010, to July 30, 2010, for the implementation date of one specific requirement and to March 31, 2011, for the implementation date of another specific requirement of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, NRC approval of the licensee's exemption request is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that any such changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date, as documented in the letter from R. W. Borchardt (NRC) to M. S. Fertel (Nuclear Energy Institute) dated June 4, 2009. The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

GGNS Schedule Exemption Request

The licensee provided detailed information in the Attachments to its letters dated January 14 and February 4, 2010, requesting an exemption. The licensee is requesting additional time to implement certain new requirements due to the long equipment lead time from the vendor, the time required for installation and testing of the new security equipment, and the impact to available resources from a scheduled spring 2010 refueling outage. The licensee describes a comprehensive plan to expand the protected area with upgrades to the security capabilities of its GGNS site and provides a timeline for achieving full compliance with the new regulation. The Attachments to the licensee's letters contain security-related information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline, justification for the exemption request, a description of the required changes to the site's security configuration, and a timeline with "critical path" activities that would enable the licensee to achieve full compliance by March 31, 2011. The timeline provides dates indicating when (1) construction will begin on various phases of the project (*e.g.,* new buildings and fences), and (2) critical equipment will be ordered, installed, tested and become operational. A redacted version of the licensee's exemption request, including attachment, is publicly available at Agencywide Documents Management and Access System (ADAMS) Accession No. ML100190852.

Notwithstanding the schedule exemptions for these limited requirements, the licensee indicated that it will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By March 31, 2011, GGNS also stated that it will be in full compliance with the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date with regard to one specified requirement of 10 CFR 73.55 until March 31, 2011, and another specified requirement of 10 CFR 73.55 until July 30, 2010.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the GGNS modifications are complete justifies extending the full compliance date in the case of this particular licensee. The security measures GGNS needs additional time to complete are new requirements imposed by the March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those currently required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC staff concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, deadline for the two items specified in the Attachments to Entergy's letters dated January 14, January 18, and February 4, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by March 31, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 9955; March 4, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7022 Filed 3–29–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313 and 50–368; NRC–2010–0111]

Entergy Operations, Inc., Arkansas Nuclear One, Units 1 And 2; Exemption

1.0 Background

Entergy Operations, Inc. (the licensee), is the holder of Facility Operating License Nos. DPR–51 and NPF–6, which authorize operation of the Arkansas Nuclear One, Units 1 and 2 (ANO–1 and 2). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Pope County, Arkansas.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73, "Physical protection of plants and materials," Section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from three of these new requirements Entergy now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated January 14, 2010, as supplemented by letter dated January 28, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The licensee's letters dated January 14 and 28, 2010, contain security-related information and, accordingly, those portions are being withheld from public disclosure. Redacted versions of the letters dated January 14 and 28, 2010, are publicly available in the Agencywide Documents Access and Management System (ADAMS) Accession No. ML100190140 and ML100710021, respectively. The licensee has requested an exemption from the March 31, 2010, implementation date stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the compliance date from the current March 31, 2010, deadline to October 31, 2010, for two requirements and August 31, 2011, for one requirement. Granting this exemption for the three items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the noted regulatory requirement.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR Part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.' " Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption would, as noted above, allow an extension from March 31, 2010, to October 31 2010, for two specific requirements, and to August 31, 2011 for one specific requirement. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR Part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final Power Reactor Security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a request to generically extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (*Reference:* June 4, 2009, letter from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the June 4, 2009, letter.

ANO–1 and 2 Schedule Exemption Request

The licensee provided detailed information in attachments to its application dated January 14, 2010, and supplemental letter dated January 28, 2010, requesting an exemption. It describes a comprehensive plan to upgrade the security capabilities of its ANO site and provides a timeline for achieving full compliance with the new regulation. Attachments to the letters contain security-related information regarding the site security plan, details of the specific requirements of the regulation for which the site cannot achieve compliance by the March 31, 2010, deadline, justification for the extension request, a description of the required changes to the site's security configuration, and a timeline with critical path activities that would enable the licensee to achieve full compliance by August 31, 2011. The timeline provides dates indicating when critical equipment will be ordered, receipt of the equipment, installation, tested, and training.

Notwithstanding the scheduler exemptions for these limited requirements, the licensee would continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-

approved physical security program. By October 31, 2010, ANO–1 and 2 will be in full compliance with all but one specified requirement. By August 31, 2011, ANO–1 and 2 will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has justified its request for an extension of the compliance date with regard to two specified requirements of 10 CFR 73.55 until October 31, 2010, and one specified requirement until August 31, 2011.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC has determined that the long-term benefits that will be realized when the complete system is in place justifies extending the full compliance date in the case of this particular licensee. The security measures for which ANO–1 and 2 need additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC staff concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption to the March 31, 2010, deadline for the three items specified in the attachments to the Entergy letters dated January 14 and 28, 2010, the licensee is required to be in full compliance with 10 CFR 73.55 by August 31, 2011. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 13607; dated March 22, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–7031 Filed 3–29–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0002]

Sunshine Act Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of March 29; April 5, 12, 19, 26; May 3, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 29, 2010

Tuesday, March 30, 2010

9:30 a.m. Briefing on Safety Culture (Public Meeting). (Contact: Jose Ibarra, 301–415–2581.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 5, 2010—Tentative

Tuesday, April 6, 2010

9 a.m. Periodic Briefing on New Reactor Issues—Design Certifications (Public Meeting). (Contact: Amy Snyder, 301–415–6822.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, April 8, 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 April 12, 2010—Tentative

Thursday, April 15, 2010

9:30 a.m. Briefing on Resolution of Generic Safety Issue (GSI)—191, Assessment of Debris Accumulation on Pressurized Water Reactor (PWR) Sump Performance (Public Meeting). (Contact: Michael Scott, 301–415–0565.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 19, 2010—Tentative

There are no meetings scheduled for the week of April 19, 2010.

Week of April 26, 2010—Tentative

Thursday, April 29, 2010

9:30 a.m. Briefing on the Fuel Cycle Oversight Process Revisions (Public Meeting). (Contact: Michael Raddatz, 301–492–3108.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 3, 2010—Tentative

Tuesday, May 4, 2010

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting). (Contact: Kristin Davis, 301–415–2673.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

*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: March 25, 2010.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 2010–7185 Filed 3–26–10; 4:15 pm]

BILLING CODE 7590–01–P

Postal Regulatory Commission

Sunshine Act Meetings

TIME AND DATE: Wednesday, April 7, 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. The public session will be podcast.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC:

1. Review of Postal-related congressional activity (open).
2. Report on international activities (open).
3. Review of active cases (open).
4. Report on public communications regarding the Nature of Service Inquiry (open).
5. Report on status of a special study, pursuant to section 802(c) of the Postal Accountability and Enhancement Act (PAEA) of 2006, addressing the Postal Service's estimated share of a certain Civil Service Retirement System-related retirement benefit liability. (open).
6. Report on recent activities of Joint Periodicals Task Force and status of anticipated report to the Congress pursuant to section 708 of the PAEA (open).
7. Report on status of internal evaluation of the Public Representative function (open).
8. Report on status of technical conference papers authored by staff (open).

PORTIONS CLOSED TO THE PUBLIC:

9. Discussion of pending litigation (closed).
10. Discussion of confidential commercial information relative to Commission contracts (closed).
11. Discussion of confidential personnel issues involving performance management (closed).

CONTACT PERSON FOR FURTHER INFORMATION: Stephen L. Sharfman, General Counsel, Postal Regulatory Commission, at 202-789-6820 or *stephen.sharfman@prc.gov* (for questions concerning the agenda) and Shoshana M. Grove at 202-789-6842 or *shoshana.grove@prc.gov* (for questions concerning podcasting).

Dated: March 26, 2010.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–7155 Filed 3–26–2010; 8:45 am]

BILLING CODE 7710–FW–S

POSTAL REGULATORY COMMISSION

[Docket No. A2010–4; Order No. 428]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Crescent Lake (Oregon)Post Office ZIP Code 97425 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.

DATES: Deadline for filing administrative record: March 29, 2010. For other dates, *see* Procedural Schedule.

ADDRESSES: Submit filings electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot file electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section 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 Crescent Lake Post Office, Crescent Lake, Oregon 97425. The appeal was received by the Commission on March 12, 2010. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2010–4 to consider the petitioner's appeal. If the petitioner would like to further explain her position with supplemental information or facts, she may either file a Participant Statement on PRC Form 61 or file her own brief with the Commission by no later than March 29, 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 additional issues other than that set forth above or, alternatively, 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 March 29, 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 webmaster 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(b). Notices of intervention are due on or before March 29, 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. *See* 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. *See* 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 March 29, 2010.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks 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.**

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

March 12, 2009	Filing of Appeal.
March 29, 2010	Deadline for Postal Service to file administrative record in this appeal or responsive pleading.
April 16, 2010	Deadline for petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
April 19, 2010	Deadline for petitions to intervene (*see* 39 CFR 3001.111(b)).
May 6	Deadline for answering brief in support of Postal Service (*see* 39 CFR 3001.115(c)).
May 21, 2010	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
May 28, 2010	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argumetn only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
July 12, 2010	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2010–6974 Filed 3–29–10; 8:45 am]

BILLING CODE 7710–FW–S

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding two (2) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

1. *Title and Purpose of Information Collection:*

Application for Employee Annuity Under the Railroad Retirement Act; 3220–0002

Section 2 of the Railroad Retirement Act (RRA) provides for payments of age and service, disability, and supplemental annuities to qualified employees. An annuity cannot be paid until the employee stops working for a railroad employer. In addition, the age and service employee must relinquish any rights held to such jobs. A disabled employee does not need to relinquish employee rights until attaining Full Retirement Age, or if earlier, their spouse files for a spouse annuity. Benefits become payable after the employee meets certain other requirements, which depend on the type of annuity payable. The requirements for obtaining the annuities are prescribed in 20 CFR 216, and 220.

The RRB uses the electronic *AA–1cert, Application Summary and Certification* process and the following forms to collect the information needed for determining entitlement to and the amount of, an employee retirement annuity: *Form AA–1, Application for Employee Annuity Under the Railroad Retirement Act, Form AA–1d, Application for Determination of Employee Disability,* and *Form G–204, Verification of Workers Compensation/ Public Disability Benefit Information.*

The AA–1cert process obtains information from an applicant for either an age and service, or disability annuity by means of an interview with an RRB field-office representative. It obtains information about an applicant's marital history, work history, military service, benefits from other governmental agencies and railroad pensions. During the interview, the field-office representative enters the information obtained into an on-line information system. Upon completion of the interview, the applicant receives Form AA–1cert, Application Summary and Certification, which summarizes the information that was provided by/or verified by the applicant, for review and signature. The RRB also uses a manual version, RRB Form AA–1, in instances where the RRB representative is unable to contact the applicant in-person or by telephone, *i.e.,* the applicant lives in another country.

Form AA–1d, Application for Determination of Employee Disability, is completed by an employee who is filing for a disability annuity under the RRA, or a disability freeze under the Social Security Act for early Medicare based on a disability. Form G–204, Verification of Workers Compensation/ Public Disability Benefit Information, is used to obtain and verify information concerning worker's compensation or public disability benefits that are or will be paid by a public agency to a disabled railroad employee.

All of the forms require completion to obtain a benefit. One or more response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (75 FR 4944 on January 28, 2010) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Title: Application for Employee Annuity Under the Railroad Retirement Act.

OMB Control Number: 3220–0002.

Form(s) submitted: AA–1, Application for Employee Annuity; AA–1cert, Application Summary and Certification; AA–1d, Application for Determination of Employee's Disability; and G–204, Verification of Worker's Compensation/ Public Disability Benefit Information.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households, State or local government.

Obligation to Respond: Required to obtain or retain benefits.

Abstract: The Railroad Retirement Act provides for payment of age, disability, and supplemental annuities to qualified employees. The application and related forms obtain information about the applicant's family work history, military service, disability benefits from other government agencies and public or private pensions. The information is

used to determine entitlement to and the amount of the annuity applied for.

*Changes Proposed:*Non-burden impacting editorial changes intended to provide clarification and specificity to several current responses as well as the deletion of several items that are no longer needed are proposed to Form AA–1. Non-burden impacting clarifying editorial changes are proposed to Form AA–1(cert). No changes are proposed to Form(s) AA–1d and G–204.

The burden estimate for this ICR is proposed as follows:

Estimated annual number of respondents: 14,120.

Total annual responses: 17,825.

Total annual reporting hours: 9,271.

2. *Title and Purpose of Information Collection:*

Voluntary Customer Surveys in Accordance With E.O 12862; 3220–0192

In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated. The information collection, which was first approved by the Office of Management and Budget (OMB) in 1997, provides the RRB with a *generic clearance authority.* This generic authority allows the RRB to submit a variety of new or revised customer survey instruments (needed to timely implement customer monitoring activities) to the Office of Management and Budget (OMB) for expedited review and approval. Our ICR describes the information we seek to collect from the public.

Information Collection Request (ICR)

Title: Voluntary Customer Surveys in Accordance with E.O. 12862.

OMB Control Number 3220–0192.

Form(s) submitted: G–201, Customer Assessment Survey.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households, Business-or-other-for profit.

Obligation to Respond: Voluntary.

Abstract: The Railroad Retirement Board (RRB) utilizes voluntary customer surveys to ascertain customer satisfaction with the RRB in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

Changes Proposed: The RRB proposes no changes to the information collection.

The burden estimate for this ICR is unchanged as follows:

Estimated annual number of respondents: 1,750.

Total annual responses: 1,750.

Total annual reporting hours: 735.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Patricia.Henaghan@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–6220 Filed 3–29–10; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12070 and #12071]

Oklahoma Disaster Number OK–00035

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1883–DR), dated 03/05/2010.

Incident: Severe Winter Storm.

Incident Period: 01/28/2010 through 01/30/2010.

Effective Date: 03/22/2010.

Physical Loan Application Deadline Date: 05/04/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 12/06/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 03/05/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Beaver, Beckham, Blaine, Canadian, Cherokee, Craig, Creek, Custer, Garvin, Grant, Lincoln, Logan, Major, Mayes, Murray, Nowata, Okfuskee, Ottawa, Pawnee, Rogers, Sequoyah, Texas, Wagoner, Washington.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–6960 Filed 3–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12051 and #12052]

Oklahoma Disaster Number OK–00034

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–1876–DR), dated 02/25/2010.

Incident: Severe Winter Storm.

Incident Period: 12/24/2009 through 12/25/2009.

DATES: *Effective Date:* 03/22/2010.

Physical Loan Application Deadline Date: 04/26/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 11/25/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 02/25/2010, is hereby amended to include the following areas as

adversely affected by the disaster.

Primary Counties: Alfalfa, Beckham, Bryan, Caddo, Carter, Cherokee, Creek, Dewey, Greer, Harmon, Haskell, Kiowa, Le Flore, Logan, Mayes, Mccurtain, Mcintosh, Osage, Pawnee, Pittsburg, Roger Mills, Seminole, Wagoner, Washington, Washita.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–6963 Filed 3–29–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

RIN 3244–AF61

Small Business Innovation Research Program Policy Directive

AGENCY: U.S. Small Business Administration.

ACTION: Notice of Final Amendments to Policy Directive.

SUMMARY: This document announces a final amendment to the Small Business Innovation Research (SBIR) Program Policy Directive (PD). This amendment adjusts the SBIR Program award threshold amounts to offset the effect of inflation. This document also considers the public comments received in response to SBA's Notice of Proposed Amendment to the Policy Directive, which was published in the **Federal Register** on August 15, 2008.

DATES: This amendment is effective on March 30, 2010.

FOR FURTHER INFORMATION CONTACT: Edsel M. Brown, Jr., Assistant Director, Office of Technology, SBA, at (202) 205–7343. You may also email questions to *technology@sba.gov*.

SUPPLEMENTARY INFORMATION: On August 15, 2008, SBA published in the **Federal Register** proposed amendments to the SBIR Program PD to raise the SBIR Phase I award threshold amount from $100,000 to $150,000, and the Phase II award threshold amount from $750,000 to $1,000,000 (FR 48004). Congress established the current award threshold amounts of $100,000 for Phase I and $750,000 for Phase II in the program's 1992 reauthorization legislation. SBA has statutory authority to increase these award amounts to adjust for inflation or other economic or programmatic considerations once every five years (U.S.C. 638(j)(2)(D)). The regulatory guideline for the SBIR award amounts can be found in Section 7(h)(1) of the SBIR Policy Directive (67 FR 6008, Sept. 24, 2002). SBA has determined that to restore the average economic value of the SBIR awards, the award threshold amounts should be increased at this time. SBA determined that adjusting the threshold amounts to $150,000 for Phase I and $1,000,000 for Phase II adequately offsets the general effects of inflation, maintains a degree of stability and simplicity to the threshold levels, and continues to provide participating agencies with an appropriate degree of flexibility in award size. In the proposed amendment, the SBA explained that it monitored information from the U.S. Department of Commerce's Bureau of Economic Analysis, including the GDP Implicit Price Deflator and the Satellite R&D Account, as well as the Biomedical Research and Development Price index, to determine the appropriate time for, and amount of, this adjustment. The SBA believes this information still supports the adjustment in this final amendment.

Discussion of Comments on the Final Amendments

The 30-day public comment period closed on September 15, 2008. SBA received two comments on the proposed amendment. Both of the comments supported the proposed amendments and commended SBA for making the adjustments to the threshold amounts. One commenter noted further that because the National Institutes of Health (NIH) had already taken advantage of existing flexibility to exceed the guidelines, he did not foresee a significant reduction in the number of awards at that agency resulting from the change in guideline levels. SBA will move forward with the amendment as originally proposed.

Paperwork Reduction Act

SBA has determined that these amendments to the SBIR PD do not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

Regulatory Impact Analysis

OMB has determined that this amendment constitutes a "significant regulatory action" under Executive Order 12866 and in the proposed amendment to the Policy Directive, the SBA prepared a Regulatory Impact Analysis. The SBA received no comments on this analysis and continues to believe that the analysis was accurate.

Notice of Final Amendments to the Policy Directive; Small Business Innovation Research Program

To: The Directors, Small Business Innovation Research (SBIR) Program

Subject: Final Revisions to the SBIR Program Policy Directive Concerning Phase I and Phase II Threshold Amounts

1. *Purpose.* Section 9(j)(3) of the Small Business Act (Act) (15 U.S.C. 638(j)(3)) requires the Administrator of the U.S. Small Business Administration (SBA) to modify the SBIR Program Policy Directive as required for the general conduct of the SBIR Program within the Federal Government. Specifically, § 9(j)(2) of the Act requires the SBA to adjust the award amounts for Phase I and II to reflect economic or programmatic considerations once every five years.

2. *Authority.* These amendments to the Policy Directive are issued under the authority of 15 U.S.C. 638(j).

3. *Procurement Regulations.* The Federal Acquisition Regulations may need to be modified to conform to the requirements. Regulatory provisions that pertain to the areas of SBA responsibility will require approval of the SBA Administrator or designee. The SBA's Office of Technology is the appropriate office for coordinating such regulatory provisions.

4. *Personnel Concerned.* All Federal Government personnel who are involved in the administration of the program, including those involved with the issuance and management of funding agreements of the SBIR Program and the establishment of goals for small business concerns in research or research and development procurements or grants.

5. *Distribution.* Federal Government agencies and departments participating in the SBIR Program and those required to establish small business research development goals as directed by § 9 of the Act (15 U.S.C. 638(j)).

6. *Originator.* Office of Technology, SBA.

7. *Dates.* These amendments will be effective when issued as final in the **Federal Register.**

For the reasons set forth in the preamble, the SBIR Policy Directive is amended as follows:

1. Amend § 7(h)(1) by removing "$100,000" and adding in its place "150,000" and by removing "$750,000" and replacing it with "$1,000,000".

2. Amend § 7(h)(2) by removing "$100,000" and adding in its place "$150,000" and by removing "$750,000" and adding in its place "$1,000,000".

3. Amend § 10(b)(7) by removing "$100,000" and adding in its place

"$150,000" and by removing "$750,000" and adding in its place "$1,000,000".

Dated: May 29, 2009.

Karen G. Mills,

Administrator, U.S. Small Business Administration.

Editorial Note: This document was received in the Office of the Federal Register on March 25, 2010.

[FR Doc. 2010–7018 Filed 3–29–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61716; File No. SR-CBOE-2010-008]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change Relating to Co-location Service Fees

March 16, 2010.

Correction

In notice document 2010–6184 beginning on page 13625 in the issue of Monday, March 22, 2010, make the following correction:

On page 13625, the heading is corrected to read as set forth above.

[FR Doc. C1–2010–6184 Filed 3–29–10; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 1, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, April 1, 2010 will be:

Institution and settlement of injunctive actions;

Institution of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 25, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–7128 Filed 3–26–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61764; File No. SR–Phlx–2010–46]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to U.S. Dollar-Settled Foreign Currency Options

March 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 18, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the 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 the Fee Schedule to add the Norwegian Krone ("XDV") to the U.S. Dollar-Settled Foreign Currency Options fees.[3] While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative on March 22, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to add XDV to the list of securities currently subject to the U.S. Dollar-Settled Foreign Currency Options fees. The Exchange proposes to add this currency to increase its offering of products.

Currently, the following U.S. Dollar-Settled Foreign Currency Options are subject to the U.S. Dollar-Settled Foreign Currency Options fees: XDB (British Pound), XDE (Euro), XDN (Japanese Yen), XDS (Swiss Franc), XDA (Australian Dollar), XDM (Mexican Peso), XEH (Swedish Krona), XEV (South African Rand), XDZ (New Zealand Dollar) and XDC (Canadian Dollar).

The Exchange filed a proposed rule change to amend its rules to enable it to list and trade options on the Norwegian Krone.[4]

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative on March 22, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FCOs are currently traded on the Exchange under the name PHLX World Currency Options® ("WCOs").

[4] *See* Securities and Exchange Release Act No. 60169 (July 2, 2009), 74 FR 31782 (June 24, 2009) (SR–Phlx–2009–40). [sic]

is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The fees assessed for XDV are the same fees assessed on members and member organizations for other U.S. Dollar-Settled Foreign Currency Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and paragraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2010–46 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–Phlx–2010–46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing 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–Phlx–2010–46 and should be submitted on or before April 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6994 Filed 3–29–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61759; File No. SR–NYSEArca–2010–16]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.37A and Rule 6.64

March 23, 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 March 11, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 Rule 6.37A and Rule 6.64. The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.* 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to: (i) Amend the bid-ask differentials for Market Maker quotations outlined in Rule 6.37A(b)(4), and (ii) amend Rule 6.64(b) by establishing guidelines for the use of bid-ask parameters in the OX System to be used during the opening auction process ("Auction").[4]

Currently, Rule 6.37A(b)(4) specifies the bid-ask differential requirements applicable to Market Maker quotations when electronically bidding and offering on the OX System during an Auction. With respect to bidding and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] An Auction is the process by which trading is initiated in a specified options class on NYSE Arca. Auctions are conducted automatically by the OX system, NYSE Arca's electronic system for order handling, execution and reporting.

offering during an Auction, the bid-ask differentials [5] vary depending on the price of the bid. Rule 6.37A(b)(4)(A)–(E) states that the quote widths shall not be more than: $0.25 if the bid is less than $2; $0.40 where the bid is at least $2 but does not exceed $5; $0.50 where the bid is more than $5 but does not exceed $10; $0.80 where the bid is more than $10 but does not exceed $20; and $1 where the bid is more than $20. With respect to electronic quoting on the OX System, after an Auction, the bid-ask differential requirement is $5. The Exchange now proposes to replace the applicable bid-ask differentials for Market Maker quoting obligations during an Auction, with the $5 quote differential that is in place at all other times.

The obligation for market makers to provide opening quotes at the widths described in 6.37A(b)(4)(A)–(E) had been adapted from the era when the Exchange conducted open outcry opening rotations, had only open outcry quotes available to respond to an order, and did not disseminate Firm Quotes. Further, an open outcry opening rotation only required a response from a single Market Maker. The opening quote represented the quote of any Market Maker who did not respond vocally to the Order Book Official, and any such Market Maker could be held to fill orders at that quoted market.

With the advent of electronic quote submission, a Market Maker was required to submit an electronic quote to participate in the opening process. Originally, electronic openings in options were designed to mimic open outcry opening rotations, with trading systems gathering opening electronic quotes for a brief period of time after the underlying security opened.

The original intent of maintaining the obligation for Market Makers to submit narrow, traditional bid-ask requirements for OX was to encourage a narrower aggregated Exchange market during the opening auction. This was especially necessary as NYSE Arca was often the first market to open a series, and there was not necessarily an accurate National Best Bid/Offer available, and OX did not require a "legal width" NBBO quote to open a series.

Since the time of the original introduction of the OX System, however, NYSE Arca has instituted increased functionality to define price parameters during the auction process. The system will not conduct an auction in a series until one of two conditions is met: (i) A market maker submits a legal width quote, or (ii) a legal width NBBO is received from OPRA. This is a systemic solution which renders the rules based quoting obligation moot.

At the introduction of the OX system for NYSE Arca in the fall of 2006, the quoting obligation for all Market Makers other than Lead Market Makers was set at 60%. In January 2008, with the approval of NYSEArca–2007–121,[6] the Lead Market Maker quoting obligation was lowered to 90%. With these reduced obligations, there is no requirement for a Market Maker to submit a quotation for an opening auction. The auction quote width requirement thus imposes limits on a non-existent obligation.

In this regard, the Exchange notes that the market structure on NYSE Arca creates strong incentives for competing Market Makers to disseminate competitive prices for the opening. To ensure that orders executed during an Auction are not subject to disadvantageous pricing, NYSE Arca proposes to establish parameters for the opening auction as described in Rule 6.64. Pursuant to this proposed rule change, the OX System will not conduct an Auction in a given series unless the composite NYSE Arca bid-ask ("BBO") [7] is within an acceptable range. For the purposes of the Auction, an acceptable range will be the bid-ask parameters pursuant to Rule 6.37(b)(1)(A)–(E). The Exchange notes that these bid-ask differentials are identical to the existing legal width differentials for Market Maker Auction quotations which this filing proposes to delete. The Exchange feels that by establishing price protection parameters within the Auction process of the OX System, rather than just as a requirement for submitted quotes, Customers and other market participants will be afforded a higher level of price protection than they presently have on NYSE Arca. The Exchange notes that this proposed change is for trading on the Exchange's electronic trading platform, and does not in any way affect the bid-ask differentials applicable to open-outcry trading.

The Exchange also proposes at this time a minor change to Rule 6.87–Obvious Errors and Catastrophic Errors. Rule 6.87(b)(2)(B) presently contains a reference to bid-ask differentials pursuant to Rule 6.37A(b)(4)–(5). Due to the proposed changes contained in this filing related to the bid-ask differentials of Rule 6.37A(b)(4)–(5), the Exchange proposes to now reference the bid-ask differentials contained in Rule 6.37(b)(1)(A)–(E). The bid-ask differentials of each rule are identical, therefore the change will not alter in any way the methods used by the Exchange when making Obvious Error determinations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) of the Act [9] 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 by setting price parameters for the opening Auction rather than rely on a restriction that does not have obligatory performance.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[5] The Auction bid-ask differentials are known in common parlance as "legal-width quotes".

[6] Exchange Act Release No. 57186 (January 22, 2008) FR73–4931 [sic] (January 28, 2008).

[7] The composite BBO may be made up an individual market maker quote, a combination of different market maker quotes where one quote represents the bid and another represents the offer, or a combination of market maker quotes and limited orders in the Consolidated Book.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–16. 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–16 and should be submitted on or before April 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6992 Filed 3–29–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61754; File No. SR–CBOE–2010–029]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Outdated References in the Exchange Fees Schedule

March 22, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 16, 2010, Chicago Board Options Exchange, Incorporated ("CBOE" 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 Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete outdated references to the old linkage plan in its fees schedule. The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.org/legal,* on the Commission's Web site at *http://www.sec.gov,* at CBOE, 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The filing proposes to (i) eliminate references in the fee schedule to execution charges for inbound "Linkage Orders" which only applied to the execution of linkage orders under the old linkage plan (which is no longer in use); (ii) delete references to the old linkage in footnote (6) regarding the marketing fee; (iii) delete references to the old linkage in footnote (14) regarding a surcharge fee; and (iv) eliminate Section 21 of the fee schedule which provided for DPM linkage fee credits under the old linkage plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") [5] and the rules and regulations thereunder and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes that by simplifying the fee schedule to delete outdated references, the proposed rule change is consistent with the Section 6(b)(5) [7] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78a.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–029. 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 Web site viewing and printing 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 Number SR–CBOE–2010–029 and should be submitted on or before April 20, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6993 Filed 3–29–10; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections and a collection in use without an OMB number.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Director to the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–0454, E-mail address: *OPLM.RCO@ssa.gov.*

I

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than June 1, 2010. Individuals can obtain copies of the collection instruments by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. Application for Child's Insurance Benefits—20 CFR 404.350–404.368, 404.603, & 416.350—0960–0010

SSA uses Form SSA–4–BK to determine if children of living and deceased workers are entitled to their parents' monthly Social Security payments. The respondents are guardians completing the form on behalf of the children of living or deceased workers, or the children of living or deceased workers.

Type of Request: Revision of an OMB-approved information collection.

Form of request	Number of respondents	Response time (minutes)	Burden (hours)
Life Claims (paper)	8,052	12	1,610

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

Form of request	Number of respondents	Response time (minutes)	Burden (hours)
Life Claims (MCS)	152,983	12	30,597
Life Claims-Signature Proxy	152,983	11	28,047
Death Claims (paper)	19,061	12	3,812
Death Claims (MCS)	362,150	12	72,430
Death Claims-Signature Proxy	362,150	11	66,394
Totals	1,057,379		202,890

2. Report to United States Social Security Administration by Person Receiving Benefits for a Child or for an Adult Unable To Handle Funds/Report to the United States Social Security Administration—0960–0049

SSA uses the information it collects on Forms SSA–7161–OCR–SM and SSA–7162–OCR–SM to: (1) Determine continuing entitlement to Social Security benefits; (2) correct benefit amounts for beneficiaries outside the United States; and (3) monitor the performance of representative payees outside the United States. The respondents are individuals living outside the United States who are receiving benefits on their own (or for someone else) under Title II of the Social Security Act.

Type of Request: Revision of an OMB-approved information collection.

Form No.	Number of respondents	Frequency of response	Average burden per response	Estimated annual burden
SSA–7161–OCR–SM	30,560	1	15	7,640
SSA–7162–OCR–SM	271,142	1	5	22,595
Totals	301,702			30,235

3. Real Property Current Market Value Estimate—0960–0471

SSA considers a person's resources when evaluating eligibility for Supplemental Security Income (SSI) payments. The value of an individual's resources, including non-home real property, is one of the eligibility requirements for SSI payments. SSA obtains current market value estimates of real property owned by applicants for, or recipients of, SSI through Form SSA–L2794. The respondents are small business operators in real estate, state and local employees, and other individuals knowledgeable about local real estate values.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 5,438.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 1,813 hours.

4. Employer Verification of Earnings After Death—20 CFR 404.821 and 404.822—0960–0472

When SSA records show a wage earner is deceased and an employer reported wages for the wage earner for a year subsequent to death, SSA must contact the employer and verify the reported wage and employee information. The information SSA obtains on Form SSA–L4112 verifies the wage information previously received from the employer is correct for the employee and the year in question. The respondents are employers who report wages for employees who have died.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

5. Wage Reports and Pension Information—20 CFR 422.122(b)—0960–0547

Pension plan administrators annually file plan information with the Internal Revenue Service, who then forwards the information to SSA. SSA maintains and organizes this information by plan numbers, plan participant's name, and Social Security number. Under Section 1131(a) of the Social Security Act, pension plan participants are entitled to request this information from SSA. The Wage Reports and Pension Information regulation, 20 CFR 422.122(b) of the Code of Federal Regulations, stipulates that before SSA disseminates this information, the requester must first submit a written request with identifying information to SSA. The respondents are requestors of pension plan information.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 600.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Annual Burden: 300 hours.

6. Request for Reconsideration—20 CFR 404.907–404.921, 416.1407–416.1421, 408.1009—0960–0622

SSA uses Form SSA–561–U2 to initiate and document the reconsideration process for determining an individual's eligibility or entitlement to Social Security benefits (Title II), SSI payments (Title XVI), Special Veterans Benefits (Title VIII), Medicare (Title XVIII), and for initial determinations regarding Medicare Part B income-related premium subsidy reductions. The respondents are individuals filing for reconsideration.

Type of Request: Revision of an OMB-approved information collection.

Collection method	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Paper form & Modernized Claims System	730,850	1	8	97,447
Internet i561	730,850	1	20	243,617
Totals	1,461,700			341,064

7. Identifying Information for Possible Direct Payment of Authorized Fees—0960–0730

SSA collects information from claimants' appointed representatives on Form SSA–1695 to process and facilitate direct payment of authorized fees to a financial institution. SSA also needs this information to issue a Form 1099–MISC, if applicable. Finally, SSA uses Form SSA–1695 to establish a link between each claim for benefits and the data that we collect on the SSA–1699 for our appointed representative database. The respondents are attorneys and other individuals who represent claimants for benefits before SSA.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10,000.

Frequency of Response: 40.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 66,667 hours.

II

SSA has submitted the information collections listed below to OMB for clearance. Your comments on the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than April 29, 2010. You can obtain a copy of the OMB clearance packages by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

1. Waiver of Supplemental Security Income Payment Continuation—20 CFR 416.1400–416.1422—0960–NEW

SSA uses Form SSA 263–U2 to determine whether an individual meets the provisions of the Social Security Act regarding waiver of payment continuation. Recipients must use Form SSA 263–U2 when they are awaiting a determination on their appeal and have decided to stop their payment continuation. SSA needs the information on the form as proof respondents no longer want their payments to continue. Respondents are recipients of SSI payments who wish to discontinue receipt of payment while awaiting a determination on their appeal.

Type of Request: Existing information collection in use without an OMB number.

Number of Respondents: 3,000.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 250 hours.

2. Centenarian Project Development Worksheets: Face-to-Face Interview; Telephone Interview; Third Party Contact; Unable To Locate—20 CFR 416.204(b) and 422.135—0960–NEW

SSA conducts interviews with centenary beneficiaries age 103 and older to assess: (1) If the beneficiaries are still living; (2) to prevent fraud, through either identity misrepresentation or representative payee misuse of funds; and (3) to assess the well-being of the beneficiaries. SSA's San Francisco field offices currently use this survey, and we intend to expand its use to all other SSA field offices. Field office personnel obtain the information through one-time, in-person interviews with centenarians. During the interview, SSA employees will make overall observations of the centenarian and their representative payee (if applicable). The interviewer will use the appropriate Centenarian Development Worksheet as a guide for the interview and to document findings. SSA will conduct the interview one time only at the beneficiary's residence or over the phone if a site visit is not possible. Refusal of the interview will not result in the suspension of the centenarian's payments. Respondents are SSI recipients or Social Security beneficiaries 103 years old or older, their representative payees, or caregivers.

Type of Request: Existing information collection in use without an OMB number.

Number of Respondents: 14,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 3,500 hours.

3. Notice Regarding Substitution of Party Upon Death of Claimant—Reconsideration of Disability Cessation—20 CFR 404.917–404.921 and 416.1407–416.1421—0960–0351

When a claimant dies before we make a determination on that person's request for reconsideration of their disability cessation, SSA seeks a qualified substitute party to pursue the appeal. If SSA locates a qualified substitute party, the agency collects information on Form SSA–770 about whether to pursue or withdraw the reconsideration request. The information Form SSA–770 collects is the basis of the decision to continue or discontinue the appeals process. Respondents are substitute applicants who are pursuing a reconsideration request for a deceased claimant.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden per Response: 5 minutes.

Estimated Annual Burden: 100 hours.

4. Application for Benefits Under the Italy-U.S. International Social Security Agreement—20 CFR 404.1925—0960–0445

SSA collects information using Form SSA–2582 based on the United States-Italy agreement effective November 1, 1978. Article 19.2 of the agreement provides that an applicant for benefits can file an application with either country. Article 4.3 of the Protocol to the Agreement dictates the country receiving the application will forward agreed-upon forms and applications to the other country. As agreed upon by the United States and Italian Social Security agencies, individuals filing an application for U.S. benefits directly with one of the Italian Social Security agencies must complete Form SSA–2528. SSA uses the SSA–2528 to establish age, relationship, citizenship, marriage, death, military service, or to evaluate a family bible or other family record when determining eligibility for benefits. The Italian Social Security agencies assist applicants in completing Form SSA–2528 and then forward the application to SSA for processing. The respondents are individuals living in

Italy who wish to file for U.S. Social Security benefits.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 250.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 83 hours.

5. Earnings Record Information—20 CFR 404.801–404.803 and 404.821–404.822—0960–0505

SSA discovered that as many as 70 percent of the wage reports it receives for children under age 7 are actually the earnings of someone other than the child. To ensure we credit the correct person with the reported earnings, SSA verifies wage reports for children under age 7 with the children's employers before posting to the earnings record. SSA uses Form SSA–L3231–C1 for this purpose. The respondents are employers who report earnings for children under age 7.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

6. Work Incentives Planning and Assistance Program—0960–0629

The Work Incentives Planning and Assistance (WIPA) program collects identifying information from project sites and Community Work Incentives Coordinators (CWIC). In addition, the program collects data from beneficiaries on background employment, training, benefits, and work incentives. SSA is interested in identifying beneficiary outcomes under the WIPA program to determine the extent to which beneficiaries with disabilities achieve their employment, financial, and health care goals. SSA will also use the data in its analysis and future planning for Social Security Disability Insurance and SSI programs.

Type of Request: Extension of an OMB-approved information collection.

Respondents	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Project Site	147	1	2	5
CWIC	422	1	2	14
Beneficiary	60,000	1	5	5,000
Totals	60,569			5,019

7. Beneficiary Interview and Auditor's Observations Form—0960–0630

SSA's Office of the Inspector General collects information through Form SSA–322, the Beneficiary Interview and Auditor's Observation form, to interview beneficiaries and/or their payees to determine if they are complying with their duties and responsibilities. SSA randomly selects SSI recipients and Social Security beneficiaries who have representative payees as respondents for this collection.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 50 hours.

8. Certification of Contents of Document(s) or Record(s)—20 CFR 404.715f—0960–0689

SSA must secure evidence necessary for individuals to establish rights to benefits. Some of the required evidence categories include evidence of age, relationship, citizenship, marriage, death, and military service. Form SSA–704 allows SSA employees, state record custodians, and other custodians of evidentiary documents to record information from documents and records to establish these types of evidence. State record custodians and other custodians of evidentiary documents are the respondents.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 4,800.

Frequency of Response: 1.

Average Burden per Response: 10 minutes.

Estimated Annual Burden: 800 hours.

Dated: March 25, 2010.

Elizabeth Davidson,

Center Director, Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–7016 Filed 3–29–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6936]

Culturally Significant Objects Imported for Exhibition Determinations: "Gods of Angkor: Bronzes From the National Museum of Cambodia"

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 objects to be included in the exhibition "Gods of Angkor: Bronzes from the National Museum of Cambodia," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from on or about May 15, 2010, until on or about January 23, 2011, the J. Paul Getty Museum, Los Angeles, California, from on or about February 22, 2011, until on or about August 14, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 23, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–7091 Filed 3–29–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2007–0022]

Request for Comments on Carriers' Temporary Exemption Requests From DOT's Tarmac Delay Rules for JFK, EWR, LGA and PHL Operations

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: On December 30, 2009, the Department of Transportation (DOT or Department) published a final rule that requires, among other things, that U.S. carriers adopt contingency plans for lengthy tarmac delays that include an assurance that a carrier will not permit an aircraft to remain on the tarmac for more than three hours in the case of domestic flights and for more than a set number of hours as determined by a carrier in the case of international flights without providing passengers an opportunity to deplane, with certain exceptions for safety, security or Air Traffic Control-related reasons. This rule becomes effective on April 29, 2010. Several airlines have requested an exemption from these requirements for operations at John F. Kennedy International Airport (JFK), for seven months in 2010 during which runway construction is expected to be under way at that airport and the rule will otherwise be effective, one airline has asked that operations at Newark Liberty International Airport (EWR) and LaGuardia Airport (LGA) be similarly exempted for the same time period, and another has requested that Philadelphia International Airport (PHL) be included in any relief granted by the Department. The Department is seeking comment on the exemption requests to assist it in deciding whether it should grant or deny these requests. The Department will publish a document in the **Federal Register** regarding its decision on the exemption requests after it has reviewed the comments submitted.

DATES: Comments should be filed by April 9, 2010. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2007–0022 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2007–0022 at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Livaughn Chapman or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; 202–366–9342 (phone), 202–366–7152 (fax), *livaughn.chapman@dot.gov* or *blane.workie@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On December 30, 2009, the Department published a final rule titled "Enhancing Airline Passenger Protections" that sets forth numerous measures geared toward strengthening protections afforded to air travelers. 74 FR 68983. One of these provisions, which takes effect April 29, 2010, requires U.S. certificated and commuter air carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more passenger seats to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large and medium hub U.S. airport at which they operate scheduled and public charter air service. For domestic flights, the rule requires covered U.S. carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than three hours, with two safety/security-related exceptions: (1) Where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (e.g., weather, a directive from an appropriate government agency); and (2) where Air Traffic Control (ATC) advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly disrupt airport operations. For international flights departing from or arriving at a U.S. airport, the rule requires covered U.S. carriers to provide assurance that the carriers will not permit an aircraft to remain on the tarmac for more than a set number of hours before deplaning passengers as determined by the carriers, with the same safety, security, and ATC exceptions. 14 CFR 259.4(b)(1) and (b)(2). For all flights, carriers must provide adequate food and water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security requirements preclude such service. Carriers must also ensure that lavatory facilities are operable and medical attention is provided if needed while the aircraft remains on the tarmac. Pursuant to 49 U.S.C. 46301, violations of 14 CFR Part 259 subject a carrier to civil penalties of up to $27,500 per violation. 49 U.S.C. 46301.

Jet Blue, American, and Delta recently requested an exemption from the tarmac delay rules for their JFK operations from March 1 through December 1, 2010, the period of time during which work affecting JFK's Runway 13R/31L (also referred to as the "Bay Runway") is scheduled to take place, or until work on the runway is completed, whichever date is earlier.[1] On March 1, 2010, runway and airfield construction did in fact commence at JFK, and will temporarily affect operations at that airport. Runway 13R/31L, which is the longest and most frequently used of the four runways at JFK, measures 14,572 feet in length and handles approximately one-third of JFK's annual operations, including approximately half of all departures at JFK. The Port

[1] We note at the outset that the requested exemption would begin March 1, 2010, although the rule does not go into effect until April 29, 2010.

Authority of New York and New Jersey (Port Authority) plans to resurface this runway with concrete and widen it to accommodate new large aircraft and to help prevent ice ingestion. The Port Authority also plans to install new runway lighting, electrical infrastructure, and a new electrical feeder system to the runway.

The construction project is proposed to occur in six phases, and will render Runway 13R/31L unavailable from March 1 to June 30, 2010. The western two-thirds of the runway is planned to reopen on July 1, but its use will be limited under some weather and operating conditions, primarily because some high-speed runway turnoffs and navigational aids (NAVAIDS) will be unavailable until later in the construction period. On September 15, Runway 4L/22R will close until September 30 to resurface its intersection with Runway 13R/31L. Runway 13R/31L and its associated NAVAIDS is planned to reopen in its entirety and be fully functional in mid-November 2010.

JetBlue asserts that it is imperative for the Department to issue it an exemption from the tarmac delay rules because of the JFK runway construction to ensure that the very purpose of the rule—to enhance passenger protections—is not undermined by the application of the final rule to unforeseen and unaddressed circumstances. More specifically, JetBlue requests relief from 14 CFR §§ 259.4(b)(1) and (b)(2), which prohibit carriers from permitting an aircraft to remain on the tarmac for more than 3 hours for domestic flights and for more than a set period of time as determined by the carrier for international flights without providing passengers an opportunity to deplane. JetBlue reasons that disruptive events, such as airport construction, often have a significant, domino-like impact upon multiple flights because the interconnecting resources required for each flight—aircraft, flight deck crew and flight attendant crew—each may compound the problem. JetBlue asserts that one late flight may delay three additional flights if the resources connect differently, and two or more late flights JetBlue argues may delay several more flights. JetBlue avers that once the final rule takes effect on April 29, 2010, the potential for disruption will be further compounded because at the three-hour mark, flights must return to the gate and offer passengers the opportunity to deplane, thereby further delaying that flight (if not resulting in a cancellation). JetBlue asserts that such incidents will have a subsequent ripple effect on the following flights that require use of the same aircraft, cockpit crew or flight attendant crew.

If the Department grants JetBlue its requested exemption, JetBlue states, it will inform passengers before boarding that significant delays may be encountered because of the Bay Runway closing, and will ensure that each of its aircraft is stocked with sufficient food and beverages to accommodate any such delay. In addition, JetBlue states that its lavatories will be available and its LiveTV service will be provided to passengers on each aircraft. JetBlue avers that it has already taken several steps to minimize the impact of this closure on its JFK operations, including voluntarily and significantly reducing planned flight operations and implementing guidelines for passenger comfort and convenience in such situations that are more stringent than current law requires.

Delta supports JetBlue's request for a temporary exemption and further requests that identical relief from the tarmac delay contingency planning provisions be extended to Delta, and to other similarly situated carriers at JFK. Delta states that it has already trimmed its JFK schedule in anticipation of the Bay Runway reconstruction, and will take all reasonable measures to minimize inconvenience to passengers. Delta states that it agrees with JetBlue's argument that rigid and inflexible application of the new tarmac delay rule would have the unintended and undesirable effect of exacerbating passenger inconvenience and disruption by forcing the cancellation of flights that could otherwise be operated. Delta avers that airline recovery and reaccommodation efforts will be further hampered by the reduced capacity of the airport. Delta states that it is willing to abide by the same terms and conditions proposed by JetBlue, including informing passengers of the likelihood of delays, and ensuring that it provides adequate food, beverage, and sanitary facilities.

American agrees with arguments by JetBlue and Delta that application of the new tarmac delay rule during the JFK runway reconstruction project could have unintended adverse impacts on passengers by causing carriers to cancel flights in lieu of incurring large civil penalties. American supports the exemption requests of both JetBlue and Delta, provided that the Department extends relief to all carriers operating at JFK, rather than limit such relief to JetBlue and Delta. American argues that any scenario under which some but not all carriers at JFK would be subject to the tarmac delay rule would be unworkable, unfair, and confusing to consumers.

Continental argues that the problems caused by the runway closure and construction at JFK described by Delta and JetBlue in their exemption requests are not limited to JFK. Continental states that the airports in the New York Metropolitan area share the same air space and arrival and departure corridors. Consequently, Continental contends, delays or delay mitigating strategies at JFK will adversely affect air carriers and passengers at EWR and LGA as well. Therefore, Continental takes the position that to the extent the Department grants Delta and JetBlue temporary relief from the tarmac delay rules fundamental fairness dictates that airlines serving EWR and LGA receive the same relief.

Comments on these carriers' requests have been filed by FlyersRights.org. FlyersRights.org opposes each of the exemption requests. FlyersRights.org argues that those carriers are requesting permission to keep their passengers stranded for more than three hours on taxiways at JFK because airlines have overscheduled operations beyond the capacity of the JFK runway system during this temporary period. Flyersrights.org asserts that over-scheduling exists because the FAA has not required the airlines serving JFK to reduce their scheduled operations at that airport to avoid multi-hour departure delays before takeoff during the Bay Runway reconstruction period. Flyersrights.org argues that ATC should prohibit airlines from pushing aircraft back from gates at congested airports, such as JFK, when a lengthy tarmac delay is inevitable. Flyersrights.org maintains that airlines have had months to plan for the reconstruction of the Bay Runway, and argues that a grant of the exemption requests would set a bad precedent.[2]

Most recently, on March 22, 2010, US Airways also filed a request for an exemption from the tarmac delay rules. US Airways states in its petition that it fully supports Continental's request that all carriers serving the three major New York City airports be granted relief from the tarmac delay rules under the same terms and conditions contained in JetBlue's petition, provided that the Department grants the same relief for Philadelphia's airport (PHL). US Airways argues that PHL should be included because PHL shares the same airspace with JFK, LGA and EWR, is part of the same air traffic control

[2] Interested persons can read the carriers' exemption requests and comments on these requests in their entirety in this docket.

center, and has the same congestion challenges as those airports.

The Department is seeking comment on whether it should act on the requests by JetBlue, Delta, American, Continental and US Airways by means of one of the following four measures: (1) Deny each exemption request; (2) grant one or more of the exemption requests in their entirety; (3) grant a limited temporary exemption for operations at one or more of the airports by allowing the 3-hour limit to be raised to 4 hours during the two specific heavy construction periods (April 29 thru June 30, 2010 and September 16 thru September 29, 2010) planned for JFK's Bay Runway; or (4) deny each exemption request, but direct the Aviation Enforcement Office to consider the runway closure and unexpected bad weather in deciding whether to pursue an enforcement case against a carrier for a lengthy tarmac delay incident that occurs at one or more of the airports.

We invite interested persons to comment on these proposed courses of action. What are the potential costs or benefits of each measure? Are there other alternative measures that the Department should consider? How likely are the proposed measures to succeed in protecting passengers from lengthy tarmac delays? Should carriers' requests for an exemption for their JFK operations be treated differently than the request for an exemption for the operations at LGA, EWR and PHL? Should any course of action apply to all carriers at JFK or only specific carriers (*e.g.,* carriers with more significant presence at JFK)? Since carriers can establish any tarmac delay limits for international flights in their contingency plans, is there any reason that an exemption is needed for such flights? Commenters should explain their reasons for supporting or not supporting a particular measure or method.

Issued this 25th day of March 2010, at Washington, DC.

Ray LaHood,

Secretary of Transportation.

[FR Doc. 2010–7198 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–317 (Sub-No. 6X)]

Indiana Harbor Belt Railroad Company—Discontinuance of Trackage Rights Exemption—in Lake County, IN

Indiana Harbor Belt Railroad Company (IHB) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue its local and overhead trackage rights over approximately 1.78 miles of Elgin, Joliet & Eastern Railway Company's (EJE) line of railroad extending from milepost 47.88 at Hammond, to milepost 46.10 at Hammond (Hammond Line), in Lake County, IN.[1] The line traverses United States Postal Service Zip Code 46320.

IHB has certified that: (1) No local traffic has moved via its trackage rights over the line for at least 2 years; (2) any IHB overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of IHB rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 29, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2)[2] must be filed by April 9, 2010.[3] Petitions to reopen must be filed by April 19, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IHB's representative: Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our website at *www.stb.dot.gov.*

Decided: March 25, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–7015 Filed 3–29–10; 8:45 am]

BILLING CODE 4915–15–P

[1] IHB notes that EJE anticipates filing for authority to abandon the Hammond Line.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2010–0027]

Livability Initiative under Special Experimental Project No. 14

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The FHWA is requesting comments on a livability initiative to harmonize and coordinate the Federal-aid Highway Program with grant-in-aid programs administered by the Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA). Under this initiative, the FHWA intends to utilize Special Experimental Project No. 14 (SEP–14) to permit, on a case-by-case basis, the application of HUD requirements on Federal-aid highway projects that may otherwise conflict with Federal-aid Highway Program requirements. One such requirement is contained in HUD's Section 3 Program, the goal of which is to provide training, employment and contracting opportunities to low and very low income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located and businesses that substantially employ such persons. The purpose of this proposed SEP–14 experiment is to further the goals of the DOT, HUD, and EPA partnership on sustainable communities.

DATES: Comments must be received on or before May 14, 2010.

ADDRESSES: All comments should include the docket number that appears in the heading of this document and may be submitted in the following ways:

• *E-Gov Web site: http://www.regulations.gov.* This Web site allows the public to enter comments on any **Federal Register** notice issued by

any agency. Follow the instructions for submitting comments.

- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that DOT received your comments, include a self-addressed stamped postcard.

Note: Comments are posted without changes or edits to *http://www.regulations.gov*, including any personal information provided. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. 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.*). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. Gerald Yakowenko, Office of Program Administration (HIPA), (202) 366–1562. For legal information: Mr. Michael Harkins, Office of the Chief Counsel (HCC–30), (202) 366–4928, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through *http://www.regulations.gov*, which is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the **Federal Register**'s home page at *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at *http://www.gpoaccess.gov*.

Background

On March 18, 2009, DOT and HUD announced a new "Sustainable Communities" partnership to help American families gain better access to affordable housing, more transportation options, and lower transportation costs. On June 16, 2009, the EPA joined the DOT/HUD partnership, which helps ensure that transportation and housing goals are met while protecting the environment, promoting equitable development, and helping to address the challenges of climate change. The initiative underlying this partnership has a number of goals and principles including coordinating and leveraging Federal investment, increasing community revitalization and the efficiency of public works investments, expanding location- and energy-efficient housing choices for people of all incomes, and aligning DOT, HUD, and EPA policies and funding to remove barriers to collaboration. This initiative has been developed, in part, to develop measures that enhance the livability of communities, neighborhoods, and metropolitan areas, help communities attain livability goals and remove barriers to coordinated housing, transportation, and environmental protection investments. More information regarding the DOT, HUD, and EPA Sustainable Communities Partnership can be found at *http://www.epa.gov/dced/2009–0616-epahuddot.htm.*

Recently, HUD and DOT recognized an opportunity for collaboration between our respective Agencies for the benefit of funding recipients who want to use certain HUD funds as a local match for FHWA grants-in-aid. In exploring this opportunity, FHWA found that certain HUD requirements were potentially in conflict with requirements of the Federal-aid Highway Program. Specifically, HUD's Section 3 program at 12 U.S.C. 1701u requires that recipients of funds from programs that provide certain housing and community development assistance ensure that opportunities for training and employment are given to low and very low income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located, to the greatest extent feasible, and that contracting opportunities generated by the expenditure of such funds be made available to businesses that substantially employ such persons, to the greatest extent feasible. Further, 12 U.S.C. 1701u(b) provides that it is the policy of the Congress to ensure employment and other economic opportunities generated by Federal financial assistance for housing and community development programs be directed to low and very low-income persons, particularly recipients of government assistance for housing.

Under 42 U.S.C. 5305, HUD's economic opportunity requirements apply to, among other things, projects utilizing Community Development Block Grant (CDBG) funds for public infrastructure improvements. Further, 42 U.S.C. 5305 provides that CDBG funds may be used as the non-Federal match required by other Federal grant-in-aid programs.

The FHWA regulations at 23 CFR 635.117(b) and 636.107 prohibit contracting agencies from using geographic preferences on Federal-aid highway projects. The FHWA's regulations were enacted pursuant to 23 U.S.C. 112(a), which provides that the Secretary of Transportation shall require such plans and specifications and such methods of bidding as shall be effective in securing competition, and 23 U.S.C. 112(b), which requires Federal-aid highway contracts be awarded by competitive bidding to the lowest responsive, responsible bidder.

While it appears that CDBG- and FHWA-eligible projects would benefit from the use of joint funding, the potential conflict between HUD's economic opportunity requirements and FHWA's procurement requirements has been identified as a potential barrier to the efficient administration of joint FHWA/HUD funded projects and could inhibit the ability of State and local governments to utilize their HUD funding to support highway projects funded under Title 23.

SEP–14

In 1988, a Transportation Research Board (TRB) task force, comprised of representatives from all segments of the highway industry, was formed to evaluate Innovative Contracting Practices. This TRB task force requested that the FHWA establish a project to evaluate and validate certain findings of the task force regarding innovative contracting practices, which are documented in Transportation Research Circular Number 386, titled, "Innovative Contracting Practices," dated December 1991. In response, the FHWA initiated Special Experimental Project No. 14 (SEP–14) (*http://fhwa.dot.gov/programadmin/contracts/021390.cfm*).

The SEP–14 strives to identify, evaluate, and document innovative contracting practices that have the

potential to reduce the life cycle cost of projects, while at the same time, maintain product quality. Under SEP–14, the FHWA has the flexibility to experiment with innovative approaches to contracting. However, SEP–14 does not seek alternatives to the open competitive bid process.

The innovative practices originally approved for evaluation were: cost-plus-time bidding, lane rental, design-build contracting, and warranty clauses. Forty-one States have used at least one of the innovative practices under SEP–14. Based on their collective experiences, FHWA decided that cost-plus-time bidding, lane rental, and warranty clauses were techniques suitable for use as non-experimental, operational practices and in 1995 these were made regular Federal-aid procedures. Additionally, design-build contracting in the Federal-aid Highway Program was originally conducted under SEP–14 until Congress modified 23 U.S.C. 112 in section 1307 of the Transportation Equity Act for the 21st Century (TEA–21) to permanently authorize the use of this contracting method. The SEP–14 continues to be used to test and evaluate experimental contracting practices.

Livability Features Under SEP–14

The FHWA proposes to permit States to request SEP–14 approval for contracting practices intended to enhance livability and sustainability as part of any project that is to be jointly funded with HUD. In order to receive SEP–14 approval, States would need to follow the normal process and submit work plans to the appropriate FHWA division office.

In particular, with respect to projects involving activities that otherwise meet the requirements for the use of FHWA and HUD funds, the FHWA proposes to permit States to experiment under SEP–14 by combining these funding sources for single, integrated projects that are procured and bid under a single contract while complying with training, employment and contracting requirements of HUD's Section 3, to the greatest extent feasible. The purpose of the experiment will be to gauge the extent to which HUD funding may be used for highway projects, the effects on competition whenever HUD's economic opportunity requirements are used on a joint FHWA/HUD project, and the extent to which the alignment of FHWA and HUD requirements further livability. As such, States would be asked to address at least four points in developing their work plans. First, States would be asked to describe how they will evaluate the effects of HUD's economic opportunity requirements on competitive bidding. In doing so, the States may wish to compare the bids received for the proposed project to prior projects of similar size and scope and in the same geographic area. Second, States would be asked to quantify and report on the expected economic benefits from advancing the joint FHWA/HUD project under a single contract.

Third, States wishing to utilize SEP–14 to permit the use of HUD-required hiring preferences on joint FHWA/HUD projects would be asked to identify the amount of HUD and FHWA funding involved in the project as well as the estimated total project cost. In order to qualify for a SEP–14 approval to use a geographic preference for a joint FHWA/HUD project, we propose that the amount of HUD funding involved with the project must be at least 10 percent of the amount of Title 23 eligible work, or with respect to projects financed with $100,000,000 or more in Federal funding in the aggregate, 5 percent of such eligible work. In any event, the FHWA may reject SEP–14 work plans for projects with only *de minimis* amount of HUD funding. Fourth, States would be asked to address in the work plan the degree to which the project enhances livability and sustainability.

Livability investments are projects that not only deliver transportation benefits, but are also designed and planned in such a way that they have a positive impact on qualitative measures of community life. This element of long-term outcomes delivers benefits that are inherently difficult to measure. However, it is implicit to livability that its benefits are shared and therefore magnified by the number of potential users in the affected community. Therefore, we propose that descriptions of how projects enhance livability should include a description of the affected community and the scale of the project's impact. Factors relevant to whether a project improves the quality of the living and working environment of a community include:

- Will the project significantly enhance user mobility through the creation of more convenient transportation options for travelers?
- Will the project improve existing transportation choices by enhancing points of modal connectivity or by reducing congestion on existing modal assets?
- Will the project improve accessibility and transport services for economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities, or to make goods, commodities, and services more readily available to these groups?
- Is the project the result of a planning process which coordinated transportation and land-use planning decisions and encouraged community participation in the process?

Sustainability refers to whether a project promotes a more environmentally sustainable transportation system. Factors relevant to sustainability include:

- Does the project improve energy efficiency, reduce dependence on oil and/or reduce greenhouse gas emissions? Applicants would be encouraged to provide quantitative information regarding expected reductions in emissions of CO2 or fuel consumption as a result of the project, or expected use of clean or alternative sources of energy. Projects that demonstrate a projected decrease in the movement of people or goods by less energy-efficient vehicles or systems would be given priority under this factor.
- Does the project maintain, protect or enhance the environment, as evidenced by its avoidance of adverse environmental impacts (for example, adverse impacts related to air quality, wetlands, and endangered species) and/or by its environmental benefits (for example, improved air quality, wetlands creation or improved habitat connectivity)?
- Does the project further the goals of the DOT, HUD, and EPA Sustainable Communities Partnership discussed above?

The FHWA would only consider the possible use of HUD's economic opportunity requirements under SEP–14 in the context of a joint FHWA/HUD project and only to the extent necessary to comply with applicable HUD statutes. The FHWA would not consider the use of such preferences unless necessary to meet the requirements of a Federal grant-in-aid program.

Request for Comments

The FHWA requests comments on all aspects of this notice, including the FHWA's proposal to use SEP–14 to test contracting methods that enhance livability and sustainability in projects funded jointly with HUD. Additionally, the FHWA specifically requests comments on the use of SEP–14 to experiment with the use of geographic preferences in joint FHWA/HUD projects and the type of data the FHWA should receive from States in evaluating this SEP–14 experiment.

Authority: 23 U.S.C. 315.

Issued on: March 22, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–7053 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting—Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services.

DATES: The meeting will be held Tuesday, April 20, 2010 from 9 a.m.–4 p.m. Pacific Daylight Time.

Important note to SC–222 Participants. The 5th Plenary Session will be held in conjunction with the Inmarsat Aero Conference in San Francisco (*see* below). As of the date of this Meeting Announcement, the agenda for the 5th Plenary session is sparse. We have already changed the meeting from two days to one, and the current expectation is that all productive business may be concluded in less than the allotted time. As a result, provision for participation by telecon and WebEx will be provided for committee members who are not attending the Conference.

ADDRESSES: Hosted by Inmarsat in conjunction with the Inmarsat Aero Conference at the Four Seasons Hotel, 757 Market Street, San Francisco, CA 94103, USA. Rooms may be reserved at the conference rate by contacting the hotel directly at 415–633–3490 and referring to the Inmarsat Aero Conference.

An RSVP to Chuck LaBerge (*laberge.engineering@gmail.com*) and Daryl McCall (*dmccall@fastekintl.com*) is requested by close of business Monday, April 13, 2010. Members who plan to use the telecon/WebEx are encouraged to reply noting their intention.

Dress: Business Casual.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services.

The agenda will include:

Tuesday, April 20, 2010—Telephone bridge available at 8:45 PDT; details posted to SC–222 Web site by Monday, April 19, 2010.

- Opening Plenary (Introductions and Opening Remarks).
- Review and Approval of SC–222/WP–038, Summary for the 4th Meeting of Special Committee 222 held at the SkyTerra, Reston, VA.
- Review and Approval of the Agenda for the 5th Meeting of SC–222, WP–040.
- Old Business.
- Review of/reports for the currently active Action Items regarding SBB Safety issues per the minutes of the 4th Plenary Meeting.
- Working Papers, Discussions regarding ATCt issues.
- SC–222/WP–039 Analysis of Potential ATCt Interference to Inmarsat Aeronautical Services.
- Additional working papers as may be provided in advance of the meeting.

Note: Working papers posted to the SC–222 Web Site on before April 13 will receive first priority in review. Additional working papers will be reviewed in the order in which they were received. To obtain a new WP number, contact Dr. LaBerge at *laberge.engineering@gmail.com*. To post a new WP to the Web site, provide a PDF version to Mr. McCall at *dmccall@fastekintl.com*, with a copy to Dr. LaBerge.

- Additional working papers as may be provided at the meeting.
- Other Business.
- Review and adjustment of document delivery schedule, based on working paper discussion.
- Review of Assignments and Action Items.
- Date and Location for the 6th Meeting of SC–222. Tentatively as a joint meeting with AEEC AGCS in Annapolis, MD, August 2–6, 2010.
- Adjourn (no later than p.m.).

Note: The Inmarsat Aero Conference starts at 6 PM PDT on Tuesday, April 20, 2010.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 24, 2010.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–7085 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting—RTCA Special Committee 220: Automatic Flight Guidance and Control

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 220: Automatic Flight Guidance and Control meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 220: Automatic Flight Guidance and Control.

DATES: The meeting will be held April 20–22, 2010. April 20th–21st from 9 a.m. to 5 p.m. and April 22nd from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the La Quinta Inn, 20570 W 151st Street, Olathe, KS 66061, Tel: 1–913–254–0111, Fax: 1–913–254–0777.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 220: Automatic Flight Guidance and Control meeting. The agenda will include:

- Welcome/Agenda Overview
- Continue MOPS Write-up
- Wrap-up and Review of Action Items
- Establish Dates, Location, Agenda for Next Meeting, Other Business

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 23, 2010.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–7084 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–09]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 19, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–1218 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, (425–227–2127), Standardization Branch, ANM–113, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC on March 24, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2009–1218.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: § 25.1301(d).

Description of Relief Sought: Instead of complying with the provision that the engine "Function properly when installed," Boeing requests that the engine be assured to "Function safely when installed, notwithstanding occurrence of a possible non-operationally significant minor EPR limit cycle oscillation during certain ground operation, at aircraft speed below 35 knots IAS."

[FR Doc. 2010–7014 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–08]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before April 19, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–0323 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenna Sinclair, ANM–113, (425) 227–1556, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, WA 98057–3356; or Ralen Gao, (202) 267–3168, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 24, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2007–0323.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: §§ 25.785(j), 25.857(e), and 25.1447(c)(1).

Description of Relief Sought: Boeing requests adding a lock on access doors between the occupied area and the cargo compartment on its Model 777F freighters. This feature would prevent a stowaway from gaining access to the occupied areas while retaining the in-flight access to the cargo compartment via these doors granted by Exemption No. 9779.

[FR Doc. 2010–7013 Filed 3–29–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Feasibility of Including a Volunteer Requirement for Receipt of Federal Education Tax Credits

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury invites the general public to comment on the feasibility of instituting a community service requirement as a condition for receiving a tax credit for tuition and related expenses.

DATES: Written comments should be received on or before April 29, 2010, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Deena Ackerman, Office of Tax Analysis, at (202) 622–7504.

SUPPLEMENTARY INFORMATION: Section 1004(f) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (ARRA) charges the Department of the Treasury (Treasury) and the Department of Education (Education) with studying the feasibility of including a community service requirement as a condition for receiving a tax credit for tuition and related expenses. Treasury and Education are instructed to report on the study to Congress.

Under current law, individual taxpayers with education expenses may be eligible for one of several education credits described in section 25A of the Internal Revenue Code. Taxpayers may claim a lifetime learning credit for 20 percent of up to $10,000 of expenses for tuition and required fees per taxpayer for a maximum credit of $2,000. The lifetime learning credit is non-refundable and subject to income limits. Through 2010, taxpayers may claim an American Opportunity Tax Credit for 100 percent of the first $2,000 of tuition and expenses, and 25 percent of the next $2,000 of tuition and expenses per student for eligible students who are attending postsecondary education at least half time. Up to 40 percent of the eligible credit amount is refundable and the credit is subject to income limits. The American Opportunity Tax Credit expires December 31, 2010, after which taxpayers may be eligible for the non-refundable Hope scholarship credit for the first two years of post-secondary education, as under pre-ARRA law. Taxpayers may claim a Hope scholarship credit for 100 percent of the first $1,200 and 50 percent of the next $1,200 of tuition and required fees per student attending at least half time. The credit is non-refundable and subject to income limits. A taxpayer may claim only one credit per eligible student.

Treasury is soliciting comments to assist in the exploration of the feasibility of implementing a community service requirement as a condition for receiving an education credit. Treasury is particularly interested in comments on the specific questions set forth below, or on other issues related to the feasibility of instituting a community service requirement.

1. Should students be required to fulfill a community service requirement for receipt of an education credit? Why or why not?

2. If there were a community service requirement, should the institutions providing post-secondary education and training (hereafter, colleges) be required to administer it? Please elaborate.

3. If there were a community service requirement, and colleges were required to administer the requirement, what would be the main operational and administrative challenges the schools would face in implementing this requirement? Topics to address include, but are not limited to:

a. How would colleges ensure that there are meaningful community service opportunities available for all students?

b. How would colleges ensure that eligible students are identified and able to claim the credit while students who failed to fulfill the community service requirement are not able to claim the credit?

c. How could existing infrastructure on campuses help or hinder the implementation of this requirement?

4. If administration of this credit involved additional reporting, perhaps on a revised IRS Form 1098–T or were tied to the campus-based work study program, how would institutions be affected?

5. What challenges would students face in fulfilling this community service requirement if it were adopted?

When submitting comments, please include your name, affiliation, address, e-mail address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

ADDRESSES: Please submit comments electronically through *education.comments@do.treas.gov.* Alternatively, comments may be mailed to: Volunteer Requirement Comments, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 4036A, Washington, DC 20220.

Dated: March 24, 2010.

Mark Mazur,

Deputy Assistant Secretary (Tax Analysis).

[FR Doc. 2010–7021 Filed 3–29–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designations, Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing the names of 54 individuals whose property and interests in property have been blocked pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act") (21 U.S.C. 1901–1908, 8 U.S.C. 1182).

DATES: The designation by the Director of OFAC of the 54 individuals identified in this notice pursuant to section 805(b) of the Kingpin Act is effective on March 24, 2010.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available on OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: (202) 622–0077.

Background

The Kingpin Act became law on December 3, 1999. The Kingpin Act establishes a program targeting the activities of significant foreign narcotics traffickers and their organizations on a worldwide basis. It provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and the benefits of trade and transactions involving U.S. companies and individuals.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property and interests in property, subject to U.S. jurisdiction, of persons who are found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

On March 24, 2010, the Director of OFAC designated 54 individuals whose property and interests in property are blocked pursuant to section 805(b) of the Foreign Narcotics Kingpin Designation Act.

The list of additional designees is as follows:

Individuals:

1. SAUCEDA GAMBOA, Gregorio, Avenida Manuel M. Ponce 2404, Colonia Zaragoza, Nuevo Laredo, Tamaulipas, Mexico; Leonides Guerra No. 97 y Eugenio Lopez No. 97, Colonia San Rafael, Matamoros, Tamaulipas, Mexico; Claveles No. 320, entre Retama y Palma, Colonia Jardin, Reynosa, Tamaulipas, Mexico; Octava No. 433, entre Fuente de Diana y Boulevard Oriente Dos, Colonia Las Fuentes, Reynosa, Tamaulipas, Mexico; Calle Ciudad PEMEX, Enseguida del Numero 512, Colonia Jose de Escandon—Petrolera, Reynosa, Tamaulipas, Mexico; DOB 05 Nov 1965; Alt. DOB 05 May 1965; POB Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. SAXG651105HTSCXR07 (Mexico); Electoral Registry No. SCGMGR65110528H300 (Mexico); (INDIVIDUAL) [SDNTK]

2. GONZALEZ DURAN, Jaime, Calle Xolmon, Tampaxal, Colonia Aquismon, San Luis Potosi C.P. 79760, Mexico; DOB 22 Jan 1976; POB San Luis Potosi, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. GODJ760122HSPNRM01 (Mexico); R.F.C. GODJ760122 (Mexico); Cartilla de Servicio Militar Nacional B8987689 (Mexico); C.U.I.P. GODJ760122H24151162 (Mexico); (INDIVIDUAL) [SDNTK]

3. TREVINO MORALES, Omar (a.k.a. TREVINO MORALES, Alejandro; a.k.a. TREVINO MORALES, Omar Alejandro; a.k.a. TREVINO MORALES, Oscar Omar); Colonia Militar, Nuevo Laredo, Tamaulipas, Mexico; Reynosa, Tamaulipas, Mexico; Coahuila, Mexico; DOB 26 Jan 1974; POB Nuevo Laredo, Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

4. VELASQUEZ CABALLERO, Ivan (a.k.a. VELAZQUEZ CABALLERO, Ivan; a.k.a. VELAZQUES CABALLERO, Ivan); Calle Nuevo Leon, Colonia Riveras Del Rio, Nuevo Laredo, Tamaulipas CP88000, Mexico; Calle Belden 5936, Colonia Militar, Nuevo Laredo, Tamaulipas, Mexico; Calle Mundial 55, Nuevo Laredo, Tamaulipas, Mexico; Calle 15 Septiember y Leandro Valle, Nuevo Laredo, Tamaulipas, Mexico; Calle Veracruz 500 o 550, Colonia Electricistas, Nuevo Laredo, Tamaulipas, Mexico; Calle Lucio Blanco 1324, Colonia Militar, Nuevo Laredo, Tamaulipas, Mexico; Avenida Abasolo No. 620, Colonia Hidalgo, Seccion 770, Nuevo Laredo, Tamaulipas, Mexico; Villa Hidalgo, Coahuila, Mexico; Paseo Colon St., Nuevo Laredo, Tamaulipas, Mexico; Lago St. and La Chapalla, Nuevo Laredo, Tamaulipas, Mexico; 1418 Yucatan, Nuevo Laredo, Tamaulipas, Mexico; DOB 10 Feb 1970; POB Nuevo Laredo, Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. VECI700210HTSLBV09 (Mexico); (INDIVIDUAL) [SDNTK]

5. REJON AGUILAR, Jesus Enrique (a.k.a. REJON AGUILAR, Jose (Jesus) Enrique); Calle Hidalgo No. 6, Col. Sabancuy, Carmen, Campeche C.P. 24370, Mexico; DOB 09 Jun 1976; Alt. DOB 01 Jan 1970; POB Campeche; Citizen Mexico; Nationality Mexico; C.U.R.P. REAJ760609HCCJGS02 (Mexico); Cartilla de Servicio Militar Nacional C720867 (Mexico); C.U.I.P. REAE760609H04151249 (Mexico); (INDIVIDUAL) [SDNTK]

6. PEREZ ROJAS, Daniel (a.k.a. GONZALEZ DIAZ, Juan); Fraccionamiento Santa Isabel, Tlajomulco De Zuniga, Jalisco, Mexico; Aldea San Cristobal, Comapa, Jutiapa, Guatemala; Valle Hermoso, Tamaulipas, Mexico; Matamoros, Tamaulipas, Mexico; DOB 10 Feb 1977; Alt. DOB 28 Sep 1976; Alt. DOB 11 Feb 1977; POB Moyuta, Guanajuato, Mexico; Citizen Mexico; Nationality Mexico; Driver's License No. 1–1–22–07–00030905–3 (Guatemala) exp: 2010; Cedula No. U22–30905 (Guatemala); (INDIVIDUAL) [SDNTK]

7. MENDEZ SANTIAGO, Flavio, Mexico; DOB 11 Mar 1975; Citizen Mexico; Nationality Mexico; R.F.C. MESF750311 (Mexico); (INDIVIDUAL) [SDNTK]

8. HERNANDEZ LECHUGA, Lucio (a.k.a. HERNANDEZ LECHUGA, Raul Lucio; a.k.a. HERNANDEZ LECHUGA, Luciano); Mexico; Calle Astros 7, Col. Praxedis Balboa, Matamoros, Tamaulipas, Mexico; DOB 08 Feb 1976; POB Hidalgo, Mexico; Alt. POB Piedras Negras, Coahuila, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

9. RUIZ TLAPANCO, Sergio Enrique, Mexico; DOB 08 Oct 1972; Citizen Mexico; Nationality Mexico; R.F.C. RUTS721008 (Mexico); (INDIVIDUAL) [SDNTK]

10. RAMIREZ TREVINO, Mario (a.k.a. RAMIREZ TREVINO, Mario Armando); Tamaulipas, Mexico; Reynosa, Tamaulipas, Mexico; DOB 05 Mar 1962; POB Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

11. PENA MENDOZA, Sergio (a.k.a. PENA MENDOZA, Sergio Arturo Sanchez; a.k.a. PENA SOLIS, Sergio; a.k.a. MENDOZA PENA, Sergio; a.k.a. SOLIS, Rene Carlos; a.k.a. LOPEZ, Antonio Santiago); Miguel Hidalgo 410, Concordia, Nuevo Laredo, Tamaulipas, Mexico; Calle Decima, Colonia Las Fuentes, Reynosa, Tamaulipas, Mexico; DOB 25 Jan 1973; Alt. DOB 1970; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

12. FLORES BORREGO, Samuel (a.k.a. "Samuel FLORES FLORES"); Miguel Aleman, Tamaulipas, Mexico;

Reynosa, Tamaulipas, Mexico; Michoacan, Mexico; DOB 06 Aug 1972; Alt. DOB 22 Aug 1977; POB Tamaulipas, Mexico; Alt. POB Distrito Federal, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. FOBS720806HTSLRM05 (Mexico); C.U.I.P. FOFS770822H09576414 (Mexico); (INDIVIDUAL) [SDNTK]

13. MEJIA GONZALEZ, Juan Reyes, Miguel Aleman, Tamaulipas, Mexico; DOB 18 Nov 1975; POB Mier, Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

14. BARRAGAN BALDERAS, Gilberto (a.k.a. "Gilberto Barragan"); Miguel Aleman, Tamaulipas, Mexico; DOB 19 May 1970; POB Miguel Aleman, Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

15. CANO FLORES, Aurelio (a.k.a. SANCHEZ CASTILLO, Efrain); Miguel Aleman, Tamaulipas, Mexico; Tampico, Tamaulipas, Mexico; DOB 03 May 1972; Alt. DOB 1972; POB Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

16. NAJERA TALAMANTES, Sigifredo, Dionicio Carreon 228, Colonia Alianza, Nuevo Laredo, Tamaulipas, Mexico; Monterrey, Nuevo Leon, Mexico; Coahuila, Mexico; DOB 31 Aug 1980; POB Delicias, Coahuila, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

17. RANGEL BUENDIA, Alfredo, Privada Laredo 6412, Colonia Hipodromo, Nuevo Laredo, Tamaulipas, Mexico; Calle Villareal 23, Colonia Country Club, Hermosillo, Sonora, Mexico; Calle Leonardo Valles 721, Hermosillo, Sonora, Mexico; Calle Sierra Azul 239, Hermosillo, Sonora, Mexico; DOB 23 Feb 1966; Alt. DOB 03 Nov 1986; Alt. DOB 03 Jan 1966; POB Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. RABA660223HTSNNL09 (Mexico); Electoral Registry No. RNBNAL66022328H401 (Mexico); Credencial electoral 156593459 (Mexico); Driver's License No. 724097 (Mexico); (INDIVIDUAL) [SDNTK]

18. MEDINA ROJAS, Eleazar (a.k.a. MEDINA RIOJAS, Eleazar; a.k.a. GONZALEZ MARTINEZ, Erick); Cuauhtemoc 805, Nuevo Laredo, Tamaulipas, Mexico; Diaz Miron 604, Colonia Victoria, Nuevo Laredo, Tamaulipas, Mexico; DOB 28 Jan 1972; POB Nuevo Laredo, Tamaulipas; Alt. POB Monterrey, Nuevo Leon; Citizen Mexico; Nationality Mexico; C.U.R.P. MERE720128HTSDJL07 (Mexico); (INDIVIDUAL) [SDNTK]

19. MONTES SERMENO, Juan Gabriel (a.k.a. MONTES SERMENO, Gabriel; a.k.a. MONTES, Juan Gabriel; a.k.a. MONTES ZERMENO, Gabriel); Calle Libertad No. 5, Col. San Fernando, Matamoros, Tamaulipas, Mexico; Calle Libertad No. 84, Col. San Fernando, Matamoros, Tamaulipas, Mexico; DOB 27 Oct 1973; POB Tamaulipas; Citizen Mexico; Nationality Mexico; C.U.R.P. MOSJ731027HTSNRN02 (Mexico); (INDIVIDUAL) [SDNTK]

20. DIAZ LOPEZ, Mateo, Calle Guatemala No. 5610, Colonia Hipodromo, Nuevo Laredo, Tamaulipas, Mexico; Calle Tiera Del Soconusco No. 252, Fraccionamiento Colinas Del Sur, Nuevo Laredo, Tamaulipas, Mexico; Calle Mundial No. 55, Nuevo Laredo, Tamaulipas, Mexico; Sinaloa No. 10, Kilometer 10, Nuevo Laredo, Tamaulipas, Mexico; Calle Ramiro Pena No. 829, Colonia Electricistas, Nuevo Laredo, Tamaulipas, Mexico; Calle Habana No. 2204, Colonia Americo Villarreal, Nuevo Laredo, Tamaulipas, Mexico; Veracruz No. 500 o 550, Colonia Electricistas, Nuevo Laredo, Tamaulipas, Mexico; Calle Chihuahua No. 805 0 815, Cerca de la esquina de Calle Ruiz Cortines, Nuevo Laredo, Tamaulipas, Mexico; DOB 11 Sep 1973; Alt. DOB 1974; POB Valle Hermoso, Tamaulipas; Alt. POB La Libertad, Cunduacan, Tabasco, Mexico; Alt. POB San Rafael, Tabasco, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

21. VASQUEZ MIRELES, Victor Manuel (a.k.a. VAZQUEZ MIRELES, Victor Manuel); Guadalupe, Nuevo Leon, Mexico; San Nicholas, Nuevo Leon, Mexico; Tampico, Tamaulipas, Mexico; Calle Abelardo Rodriguez, Matamoros, Tamaulipas, Mexico; DOB 03 Jun 1967; Alt. DOB 03 Jun 1977; POB Tamaulipas, Mexico; Alt. POB Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. VAMV670603HTSZRC06 (Mexico); (INDIVIDUAL) [SDNTK]

22. GONZALEZ PIZANA JR., Rogelio (a.k.a. GONZALEZ GARZA, Rolando; a.k.a. PIZANA GONZALEZ, Rogelio; a.k.a. GONZALEZ PIZANA, Rogelio Kak, Jr.); Matamoros, Tamaulipas, Mexico; Carretera A La Playa El Huizachal, Valle Hermoso, Tamaulipas, Mexico; Fraccionamiento Valle De Aguayo, 9th Street and Quintana Roo No. 3150, Ciudad Victoria, Tamaulipas, Mexico; DOB 28 Feb 1974; Alt. DOB 01 Mar 1974; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

23. REYES ENRIQUEZ, Luis, Mexico; DOB 21 Jun 1973; POB Veracruz; Alt. POB Molango de Escamilla, Hidalgo; Citizen Mexico; Nationality Mexico; C.U.R.P. REEL730621HVZYNS07 (Mexico); (INDIVIDUAL) [SDNTK]

24. ESTRADA GONZALEZ, Eduardo, Mexico; DOB 01 May 1974; POB Tamaulipas; Citizen Mexico; Nationality Mexico; C.U.R.P. EAGE740501HTSSND02 (Mexico); R.F.C. EAGE740501 (Mexico); (INDIVIDUAL) [SDNTK]

25. MELLADO CRUZ, Galdino (a.k.a. MELLADO CRUZ, Galindo; a.k.a. GALINDO MELLADO, Cruz; a.k.a. "El Mellado"); Calle Llano Grande, Tampico Alto, Veracruz C.P. 92040, Mexico; DOB 18 Apr 1973; POB Tampico, Veracruz; Citizen Mexico; Nationality Mexico; C.U.R.P. MECG730418HVZLRL05 (Mexico); R.F.C. MECC730418 (Mexico); (INDIVIDUAL) [SDNTK]

26. GERESANO ESCRIBANO, Gonzalo (a.k.a. "GERESANO ESCRINAO"; a.k.a. "JEREZANO ESCRIBANO"; a.k.a. "CERESANO ESCRIBANO"; a.k.a. "GERESANO ESCRIBAJO"); Mexico; DOB 28 Feb 1974; Citizen Mexico; Nationality Mexico; R.F.C. GEEG740228 (Mexico); (INDIVIDUAL) [SDNTK]

27. CARBAJAL REYES, Ramon Ulises (a.k.a. CARVAJAL REYES, Ramon Ulises; a.k.a. CARRAJAL REYES, Ramon Ulises); Calle Michoacan No. 42, Int. 02, Zono Central, Doloros Hidalgo, Guanajuato, Mexico; DOB 22 Nov 1974; Alt. DOB 23 Dec 1974; POB Guanajuato, Mexico; Alt. POB Salamanca, Guanajuato, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. CARR741122HGTRYM01 (Mexico); R.F.C. CARR741122 (Mexico); Cartilla de Servicio Militar Nacional B–8134996 (Mexico); C.U.I.P. CARR741122H11270693 (Mexico); (INDIVIDUAL) [SDNTK]

28. ORTEGA GALICIA, Ismael Marino (a.k.a. ORTEGA GALICIA, Israel Marino); Calle Mariano Matamoros, No. 58, Centro, Col. San Gabriel Chilac, Puebla, Mexico; Calle Sagitario y Lactea No. 3085, Col. Las Palmas, entre Lactea y Av. La Paz, Ciudad Victoria, Tamaulipas, Mexico; DOB 31 May 1974; POB San Gabriel Chilac, Puebla; Citizen Mexico; Nationality Mexico; C.U.R.P. OEGI740531HPLRLS07 (Mexico); R.F.C. OEGI740531 (Mexico); Electoral Registry No. ORGLIS740531121H100 (Mexico); (INDIVIDUAL) [SDNTK]

29. VERA CALVA, Carlos, Calle E. Zapata No. 2, Col. Plan de Ayala, Tihuatlan, Veracruz, Mexico; DOB 10 Jul 1970; POB Poza Rica de Hidalgo, Veracruz; Alt. POB Tuxpam, Veracruz; Citizen Mexico; Nationality Mexico; R.F.C. VECC700710 (Mexico); Cartilla de Servicio Militar Nacional B0759939 (Mexico); C.U.R.P. VECC700710HVZRLR13 (Mexico); (INDIVIDUAL) [SDNTK]

30. GONZALEZ CASTRO, Gustavo, Calle Avalo No. 28, Colonia Las Lomas, Tuxpan, Veracruz C.P. 92800, Mexico; DOB 01 Jul 1973; POB Tuxpam,

Veracruz; Citizen Mexico; Nationality Mexico; C.U.R.P. GOCG730701HVZNSS08 (Mexico); R.F.C. GOCG730701 (Mexico); Cartilla de Servicio Militar Nacional B8765616 (Mexico); (INDIVIDUAL) [SDNTK]

31. GUERRA RAMIREZ, Rogelio, Mexico; DOB 21 Aug 1973; POB Chiapas; Citizen Mexico; Nationality Mexico; C.U.R.P. GURR730821HCLRMG (Mexico); Cartilla de Servicio Militar Nacional B7384371 (Mexico); R.F.C. GURR730821 (Mexico); C.U.R.P. GURR730821HCLRMG01 (Mexico); C.U.R.P. GURR730821HCLRMG01 (Mexico); (INDIVIDUAL) [SDNTK]

32. PEREZ MANCILLA, Alejandro, Calle Ninos Heroes No. 143, entre Miguel Hidalgo y Jose Maria Morelos, Saltillo, Coahuila C.P. 25060, Mexico; DOB 23 Dec 1974; POB Reynosa, Tamaulipas; Citizen Mexico; Nationality Mexico; C.U.R.P. PEMA741223HTSRNL06 (Mexico); Electoral Registry No. PRMNAL74122328H701 (Mexico); Cartilla de Servicio Militar Nacional B9764183 (Mexico); R.F.C. PEMA741223 (Mexico); (INDIVIDUAL) [SDNTK]

33. SOTO PARRA, Miguel Angel (a.k.a. SOTO PARUA, Miguel Angel); Mexico; DOB 13 Sep 1972; POB Puebla, Puebla; Citizen Mexico; Nationality Mexico; C.U.R.P. SOPM720913HPLTRG03 (Mexico); Cartilla de Servicio Militar Nacional C26300 (Mexico); R.F.C. SOPM720913 (Mexico); (INDIVIDUAL) [SDNTK]

34. MURO GONZALEZ, Proceso Arturo, Calle Gustavo Garmendia No. 1850, Colonia Hidalgo, Culiacan, Sinaloa, Mexico; DOB 16 May 1973; POB Cuiliacan, Sinaloa; Citizen Mexico; Nationality Mexico; C.U.R.P. MUGP730516HSLRNR04 (Mexico); Cartilla de Servicio Militar Nacional 607092 (Mexico); Electoral Registry No. MRGNPR73051625H400 (Mexico); (INDIVIDUAL) [SDNTK]

35. VALENZUELA ZUNIGA, Ruben Alejandro, Privada Garcia Conde No. 107, Int. 06, Col. San Felipe, Chihuahua, Chihuaha, Mexico; DOB 16 Dec 1972; POB Torreon, Coahuila; Citizen Mexico; Nationality Mexico; Electoral Registry No. VLZGRB72121605H300 (Mexico); Cartilla de Servicio Militar Nacional B–8193135 (Mexico); R.F.C. VAZR721216 (Mexico); (INDIVIDUAL) [SDNTK]

36. LOPEZ TREJO, Fernando, Calle Abasolo No. 15, Colonia Miguel Aleman, Comitan, Chiapas C.P. 3000, Mexico; DOB 11 Apr 1971; POB Tamaulipas; Citizen Mexico; Nationality Mexico; Cartilla de Servicio Militar Nacional B7439509 (Mexico); C.U.R.P. LOTF710412HTSPRR03 (Mexico); (INDIVIDUAL) [SDNTK]

37. MATEO LAUREANO, Ignacio, Calle Mariano Matamoros No. 58, Centro, Colonia San Gabriel Chilac, Puebla, Mexico; Calle Sagitaro y Lactea No. 3085, Colonia Las Palmas, entre Lactea y Av. La Paz, Ciudad Victoria, Tamaulipas, Mexico; DOB 31 Jul 1977; POB Guerrero; Alt. POB Tecpan de Galeana, Guerrero; Citizen Mexico; Nationality Mexico; C.U.R.P. MALI770731HGRTRG07 (Mexico); Cartilla de Servicio Militar Nacional C2606947 (Mexico); (INDIVIDUAL) [SDNTK]

38. TORRES SOSA, Benjamin, Avenida Insurgentes Centro No. 60, No. Int. 1, Colonia Tabacalera, Delegacion Cuauhtemoc, Mexico, Distrito Federal C.P. 06030, Mexico; DOB 31 Mar 1969; POB Guadalupe, Zacatecas; Citizen Mexico; Nationality Mexico; C.U.R.P. TOSB690331HZSRSN06 (Mexico); Cartilla de Servicio Militar Nacional B4494067 (Mexico); Electoral Registry No. TRSSBN69033132H900 (Mexico); R.F.C. TOSB690331 (Mexico); (INDIVIDUAL) [SDNTK]

39. HERNANDEZ BARRON, Raul, Calle Congregacion Troncones y Potrerillos, Colonia Congrecaciones Troncones y Potrerillos, Coatzintla, Veracruz C.P. 93160, Mexico; DOB 04 Feb 1977; Alt. DOB 16 Oct 1980; POB Poza Rica de Hidalgo, Veracruz; Alt. POB Coatzintla, Veracruz; Alt. POB Veracruz, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. HEBR770204HVZRRL02 (Mexico); Cartilla de Servicio Militar Nacional C–528381 (Mexico); C.U.I.P. HEBR770204H30271467 (Mexico); Electoral Registry No. HRBRRL77020430H900 (Mexico); (INDIVIDUAL) [SDNTK]

40. DAVILA LOPEZ, Jose Ramon (a.k.a. DAVILA LOPEZ, Juan Ramon; a.k.a. TORRES HERNANDEZ, Antonio; a.k.a. RUBIO CONDE, David); Mexico; Calle 22, Valle Hermoso, Tamaulipas, Mexico; DOB 31 Aug 1978; Alt. DOB 11 Mar 1979; POB Tijuana, Baja, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

41. IBARRA YEPIS, Prisciliano (a.k.a. IBARRA YEPIZ, Prisciliano; a.k.a. IBARRA YEPIS, Priciliano; a.k.a. YBARRA YEPIS, Priciliano); Mexico; DOB 04 Jan 1977; POB Sonora, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. IAYP770104HSRBPR00 (Mexico); (INDIVIDUAL) [SDNTK]

42. LORMENDEZ PITALUA, Omar (a.k.a. LARMENDEZ PITALUA, Omar; a.k.a. LORMENDEZ PATALUA, Omar; a.k.a. LORMENDES PITALUA, Omar); Mexico; DOB 18 Jan 1972; POB Lecheria Tultitlan, Mexico; Alt. POB Tlalnepantla De Baz, Mexico, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LOPO720118HMCRTM01 (Mexico); (INDIVIDUAL) [SDNTK]

43. LECHUGA LICONA, Alfonso, Mexico; DOB 14 Jan 1971; POB San Bartolo Tutotepec, Hidalgo, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LELA710114HHGCCL08 (Mexico); (INDIVIDUAL) [SDNTK]

44. VARGAS GARCIA, Nabor, Mexico; DOB 12 Jul 1976; POB Pachuca, Hidalgo, Mexico; Alt. POB Pachuca De Soto, Hidalgo, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. VAGN760712HHGRRB06 (Mexico); (INDIVIDUAL) [SDNTK]

45. GALARZA CORONADO, Jose Antonio (a.k.a. GALARZA CORONADO, Antonio); Privada Los Ebanos 105, Fraccionamiento Pedregal, San Nicholas de Los Garza, Nuevo Leon, Mexico; Espana Street, Col. Buena Vista, Matamoros, Tamaulipas, Mexico; Nuevo Laredo, Tamaulipas, Mexico; DOB 13 Nov 1960; POB Matamoros, Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. GACA601113HTSLRN00 (Mexico); (INDIVIDUAL) [SDNTK]

46. FLORES SOTO, Mario (a.k.a. FLORES SOTO, Mario Alberto); Privada A2 28, Colonia Infonavit, Nuevo Laredo, Tamaulipas, Mexico; Calle Tierra del Soconusco 252, Nuevo Laredo, Tamaulipas, Mexico; DOB 31 Oct 1967; POB Durango; Citizen Mexico; Nationality Mexico; C.U.R.P. FOSM671031HDGLTR03 (Mexico); (INDIVIDUAL) [SDNTK]

47. ROMO LOPEZ, Martin (a.k.a. ROMO LOPEZ, Martin de Jesus); Piedras Negras, Coahuila, Mexico; DOB 02 Jun 1964; POB Tabasco, Zacatecas; Citizen Mexico; Nationality Mexico; C.U.R.P. ROLM640602HZSMPR05 (Mexico); (INDIVIDUAL) [SDNTK]

48. ACOSTA IBARRA, Ruben, Calle Siete de Abril No. 5, Colonia Hidalgo, Hidalgo C.P. 42500, Mexico; DOB 20 Oct 1967; POB Acatlan, Hidalgo; Citizen Mexico; Nationality Mexico; C.U.R.P. AOIR671020HHGCBB02 (Mexico); Cartilla de Servicio Militar Nacional B4111940 (Mexico); Electoral Registry No. ACIBRB67102013H701 (Mexico); C.U.I.P. AOIR671020H1374898 (Mexico); (INDIVIDUAL) [SDNTK]

49. SANCHEZ ESTEBAN, Alvaro, Mexico; DOB 04 Feb 1974; Citizen Mexico; Nationality Mexico; RFC SAEA740214 (Mexico); (INDIVIDUAL) [SDNTK]

50. CASTREJON PENA, Victor Nazario, Mexico; DOB 05 May 1972; POB Iguala, Guerrero, Mexico; Citizen Mexico; Nationality Mexico; (INDIVIDUAL) [SDNTK]

51. ROSALES MENDOZA, Carlos Alberto (a.k.a. ROSALES MENDOZA, Carlos); Michoacan, Mexico; Petacalco,

Guerrero, Mexico; DOB 12 Feb 1963; POB Guerrero, Michoacan; Alt. POB El Naranjito, La Union, Guerrero, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. ROMC630212HGRSNR09 (Mexico); (INDIVIDUAL) [SDNTK]

52. MENDOZA CONTRERAS, Cipriano (a.k.a. RIVERA TORRES, Javier); Calle Venustiano Carranza No. 904, Col. Josefa Ortiz de Dominguez, Apatzingan, Michoacan, Mexico; DOB 25 Dec 1969; POB Tepalcatepec, Michoacan; Citizen Mexico; Nationality Mexico; C.U.R.P. MECC691225HMNNNP01 (Mexico); (INDIVIDUAL) [SDNTK]

53. GONZALEZ RODRIGUEZ, Dimas, Mexico; DOB 25 Jul 1978; POB Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. GORD780725HTSNDM07 (Mexico); (INDIVIDUAL) [SDNTK]

54. VELASQUEZ CABALLERO, Juan Daniel (a.k.a. VELASQUEZ CABALLERO, Daniel; a.k.a. VELAZQUEZ CABALLERO, Juan Daniel); Colonia Infonavit, Nuevo Laredo, Tamaulipas, Mexico; Colonia Buena Vista, Nuevo Laredo, Tamaulipas, Mexico; Calle Coahuila No. 5958, Colonia Las Torres, Seccion 864, Nuevo Laredo, Tamaulipas, Mexico; DOB 26 Nov 1976; Alt. DOB 1968; POB Tamaulipas, Mexico; Citizen Mexico; Nationality Mexico; Electoral Registry No. VLCBJN73112628H700 (Mexico); (INDIVIDUAL) [SDNTK]

Dated: March 24, 2010.

Barbara C. Hammerle,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 2010–6986 Filed 3–29–10; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Former Prisoners of War has scheduled a meeting for April 12–14, 2010, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC, from 9 a.m. to 4 p.m. each day. The sessions will be held in room 530 on April 12, in room 648 on April 13 and in the California Room at the Capital Hilton Hotel, 1001 16th Street, NW., on April 14. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care, and rehabilitation.

On April 12, the Committee will receive briefings on the Robert E. Mitchell Center, Employee Education System and Veterans Health Administration Overview of Former Prisoners of War Clinical Health Care. On April 13, the Committee will receive briefings on Compensation and Pension, Veterans Health Initiative and Veterans Health Administration Update. In the afternoon, the Committee will discuss its 2009 recommendations and VA's responses. On April 14, the Committee will break out into medical and administrative working groups to complete their interim report for the Committee's final report.

No time will be allocated at this meeting for receiving oral presentations from the public. Members of the public may attend the meeting and may also submit written statements for review by the Committee in advance of the meeting to Mr. Jim Adams, Executive Assistant, Compensation and Pension Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting or seeking additional information should contact Mr. Adams at (202) 461–9659 or e-mail at *jim.adams1@va.gov.*

Dated: March 25, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–7063 Filed 3–29–10; 8:45 am]

BILLING CODE P

Federal Register

Tuesday,
March 30, 2010

Part II

Department of Agriculture

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations, Basic Provisions; and Various Crop Insurance Provisions; Final Rule

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB96

Common Crop Insurance Regulations, Basic Provisions; and Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes the Common Crop Insurance Regulations, Basic Provisions, Small Grains Crop Insurance Provisions, Cotton Crop Insurance Provisions, Sunflower Seed Crop Insurance Provisions, Coarse Grains Crop Insurance Provisions, Malting Barley Crop Insurance Provisions, Rice Crop Insurance Provisions, and Canola and Rapeseed Crop Insurance Provisions to provide revenue protection and yield protection. The amended provisions replace the Crop Revenue Coverage (CRC), Income Protection (IP), Indexed Income Protection (IIP), and the Revenue Assurance (RA) plans of insurance. These individual plans of insurance will no longer be available. The intended effect of this action is to offer producers a choice of revenue protection (protection against loss of revenue caused by low prices, low yields or a combination of both) or yield protection (protection for production losses only) within one Basic Provisions and the applicable Crop Provisions to reduce the amount of information producers must read to determine the best risk management tool for their operation and to improve the prevented planting and other provisions to better meet the needs of insured producers. In addition, FCIC has revised the Texas Citrus Tree Crop Insurance Provisions, Pear Crop Insurance Provisions, Sugarcane Crop Insurance Provisions, Macadamia Tree Crop Insurance Provisions, Macadamia Nut Crop Insurance Provisions, Onion Crop Insurance Provisions, Dry Pea Crop Insurance Provisions, Plum Crop Insurance Provisions, and Cabbage Crop Insurance Provisions to correct specific references to the revised Common Crop Insurance Regulations, Basic Provisions. Further, FCIC has revised certain provisions to incorporate provisions from previous rules implementing the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

DATES: *Effective Date:* This rule is effective April 29, 2010.

Applicability date: The changes will apply for the 2011 and succeeding crop years for all crops with a 2011 contract change date on or after April 30, 2010, and for 2012 and succeeding crop years for all crops with a 2011 contract change date prior to April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Nuckolls, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Stop 0812, Room 421, Kansas City, MO 64141–6205, telephone (816) 926–7730. For a copy of the Cost-Benefit Analysis, contact Leiann Nelson, Economist, at the office, address, and telephone number listed above.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds the revised provisions in the final rule will have positive potential benefits for producers and insurance providers. The PayGo impact of changing the rapeseed price mechanism for revenue coverage to make the harvest price equal to the projected price is estimated at $5,233. The effect of this change is to reduce the risk, which will lower the premium rate for MPCI coverage, lower the amount of premium subsidy paid due to the lower premium, and decrease the indemnity paid.

A misreported information penalty was put into place in the 2005 crop year. The misreporting penalty was based on any reported information that resulted in liability greater than 110.0 percent or lower than 90.0 percent of the actual liability determined for the unit. The policy already provided a penalty for misreported acres and yields and when the misreporting factor was also applied to the indemnity, the penalty was overly harsh. In addition, the penalty was difficult to determine and administer. The total indemnity withheld in 2005 due to the misreported information factor penalty was slightly under $2.7 million and involved just over 608,000 acres.

Combining yield protection (protection for production losses only) and revenue protection (protection against loss of revenue caused by changes in prices, production losses or a combination of both) within the current Basic Provisions and applicable Crop Provisions will minimize the quantity of documents needed in the contract between the producer and the insurance provider. A producer benefits because he or she will not receive several copies of largely duplicative material as part of the insurance contract if he or she elects to insure different crops under different plans of insurance. Insurance providers benefit because there is no need to maintain inventories of similar materials, thus eliminating the potential for providing an incorrect set of documents to a producer by inadvertent error. Benefits will accrue due to avoided costs (the resources needed to duplicate and administer contract documents), which are intangible in nature. The cost to prepare, publish, store, and mail multiple copies of similar documents is avoided.

Revisions to the prevented planting provisions will clarify certain terms and conditions to reduce fraud, waste, and abuse. For example, the prevented planting payment amount has been changed so that it will not exceed the payment level for the crop prevented from being planted. Current provisions allow payment based on another crop when there are no remaining eligible acres for the crop prevented from being planted. Previously, the payment was based on the other crop even when its value was higher. The provisions still allow eligible acres for another crop to be used but limit the payment amount to the crop prevented from being planted.

The CRC, RA, IP, and IIP plans of insurance currently use a market-price discovery method to determine prices. This final rule generally uses the same method for determining the projected price for crops with both revenue protection and yield protection. The benefits of this action to FCIC are that it will no longer be required to make multiple estimates of the respective prices for these crops. Insurance providers benefit because they no longer will be required to process multiple releases of the expected market price for a crop year. Producers also benefit because the price at which they may insure the crops included under yield protection should more closely approximate the market value of any loss in yield that is subject to an indemnity. In addition, the variation in prices between yield protection and revenue protection will be reduced. There are essentially no direct costs to provide these pricing benefits because

the pricing mechanisms to be used are essentially the same as those currently being used for the revenue plans of insurance listed above. All required data are available and similar calculations are currently being made.

These changes will simplify administration of the crop insurance program, reduce the quantity of documents and electronic materials prepared and distributed, better define the terms of coverage, provide greater clarity, and reduce the potential for fraud, waste, and abuse.

Many of the benefits and costs associated with this rule cannot be quantified. The qualitative assessment indicates the benefits outweigh the costs of the regulation.

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053. The revisions made in this regulation may result in minor changes in how the information is collected, but the fundamental nature of the information collection is not changing.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This rule finalizes changes to the Common Crop Insurance Regulations; Basic Provisions, Small Grains Crop Insurance Provisions, Cotton Crop Insurance Provisions, Sunflower Seed Crop Insurance Provisions, Coarse Grains Crop Insurance Provisions, Malting Barley Crop Insurance Provisions, Rice Crop Insurance Provisions, and Canola and Rapeseed Crop Insurance Provisions to provide revenue protection and yield protection in one policy and to make other changes that were published by FCIC on Friday, July 14, 2006, as a notice of proposed rulemaking in the **Federal Register** at 71 FR 40194–40252. The public was afforded 60 days to submit written comments after the regulation was published in the **Federal Register.** Based on comments received and specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 71 FR 56049 on September 26, 2006, extending the initial 60-day comment period for an additional 30 days, until October 26, 2006.

A total of 897 comments were received from 88 commenters. The commenters were insurance providers, attorneys, trade associations, State agricultural associations, agents, an insurance service organization, producers, State departments of agriculture, grower associations, agricultural credit associations, and other interested parties.

The public comments received regarding the proposed rule and FCIC's responses to the comments are listed below (under applicable subject headings) identifying issues and concerns, and the changes made, if any, to address the comments.

Commodity Exchange Price Provisions

FCIC received a number of comments regarding the Commodity Exchange Price Provisions (CEPP). Numerous comments were received with respect to the CEPP including, but not limited to, comments requesting: (1) Reinstating revenue coverage for sunflowers; (2) Increasing the maximum percentage the harvest price can move from 160

percent of the projected price to a larger amount; (3) Changing the projected price discovery period to 30 days; and (4) Establishing an earlier price discovery period to allow more time for sales.

The CEPP was provided for comment as a courtesy to the public and it is not part of the regulation and will not be published in the Code of Federal Regulations. Therefore, it is not subject to the formal notice and comment rulemaking process. As a result, FCIC is not publishing its responses to all of these comments in this final rule. FCIC thanks the public for their assistance in reviewing the CEPP and will consider all comments received and make appropriate changes in the CEPP.

Basic Provisions—General

Comment: Many commenters commended FCIC for their efforts to combine CRC, RA, IP, and Actual Production History (APH) into a single policy. They stated it will strengthen the efficiency and integrity of the program, simplify product selection, reduce unnecessary documents, and facilitate producers' understanding of coverage options. The commenters stated they were encouraged by many of the revisions proposed by FCIC, as they believe these provisions will reduce program vulnerabilities, resolve existing ambiguities and increase the accountability and responsibility of the producers. They recognized the high value of Federal crop insurance to producers and appreciated the continuing efforts of FCIC to further improve the effectiveness and administration of this important program. A commenter stated using the same method for determining prices for both revenue and yield protection is a move in the right direction. A commenter stated that yield protection prices will more truly reflect expected market prices. Another commenter stated that with the price being the same for the two coverages, producers will be able to more easily compare revenue protection against yield protection, thereby making a more informed decision. The commenters stated the procedures proposed by FCIC should provide a smooth transition. A commenter stated the combination policy also eliminates potential conflicts and mistakes that occur when individual plans of insurance are revised independently and differently. A commenter stated the proposed rule will govern the future terms and conditions by which producers will be insured against price and production risks under the Federal crop insurance program, and believed the ultimate success of the rule will be measured in direct proportion to the level of attention paid to each and every detail and the level of collaboration with insurance providers who deliver these important risk management products. The commenter stated careful avoidance of any unintended consequence, as well as substantive and procedural changes that have not been thoroughly vetted, whether such changes are express or implied, is absolutely critical.

Response: FCIC agrees combining the different plans of insurance into one program will be beneficial. FCIC also agrees generally using the same projected price by crop for both yield protection and revenue protection for all crops for which revenue protection is available should reflect expected market prices and assist the producer to make an informed decision when choosing between revenue and yield protection. However, the projected price for yield and revenue protection may not always be the same because FCIC reserves the right to set the projected price for yield protection to a price determined by FCIC. FCIC also agrees the revisions will reduce program vulnerabilities, resolve existing ambiguities, and increase the accountability and responsibility of the producers. The regulation is thoroughly reviewed to ensure the crop insurance program provides producers with viable risk management tools and can be marketed successfully.

Comment: A commenter stated the Federal crop insurance program is unique among Federal programs. Insurance providers must market and sell the products authorized under the program and farmers and ranchers, in turn, must make significant financial investment in risk management products most appropriate to their operations. Accordingly, the commenter believed it is inappropriate to review the proposed rule in the same context as an entitlement program, which is made available by the government and received by beneficiaries free of cost and usually without choices. Rather, the proposed rule should be reviewed to ensure risk management products offered under the program can be effectively marketed and sold by insurance providers in such a manner that consumers can make prudent risk management investments based on informed decisions.

Response: FCIC agrees that the Federal crop insurance program should not be reviewed strictly as an entitlement program. Unlike entitlement programs that are offered free of cost, most producers invest their premium dollars in the purchase of insurance. However, those premiums are also heavily subsidized by taxpayer dollars so FCIC has a heightened duty to protect program integrity and ensure the program operates in an actuarially sound manner and the review has been conducted accordingly.

Comment: A commenter suggested the proposed regulation did not simplify the regulations and they saw no benefit to the public. Another commenter stated the proposed rule is a serious and complex proposal that should be fully explained to companies, agents, and producers in order for FCIC to get the maximum benefit from their input. The commenter stated they have some concerns and reservations about the effectiveness of the proposed rule in achieving its stated objectives of providing greater simplification. The proposed rule presents new definitions and new changes that could make things even more complicated and difficult to learn than the present system. For instance, for just corn and soybean producers, there are 51 changes and 32 new definitions. While they applaud FCIC's intent to simplify what is nearly universally identified as an overly complex and burdensome program, they believe the agency could use this major restructuring as an opportunity to truly simplify the program for producers and agents alike and not merely shift 5 complicated and complex coverages (APH, RA, CRC, IP, and IIP) into one massively complicated and complex Basic Provisions and the applicable Crop Provisions.

Response: Previously, CRC, RA, IP and IIP all provided revenue coverage with different pricing mechanisms, varying unit structure, different underwriting rules, different rating structures, and different availability of crops and options. This meant that agents and producers were required to examine the coverages and terms and conditions, for each separate plan of insurance every year to determine which plan of insurance offered the best risk management fit for the producer. In this final rule, most of the differences between these plans of insurance have been eliminated so that now there is only one pricing mechanism for revenue coverage, the unit structures have been standardized, the options have been standardized, and the rating methodology has been standardized. This effort alone will eliminate considerable complexity within the program. As a result, except for the addition of revenue coverage, the policy terms remained substantially the same because all the unit structures, options, *etc.,* were already available under the APH Basic Provisions. This should also simplify the training of agents.

Further, the changes made to incorporate the revenue plans of insurance into the APH Basic Provisions and Crop Provisions should not be confused with the other changes made to enhance coverage and protect program integrity. While these changes will also have to be explained to producers and agents, such changes were necessary regardless of whether the revenue coverage was added to the APH Basic Provisions and Crop Provisions. FCIC believes the additions and revisions in this regulation simplify and improve the crop insurance program.

Comment: Several commenters urged FCIC to hold a public hearing or a series of public hearings on the proposed rule and extend the public comment period. They stated public hearings will further enable the producer, agent, and insurance groups to fully understand the scope and potential impact the proposed changes will have on the entire Federal crop insurance program so they can offer additional comments to FCIC. A commenter stated it is vital the agency provide adequate time for both producers and private insurance providers to fully educate themselves about the proposed changes. A commenter stated the comment period established from July 14, 2006 to September 12, 2006 has come at the busiest time for most farmers in the Pacific Northwest because it is harvest season, then it is time to begin the fall seeding of winter wheat. A few commenters believed it would improve the opportunity for many more farmers to respond if the comment period could be extended another 50–60 days. Growers across the country rely heavily on the Federal crop insurance system and allowing them the opportunity to provide direct input is vital to improving the effectiveness of this program.

Response: FCIC determined that public hearings were not appropriate. To provide meaningful participation of all program participants, numerous meetings would have been required. Further, the scheduling, implementation, and efforts to record and collect comments would have required massive resources and could have delayed the implementation of this rule by years. Instead of public hearings, FCIC elected to reopen the comment period and on September 26, 2006, a notice of reopening and extension of the comment period was published in the **Federal Register**. Written comments and opinions on the proposed rule were accepted until close of business on October 26, 2006.

Comment: A few commenters applauded FCIC for moving forward with consultation of producer and insurance groups. They thanked FCIC for engaging in this comprehensive review of the impact the proposed rule could have on all participants in the crop insurance program.

Response: FCIC did not consult with producer groups or insurance groups during the comment period. FCIC held requested informational meetings where it provided explanations regarding the proposed provisions. FCIC did not solicit or accept comments during these informational meetings. FCIC hopes such meetings were helpful in explaining the proposed changes so that audience members could provide meaningful written comments through the rulemaking process.

Comment: A few commenters stated one issue that is not fully explained, but that is of critical importance, is the impact these changes may have on premium rates. If a significant level of re-rating becomes necessary, it could have significant impacts on producers. A commenter noted that, while not part of the proposed rule, the rating of Group Risk Protection (GRP) and Group Risk Income Protection (GRIP) policies nevertheless affect policies included in the proposed rule. The commenter believed any rating method changes should be fully vetted with insurance providers to ensure a complete understanding of the proposed rule and its impact on farmers and ranchers. The commenter strongly urged FCIC to clearly disclose and discuss rating methods and impacts without which a full appreciation of the rule cannot be known by companies, agents, or the producers they serve. By providing additional information on this issue and others that will arise, FCIC will assure the shift to the revised Basic Provisions and applicable Crop Provisions is more transparent and will provide adequate opportunity for producers to have additional input on issues that might negatively impact them.

Response: Under this rule, one revenue protection approach will replace the current multiple approaches contained in the RA, CRC, IP, and IIP plans of insurance. The current revenue plans each have a different rating methodology. Therefore, the change to a single rating methodology for all revenue coverage under the revised Basic Provisions and applicable Crop Provisions will make the premium rates less variable. As with every crop insurance policy, the risk under such policy must be assessed and premium must be calculated to cover that risk. This will also occur under this final rule. A preliminary review shows that the amount of premium will change by less than five percent in the majority of states/crops as a result of the combination of these plans of insurance.

The actual premium rating methodology is a complex process that could not be adequately explained in a proposed rule. To the extent that persons are interested in FCIC's ratemaking process, information is available and can be requested from FCIC. FCIC does not know the basis of the commenter's assertion that the premium rating assessment under GRP and GRIP will affect the premium under this rule. GRP and GRIP offer a significantly different type of coverage than is provided under this rule (area versus individual coverage).

Comment: A commenter stated modern producers need individualized risk management and individually rated policy premiums. County data, individual production history, and loss ratio data is available. The commenter stated that low loss ratios and stable yields get the discounts and high loss ratios and variable yields pay the higher price and that regardless of the cause for excessive loss (bad farming, fraud, or bad luck), those policies should pay a recapture premium. The commenter stated that like T-yields, high-risk areas would only need to be identified until the actual data was sufficient to take over. The actual data should drive the premium. The commenter asserted that producers also need a guarantee based on the ability to produce a crop in an average year, which is not the same as an average yield. Other lines of insurance rely on comparable, not simple, averages. The commenter stated the combo process may also be applied to GRP and GRIP. The commenter stated that from his desire to provide the best individual coverage and premium possible, he saw little reason to waste time on group policies. The commenter stated that the term "group" is misleading (should be called "County Risk Plan"), because these plans do not identify loss nor indemnify for loss and, therefore, the word "insurance" should never be allowed when referencing these plans. The commenter provided additional details regarding the problems of product misrepresentation brought on by these plans. The commenter stated rather than combining county plans, he would just as soon scrap them. A lottery (with house odds) is not a proper substitute for insurance.

Response: Premium rates use actual data and reflect the producer's loss history because the lower the yield average, the higher the premium rate. If the commenter is suggesting that

premium rates be developed for each individual producer, such an effort would be impossible given the number of insureds and the variability in information at the individual level.

With respect to GRP and GRIP, since FCIC did not propose any changes to GRP or GRIP, no changes can be made in the final rule.

Comment: A commenter was concerned about the implementation timeline of the new policy. The commenter stated insurance providers will need to receive the final version of the revised Basic Provisions and applicable Crop Provisions in adequate time to make the necessary system changes, rewrite the agent and adjuster training materials and procedure manuals, and then train agents, adjusters, underwriters, *etc.* The commenter asked if there is a timeline available that FCIC plans to follow to provide insurance providers adequate time to make the required changes and provide training for implementing the new policy. The commenter also asked what information FCIC will provide insurance providers to assist with implementation.

Response: At this time, FCIC expects the final rule to be implemented for the 2011 crop year. To accomplish this, FCIC will work diligently to get the final rule published in the **Federal Register** in time for insurance providers to make system changes, prepare procedural documents, and train underwriters, loss adjusters and agents.

Comment: A commenter recommended creating an insurance policy like hail insurance so the producer could insure each crop by field for a certain amount of dollars an acre.

Response: The commenter is proposing a substantive change that would require considerable research, development, and notice and comment rulemaking. Further, FCIC does not currently have plans to conduct a feasibility study for such a policy. However, the commenter can develop such a policy and submit it under section 508(h) of the Act.

Comment: A commenter stated Congress passed the Agricultural Risk Protection Act of 2000 (ARPA) with a clear intent of expanding crop insurance availability, improving coverage levels, and encouraging planting flexibility. The commenter urged FCIC to carefully consider and assure changes made through this rule are not contradictory to the intent of ARPA and/or diminish producer program participation.

Response: Before provisions are proposed, changes are reviewed with consideration given to potential impacts on participation. FCIC does not believe that any of the final changes will adversely affect program participation, available coverage levels, or planting flexibility. The elimination of program complexity may encourage more producers to participate.

Comment: A commenter stated acreage reporting dates for FCIC and Farm Service Agency (FSA) should be the same. The commenter believes different acreage reporting dates pose a problem for insurance providers, agents, and producers and the matter should be revisited to ensure the dates are the same (or at least closer) and appropriate. The commenter would support making the FSA date closer to or the same as the FCIC date.

Response: Acreage reporting dates are listed in the Special Provisions, not in the regulations. Further, no changes have been proposed regarding the acreage reporting dates. Therefore, no change can be made as a result of this comment. However, FSA and FCIC are already reviewing acreage reporting dates with the goal of making them the same when practical.

Comment: A commenter stated FCIC is only meeting the needs of a small segment of the economy, rather than meeting the needs of the American citizens, as a whole. The commenter stated crop insurance is being paid out when there is no damage to the crop. The agency does not physically go out and check what is reported to them by agribusiness; it just issues checks from the U.S. Treasury. This kind of payout is completely unacceptable. The commenter also stated the agency needs regular and close auditing to ascertain only actual losses are paid.

Response: FCIC takes its program oversight responsibilities very seriously. However, given the large magnitude of the crop insurance program and FCIC's limited resources, it is impossible for it to review all or even a large portion of the claims. FCIC has no choice but to rely on the activities and audits of insurance providers to ensure that claims are properly paid. Further, the Risk Management Agency (RMA) Compliance Division conducts routine audits and reviews of the insurance providers, taking corrective actions as appropriate. FSA also assists this effort by monitoring producers whose losses have been outside the norm and notifying RMA when there is suspected fraud, waste, or abuse.

Comment: A commenter questioned whether the premium discount for good experience will be applicable to the revised Basic Provisions and applicable Crop Provisions. Under CRC, IP, and RA, the good experience discount was suspended but retained by the insurance provider in the event the insured would change back to APH coverage, at which time the experience would be reinstated and applicable. The commenter asks whether the good experience discount will now apply to both yield and revenue coverage since the new combo product offers both yield and revenue coverage.

Response: Many years ago, FCIC offered a good experience discount for producers. This discount was eliminated from the 1985 through 1998 Crop Provisions as they were revised. However, FCIC allowed those producers who had previously qualified for the discount under those old policies to continue to receive such discount as long as they continued to qualify. There are very few producers who continue to qualify for such discounts and they can only qualify for the discount under the same terms and conditions that were in effect for the last year such discount was available for the crop. Although the good experience discount is only available to crops that were insurable at the time the discount was offered, the good experience discount did not apply to the revenue plans of insurance. Therefore, the discount will be available to previously insured crops that now have yield protection, but will not be applicable to revenue protection.

Comment: A commenter stated it was their understanding once the proposed rule is finalized, there are plans to combine the GRIP and GRP plans of insurance into an area plan revenue and yield product. There are some significant changes being recommended in this proposed rule that will likely carry over to the area plan products (*i.e.,* removal of the misreporting information factor). It would be advantageous to everyone who works with these programs that the implementation timeframes be as close as possible so that multiple systems and different ways of handling things will be minimized.

Response: FCIC has not proposed any revisions to the GRIP and GRP plans of insurance in this rule. Therefore, no changes have been made. However, FCIC hopes to propose changes to the GRIP and GRP plans of insurance as soon as practicable.

Comment: A commenter stated there appears to be a geographic discrimination favoring southern U.S. farmers that should be addressed, if not in the hearings for the proposed rule, at least by RMA/USDA, perhaps via administrative directive. Southern farmers have a distinct advantage in terms of evaluating the growing season prior to determining whether to

purchase crop insurance. For instance, the closer to planting time a decision can be made to buy crop insurance, the better off the farmer is in making a sound decision. In Wisconsin, the sales closing date is March 15 for corn and soybeans. This date was previously April 1 and was changed to March 15 some time ago with no justifiable reason provided. It is also 27 days prior to when corn can first be planted. The further south you go, the closer those days become (Illinois is 22 days, Kentucky is 16 days, Mississippi is 11 days, Alabama is 1 day). Obviously, this is very discriminatory and should be corrected by FCIC.

Response: There are locations where the number of days between the sales closing date and planting varies. However, section 508(f)(2)(B) of the Act limits FCIC's ability to change sales closing dates because it requires sales closing dates to be established 30 days earlier than the sales closing dates in effect for the 1994 crop year. In addition, section 508(f)(2)(C) of the Act specifies that if the revised sales closing date would be earlier than January 31, the spring sales closing dates will be January 31. This means that there are locations where FCIC cannot change the sales closing dates to make the number of days between sales closing and planting more consistent. No change has been made.

Comment: A few commenters stated they disagree with the proposed elimination of revenue protection to the producers of sunflowers, canola, rapeseed, and corn silage. If market and/or agronomic decisions suggest producers should produce these crops, Federal crop insurance should not create a disincentive. They urged FCIC to provide revenue protection for these crops in the final rule.

Response: There was never an intent to provide a disincentive to produce a particular crop. However, FCIC has an obligation to ensure that the revenue prices reflect the market price as accurately as possible. To determine the revenue price, these products rely on commodity exchange prices for the crop or methodology based on a commodity exchange price for another crop that would produce a price that closely reflects the market price. There is no commodity exchange price for the crop or methodology based on a commodity exchange price for another crop that has proven to reflect the price of corn silage. Therefore, there is no basis upon which to offer protection against a change in price for corn silage. With respect to canola, there is a commodity exchange price for canola so coverage against a change in price will still be offered. With respect to rapeseed, there is no commodity exchange price available for rapeseed and the methodology previously used based on the canola commodity exchange price has proven to no longer be adequate in reflecting the market price for rapeseed. Additionally, commenters have provided suggested methodologies to be used to reflect the market price for sunflowers and FCIC has studied these methodologies. FCIC has determined that there is a sunflower pricing methodology that can reflect the market price for sunflowers so protection against a change in price can be offered. Even though protection against a change in price is not available for rapeseed and corn silage, they may be insured under revenue protection in order to preserve the existing whole-farm units currently available under RA.

Comment: A commenter stated they are not sure how the Texas citrus tree and Texas citrus fruit policies are classified (*i.e.,* yield policy or revenue policy) and, therefore, are concerned how these policies may be affected by the amended Common Crop Insurance Policy even though these policies may not be the primary target for the changes.

Response: The revenue protection discussed in the proposed rule will only be applicable to the crops that previously had CRC, IP, IIP, or RA coverage. Texas citrus trees and Texas citrus fruit were not included in any of these plans of insurance. Therefore, Texas citrus trees and Texas citrus fruit will not be affected by the revenue protection or yield protection provisions. However, Texas citrus trees and Texas citrus fruit will be affected by other applicable changes in the Common Crop Insurance Policy Basic Provisions.

Comment: A commenter cautioned that the Crop Insurance Handbook and the Loss Adjustment Manual will interpret the new policy language and write them into rules to which Standard Reinsurance Agreement holders have to adhere. The commenter stated it is vital the proposed policy enhancements for simplification, integrity and efficiency are carried over into both the Crop Insurance Handbook and Loss Adjustment Manual. The commenter stated these improvements cannot be lost in the interpretation.

Response: One purpose of the changes is to simplify the program. This should be reflected in the reduction in the number of underwriting rules needed to administer the program. The appropriate procedural documents will be revised as necessary to reflect the changes made in the policy provisions.

Comment: A commenter recommended extending the sales closing date from March 15th to March 30th to give them more time to sell the product with accurate prices/rates.

Response: FCIC cannot extend the sales closing date to March 30. Section 508(f)(2) of the Act requires sales closing dates to be established 30 days earlier than the applicable sales closing date for the 1994 crop year. The current March 15 sales closing date was previously April 15 in 1994. Therefore, no change can be made.

Comment: A few commenters stated they greatly appreciated the agency's extension of the comment period for the proposed rule to allow more time to study the provisions.

Response: The extended comment period served its purpose in providing the public additional time to study the provisions and offer comments.

Comment: A few commenters stated they believe the issues are significant enough to warrant an interim final rule rather than a final rule.

Response: Even though the issues may be significant, they did not require such major changes to the proposed rule to warrant the necessity for an interim final rule. The public was afforded additional time to comment and FCIC has considered all of the comments and made appropriate revisions in accordance with the recommendations.

As stated more fully below, there were many comments recommending changes to provisions where no changes were proposed. Since changes were not proposed, the public was not afforded an opportunity to comment. FCIC considered addressing those comments that may not be substantive in nature but this was too subjective because there may be disagreement with respect to what is considered substantive. Therefore, as a general rule, these recommended changes were not considered unless they were addressing conflicting provisions or program integrity issues.

The Application and Policy

Comment: A few commenters stated it appears coverage equivalent to the producer's current coverage will be provided to the producer without having to get a new signature from the producer, when the current programs are rolled into the Basic Provisions and applicable Crop Provisions. The commenters stated that, though this process will not be without pitfalls, not requiring a cancel and rewrite of all revenue policies should help provide a seamless transition to the new provisions. The commenters were supportive of this proposal as it will

help in administering the conversion of all carryover policyholders to the Basic Provisions and applicable Crop Provisions. Another commenter stated they were interested in the details underlying this process (for example, the revisions to plans of insurance, insurance choices, and premium calculations).

Response: Given the number of policies affected by this rule, it was impractical to require cancellation and rewriting of all of these policies. It will be imperative that agents explain the affects of these changes to the policyholder and assist them in their selection of the most appropriate risk management tool. However, without the additional paperwork burden, agents should have more time to fulfill these responsibilities. FCIC will release the details of the transition process and any other necessary information in time to allow insurance providers to take appropriate actions.

Section 1 Definitions

Comment: A commenter stated the definition of "acreage reporting date" was not proposed to be revised but it would read better by either putting the phrase "contained in the Special Provisions or as provided in section 6" in parentheses or rearranging as "The date by which you are required to submit your acreage report, and which is contained * * *"

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few commenters suggested adding something in the definition of "actual yield" about the possibility of actual yields being reduced (or adjusted) instead of in the definition of "average yield" (and elsewhere as well). The commenters suggested two possibilities for consideration: (1) Add language to the end of the first sentence so it reads something like "The yield per acre for a crop year calculated from the production records or claims for indemnities and reduced [or "adjusted" if this refers to anything besides the maximum yield edits] if required * * *"; and (2) Add a sentence at the end such as "* * * Actual yields may be reduced as required * * *"

Response: The producer's actual yield is and should be the yield per acre for a crop year calculated from the production records or a claim for indemnity and determined by dividing the producer's total production by planted acres. The producer's yield would not be an actual yield if it were adjusted. No change has been made.

Comment: A few commenters recommended FCIC consider whether the term and/or definition of "actuarial documents" should be revised since the intended implementation of eWA will result in actuarial "information" (rather than "documents") being made available on the RMA Web site. A commenter also questioned whether the "actuarial documents" include the Special Provisions, or just everything else.

Response: FCIC believes the defined term of "actuarial documents" will still be appropriate with the implementation of a new information technology system because even though the actuarial information will be filed electronically on RMA's Web site, the information still can be printed out as a hard-copy document. The definition of "actuarial documents" contains information that is found in the Special Provisions. However, because the Special Provisions contain the terms and conditions of insurance, it is provided to the insured with the Common Crop Insurance Policy Basic Provisions and Crop Provisions. No change has been made.

Comment: A commenter stated the existing, unrevised definition of "administrative fee" reads as though one fee applies to both levels of coverage, or possibly even that one fee serves to provide both catastrophic risk protection (CAT) and buy-up coverage on the same crop/county. They suggested revising this definition to read: "The applicable amount you must pay for either catastrophic risk protection or additional coverage * * *" At a minimum, "and" should be changed to "or."

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: Several comments were received regarding the definition of "agricultural experts." A commenter stated FCIC defines "agricultural experts" to include "other persons approved by FCIC", however, the Basic Provisions do not indicate how an insurance provider may learn the identity of such experts. The commenter believed FCIC has an obligation to inform the public of the persons who qualify as experts and should amend the definition of "agricultural experts" to state: "A list of the agricultural experts approved by FCIC is published on RMA's Website." A commenter requested that FCIC identify guidelines they will use to determine who is an approved agricultural expert and the process by which an individual will become an FCIC approved agricultural expert. The commenter stated guidelines do not belong within the Basic Provisions, but insurance providers, agents, and insureds have a right to know the standards and guidelines used to determine who an agricultural expert is and the process by which they are determined. A commenter disagreed with using the Cooperative Extension System in the definition of "agricultural experts." The commenter also suggested the RMA Regional Offices (ROs) put together a list of agricultural experts that can be used as a resource. The commenter stated that, according to the recent Good Farming Practices Bulletin, there is a need in the field for unbiased and experienced resources. A few commenters stated they believe Certified Crop Advisers (CCAs) should also be included in the definition of "agricultural experts" given their required training and expertise and their widespread use in the field. A commenter stated the definition of "agricultural experts" should be expanded to read as follows: "Persons who are employed by the Cooperative Extension System or agricultural departments at universities; persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought; and other persons, whether or not approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought and whose experience is equivalent to persons approved by FCIC." The proposed revision recognizes there may be persons with recognized expertise in addition to employees of the Cooperative Extension System and agricultural departments in universities, as well as any persons approved by FCIC. The proposed revision also is desirable because it gives insurance providers the option of consulting with and utilizing the skills of persons in addition to those set forth in the definition as written. When time is critical, having this option would be important.

Response: FCIC has developed procedures that can be used to determine who qualifies as agricultural experts in Manager's Bulletin MGR–05–010. Insurance providers and producers can use these procedures in selecting their experts. However, it is not practical to list all FCIC approved "agricultural experts" on RMA's Web site or for the ROs to maintain such a

listing because it would be impossible to list the name of every potential agricultural expert and it would be impossible to keep it up-to-date. In MGR–05–010, agricultural experts are not listed by name but by categories of people who are currently approved by FCIC to be agricultural experts. Any person who falls within the category is considered approved by FCIC. CCAs are included as a category of experts approved by FCIC. There is no basis to exclude Cooperative Extension System from categories of approved agricultural experts. These persons have experience in the production of the crop in the area. The phrase "whether or not approved by FCIC" should not be included in the definition. There must be a clear standard set for who qualifies as an agricultural expert and FCIC has established that through MGR–05–010. If insurance providers or producers know of other persons that should qualify as agricultural experts but they are not included in one of the listed categories, they may submit the person's name to FCIC for approval. If approved, FCIC will include the category of such person in the Bulletin. No change has been made.

Comment: A commenter stated the third sentence in the definition of "application" is problematic. As worded, it suggests that any time a policy is canceled or terminated, "* * * a new application must be filed for the crop." Certainly, this is true if the producer is willing and eligible to reinstate the canceled/terminated coverage, but not if the application would be unacceptable because the entity is ineligible.

Response: New applications must always be made after a policy has been canceled or terminated. The insurance provider should not accept the application if the applicant is ineligible. No change has been made.

Comment: A commenter stated the definition of "approved yield" is not revised in the proposed rule but requested FCIC to see their comments to the definitions of "actual yield" and "average yield" regarding the term "actual yield."

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few comments were received regarding the definition of "assignment of indemnity." A commenter questioned the meaning of the term "legitimate" and whether FCIC intends on setting forth the standards by which an insurance provider is to determine whether an assignment of indemnity is legitimate. The commenter stated it is noteworthy that section 29, entitled "Assignment of Indemnity," does not employ the term "legitimate." The commenter stated FCIC must provide additional guidance in this regard. Another commenter opposed FCIC's proposal that would restrict a producer's ability to assign an indemnity to a third party other than "legitimate creditors." The commenter stated their opposition is based on the fact that some companies have worked to create programs that directly incorporate crop insurance and marketing plans into one comprehensive program. For example, their company has worked with their grain division to create a cash grain contract that guarantees a producer a dollar per acre amount. It is a "production contract" as opposed to a typical "bushel" contract. The producer can sell the total production to the elevator at a guaranteed minimum (dollar/acre) and maintain the upside on price. This instrument is very sophisticated. It involves over-the-counter options, the assignment of indemnity to the elevator, and a cash delivery obligation of the producer. FCIC's educational efforts encourage these sorts of integrated programs. The private marketplace has responded by creating them. The commenter stated they will not work without an assignment of indemnity and they encourage FCIC to reconsider this change.

Response: FCIC agrees it may be difficult for an insurance provider to determine if a creditor is legitimate. Therefore, FCIC has removed the word "legitimate" and instead has specified the producer may assign his or her right to an indemnity for the crop year only to creditors or other persons to whom the producer has a financial debt or other pecuniary obligation. The insurance provider will have the ability to request that the producer show proof of the debt or pecuniary obligation before accepting the assignment of indemnity. FCIC also agrees assignments used in pricing/delivery agreements should be allowed. Such agreements would be considered "pecuniary obligations."

Comment: A few comments were received regarding the definition of "average yield." A commenter stated the definition is confusing and needs to be clarified. The commenter noted the definition states "* * * including actual yields reduced * * *", and later states "* * * prior to any yield adjustments." Another commenter suggested instead of adding the phrase "* * * (including actual yields reduced in accordance with the policy) * * *" to "clarify the reference to actual yields", they suggested revising the definition of "actual yield." Otherwise, the commenter believes it would be necessary to add a similar phrase in the definition of "approved yield" and in other references to actual yields throughout the policy provisions. A commenter suggested the remainder of the phrase proposed in the "average yield" definition, "* * * in accordance with the policy," needs to be reconsidered. The commenter stated the maximum yield procedure does not appear to be addressed in the Basic Provisions. The commenter added since the Basic Provisions are part of the "policy" any reference should be to the specific provisions, or to the procedure (which might be preferable instead of including detailed procedures in the policy that cannot easily be revised if and as needed).

Response: FCIC agrees the definition may be confusing and has revised it by removing references to "adjusted yields" (except adjusted transitional yields) and "actual yields adjusted in accordance with the policy." The revised definition includes actual yields, assigned yields in accordance with redesignated sections 3(f)(1) (failure to submit a production report), 3(h)(1) (excessive yields) and 3(i) (second crop without double cropping records for prevented planting), and adjusted and unadjusted transitional yields. The definition of "actual yield" should not be revised because it refers to the actual production produced in the unit. As revised, these actual yields will become a component of the "average yield."

Comment: A few comments were received regarding the definition of "catastrophic risk protection." A commenter recommended the first sentence in the definition that states "The minimum level of coverage offered by FCIC that is required before you may qualify for certain other USDA program benefits" be verified with the Farm Service Agency (FSA). The commenter stated he has received information from FSA stating the minimum level of coverage required for linkage is one level above CAT. A commenter stated catastrophic risk protection is not available for revenue protection under the definition of "catastrophic risk protection", however, under section 523(c)(2)(B) of the Crop Insurance Act (Act) it states, "Revenue insurance under this subsection shall offer at least a minimum level of coverage that is an alternative to catastrophic crop insurance." To date, the commenter is unaware of any product offered by FCIC,

which addresses this provision and the commenter suggested FCIC consider this aspect in the Basic Provisions. A commenter stated they respectfully oppose the proposed regulations for the simple reason the proposed pricing structure creates a disincentive for producers to cover their risks by purchasing the least amount of crop insurance required to accept Federal disaster assistance. A commenter suggested that levels of crop insurance below 65 percent be eliminated from the policy. The commenter stated CAT policies in particular require the same amount of paperwork and have no real value and many producers with lower levels would buy up. A few commenters stated the proposed rule allows CAT coverage under yield protection. They requested CAT coverage be eliminated, or, at the least, be subject to the same actuarial parameters for calculation of premiums to which other coverage levels are held. A commenter requested a paper drafted by another person be submitted into the record and thoroughly analyzed prior to the adoption of the final rule pertaining to the Basic Provisions. A commenter asked why there is no revenue coverage available on catastrophic risk protection policies. Many producers need the revenue coverage on high risk ground, where premiums are too high to be insured on their other policy, which may have revenue protection. The commenter asked if there has been any thought given to allowing a producer to have revenue coverage on a catastrophic risk policy if the companion policy is revenue protection.

Response: FCIC agrees the phrase "that is required before you may qualify for certain other USDA program benefits" is no longer appropriate. Many current FSA programs do not require linkage. Some past disaster programs have required crop insurance coverage, however, each disaster program stipulates its own criteria and catastrophic risk protection may not be the level of coverage required. The definition has been revised accordingly. Section 523 of the Act contains provisions applicable only to pilot programs and FCIC implemented this section when it offered the IP policy. However, the statutory mandate in section 523(c) of the Act to require CAT was only for the 1997 through 2001 crop year. When combining all the revenue products in this rule, FCIC declined to include revenue coverage in CAT policies because it would provide a disincentive for producers to purchase additional levels of coverage. CAT was only intended to be a minimal coverage risk management tool and not compete with the additional coverage policies. Therefore, as stated in the background section of the proposed rule, the definition of "catastrophic risk protection" is revised to preclude producers who elect revenue protection from obtaining CAT coverage because revenue protection is considered an option and CAT policies are not eligible for optional coverage. Since the paper referenced by the commenter was not submitted to FCIC as a comment to this rule, FCIC cannot consider the individual comments or recommendations contained in the paper in finalizing this regulation. FCIC does not have the authority to eliminate CAT coverage. Such coverage is mandated by section 508(b) of the Act and cannot be eliminated without a change in the law. Questions remain with respect to whether coverage levels less than 65 percent can be eliminated. However, since FCIC has not proposed or sought comments on such a change, it cannot be considered in this rule.

Comment: A commenter stated they recommend additional clarification for the definition of "claim for indemnity" because it is often confused with a notice of loss. The commenter stated additional language might include "Additionally, you must provide any documents required by the policy to determine the amount of indemnity, including but not limited to, harvested production records, crop input records, documents needed for verification of reported information, *etc.,* as stated in section 14." Alternatively, this could be included in section 14 rather than the definition.

Response: Notice of loss is simply a written notice, or an oral notice followed up with a written notice, that damage has occurred or production has been reduced. A claim for indemnity is a document executed by the producer and loss adjuster that contains the information necessary to pay the indemnity as specified in the applicable procedures. While the claim for indemnity must be supported by the production records, *etc.,* as required by section 14, such records are not generally transmitted to the insurance provider. FCIC will clarify that the claim for indemnity is the document that contains the information necessary to pay the claim.

Comment: A comment was received regarding the definition of "Commodity Exchange Price Provisions (CEPP)." A commenter requested FCIC explore the possibility of determining and releasing the projected price 20 to 30 days prior to the end of the sales period versus the current 15 days (approximate). The commenter stated they believe the current methodology to determine the price is good, but with the current projected price release date; there is a significant time crunch to properly service insureds. They believe the change in release dates will not materially change the projected price offered.

Response: The definition of "Commodity Exchange Price Provisions (CEPP)" does not contain any discovery period dates or commodity exchanges. The dates, commodity exchanges and other relevant information are located in the actual CEPP. However, FCIC has reviewed all comments related to the CEPP and will consider changes to provide additional time between the price release date and the sales closing date if reliable prices can be established and it is in the best interests of producers.

Comment: A few comments were received regarding the definition of "common land unit." A commenter recommended adding the phrase "as determined by FSA" to the end of the definition of "common land unit" because it helps to clarify the common land unit is determined by FSA and is not a determination made by the insurance provider. A few commenters questioned whether the term "common land unit" should be defined and used in the Basic Provisions at this point before the implementation issues between FCIC and FSA have been resolved. The commenters suggested keeping the definition rather generic, such as "The smallest unit of land as defined by FSA" if it is added. A commenter stated it appears the definition would define corn and soybean acreage in the same field on the same farm as being different common land units. The commenter questioned if that was the intent. The commenter also questioned if this definition matches FSA's definition of common land unit. A commenter strongly opposed use of a "common land unit" without a meaningful definition that specifies the insurance unit definition of what it constitutes for a unit at the farm level. The commenter stated that, unless the summary of protection reflects the insurance guarantee for each unit, the producer does not have a basis for determining whether crop damage constitutes a covered loss. Furthermore, without knowing the insurance guarantee by unit, the producer cannot fulfill the notice of damage reporting requirements. Therefore, when USDA decides to allow producers to file a common acreage report for both FCIC and FSA programs, the commenter strongly recommended that the common

units for each agency become FSA tract numbers. A commenter stated they are concerned about the definition of "common land unit" since citrus in south Texas has a rather unique legal description. The commenter stated he hopes the new definition does not place citrus growers at a disadvantage.

Response: There are several issues that need to be resolved before the definition of "common land unit" is included in the policy provisions. Therefore, the proposed definition will not be retained in the final rule. However, it is possible that common land unit numbers may be used by FSA and provided to producers. If this occurs, such numbers may be utilized for the purposes of crop insurance. Therefore, FCIC has added a reference to common land unit numbers in section 6 with respect to the reporting of acreage but made it clear that such information need only be reported if a common land unit number has been provided to the producer by FSA and it is required to be reported by the acreage report form.

Comment: A commenter questioned whether the definition of "conventional farming practice" needed both phrases "* * * for producing an agricultural commodity * * *" and "* * * that is necessary to produce the crop * * *" The commenter was concerned that there were so many separate phrases in this sentence as it is. The commenter questioned if a producer really has to "* * * conserve or enhance natural resources and the environment * * *" in order for it to be considered a conventional farming practice.

Response: There is no need to include the provisions regarding to "* * * conserve or enhance natural resources and the environment * * *" because this language is contained in the definition of "sustainable farming practices. " Therefore, FCIC is revising the definition to remove the language. FCIC is also removing the redundancy regarding the production of the crop.

Comment: A few comments were received regarding the definition of "Cooperative Extension System." A commenter supported the proposed definition and stated the issue of who should be considered "agricultural experts" has been a tricky one and adding this definition would help to make it clearer. Another commenter stated the definition of "Cooperative Extension System" refers to "* * * offices staffed by one or more agronomic experts * * *" instead of the defined term "agricultural experts." The commenter stated if there is a distinction, perhaps a definition of "agronomic experts" might be needed as well.

Response: The references to "Cooperative Extension System" are more accurate than "Cooperative State Research, Education and Extension Service (CSREES)" because the agricultural experts may not have been employees of CSREES but they worked in cooperation with CSREES. Further, the term "agricultural experts" should be used instead of "agronomic experts" to be consistent with other provisions in the policy. Therefore, this change has been made in the final rule.

Comment: A few comments were received regarding the definition of "delinquent debt." A few of the commenters suggested delinquent debt be defined in the policy to alleviate the chance of misunderstanding between the insurance provider and the insured on what constitutes a delinquent debt. A commenter stated current procedures allow a corporation not to pay the premium and then the substantial beneficial interests (SBIs) of the corporation get insurance via an individual policy. The commenter recommended the wording be changed to the following: A delinquent debt for any policy will make you (as an individual) or a person with a substantial beneficial interest in you, ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 2(f)(2). A commenter stated there could be misunderstandings of certain details that are included in the current definition—whether administrative fees are included in a delinquent debt, when it is considered delinquent (not postmarked versus not received), *etc.* Some of this information should be retained in the Basic Provisions, whether in this definition or in section 24 [Amounts Due Us]. A few commenters stated FCIC has cited the definition contained in 7 CFR part 400 subpart U, but they suggested it is unlikely that many insureds have access to the Code of Federal Regulations. The commenters stated simply referring to the regulations does not seem very helpful to insureds, who need to know exactly what is included in their contracts. A commenter stated the insurance providers could put the CFR link on their Web sites to make it easier for their policyholders to locate the referenced regulations; however, if a difference of opinion results in a legal dispute, there might be some question as to whether something not specified in the policy itself would be considered something the policyholder should be expected to know and understand.

Response: FCIC understands the commenters concerns of referring the readers to another document for the definition of "delinquent debt." However, it is not uncommon for the Basic Provisions to contain cross references to other provisions in 7 CFR part 400 (*e.g.,* definition of "actual production history (APH)" refers to 7 CFR part 400, subpart G). Further, these regulations are part of the policy as it is defined. Maintaining one definition of "delinquent debt" in 7 CFR part 400, subpart U and a cross reference in the Basic Provisions will prevent any conflicts between the Basic Provisions and subpart U. Further, the definition of "Code of Federal Regulations (CFR)" specifies the Web address where the applicable CFR can be found. In addition, FCIC has added a link on RMA's Web site to 7 CFR part 400, so that interested parties may have access. With respect to the issue of postmarked versus received, these terms go to the core of the definition of "delinquent debt" and will be addressed in subpart U. No change has been made in response to these comments.

Comment: A commenter suggested it might be helpful in the definition of "disinterested third party" to list the people who have a familial relationship in a sequential order (generational or relational, where spouse would come before children).

Response: FCIC has considered this change but it does not substantially clarify the rule or improve readability. No change has been made.

Comment: A comment was received regarding the definition of "earliest planting date." The commenter stated the defined term is "earliest" but the Special Provisions refer to "initial" planting date. The commenter asked why not choose one or the other to make it consistent; then the definition could begin "The date in the Special Provisions * * *".

Response: The Special Provisions now refer to the earliest planting date so the provisions are consistent. No change has been made.

Comment: A commenter questioned whether the definition of "economic significance" should be updated to refer to "agricultural commodity" instead of "crop" or if the definition is still needed.

Response: The definition of "crop of economic significance" is not in the Basic Provisions in 7 CFR part 457. No change has been made.

Comment: A commenter agreed with moving most of the details from the definition of "enterprise unit" to proposed section 34(a)(2)(i) but stated a reference to that section would be helpful.

Response: FCIC has changed the provision accordingly.

Comment: A commenter questioned whether the term "agricultural commodity" is necessary in the definition of "first insured crop" when the rest of the definition uses "crop" and makes it clear we are talking about the first crop "planted" (so it is not going to be livestock as "first insured" followed by soybeans as the "second").

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter suggested the definition of "good farming practices" is not proposed to be changed but contains a serious deficiency. Specifically, the language in clause (1) relating to practices "generally recognized by agricultural experts for the area" and in clause (2) relating to "generally recognized by the organic agricultural industry for the area" should be modified. The deficiency becomes apparent in those situations in which a processor is either the exclusive or dominant determiner of farming practices in a geographic area. Such processors generally specify the acceptable seed varieties to plant, cultivation practices (including inputs necessary to produce a crop), harvesting times and practices, and storage practices. The commenter stated insurance providers are concerned that the definition, as written, effectively delegates to processors the determination of good farming practices with respect to the crop to be processed simply by repetition of past practices. Under the definition, a processor's routine practices simply become "good" because they have been repeated yearly in the local area. In short, once a processor's practices become routine, they become a self-fulfilling embodiment of "good" practices no matter how inadequate or outdated they are and no matter how poorly implemented. The commenter stated this issue is an important one, as it potentially affects several crops with high dollar values such as sugar beets, green peas, hybrid seed corn, sweet corn, processing beans, processing tomatoes, dry peas, and dry beans. The problem identified in the existing definition can be solved by adding the term "conditions in the" after the word "for" and preceding the word "area" in each clause of the definition. Making this change eliminates the "closed circle" approach of the existing definition. The change would permit utilization of comparative practices involving similar conditions from comparable geographic areas in determining whether a good farming practice has been applied. Stated bluntly, the change would eliminate the situation in which a processor's negligence in failing to update its requirements based on new research, testing, or experience, or its negligence in administering its requirements for planting, growing, and harvesting a crop, divests an insurance provider, and ultimately, FCIC from determining what constitutes a good farming practice for loss adjustment purposes.

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few comments were received regarding the definition of "harvest price exclusion option." A commenter stated that allowing producers to exclude the Harvest Price Option rather than having to elect to receive it helps avoid the potential for producers not receiving a benefit. They urged FCIC to maintain this provision in the final rule. A commenter suggested language be added to indicate and clarify the projected price will be used to determine the guarantee and further clarify the harvest price will be used in the calculation of revenue to count for indemnity purposes. A commenter stated FCIC proposes that the revised policy provide coverage for both an increase and decrease in price, unless the producer selects the harvest price exclusion option. If a producer is allowed to eliminate coverage for upward price protection, the commenter asks why they should not also be allowed to eliminate downward price protection, if they so choose. This may be a viable additional option for many producers given the downward price protection already built into the current farm program provisions such as the counter-cyclical payments and loan deficiency payments. Many producers also cover their downward price risk through use of hedges, hedge-to-arrive contracts, forward contracts, and options.

Response: It is not necessary to include the uses of the projected price and harvest price in the definition of "harvest price exclusion" because the definitions of "harvest price" and "projected price" and section 3 already specify how each price will be used. Since the option to exclude downside price protection was not proposed, no changes were required as a result of conforming amendments, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. All references to "option" have been removed because it was redundant with the ability of the producer to elect to exclude the upward price protection.

Comment: A few commenters suggested the definition of "insurable interest" be expanded to further clarify and define the term as used in the Crop Insurance Handbook (CIH) and Loss Adjustment Manual (LAM). The commenters stated "share" is defined in the proposed rule as "Your percentage of insurable interest in the insured crop * * *" while "insurable interest" is defined as "The value of your interest in the crop * * *" This suggests "share" is only the percentage figure (not sure this is the intent), while the "insurable interest" is a value amount (not entirely clear on this either). The commenters requested FCIC to consider whether it is intended for "share" to apply to "the insured crop" while "insurable interest" applies to "the crop" (insured or not). The commenters stated the last sentence of each definition addresses the maximum share or insurable interest for loss purposes but they do not match exactly. For "share," it reads "* * * your share will not exceed your share at the earlier of the time of loss or the beginning of harvest." For "insurable interest," it reads "* * * The maximum indemnity payable to you may not exceed the indemnity due on your insurable interest at the time of loss" and does not include the reference to "* * * or the beginning of harvest." If both definitions are kept, one of these sentences probably should be deleted; keep the one that is most accurate. A commenter stated it is unclear how one would pinpoint "* * * the time of loss."

Response: The applicable procedures will be revised to conform to the definitions in the policy. Further, it is intended that both the definition of "insurable interest" and "share" refer to the producer's percent interest in a crop so the definition of "insurable interest" is revised to refer to the percentage of the insured crop that is at financial risk and the definition of "share" is revised to cross-reference "insurable interest" to eliminate any conflicts. Both the definitions of "insurable interest" and "share" were intended to refer to the insured crop and the definitions have been revised accordingly. There was an apparent conflict between "insurable interest" and "share" with respect to the time each was determined. FCIC has revised the definition of "insurable interest" to remove all references to timing because it was intended to determine the percentage of the crop that was at risk. The definition of

"share" still refers to the time of loss or the beginning of harvest.

Comment: A few comments were received regarding the definition of "insurable loss." The commenters asked if it would be considered an insurable loss if the insured did not accept payment.

Response: In accordance with the definition of "insurable loss," if the insured does not accept an indemnity payment, the loss will not be considered to be an insurable loss under the policy.

Comment: A few comments were received regarding the definition of "liability." A commenter had some concerns with this revised definition since "* * * determined in accordance with the claims provisions * * *" instead of referring to the "premium computation" takes share out of the equation. This would seem to have implications for when misreported information is corrected, second crop (for prevented planting purposes) and data processing. The commenter also recommended the reference should be to "* * * the Settlement of Claim provisions * * *" rather than "* * * the claims provisions * * *"

Response: The liability is based on the total value of the crop for the unit, not the producer's share of the crop. For the purpose of determining a claim, the total production to count is subtracted from this total liability and the result is multiplied by the share to obtain the producer's share of the indemnity. This is because all determinations are done on a unit basis, which would include the whole value, all production, *etc.,* for the unit, not just the producer's share. If the liability were to refer to the premium computation, it would result in a double reduction for the share, once in the determination of liability and again in the indemnity calculation. This means it is not necessary to take share into consideration when determining misreporting or prevented planting payment reductions for second crops or for data processing because share is factored into any payments. FCIC agrees "the claims provisions" should be "the Settlement of Claim provisions" and has modified the definition accordingly.

Comment: A commenter stated "optional unit" is not defined in the definitions, yet "basic unit", "enterprise unit" and "whole-farm unit" are defined. The commenter suggested that either all types of units should be defined in the definitions, or all should be addressed in section 34.

Response: It is not practical to define the term "optional unit" because there are a large number of variations available and FCIC has determined that such variations are best left in section 34 of the Basic Provisions and the applicable Crop Provisions. No change has been made.

Comment: A commenter requested the defined term of "organic agricultural industry" be changed to "organic agricultural experts" to reflect the meaning of the definition as given. This would also be consistent with the new term "agricultural experts" that is proposed in the rule. The commenter noted the industry is composed of a broad variety of businesses and believe the industry as a whole should not be confused with those who are expert in organic agriculture. In addition, they would hope experiment stations would be eligible to be the employers of "organic agricultural experts" along with the other institutions listed. The commenter stated they appreciate the consideration given to organic farming methods, especially the recognition that organic farming practices may vary from non-organic practices.

Response: The commenter is correct and "organic agricultural industry" is a misnomer and the definition really describes organic agricultural experts in the same manner as agricultural experts. Therefore, the name has been changed, along with the other references in the policy.

Comment: A comment was received regarding the definition of "perennial crop." A commenter stated that with the implementation of the Basic Provisions it would be an appropriate time to include some kind of qualifier such as "* * * that has an expected life span of more than one year" or "* * * that normally has a life span * * *" to the definition of "perennial crop." This revision would make the "perennial crop" definition consistent with the one for "annual crop."

Response: Since no change to this definition was proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter questioned if the definition of "policy" should be revised. They requested FCIC to note their comments regarding whether "* * * the Commodity Exchange Price Provisions, if applicable * * *" must be provided to policyholders along with the Basic, Crop and Special Provisions or whether information can be made available on the web site or in the agent's office like the other actuarial documents.

Response: The CEPP, if applicable, is a part of the policy so the definition of "policy" must be revised to include those provisions. Like the Basic Provisions, Crop Provisions and Special Provisions, the insurance provider will be responsible for providing to producers who purchase revenue or yield protection those pages of the CEPP that correspond to the crops the producer insures. The CEPP will also be available on RMA's Web site. In subsequent years, the insurance provider will only be required to provide the producer with changes to the CEPP. FCIC has revised section 4(c) to specify changes to the CEPP must be provided in writing to the insured not later than 30 days prior to the cancellation date for the insured crop. The CEPP will be formatted so that the page(s) applicable to the crop and sales closing date can be printed exclusive of other information.

Comment: A commenter recommended the definition of "premium billing date" be revised as follows: "The earliest date upon which premium and/or administrative fees are due for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions." This has been an issue on reviews by FCIC regarding the wording needed on premium billings and notices.

Response: The premium billing date is not the date the premium is due. It is the date that premium bills are to be sent to the producers by insurance providers. Premium is due thirty days after the premium billing date. No change has been made.

Comment: A few comments were received regarding the definition of "prevented planting." A commenter stated the second sentence of the definition of "prevented planting", which addresses "[t]he failure to plant the insured crop within the late planting period," is misleading in light of the final sentence of section 17(d)(2). To wit, an insured who initially seeks to plant during the late planting period will not receive a prevented planting payment if other producers had planted prior to the late planting period. The commenter stated this inconsistency must be reconciled. A commenter stated they view as positive the prevented planting provisions being changed to clarify prevented planting coverage is not available because of lack of equipment or labor or failure to plant when others in the area are planting. A commenter stated FCIC proposes to revise the definition of prevented planting to clarify failure to plant because of lack of equipment or labor is not considered prevented planting because lack of equipment or labor are not insured causes of loss. The commenter noted prevented planting claims, which implicate the issue of

inputs such as manpower and equipment, are always very difficult. The commenter stated while the proposed amendment to the definition goes a long way in clarifying this troublesome issue, it may not go far enough to encompass other often-recurring problems associated with uninsured causes of loss. The commenter stated with minimum, and particularly no-till, farming practices becoming more and more prevalent, insurance providers are often met with an argument from insureds that "my land was wet because I am a no-till farmer. My neighbor's land was drier and he was able to plant because he follows a conventional tillage method." The commenter stated a farming practice such as no-till or minimum till is not a characteristic of the land; rather, it is a farm management decision. Consequently, a decision relative to a farming practice is not an insured cause of loss for prevented planting purposes. The commenter stated the definition of prevented planting should be revised to clarify this increasingly encountered problem.

Response: FCIC has revised the definition of "prevented planting" by combining the first and second sentences. This clarifies the provisions regarding a cause of loss general to the surrounding area and that prevents other producers from planting acreage with similar characteristics is applicable to both situations in which planting is prevented by the final planting date and during any applicable late planting period. This revision also removes any potential conflict between the definition and section 17(d)(2). FCIC also has clarified that the use of a particular production method does not constitute an insured cause of loss. Management decisions are never an insured cause of loss.

Comment: A commenter stated FCIC should consider whether the definition of "production guarantee (per acre)" should be identified as for yield protection only (unless it also applies to revenue protection).

Response: The definition of "production guarantee (per acre)" should not specify for yield protection only. The definition of "revenue protection guarantee (per acre)" includes a reference to the "production guarantee (per acre)," so the term is applicable to both yield and revenue production. No change has been made.

Comment: A comment was received regarding the definition of "production report." The commenter suggested that "* * * planted acreage and harvested production" is not necessarily wrong, but may be somewhat outdated now that yields are assigned for prevented planting acreage when a second crop is planted and there is no double cropping history and sometimes appraised production. The commenter also recommended replacing the "or" before "* * * by measurement of farm-stored production" with a comma to set off the three separate phrases.

Response: The definition is not totally accurate because there are situations where yields are assigned for prevented planting acreage when a second crop is planted and there is no double cropping history and appraised yields may be used. However, there are also situations where there are appraised yields but they are not used, such as appraisals for uninsured causes. Therefore, to eliminate any potential conflict with other policy provisions and FCIC issued procedures, FCIC is removing the term "harvested." Further, FCIC has removed the term "or" and added a comma in its place.

Comment: A commenter stated the definition of "projected price" is potentially ambiguous. Because "[a] price" is singular, and the reference is to the plural "all crops," it could be read to mean that an identical price is used for each insured crop. Thus, we recommend rewriting this definition.

Response: FCIC has revised the definition to specify that the price is for each crop.

Comment: A few comments were received regarding the definition of "replanted crop." The commenters referenced Bulletin No. MGR–06–008—Grain Sorghum Planting in South Texas that was issued on June 9, 2006. A commenter stated it is their understanding the position taken in the bulletin was developed as a result of the following portion of the language in the "replanted crop" definition "* * * if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it * * *;" The commenter understands this portion of the definition was only intended to address winter wheat or barley, which is damaged under the Wheat or Barley Winter Coverage Endorsement. In this situation the insured has the option not to replant, and be paid based on the appraisal. This language was not intended to address grain sorghum or any other crops as indicated in the bulletin. The commenter recommended additional language be added to clarify whenever an insured plants the same crop back on the same acreage in the same crop year this is always considered being a replanted crop. Another option would be to remove the above referenced language from the definition and redefine replanted crop in either the Small Grains Crop Provisions or the Wheat or Barley Winter Coverage Endorsement to include this language where it was intended. The commenter also questioned if the definition is intended to exclude the use of this term for a second crop. Another commenter stated the bulletin indicated a crop replanted to the same crop after it was no longer practical to replant the damaged first insured crop would be considered an uninsurable second crop. Although the bulletin addressed grain sorghum, the provisions cited were all from the Basic Provisions. The commenter believes the bulletin was written such that its direction will lead to unintended consequences and should not have cited provisions applicable equally to all crops and should not have triggered solely on a determination of whether or not it was practical to replant. The commenter recommended the definition be rewritten so it is clear that, if a crop is replanted back to the same crop on the same acreage in the same crop year, it is always considered the same original crop unless specified otherwise in the Crop Provisions. Then, particular issues such as the grain sorghum issue dealt with in MGR–06–008 could be better addressed in the Crop Provisions.

Response: Section 508A(a)(2) of the Act makes it clear that a second crop can be the same crop as the first crop unless such crop qualifies as a replanted crop. Section 508A(a)(3) of the Act defines a replanted crop as "any agricultural commodity replanted on the same acreage as the first crop for harvest in the same crop year if the replanting is required by the terms of the policy of insurance covering the first crop." Therefore, unless replanting is required under the policy, a second planting of the same crop has to be considered a second crop. This would apply to all crops. However, there are only certain crops where it is appropriate to allow replanting to be optional. FCIC has previously revised the Basic Provisions to specify that if the policy makes replanting optional and the producer elects to replant (*i.e.,* replanting spring wheat after the failure of winter wheat and continue carrying insurance on the winter wheat under the Winter Coverage Endorsement), the second planting is considered a replanted crop. Therefore, the Basic Provisions should contain the rule and the Crop Provisions the exception. No change has been made in this rule.

Comment: A comment was received regarding the definition of "revenue protection." A commenter suggested replacing the first "or" in both sentences with a comma and making other

changes as follows: "* * * against production loss, price decline/increase, or a combination of both * * * only against production loss, price decline, or a combination of both."

Response: FCIC has revised the definition to remove each "or" between "production loss" and "price decline" and added commas. Additionally, FCIC has revised the "Causes of Loss" sections in the Crop Provisions to clarify that a price change is an insurable cause of loss as long as the cause of the price change is not determined to be an uninsurable cause of loss. This change is consistent with the definition of "revenue protection" which states both price declines and increases are covered.

Comment: A commenter stated the defined term is "RMA's Web site." This is sometimes referred to as "RMA's Web site" and other times as "the RMA Web site" in the Basic Provisions. It would be helpful to use one term consistently.

Response: FCIC has revised the provisions to consistently use the defined term.

Comment: A commenter suggested deleting the parentheses in the definition of "section" and beginning "For the purposes of unit structure, a unit of measure * * *".

Response: FCIC has revised the provision as suggested because it could be perceived that the parenthetical was not actually part of the definition.

Comment: A commenter recommended revising the third sentence in the definition of "second crop" for clarification.

Response: FCIC has considered this change but does not know how to write the provision any clearer. If there are specific suggestions, FCIC will consider them when it next revises the Basic Provisions. No change has been made.

Comment: A few commenters stated clarifying the definition of "share" is appropriate, especially since the proposed rule adds a definition of "insurable interest," which speaks to the "value of your interest in the crop." The definition of "share" is relevant to performing calculations in the sale and service of the MPCI policies. The definition can be improved, therefore, by changing it to read as follows: "Your insurable interest in the insured crop, expressed as a percentage, as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest." This minor change makes the definition consistent with its utilization in the program, and it avoids creating any ambiguity when this definition is read along with the definition of "insurable interest." The commenter referred FCIC to their comments above to the proposed new definition of "insurable interest" and asked whether they match and/or are redundant. Also consider changing "* * * your share will not exceed your share * * *" to "* * * your share will not exceed your insurable interest * * *"

Response: As stated above, FCIC revised the definition of "insurable interest" in response to other comments to specify that "insurable interest" is expressed as a percentage. Therefore, it is no longer necessary to clarify "share" is expressed as a percentage. FCIC revised the definition of "share" to remove the reference to percentage and only refer to insurable interest.

Comment: A few comments were received regarding the definition of "substantial beneficial interest." A commenter stated the proposed rule amends the definition to provide, in part, that a "spouse * * * will be considered to have a substantial beneficial interest unless the spouse can prove they are legally separated or otherwise legally separate * * *". In its explanatory discussion portion of the proposed rule (71 FR 40215), FCIC states this change is to clarify "that spouses are presumed to share in the spouse's share." If, as it seems, FCIC's intention is to create a presumption, then the definition of "substantial beneficial interest" should reflect this. Moreover, the terms "presumed" and "presumption" create an evidentiary standard that will be relevant to a legal action involving this issue. For this reason, the commenter urged FCIC to amend the definition to state that a "spouse will be presumed to have a substantial beneficial interest unless the spouse can prove they are legally separated or otherwise legally separate * * *". In addition, a commenter questioned the continued inclusion of the phrase "legally separated or otherwise legally separate under applicable State dissolution of marriage laws." The 2007 Crop Insurance Handbook (CIH), specifically Exhibit 32 section 2G(l), sets forth seven criteria that, if met, entitle a spouse to a separate policy regardless of marital status. Thus, there appears to be an inconsistency between the Basic Provisions and the CIH, as currently written. A few commenters recommended FCIC consider if the definition of "substantial beneficial interest" is affected by the proposed changes in sections 10(a) & (b), where the interest of any children or other household members are to be included as well as the interest of the spouse. The commenters also suggested FCIC might need to clarify whether a "child" is limited to minor children, or to offspring residing with the individual insured, or in some other way.

Response: FCIC has revised the definition to use the term "presumed." There appears to be confusion regarding SBI and separate shares for the purposes of having separate policies. SBI is only applicable to identify those persons who are required to provide their social security numbers because of their interest in the applicant or insured. This is different than insurable interest or share because those refer to the interest in the crop. To have a separate share or separate policies, there must be an insurable interest in the crop. Therefore, the phrase "legally separated or otherwise legally separate under the applicable State dissolution of marriage laws" should be included in the definition because it is necessary to specify when a spouse is no longer considered to have a SBI in the producer. The term "child" is intended to take its common meaning, which would include a child of any age. For the purposes of SBI, no child is presumed to have a SBI in the insured. To have a SBI, a child must have some other legal relationship to the insured, such as entering into a partnership of some other entity. However, FCIC has revised section 10 to clarify that although a child can be of any age, only children who reside in the same household as the insured are considered to be included in the insured's share. Children who reside outside of the insured's household are not included in the insured's share and can only obtain insurance if they have a separate share of the crop and obtain a separate policy.

Comment: A few comments were received regarding the definition of "whole-farm unit." The commenters asked why it could not also be applied to a producer who only requests yield protection coverage for all of his/her insurable crops in the county.

Response: The definition just described whole-farm units. The restriction of the applicability of whole-farm units is contained in section 34. Currently whole-farm units are only available under the Revenue Assurance plan of insurance and are incorporated into revenue protection. However, a rating methodology has not yet been developed for whole-farm unit coverage under yield protection. To allow greater flexibility, FCIC has revised section 34 to allow the Special Provisions to include a whole-farm unit for policies other than revenue protection in the

event rating methodology is developed in the future.

Comment: A few commenters stated it is unclear why the definition of "yield protection" should be restricted to those crops/counties for which revenue protection is available (whether elected or not). It would seem to be appropriate terminology also for crops/counties where revenue protection is not available (instead of having to distinguish between "yield protection" and "APH coverage"). In that case, this definition should be revised to something like "Insurance coverage that provides protection against a production loss only." [delete the phrase "* * * for crops for which revenue protection is available but was not elected"]. If this is not done, it would seem to be necessary to add a definition of "APH coverage" (the term used in the "Background" of the Proposed Rule) for those other crops/counties; otherwise, it could be interpreted that the Basic Provisions apply only to those crops/counties that have the choice.

Response: There is apparently some confusion about yield protection and its relationship to revenue protection and APH coverage. FCIC has clarified in section 3 that yield protection is a different plan of insurance than APH, revenue protection and any of the other plans of insurance, such as the dollar amount plan of insurance. Further, revenue protection and yield protection will be available for the applicable crops in all counties with actuarial documents for such crops. Once revenue protection and yield protection plans of insurance are available for a crop, the APH plan of insurance will not be available for the crop. Because yield protection and APH are different plans of insurance, the definition of yield protection cannot simply refer to protection against loss of production. The most important distinction between yield protection and APH is that the yield protection pricing mechanism is based on a projected price determined in accordance with the CEPP. Therefore, yield protection and revenue protection will be available for the same crops in the same counties. For this reason, yield protection correctly references the crops for which revenue protection is available. FCIC has clarified in the definitions of "yield protection" and "revenue protection" that they are separate plans of insurance. In this rule, the distinction is only made between revenue protection, yield protection and all other plans of insurance. Therefore, it is not necessary to include separate definitions for these other plans of insurance. Their terms and conditions are very well explained in the Crop Provisions, Special Provisions, and actuarial documents.

Comment: A few comments were received regarding the definition of "yield protection guarantee (per acre)." Some commenters recommended deleting the phrase "* * * for a crop that has revenue protection available" so this applies to any crop/county not insured under revenue protection. Some commenters recommended deleting this definition since yield protection coverage would be addressed by the existing definition of "production guarantee (per acre)", or group the definitions of "production guarantee (per acre)," "revenue protection guarantee (per acre)" and "yield protection guarantee (per acre)" as subparagraphs under the overall general definition of "guarantee (per acre)" to clarify the distinctions and similarities between the three. Commenters also suggested that FCIC might also need to add something for the non-revenue protection crops that are insured under a dollar amount plan rather than under an APH/yield plan.

Response: As stated above, the "dollar amount plan of insurance," "APH plan of insurance," and "revenue protection plan of insurance" are separate and distinct. The phrase "for a crop for which revenue protection is available" cannot be deleted because this definition is only applicable to the yield protection plan of insurance, which is only available for crops for which revenue protection is available. It is not applicable to the dollar amount plan of insurance or the APH plan of insurance. Further, the definition cannot be deleted because, under yield protection, the guarantee is based on both the yield and the price to obtain the dollar value of the insurance coverage. Under the APH plan, the guarantee is only based on the yield. FCIC does not need to add additional definitions or terms for the dollar amount plans of insurance since their guarantees are explained in the Crop Provisions. No change has been made in response to these comments. Minor editorial changes were made for clarity.

Section 2 Life of Policy, Cancellation, and Termination

Comment: A commenter stated they agree the social security numbers (SSN), employer identification number (EIN), or identification numbers must be provided on the application.

Response: FCIC has retained the provisions requiring identification numbers on the application.

Comment: A commenter stated proposed section 2(b) indicates the applicant must provide a SSN if the applicant is an individual or an EIN if the applicant is a person other than an individual. However, the Crop Insurance Handbook (CIH) (Exhibit 32) and Appendix III of the Standard Reinsurance Agreement (SRA) do allow individual entities to be insured using an EIN and some entities other than individuals to use an SSN. The commenter stated a literal reading of this policy language would not seem to support how these entities are currently being administered per the CIH and Appendix III. The commenter recommended the policy language be rewritten to support how these entities are currently being insured. They suggested the provision could indicate something to the effect that the applicant must provide a SSN or EIN, whichever is applicable. Another commenter stated because proposed section 2(b)(1)(i) refers to "* * * SSN, EIN or identification number," the first sentence of (b) should refer to that third possibility as well.

Response: EINs can still be included on the application for any entity. However, under the Basic Provisions, the CIH, and Appendix III, all individuals with a SBI in the entity must also provide the SSNs for such individuals. For example, a producer who operates a farm and has an EIN, can report the EIN on the application but the producer must also provide their SSN. The provisions have been clarified to allow EINs to be used as long as the SSNs are also provided. However, the producer cannot be allowed to make the election of whether to provide the EIN or the SSN because EINs can change and it would be impossible to track the producer for the purposes of eligibility and yield history. FCIC has removed all references to "or identification number" in section 2(b)(1), (2), (3) and (5) and added a new section 2(b)(10) to specify a person who is not eligible to obtain a SSN or EIN must request an assigned number.

Comment: Several commenters disagreed with the provisions proposed in section 2(b)(1)(ii) (redesignated section 2(b)(5)(ii)) that specify no insurance will be provided if the SSN, EIN, or identification numbers are not corrected prior to any indemnity being paid. A commenter stated if the producer is eligible for insurance, there should be no penalty for misreporting. The commenter believes corrections should be allowed without loss of program benefits. A few commenters stated errors can occur at virtually every stage of information transfer. They believe producers should not automatically have their coverage canceled, as is now the case, if they

inadvertently provide, through their mistake or someone else's, an inaccurate SSN, EIN, or ID Number. The commenter believes this is an overly harsh punishment for what is usually an inadvertent clerical error and the provisions should be revised. The commenter stated the only necessary exception to this would be when, upon further investigation, the numbers provided identify the producer as being ineligible to participate in programs under the Federal Crop Insurance Act or shows them to be listed on the Ineligible Tracking System (ITS). A few commenters stated they believe an erroneous SSN or other number should not automatically cause coverage to cancel unless the number or numbers indicate the person is ineligible to participate in the program. A commenter stated as an alternative, a less draconian penalty other than complete denial of coverage should be meted out to those who make an error in providing a SSN or other ID number. A commenter supported the ability to correct an EIN/SSN before payment.

Response: Section 506(m)(1) of the Act requires the producer to provide a SSN as a condition of eligibility. This means a correct SSN. Therefore, failure to provide a correct SSN makes the producer ineligible for insurance and FCIC does not have the discretion to change this requirement. However, there may be instances producers may not be aware that they provided the incorrect SSN because application was made years ago. Therefore, FCIC is revising the provisions to allow a producer to correct errors the producer can prove were inadvertent. While FCIC is allowing a small amount of leeway with respect to a producer's eligibility for past years, producers must be aware that a producer's certification of incorrect identification numbers generally constitutes a false statement that can subject the producer to criminal, civil and administrative sanctions and if a claim has been paid there may be additional consequences. FCIC has revised the provisions to notify the producer that the submission and certification of an incorrect identification number may subject the producer to civil, criminal or administrative sanctions. FCIC has left in the requirement that if a producer provides and certifies an incorrect identification number and fails to correct it, that producer is ineligible for insurance for any year for which the incorrect information was used and any payments made during such period must be repaid. Further, the provisions are revised to state that, even if the identification number information is corrected, the producer will still be ineligible for insurance for any year for which the incorrect information was used (and any payments made during such period must be repaid) if the producer received a disproportionate benefit, was otherwise ineligible for crop insurance, or avoided any obligation or requirement under any State or Federal law.

Comment: A commenter stated FCIC proposes to revise section 2(b) to better define the ramifications for an applicant or insured whose application either does not include the requisite SSNs, EINs or other identification numbers or includes erroneous information for persons that have a SBI in the policy. Further and more specifically, proposed section 2(b)(2)(ii) (redesignated section 2(b)(5)(ii)) addressed situations in which the subject person is not eligible for insurance and provides, with one exception, that such policy is void and no indemnity is due. With regard to the premium and fees, FCIC distinguished between policies for which the premium and fee are paid and those policies for which they are not. The former is entitled to a refund less 20 percent of the premium; the latter is not liable for any premium. The commenter did not understand and did not agree with FCIC's application of differing penalties. The commenter added that presumably, the work expended by the insurance provider in reviewing an application does not vary based on whether or not premium is paid. Thus, the commenter believes if the 20 percent premium charge is intended to offset expenses incurred by the insurance provider, such compensation is warranted regardless of whether the premium is paid. The commenter stated that likewise, if the 20 percent assessment is a punitive measure, there is no reasonable basis to distinguish between persons who pay premium early and those who do not. The commenter believes the disparate treatment set forth in proposed section 2(b)(2)(ii)(A) and (B) may encourage insureds to delay the payment of premium until the last possible minute. The commenter recommended FCIC eliminate the arbitrary distinction underlying sections 2(b)(2)(ii)(A) and (B)), and amend section 2(b)(2)(ii) to provide that 20 percent of the premium is due on any policy for which the subject person is ineligible for insurance. Another commenter stated administrative fees and 20 percent of the premium should be applicable regardless if the premium has or has not been paid by the producer prior to the policy being voided. The commenter believes the insurance provider should have the option to bill for these amounts and the producer and SBIs should be considered ineligible if these debts are not paid by the termination date.

Response: There is no basis to treat producers who have previously paid the premium different from producers who have not paid the premium. The retention of 20 percent of the premium was intended to offset the expenses of the approved insurance provider, not be punitive in nature. FCIC has revised redesignated section 2(b)(7)(ii) to require all producers to pay 20 percent of the premium the producer would otherwise be required to pay if the policy is voided.

Comment: A commenter recommended proposed section 2(b)(1)(ii) (redesignated section 2(b)(7)(iii)) be clarified in more detail regarding whether or not the return of premium applies to only the current year or all previous years when the application has the wrong SSN. For example, a producer reported the wrong SSN to an insurance provider and paid the premium for the last three years with no loss. If in the fourth year, the producer is paid a small payment and later it is determined the producer reported the incorrect SSN, would the insurance provider return the prior three years premium or does the return of premium only apply to the year the loss was paid. If it applies to all four years, the program runs the risk of a producer intentionally misreporting his SSN in hopes of receiving a small claim payment, then notifying the insurance provider of the wrong SSN. The producer would have to repay the small payment, but the insurance provider would have to return the prior three years premium.

Response: If an incorrect identification number is provided and it would result in the application not being acceptable, no insurance would have been, or considered to have been, in place, and the policy is voided under the revised provisions. Therefore, any crop policies associated with that application would be void for all crop years for which such identification number was incorrect. If the policy is void, it has been the practice of FCIC to only require the producer to pay 20 percent of the premium to offset costs (see sections 23 and 27). There is no basis to change this practice for these producers who similarly have their policies voided. There should not be a significant risk that producers will seek to have their policies voided for the return of premium because it presumes that the producer will know that there

will be a number of good years in which no indemnity will be due and only a small claim made in later years. This is unlikely to occur. FCIC has clarified that if the policy is void, no insurance is considered to have attached for any year in which the incorrect identification number has been provided, and the producer would be responsible for 20 percent of the premium for all years covered by the application. FCIC has also moved provisions regarding the effect of voidance to a new section 2(b)(7). Additionally, the provisions in section 27(b) have been clarified to specify the amount of premium that can be retained by the insurance provider when a policy is void is 20 percent of the premium amount the producer would otherwise be required to pay. Current provisions in section 27(b) do not specify whether the 20 percent of premium is based on producer paid premium or the total premium under the policy (producer paid premium plus subsidy). All other sections of the policy that referred to retention of 20 percent of the premium were clear that it is based on the amount paid by the producer. FCIC has revised section 27 to specify the 20 percent is applied to the producer paid portion of the premium.

Comment: A commenter stated they agree with the intended change in proposed sections 2(b)(1)(ii) and (ii)(A) through (C) but are concerned implementation could be problematic since the application would have been accepted long before the time a claim payment could be made, and there could be data processing issues as well. The commenter stated these subsections need to be rewritten for clarity. For example, FCIC could delete "If the information is not corrected," at the beginning of (A) since the lead-in already makes this clear.

Response: As stated above, FCIC has revised the provisions to reduce the impact on producers who have made inadvertent errors and have received absolutely no benefit from using the incorrect identification number. Further, the reference to correction by the claim payment has been removed because many incorrect identification numbers are discovered after the claims have been paid and the 1099 tax forms are issued. However, there will still be some impact on the program because, if the conditions exist that result in an unacceptable application and the policy is voided, previously paid indemnities must be refunded and the correct premium owed reconciled.

Comment: A few comments were received regarding the provision proposed in section 2(b)(1)(ii) (redesignated section 2(b)(5)(ii)). A commenter stated they view as positive allowing the correction of incorrect SSNs or EINs before any claim payment is made. A commenter stated since the proposed policy language will allow correction of SSNs, EINs or other identification numbers to be made, they assume the RMA Data Acceptance System will now allow these corrections to be made without a late sales reduction applying. Another commenter stated they expect FCIC will amend Appendix III to the SRA so insurance providers are not penalized for corrections that occur prior to the payment of an indemnity or a replant or prevented planting payment.

Response: As stated previously, the provisions have been revised to allow revisions upon discovery of errors and removed the reference to the payment date as the deadline for corrections. If corrections to the identification number are allowed by the revised provisions, the insurance provider cannot be penalized for the correction unless the correction was necessary because of agent or insurance provider error.

Comment: A commenter stated they disagree with the proposed provision in section 2(b)(2)(i), which states the amount of coverage will be reduced proportionately by the percentage interest of such persons. The commenter believes that if the person with a SBI is eligible for insurance, there should be no penalty for misreporting and that corrections should be allowed without loss of program benefits.

Response: To be consistent, coverage should not be reduced if the correct identification number is provided. As indicated above, the provisions have been revised to allow correction of an inadvertent error. However, if it is determined that the person with the SBI is otherwise ineligible or the incorrect number would have allowed the producer to obtain disproportionate benefits under the crop insurance program, or avoid an obligation or requirement under any State or Federal law, the policy will be void. FCIC is maintaining those provisions that specify that if an identification number is not provided for any SBI holder, the policy will be void. This is because the SBI holder will be presumed to be ineligible. The identification numbers are required to ensure eligibility and the proper administration of the program. These provisions have been moved to section 2(b)(6).

Comment: A few commenters stated the added phrase "* * * (presumed to be 50 percent for spouses of individuals) * * *" in section 2(b)(2)(i) (redesignated section 2(b)(6)(i)) could be problematic when taken together with section 10(a) and (b). They stated the spouse's interest in the insured entity may be presumed to be half when the spouses are the only ones with such an interest in the entity. If children and/or other household members will be considered to be part of the insured entity as well (as proposed), that leaves less than 50 percent for the actual named insured. Another commenter expressed concern regarding including children and other household members as being among those with a SBI in the insured entity [as proposed in section 10(a) & (b)]. The commenter stated that, with respect to this subsection, such a change would enlarge the pool of people whose eligibility must be determined though they are not officially part of the insured entity.

Response: There appears to be confusion between having an interest in the insured (SBI) and having an interest in the crop (share). SBI is only for the purpose of determining who must report identification numbers. Spouses are presumed to have an interest in the insured but are not presumed to have an interest in the crop. To have an interest in the crop, the spouse must show a legitimate risk of loss. It is possible that a spouse may not have a share of the crop. Further, simply because a person has a share of the crop does not mean the person has a SBI in the insured. For example, a landlord and tenant can insure their shares under separate policies and unless there is another type of legal relationship, *i.e.,* partnership, *etc.,* the landlord does not have to be reported as a person with a SBI in the tenant. The definition of "substantial beneficial interest" clearly states that children are not considered to have a SBI in the producer unless the child has a separate legal interest in the person. Such interest could include a family trust or the child could be a partner in the insured. No change has been made.

Comment: A commenter stated they agree with the proposed provision in section 2(b)(2)(ii) (redesignated section 2(b)(6)(ii)), which states the policy is void if the person is not eligible for insurance.

Response: FCIC agrees that policies should be void when the person with a SBI is not eligible for insurance.

Comment: A commenter suggested deletion of the words "authorized under the Act" in section 2(e).

Response: Since no changes to these provisions were proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter asked if the language in section 2(e)(2) means the

date for the Ineligible Tracking System is the date the claim is completed by the adjuster and signed by the insured, the date the insurance provider processes the claim, or the date the claim is submitted to the insurance provider.

Response: Consistent with the revised definition of "claim for indemnity," the payment date is the date the form containing all the information necessary to pay an indemnity is submitted to the insurance provider.

Comment: A commenter stated section 2(f)(2)(i)(C) has caused problems in areas where the crop has a termination date that is different than the sales closing date. For example, wheat in Montana (with the exception of the four spring only counties) has a sales closing and cancellation date of September 30 and a termination date of November 30. If the insured purchases wheat by September 30, 2005 for the 2006 crop year, and does not pay the premium by the termination date of November 30, 2006, per the provision contained in section 2(f)(2)(i)(A), the wheat coverage would be terminated and no coverage should be effective for the 2007 crop. However, the interpretation the commenter has received from the FCIC is that per the language in section 2(f)(2)(i)(C), if the wheat had already been planted prior to November 30, 2006, so that insurance had already been considered to have attached for the 2007 crop year, the wheat could not be terminated until November 30, 2007. Under this interpretation, the insured would be able to insure wheat for two years without having paid a single dollar of premium. The commenter stated it had always been their understanding the intent of this item was to apply to "other" crops insured by the policyholder, not to the insured crop, which is indebted (wheat in the above example). The commenter recommended the policy language be revised so this item is only applicable to "other" crops insured on the policy and not the crop causing the indebtedness. The commenter provided two different recommendations as follows: (1) "For each policy for which insurance has attached before you become ineligible (excluding the crop(s) with unpaid administrative fees or premiums), the termination date immediately following the date you become ineligible;" and (2) The commenter suggested deletion of this item as it becomes administratively difficult to determine if insurance has attached or not on all of the other crops on the policy. This would then default back to item 2(f)(2)(i)(A). The commenter stated that policyholders with unpaid amounts should not get a free grace period of a year of coverage simply because the termination date falls after the cancellation date.

Response: FCIC has clarified the provision because it never intended to allow continued coverage for the crop for which premium was not paid by the termination date. The purpose of the difference in the termination and sales closing dates was to allow producers who have both spring and winter varieties of the same crop to only have one billing date. It was most practical to move the billing date for the winter variety to coincide with the spring. After the billing date there must be sufficient time to allow for payment and due process before making the producer ineligible and terminating the policy. However, it is not practical to move the sales closing date to coincide with the termination date because it is too close to the date of planting and could lead to adverse selection. FCIC has revised the provision to specify that if the sales closing date is prior to the termination date, and the amount owed is not paid by the termination date, termination is retroactive to the previous sales closing date and insurance is considered not to have attached to the crop for the crop year.

Comment: A few commenters stated sections 2(f)(2)(i)(E) and 2(f)(3)(iii) should be revised to tie regaining eligibility to the discharge of a bankruptcy petition instead of the filing of a bankruptcy petition. The commenters stated that allowing individuals that have merely filed for bankruptcy to participate in the program creates a program vulnerability that should be stopped. The commenters understand that FCIC adopted the filing of a bankruptcy petition as the trigger for regaining eligibility based upon concerns that denying participation until discharge would violate 11 U.S.C.A. 525(a). The commenters stated that this is not true. Section 525(a) provides: (a) * * * a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

The courts of appeals that have approached the question have read the statute's reach narrowly, focusing upon the specific language of the statute. See, *e.g., Watts* v. *Pennsylvania Hous. Fin. Co.,* 876 F.2d 1090, 1093–94 (3d Cir. 1989); *In re Goldrich,* 771 F.2d 28, 30 (2d Cir. 1985). *Watts* involved an emergency mortgage assistance program designed by the State of Pennsylvania to prevent imminent mortgage foreclosures by providing for loans to distressed borrowers in the form of direct payments to their mortgage lenders, keeping their mortgages current. When plaintiff borrowers filed for bankruptcy, the program suspended these payments for the duration of the Bankruptcy Code's automatic stay. Plaintiffs contended this suspension violated § 525(a). In response, the court of appeals noted that a loan from the Pennsylvania program simply was not a "license, permit, charter [or] franchise," and that since those terms "are in the nature of indicia of authority from a governmental unit to pursue some endeavor," the term "similar grant" should be given the same meaning. *Watts,* 876 F.2d at 1093. Similarly, the court in *In re Goldrich* concluded that § 525(a) did not prohibit consideration of prior bankruptcies in credit decisions, since "the language of section 525 may not properly be stretched so far beyond its plain terms." Goldrich, 771 F.2d at 29.

The items enumerated in the statute-licenses, permits, charters, and franchises are unrelated to insurance. They reveal that the target of § 525(a) is government's role as a gatekeeper in determining who is authorized to pursue certain livelihoods. It is directed at governmental entities that might be inclined to discriminate against former bankruptcy debtors in a manner that frustrates the "fresh start" policy of the Bankruptcy Code, by denying them permission to pursue certain occupations or endeavors. The intent of Congress incorporated into the plain language of § 525(a) should not be transformed by employing an expansive understanding of the "fresh start" policy to insulate a debtor from all adverse consequences of a bankruptcy filing or discharge. *Toth* v. *Michigan State Housing Development Authority,* 136 F.3d 477 (6th Cir. 1998) (housing authority did not violate Bankruptcy

Code's antidiscrimination provision when it denied debtor's home improvement loan solely because she had received discharge within three years of application).

The commenters stated that alternatively, if FCIC remains concerned that denying participation until discharge would violate 11 U.S.C.A. § 525(a), the commenters suggest that 2(f)(2)(i)(E) must be changed to make the "termination date" the date of dismissal of the bankruptcy. If disallowing participation during the pendancy of a bankruptcy violates 11 U.S.C.A. § 525(a), which the commenters do not believe is true, then back dating the termination is also a violation as participation is denied "during the case but before the debtor is granted or denied a discharge."

Response: Since no changes to these provisions were proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended addressing the situation in section 2(g) regarding when an insured passes away within 30 days of the sales closing date and the insured's holdings convert to an estate, or in the event the death is a family member like a child, *etc.*

Response: There are situations where an individual may die, *etc.,* and the estate may not pass on to a spouse or the spouse may not meet all the criteria. Provisions have been added in section 2(g) to address these issues. A child's death would be covered under the provisions regarding either the individual insured whose beneficiary is the spouse, the entity insured, or the new provisions regarding an individual insured if the beneficiary is someone other than the spouse, whichever is applicable.

Comment: Many commenters stated the proposed rule states if a married insured dies or is declared incompetent, the policy automatically converts to the spouse's name and will continue in effect until canceled by the spouse. This is a positive change and they urged FCIC to retain it in the final rule.

Response: FCIC has retained the provision in the final rule.

Comment: Many comments were received regarding the provision proposed in section 2(g)(1) that specifies the policy will automatically convert to the name of the spouse if the insured individual dies, disappears, or is judicially declared incompetent. A commenter asked if the policy will convert to the name of the surviving spouse, no matter when the insured dies. In other words, if they die anytime during the insurance period, can the insurance provider make this change? A commenter stated the concept in section 2(g)(1) of allowing coverage to convert to the surviving spouse (if listed as SBI holder) should alleviate some of the problems that have been encountered, but there may be some concerns with implementation. For example, the spouse might not be the heir to the farming operation in all cases, yet this proposed language would make that the default. The commenter believes this might be workable as long as other cases, such as a son inheriting the farm, can be handled through the procedures for a successor-in-interest or transfer of right to an indemnity. A commenter stated while theoretically a positive change, there may be situations in which a spouse dies and the farming operation is taken over by a child of the deceased, the deceased's estate, or another farming operation. The commenter stated an option should, therefore, be provided to convert the deceased spouse's coverage over to these individuals or entities. A commenter stated the provision sets forth two conditions under which the policy automatically will convert to the spouse's name. However, the provision does not specify what occurs if either or both of these conditions are not satisfied. The commenter asked if the policy is terminated or if it is void. The commenter asked whether the policy is void, is it void ab initio. The commenter questioned if the insurance provider is obligated to provide a premium refund for a policy that is voided. The commenter asked if, for example, the death occurs after the filing of notice of loss but before the issuance of an indemnity check, if the claim is extinguished. The commenter stated that arbitration and litigation will not arise if the surviving spouse satisfies the criteria in subsection (1)(i) and (ii) but what happens when he or she does not. The commenter suggested FCIC provide guidelines applicable to this eventuality. The commenter stated, in light of the existing procedures relating to successors-in-interest, the Basic Provisions should expressly state that a new application is not required. The commenter added that FCIC must amend Appendix III to ensure that an insurance provider is not penalized when it changes the SSN from that of a deceased policyholder to that of the surviving spouse.

Response: FCIC has revised the provisions to add the situation where the beneficiary of the insured's estate may be someone other than a spouse or the spouse does not meet the specified criteria. The same terms and conditions that relate to when a member of an entity dies, *etc.,* apply. The policy is never voided. The policy either (1) continues in the spouse's name, or in all other situations, (2) is canceled as of the cancellation date for the current crop year if the event occurs more than thirty days prior to such cancellation date, or (3) continues in effect for the crop year if the event occurs within thirty days of the cancellation date. Even successor in interest must file a new application that will allow the use of the previous experience. Appendix III of the SRA will be made consistent with the Basic Provisions as necessary.

Comment: A commenter stated in each of subsections 2(g)(1) through (3), FCIC employs the term "automatically" to describe the end result of certain occurrences, *e.g.,* "automatically converts," "automatically dissolves" and "automatically canceled." However, a condition precedent to the automatic consequence assumed by section 2(g) is notice to the insurance provider. For example, without notice that a married individual has died, an insurance provider cannot "automatically convert" the policy to the name of the surviving spouse. Therefore, the commenter recommended FCIC amend section 2(g) to provide: "In cases where we have received notice that there has been a death, disappearance, or judicial declaration of incompetence * * *"

Response: FCIC has added a provision that requires notice in any case except where the beneficiary is the spouse and the spouse is listed as a SBI holder and has a share of the crop. If the beneficiary is such spouse, the policy automatically converts and there is no penalty if notice is not provided. The insurance provider should correct the documents whenever notice is provided. In all other instances, notice is required but whether it is provided timely or not does not change the fact that the policy is cancelled by the date specified in section 2(g). This means that if notice is not provided until three years later, the policy is still considered to have been canceled by the specific date and any indemnities, replant payments, prevented planting payments, administrative fees and premium paid in the interim must be repaid.

Comment: Several comments were received regarding the provisions proposed in section 2(g)(2). A few commenters urged FCIC to consider revising the provision regarding surviving partners, members, and shareholders, to maintain the policy if the death occurs within 45, rather than 30, days of the sales closing date. A

commenter stated a 30-day time limit seems rather narrow because there are obviously a number of matters, both personal and business related, which must be handled in short order following the death of a partner in a partnership. The commenter believes that requiring the submission of a new application within a short 30 day window following the death may be asking a bit much from the remaining partners. They stated a 45- to 60-day window would seem more reasonable. A commenter stated section 2(g)(2) states if any partner, member, shareholder, *etc.,* of an insured dies * * * it automatically dissolves the entity. The commenter added it depends on when the insured dies to determine if the policy will be canceled or if it continues. The commenter asked if a partner, member, shareholder, *etc.,* dies, and it only changes the entity but does not dissolve the entity, how should this be handled.

Response: FCIC believes 30 days provides an adequate amount of time for needed changes and has retained the proposed provisions. There is not a single date that can be established by which all estates would be settled. However, in farming situations, there is usually someone carrying on the farming operations and 30 days should provide sufficient time. If no one is carrying on the farming operations, then insurance is not required and there is no harm if the policy is canceled. If a partner, member, shareholder, *etc.,* dies and the entity does not dissolve, the policy would continue in force. Any changes in persons having a SBI would be submitted in accordance with the provisions in redesignated section 2(b)(9). The provision has been clarified to indicate that death, dissolution or declaration of incompetence must be an event that results in dissolution of an entity.

Comment: A few commenters recommended FCIC consider putting "dissolution" of an insured entity into a separate subsection in section 2(g), to make it clearer that it is handled differently. The commenters stated in fact, (g)(2) might be better addressed by referring first to this being an issue of the dissolution of the insured entity rather than the death, disappearance or declaration of incompetence of any of its members, adding that grouping (2) and (3) together might eliminate some of the duplicate language.

Response: Whether another basis for dissolution or death, disappearance, *etc.,* is referred to first or second does not change the meaning of the provisions or provide any additional clarity. As revised, it makes more sense to keep the existing order because FCIC has added provisions regarding when the beneficiary is other than a spouse or the beneficiary spouse does not meet all the criteria for automatic conversion to the spouse's name and the consequences are the same for both the entity and such beneficiary when the insured, dies, disappears, *etc.* Dissolution for reasons other than death, disappearance or judicially declared incompetence is covered by the provisions in redesignated section 2(g)(4). Different timeframes are required for cases in which there is a death, disappearance or judicially declared incompetence because of the additional personal matters that generally must be attended to in such cases. These different timeframes should be addressed in separate sections because combining them would result in more complex and confusing provisions. No changes have been made in response to this comment.

Comment: A commenter stated they disagree with the provisions proposed in section 2(g)(2) establishing a more or less than 30-day time period for required actions prior to the sales closing deadline. The commenter stated although 30 days prior to the sales closing date seems to be adequate time to take appropriate action, these situations are typically discovered much later. The commenter believes corrections based on these circumstances should be handled similar to section 2(g)(1) for spouses.

Response: FCIC understands some cases of dissolution are not discovered in a timely manner but business relationships should not be treated like spouses. FCIC is considering not only the personal nature but the relationship of the parties under the policy. As stated above, FCIC has clarified that the automatic conversion only applies when the spouse is listed as a SBI holder and has a share of the crop to be insured. In such cases, the spouse is the only possible insured so there is no basis for requiring a new application and novation is permitted. However, with respect to business relationships, if the entity is dissolved, it is unknown who will continue to have a share of the crop or who will be the insured. Therefore, a new application is necessary. FCIC has revised the provision to clarify that it is only when the entity is dissolved that the policy will be canceled. If the entity is not dissolved, insurance continues in the entity name and only those persons with a SBI need to revise the application in accordance with redesignated section 2(b)(9). FCIC has also added provisions requiring notice be provided to the insurance provider by the remaining persons in the dissolved entity or beneficiary. No change has been made in response to this comment.

Comment: A commenter stated in section 2(g)(2), allowing coverage to continue when the insured entity is dissolved due to death, *etc.,* of one of its members less than 30 days before the sales closing date would alleviate some of the problems that currently exist, but it might create some confusion for those who do not want coverage to continue. The commenter stated this provision seems to run counter to current procedures that consider coverage to have ceased upon death or dissolution of the insured entity. The commenter stated the language in section 2(g)(2)(ii) (redesignated section 2(g)(3)(ii)) needs to be tweaked somewhat. For example, if the entity dissolves "Less than 30 days before the sales closing date, * * * the policy will continue in effect through the crop year * * *" but which crop year? If this occurs before the cancellation date, the "continued" coverage will be only for less than 30 days. Similar concerns need to be addressed with regard to the language in section 2(g)(2)(ii)(A) (redesignated 2(g)(3)(ii)(A)): "prior to the sales closing date for coverage for the subsequent crop year * * *" These "crop years" will be different years depending on whether the occurrence affecting the insured entity happened before or after the sales closing/cancellation date. The commenter stated FCIC also needs to consider what other policy or procedure language is affected and might require revision. The proposed language requiring the remaining party(ies) to sign a timely cancellation request might still present difficulties if the entity dissolution took place only a day or so before the cancellation date. FCIC also should consider those crops where the cancellation date is not the same as the sales closing date.

Response: The 30-day provisions were added because even businesses need some time to handle the details necessary when a member dies. However, even if less than 30 days, and insurance could automatically continue, there is a provision included in redesignated section 2(g)(3)(ii) that would allow for a voluntary cancellation by the cancellation date. These provisions are clear and should not result in any confusion. FCIC issued procedures will be updated to reflect the new provision. As proposed, if the death, disappearance, or judicially declared incompetence occurred within 30 days of the sales closing date, it was intended that coverage be provided for the crop year immediately following the sales closing date. However, to reduce

confusion associated with crop programs having more than one sales closing date, the provisions have been changed to reference the cancellation date instead of the sales closing date. The provisions have also been clarified in redesignated sections 2(g)(3)(ii) and 2(g)(4)(ii) to indicate the crop year covered is the crop year immediately following the cancellation date. Clarifying these sections with regard to the year coverage is provided makes it unnecessary to clarify the provisions in redesignated section 2(g)(3)(ii)(A) regarding the subsequent crop year. If death occurs very close to the cancellation date, there would be a very limited time to cancel coverage. However, the cancellation date cannot be extended because it could allow situations where producers could adversely select against the program. Since the provisions have been changed to reference the cancellation date, concerns involving different sales closing and cancellation dates are resolved because insurance does not attach before the cancellation date.

Comment: A commenter stated they agree with the proposed action in section 2(g)(3) (redesignated section 2(g)(4)) if the insured entity is dissolved.

Response: FCIC has retained the provision in the final rule.

Comment: A commenter stated that, in section 2(g)(3)(ii) (redesignated section 2(g)(4)(ii)), presumably the phrase "* * * unless canceled by the cancellation date prior to the start of the insurance period" refers to crops with a cancellation date later than the sales closing date; otherwise, this would not be possible when the insured entity dissolved "On or after the sales closing date * * *"

Response: As stated above, FCIC revised the provision so that the 30 days now refers to the cancellation date. Therefore, cases in which the sales closing date and cancellation date are different should no longer be an issue.

Comment: A commenter suggested that section 2(k) be revised by changing "* * * any applicable consequences * * *" to "* * * any other applicable consequences * * *" to clarify that these would be in addition to "* * * the consequences in section 6(g) * * *"

Response: FCIC has revised the provision as recommended because there may be other consequences, such as voidance of the policy under section 27, disqualification and civil fines under 7 CFR part 400, subpart R, or other applicable civil, criminal or administrative sanctions, if information has been misreported.

Section 3 Insurance Guarantees, Coverage Levels, and Prices

Comment: A few comments were received regarding section 3(b). A few commenters did not think the first parenthetical, which relates to CAT was necessary. A commenter stated the definition of CAT already provides that revenue coverage is not available for CAT. Another commenter stated if FCIC is insistent on restating this exclusion, then a separate subsection would be more appropriate. A commenter stated the provisions could be rewritten to reduce the length and to improve clarity. Since section 3(b) makes no reference to the same price percentage, presumably it is intended to address "the same coverage" (level and type of protection) but with the added phrases, it is not clear. Instead of indicating a choice between CAT and additional coverage, and then a choice of additional coverage level, consider simply requiring the same level of coverage (which will be either CAT or one of the additional levels). The commenter requested FCIC consider their other comments about clarifying the terminology for the different choices of protection (amount of insurance, yield coverage for those crops for which revenue protection is not available, yield protection, or revenue protection). The commenter questioned if it is necessary to distinguish between "yield coverage" and "yield protection." A commenter stated FCIC employs the term "yield coverage" which is not a defined term. The Basic Provisions define the term "coverage." If "yield coverage" and "coverage" are synonymous, FCIC should use the defined term, *i.e.,* "coverage." If the terms are not identical in meaning, the commenter stated FCIC must define "yield coverage." This provision is unnecessarily confusing and, perhaps, should be further subdivided. A commenter stated the current Crop Provisions require producers to purchase the same levels of coverage on both irrigated and non-irrigated units. It is the commenter's position this provision is unnecessarily restrictive and that producers who grow both irrigated and non-irrigated crops should be allowed to purchase different levels of insurance to better match coverage to the overall level of risk associated with each practice. By not providing producers the flexibility to match coverage to a specific practice, the agency forces producers to underinsure their irrigated crops due to the costs associated with insuring non-irrigated crops at higher levels. Producers should be allowed to select a single level of coverage for irrigated units and a different coverage level for non-irrigated units insured on their policy. To safeguard against possible abuse of this provision, a producer's choice for non-irrigated coverage should be limited to the same level or lower than the coverage level selected for irrigated units. The commenter urged FCIC to include this change in the final rule and provide producers the flexibility to select appropriate levels of coverage for their crops.

Response: The provisions have been revised by removing the first parenthetical phrase regarding CAT coverage, separating the provisions into subsections, and removing other unnecessary information for clarity. Additionally, the provisions have been revised to clarify the producer must select the same plan of insurance (*e.g.,* yield protection, revenue protection, actual production history, amount of insurance, *etc.*), the same level of coverage (all catastrophic risk protection or the same level of additional coverage), and the percentage of the applicable price. Further, the term "yield coverage" has been removed from the provisions because it was confusing with the term "yield protection." Therefore, no definition is required. Since no change was proposed to allow separate coverage levels for irrigated and non-irrigated acreage, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule.

Comment: A few comments were received regarding high-risk land. A commenter requested other coverage levels be allowed for high-risk land, not just catastrophic risk protection. The commenter suggested the producer be given the choice of any level of coverage up to the buy-up level of coverage the producer selected for the non high-risk land. Another commenter stated if the producer chose revenue protection on non high-risk ground, then the producer should have the choice of either revenue protection or non revenue protection on the excluded high-risk ground. If the producer did not choose revenue protection on the non high-risk ground, they should not be able to select it on their excluded high-risk ground. Requiring the level and type of coverage on the excluded high-risk ground to be the same or lower than what is allowed on the non high-risk ground alleviates any concern of the risk of adverse selection. This would not affect the producer that farms all non high-risk ground (Producer A) or the producer who farms all high-risk ground (Producer B). These producers can

consider the cost and coverage and arrive at a level and revenue/non revenue selection that best fits their circumstances. The commenter stated there is a large number of producers (the commenter called this group Producer C) who have ground in the same county that is rated both high-risk and non high-risk. Currently and as part of the proposed rule, this group of producers has two choices: insure all high-risk and non high-risk at the same level and type of coverage, or insure the non high-risk ground on a buy-up policy and exclude the high-risk ground and not insure it or only insure it at the catastrophic level. Producer A in this county who farms all non high-risk ground might choose 70–80 percent coverage while Producer B who farms all high-risk ground might choose 55–65 percent coverage (high-risk premium rates are from 1-to-3 times higher—sometimes even higher—than non high-risk rates for the same level and type of coverage). The commenter stated, for example, in Wayne County located in southern Illinois using a 120-bushel APH on corn and 2006 crop year rates: Producer A (non high-risk ground) chooses 70 percent RA coverage, which costs $11.24 per acre and provides $217.56 coverage per acre. Producer B (all high-risk ground classified AAA) chooses 55 percent CRC coverage, which costs $15.57 per acre and provides $170.94 coverage per acre. Producer C, whose farming location is 50 percent non high-risk and 50 percent high-risk under the proposed rule has four choices: (Option 1) insure all of their farm at 70 percent RA coverage (like Producer A) incurring premium on their non high-risk ground of $11.24 per acre and coverage of $217.56 per acre; but their high-risk rate is $30.47 per acre for the same $217.56 per acre coverage (three times higher than non high-risk ground); (Option 2) insure all of their farm at 55 percent RA (like Producer B) incurring premium on their non high-risk ground of only $5.22 but lowering their coverage to $185.19, which makes their entire policy a lot less responsive to drought and revenue losses at this lower coverage level on higher elevation farm ground; (Option 3) Producer C can insure their non high-risk ground at 70 percent RA coverage and request a High-Risk Land Exclusion Option and not insure their high-risk ground, which gives them no coverage on their high-risk ground; or (Option 4) insure their high-risk ground with a high-risk CAT policy, which will only cost them the $100 administrative fee for all of their high-risk acres but only providing them with coverage of $66 per acre and they would not be provided optional units or replant coverage. Neither Option 3 nor Option 4 offers the producers much coverage. Option 1 makes the cost of the high-risk ground prohibitive and would cause some producers to insure high-risk ground at a higher level than they would have had they had the option of choosing a lower level on their high-risk ground. Option 2 lowers the coverage on the non high-risk ground to a less responsive area not really covering them well in a drought or low revenue loss. All Producer C wants is to be able to make the same choice Producer A was able to make on their non high-risk ground and Producer B was able to make on their high-risk ground. The commenter stated there are more acres of high-risk land than total acres covered by the several different specialty crops or other provisions provided for practices such as organic farming. Thus, there are a lot more producers with the dilemma of having high-risk ground and non high-risk ground than producers who are affected by organic practices or producers who grow a lot of different insured specialty crops. The commenter stated if high-risk rates are actuarially sound, (it appears if they are anything, they are too high when compared to non high-risk ground) giving producers the choice of the same or a lower level of coverage and the same or a lower type of coverage on their high-risk ground compared to their non high-risk ground should not be giving FCIC or the insurance providers any more exposure than they already have because this choice is already given to the producer who only has high-risk ground and reduces the risk of producers carrying an unduly higher level of coverage on their high-risk ground because they want or need a higher level of coverage on their non high-risk ground. Administratively, this choice should not be a big change because a producer is already given a choice of a High-Risk Land Exclusion Option on their high-risk ground with the option of buying a high-risk CAT policy. This proposal would only let the producer have additional choices of type and levels of coverage above the catastrophic policy on their excluded high-risk land but the same or below the level or type of coverage carried on their non high-risk ground.

Response: Since CAT coverage is not available with revenue protection, a clarification was added in the proposed rule to specify if the producer has revenue protection and excludes high-risk land; the CAT coverage will be yield protection only for the excluded high-risk land. With respect to allowing differing additional coverage levels for non high-risk and high-risk land when the high-risk land is excluded, FCIC did not propose the change and the public was not provided an opportunity to comment on the recommended change. Therefore, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated FCIC establishes two standards throughout the Basic Provisions: one applies to crops for which revenue protection is not available and the other to crops for which revenue protection is available, apparently without regard to whether the insured selects yield protection or revenue protection. The commenter questions FCIC's penchant for this classification. If an insured selects yield protection for a specific crop, regardless of whether revenue protection is also available, the commenter contends the standards applicable in that situation should be comparable to those that apply if revenue protection is not available, *i.e.,* the insured must purchase yield protection. FCIC should establish one set of guidelines for yield protection, regardless of whether it was one of two options or the only option. The commenter stated the confusion engendered by this distinction is well-illustrated in sections 3(c) and (d). The commenter contended it is more logical to differentiate between policies for which the insured selects yield protection and those for which the insured selects revenue protection. If revenue protection is not available, the insured automatically will default into the former category; if revenue protection is available, then the insured's election is dispositive.

Response: FCIC has revised and separated the provisions to clarify that yield protection and revenue protection are separate plans of insurance that are available for the same crops. FCIC has also clarified that the other plans of insurance (*i.e.,* APH, dollar amount of insurance, *etc.*) are available for those crops for which revenue protection is not available. Now within each plan of insurance or category of plans of insurance, there are provisions regarding the changes to coverages, prices, *etc.* The provisions regarding yield protection and revenue protection refer to "if available for the crop" to allow flexibility in the expansion of these plans of insurance. As stated above, yield protection is not synonymous with APH because the pricing mechanisms are different between the two and they are considered as separate plans of insurance.

Comment: A few comments were received regarding the proposed Harvest

Price Option. A commenter stated they support allowing producers to exclude the Harvest Price Option rather than having to elect to receive it. This helps avoid the potential for producers not receiving a benefit they ultimately wished to have and the commenter urged FCIC to include this change in the final rule. The commenter also suggested producers should be able to elect to receive the Harvest Price Option without having to purchase revenue protection and urged FCIC to also make this modification in the final rule. The commenter quoted another person as stating, "This would provide growers with replacement coverage that would replace lost bushels at their current market value and growers could then cover lower prices with forward contracts, futures, options, and FSA commodity programs." While this proposed revision offers producers yet another risk management option to consider, its viability is predicated on appropriate rating. Another commenter stated they are concerned about the proposed changes that potentially diminish the protection and overall value of coverage. The provision that limits the harvest price option to crops with revenue protection, in their view, is overly restrictive. To enhance a producer's ability to better compliment their crop insurance coverage with other farm program support and private risk management tools, the commenter recommends the producer be allowed the flexibility to select the harvest price exclusion with the option to purchase an upside price replacement coverage endorsement.

Response: Allowing producers to elect the harvest price exclusion rather than producers having to elect to receive the harvest price will be advantageous to many producers. In the past, the vast majority of producers elected this additional coverage. FCIC will retain this provision in the final rule. It is not possible to have a harvest price with a yield protection or APH plan of insurance because it would be revenue coverage. Further, the harvest price is based on commodity exchanges and for many crops, such exchanges are not available. FCIC has revised the provisions to allow expansion of revenue coverage as the ability to determine projected and harvest prices are developed. If there are private insurance products available for supplemental price protection, producers are not precluded from purchasing such policies, provided that such policies have been determined by FCIC to not shift any risk to the underlying policy. Private supplemental policies or other policies submitted and approved under section 508(h) of the Act, may be utilized to provide additional insurance protection both for crops covered under revenue protection and those that are not. No change has been made.

Comment: A commenter stated the references in sections 3(c)(2), (i) & (ii) to "* * * percentage of the price election or amount of insurance * * *" suggest policyholders may choose a percentage of the amount of insurance on dollar plan crops. Because this is contrary to the Crop Insurance Handbook Section 8A(2), which states the producer may "* * * select one of several dollar amounts of insurance * * *", they suggested revising it to "* * * the amount of insurance or the percentage of the price election * * *" or at least adding "the" before "* * * amount of insurance" to separate it from "price election," and rewriting (i) and (ii) since the amount of insurance would not be multiplied by a percentage.

Response: As a general rule, the commenter is correct that for dollar amount of insurance plans, the producer selects a percentage of the dollar amount of insurance, akin to the level of coverage, not the percentage of price election. Therefore, in the provisions relating to plans of insurance other than revenue and yield protection, they have been revised to distinguish between amounts of insurance and percentage of the price elections.

Comment: A commenter proposed changing language in section 3 to "* * * at the 100 percent of the projected price or price election for crops for which revenue protection is not available or equivalent coverage * * *" The commenter stated as currently written, 100 percent price election would only apply to crops in which revenue protection is not available. The current price election definition only refers to crops for which revenue protection in not available.

Response: As stated above, FCIC has revised section 3 to clearly distinguish between revenue protection, yield protection, and all other plans of insurance. A commenter requested that revenue coverage only receive 100 percent of the projected price and harvest price. During the review of this comment, FCIC determined that the commenter was correct and that only 100 percent of the projected price and harvest price could be used because of rating issues. Therefore, FCIC has clarified that under revenue protection, the producer will receive 100 percent of the projected price and harvest price. Under yield protection and all other plans of insurance, producers may select a percentage of the applicable prices or dollar amounts of insurance.

Comment: A commenter stated as a prefatory note, section 3(c)(2) provides that, for a crop for which revenue protection is not available, an insured "may change the coverage level or percentage of the price election or amount of insurance * * *" However, section 3(d)(1), which applies to a crop for which revenue protection is available, an insured may change the "coverage level." By implication, if revenue coverage is available the insured may not change the percentage of the price election. However, section 3(d)(2) refers to "the percentage of projected price and harvest price selected" by the insured, thereby suggesting that the insured may choose a percentage of the price if revenue protection is selected. A similar reference appears in section 3(d)(3). This seemingly conflicting language is confusing. The commenter recommended that FCIC clarify subsection (d) and, in particular, state clearly, that an insured who purchases revenue protection may not select a percentage of the price; 100 percent of the price should be the only option.

Response: As stated above, redesignated section 3(c) has been revised to only allow 100 percent of projected and harvest prices under revenue protection. Producers will be able to choose a percent of the projected price under redesignated section 3(d) relating to yield protection and all other plans of insurance.

Comment: A few commenters stated periods of extended drought or other recurring loss events can erode producers' individual yield history to unusable levels. The commenters encouraged FCIC to develop a solution to this problem. Producers affected by successive years of disastrous weather are also those who can least afford to be underinsured. The commenters were aware FCIC has been researching the problem for several years, but this important deficiency is not addressed in the proposed rule. Another commenter stated basic crop insurance works okay until one hits a number of consecutive years of bad crops due to drought and hail. The resulting lowering of APH makes this insurance ineffective and also affects any disaster relief due to lowering APH and National Agricultural Statistical Service (NASS) yields in a prolonged drought area. The commenter states this problem needs to be fixed. The commenter proposed excluding the years of a disaster declaration from the APH calculation and stated until this is done, Federal crop insurance will always fall short of covering the needs

of production agriculture. The commenter provided information from his farm in drought stricken South Central Montana and hoped it would be of some use to show the effect of declining yields.

Response: FCIC is continuing to look at ways to improve the program to benefit producers and solve problems such as the affects of declining yields. When it discovers such an improvement, FCIC will take such action as necessary for implementation.

Comment: A commenter stated FCIC's record-keeping requirements for grain type crops, for both APH records and loss claims are not attainable for policies with optional units on farms with central drying or storage. The requirement of disinterested third party determinations is unworkable in all parts of the U.S. for these kinds of operations. Authority similar to the new flexibility in the 2007 Crop Insurance Handbook for APH records (page 217, section 10) needs to be expanded to apply to multiple unit policies for both APH and claims for this category of crops.

Response: Redesignated section 3(g)(3) requires producers to maintain written verifiable records by unit. "Verifiable records" is defined as "contemporaneous records of acreage and production provided by the insured, which may be verified by FCIC through an independent source, and which are used to substantiate the acreage and production that have been reported on the production report." The requirement for disinterested third parties relates to quality adjustment and that requirement should not adversely affect any producer who utilizes a central storage facility because it involves the person who is authorized to pull the samples, not maintain the records.

Comment: A commenter recommended changing the production deadline in section 3(e) (redesignated section 3(f)) to be the sales closing date and not the earlier of the acreage reporting date or 45 days after the cancellation date. The commenter also recommended adding the additional clarification of "If production is not reported by the production reporting deadline, we are not able to update until the following crop year."

Response: Since no changes to these provisions were proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated the added phrase in section 3(e) (about the possibility of a different production reporting deadline when a written agreement is requested) (redesignated section 3(f)) results in two different exceptions to the usual deadline. They suggested either putting parentheses around the first exception ["* * * (unless otherwise stated in the Special Provisions), except as specified * * *"] or changing "* * * except as specified * * *" to "or as specified * * *"

Response: There are two exceptions to the stated deadlines and FCIC has clarified this language for readability. Further, FCIC has revised the provision to correct the citation in the proposed language. The correct cite should only refer to section 18 regarding requests for written agreements, which must include a completed APH form, and must be submitted by the sales closing date or acreage reporting date, as applicable.

Comment: A few commenters stated they supported the provisions in section 3(f) (redesignated section 3(g)), which permit producers to correct misreported data by the production reporting dates without penalty, and they urged FCIC to retain this proposed provision in the final rule. Another commenter suggested with the added "However * * *" phrase in section 3(f)(2) (redesignated section 3(g)(2)), FCIC should consider if it is still correct for the first sentence to state "* * * you will be subject to the provisions * * *" The commenter suggests changing it to read "* * * you will be subject to the provisions regarding misreporting contained in section 6(g), unless the information is corrected: (i) On or before the production reporting date; or (ii) Because the incorrect information was the result of our error * * *"

Response: FCIC has retained the provision in the final rule. FCIC has also revised redesignated section 3(g)(2) as suggested.

Comment: A commenter questioned if the reference to "and 7 CFR part 400, subpart G" in sections 3(f)(3) and 3(g)(1) (redesignated sections 3(g)(3) and 3(h)(1) respectively)) are necessary in addition to the reference to section 3(e)(1) (redesignated section 3(f)(1)).

Response: The references to 7 CFR part 400, subpart G are necessary because redesignated section 3(f)(1) only applies when no production report is provided and it states that not more than 75 percent of the producer's previous year's yield will be used. This provides the maximum yield that can be assigned under redesignated sections 3(g)(3) and (h)(1). For example, with respect to the failure to have written verifiable records in redesignated section 3(g)(3), 7 CFR part 400, subpart G, states that the yield will be a percentage of the transitional yield depending on the number of years of verifiable records that are provided. This yield may be less than the maximum allowed in redesignated section 3(f)(1), in which case, the yield determined in accordance with subpart G would apply. If the yield were higher, the maximum in redesignated section 3(f)(1) would apply. No change has been made.

Comment: A few comments were received regarding proposed section 3(f)(4). A commenter questioned if the provision means as a result of an APH review or does this mean if the producer brings in hard copy production and acreage information after the initial report of production and acres, the insurance provider would need to consider this information or the insured would incur a misreporting penalty. The commenter questioned if the "production reporting date" of the policy would be superseded if the production and acreage information were being provided to correct misreported information. The commenter also questioned if not required by an APH review, whether an insured could submit information to correct a yield after an indemnity is paid and if so, would the APH need to be corrected for the current year and the indemnity revised. The commenter asked whether the allowance for an insurance provider to correct the APH the following year provided the tolerance was not exceeded is being removed from procedure. A few commenters suggested the proposed revisions state the insurance provider will make any corrections necessary "* * * any time we discover you have misreported any material information * * *" but it is not clear exactly how this will apply, such as whether the corrections are subject to the APH tolerances in procedure. Perhaps the intention to follow APH tolerance procedures is covered by the statement "* * * the following actions may be taken" although this is somewhat confusing since the "following actions" all use the word "will": "We will correct * * *" and "You will be subject * * *" [Maybe these details belong in procedure rather than in the policy, but it needs to be clarified.] The potential confusion between "may" and "will" also extends to the linking "and" between (ii) and (iii)—"and" could suggest that all three subsections "will" apply rather than "may" apply. A commenter stated that perhaps it could be deleted and the semicolons changed to periods. One of the commenters stated that changing "may" to "will"

sends a stronger program integrity message.

Response: The phrase "At any time we discover" in redesignated section 3(g)(4) means whenever the insurance provider becomes aware of the error. It would not matter if it was a result of an APH review or an insured providing corrected information. The production reporting date is not superseded. The production report still must be provided by the production reporting date and all corrections must be made by the production reporting date or the consequences in section 6(g) will apply. If a producer corrects a production report after the production reporting date and the correction would result in a higher liability, the liability will not be increased for that crop year but the correction will apply to succeeding years. If the correction would result in a lower liability, the producer's liability will be reduced for the current crop year. FCIC has revised the provisions to require the insurance provider to correct approved yields if they are not correct, to correct the unit structure, and apply the provisions in section 6 regarding misreporting, as applicable. It does not matter whether this discovery occurs in the same crop year or subsequent crops years. The insurance provider will correct the information and take the appropriate actions. FCIC has changed the provision to specify "will" instead of "may" to make it clearer. The procedures will be changed to conform to the policy provisions. However, when there are inadvertent inconsistencies, the preamble to the Basic Provisions states that the procedures will apply to the extent that they are not in conflict with the policy provisions.

Comment: A commenter questioned whether it is FCIC's intent that only data will be corrected (for example, APH databases), in section 3(f)(4)(i) (redesignated section 3(g)(4)(i)) but financial changes (premiums, indemnities) will not be corrected. If it is FCIC's intent that financial changes be made, making corrections for years subsequent to the year for which there was incorrect information will likely be difficult in some cases. For example, if an insurance provider gets a policy via transfer in 2009, and an error is discovered relating to the 2007 year, the insurance provider will likely not have all necessary information to correct claims, which may have occurred in 2007 or 2008. Multiple insurance providers could be involved, and the insurance provider that has the policy now may not be owed money but another insurance provider may be owed money. Further, section 7 U.S.C. 1515 prohibits FCIC from imposing financial changes on insurance providers after three years. Thus, the commenter assumed the proposed language addresses data but not financial changes. Is this correct?

Response: Redesignated section 3(g)(4) provides provisions regarding the insured's responsibility to provide accurate information used to determine approved yields, and the actions that may be taken when such data is found to be incorrect. FCIC has revised the provisions to specify that if correct information would result in an overpayment of premium or indemnity such amounts must be repaid. FCIC has a responsibility to ensure that taxpayer dollars are spent properly so it must require the repayment of overpaid amounts. However, FCIC recognizes that this could be difficult if the producer has switched insurance providers. FCIC procedures require the insurance provider to make the corrections for the year for which they insured the policy and collect the amounts owed. If the discovery of the incorrect information is outside the three-year period specified in section 515 of the Act, the insurance provider would have to collect the amounts owed from the producer and submit the amounts owed to FCIC.

Comment: A commenter recommended that section 3(g)(1) (redesignated section 3(h)(1)) be revised to allow insurance providers the ability to revise yields that exceed the lower level yield edits in the same manner as excessive yields if the insurance provider determines there is not a valid basis to support the differences in the yields.

Response: FCIC is not aware of any lower level yield edits. Major disasters can result in zero yields and they have to be accepted by the system. Further, there is no benefit to producers to underreport their yields since it has the effect of reducing their guarantee. If there are instances where producers are shifting their production, which results in a high yield on one unit and a very low yield on another, redesignated section 3(h) specifies that the high yield may be adjusted but the low yield would remain the same. To allow adjustment of the low yield would result in no consequences for shifting production and adversely impact program integrity.

Comment: A commenter recommended additional language be added in section 3(g)(2)(ii) (redesignated section 3(h)(2)(ii)), such as the following: "Appraisals for yields in excess of 400% of T-Yields cannot be accepted as production evidence for following years."

Response: Since no changes to these provisions were proposed and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A few comments were received regarding the phrase "valid basis" in section 3(g)(2)(iii) (redesignated section 3(h)(2)(iii)). A commenter stated FCIC should consider defining "valid basis." Producers are confused when records can be provided to support yields that are being reduced due to no valid basis. Another commenter recommended the provisions be reworded to remove the term "valid basis." "Valid basis" has been defined to mean a difference in yields from one farm to another for purposes of the excessive yield procedure. This term is not appropriate for use with inconsistent approved APH yield procedures. This procedure does require that the inconsistent approved APH yield be higher than the others but the primary qualification is the acreage triggers must also be met. APH reviews are required for excessive yield situations but are not required when an inconsistent approved APH yield meets the acreage triggers.

Response: FCIC does not agree the phrase "valid basis" needs to be defined because it intends for the common meaning to apply. The term "valid" commonly means there is a legitimate, sound, well-founded reason. In this case, there must be a valid reason for the inconsistent yields. For example, can the difference in yield be attributed to significantly different soil types, microclimates, different topography, *etc.* There must be some verifiable reason, agronomically based, that would support the difference in yields. FCIC has added the term "agronomic" for clarity.

Comment: A few comments were received regarding the hail and fire exclusion. A commenter supported FCIC for making the hail and fire exclusion available for revenue protection. The commenter hoped the discount for excluding hail and fire for MPCI will be equitable to what is charged in the private sector. With the increased subsidies and lowered credit for the hail and fire exclusion, the dollar amount for the exclusion becomes much less important to the producer and fewer producers exclude hail and fire perils because the benefit is so small. A producer with a 75 percent coverage level policy receives 55 percent subsidy. If they decide not to exclude hail and fire, 100 percent of the hail and fire producer expense is subsidized, but only 55 percent of the producer hail loss

cost is subsidized. Therefore, a producer receives less of a benefit by excluding hail and fire from a MPCI policy. The more hail and fire exclusions that are encouraged and excluded will reduce premiums paid by policyholders and reduce FCIC's liability and subsidy payments. The commenter stated it is important to note the hail and fire exclusion was created to provide producers an option to substitute private hail and fire coverage for such risk covered in the MPCI policy. It was not the intent of Congress for FCIC to be in direct competition with the wholly private crop hail insurance industry. Another commenter stated although it is a basic principle of crop insurance that it should not duplicate products or services that are available in the private sector, the current approach does not fully honor that principle. This approach allows a modest reduction or offset in MPCI premium rates for producers who opt out of a single hazard such as hail or fire by buying a private policy, but the method used to calculate that amount is flawed and allows for a far smaller reduction than would be truly justified by the decrease in likelihood of an indemnity. The commenter stated they understand FCIC has contracted a study to analyze the existing methodology that establishes the private hail/fire offset, and to suggest ways to improve that methodology. Since FCIC intends to complete implementation of the combined policy by the 2009 reinsurance year, the commenter believes this process also provides an opportune time to implement recommendations from the pending study and adjust the private hail/fire offset provisions in the Basic Crop Insurance Provisions, as well.

Response: FCIC can only reduce the premium for the hail/fire exclusion in an amount commensurate with the risk. FCIC has previously evaluated that risk but FCIC has contracted for a study of hail and fire rate reductions and will implement appropriate changes based on the results of the study. Further, the amount of subsidy is set by the Act and FCIC does not have the discretion to change the manner in which it is applied. Provisions allowing the exclusion of hail and fire protection under revenue protection are retained in the final rule. However, some additional study is needed to determine if hail and fire coverage can be excluded from whole-farm units. Therefore, provisions have been added indicating hail and fire coverage can be excluded from whole-farm units only if allowed by the Special Provisions.

Comment: Many comments were received regarding the provisions in section 3(k)(1) that address the availability of revenue protection if someone, either the Secretary of Agriculture, Administrator of the Risk Management Agency or other designated staff of the Risk Management Agency believes market conditions are significantly different than those used to rate or price revenue protection. A few commenters stated they are particularly concerned that the rule contains three instances where revenue protection could be denied and withdrawn. First, producers are denied price protection whenever USDA believes a third party has created unexpected market conditions. The rule states revenue protection will not be available in the event of an occurrence that "results in market conditions significantly different than those used to rate or price revenue." The provision would create a considerable amount of uncertainty in the reliability of revenue protection. Any effort to determine how much, if any, change in price is attributable to an act of a third person is speculative and would lead to significant uncertainty relative to the reliability of revenue protection. They urged this provision be deleted in the final rule or that FCIC define the term "significantly different" to better delineate the conditions upon which FCIC would terminate revenue protection. A commenter believed FCIC should avoid taking on the responsibility of imposing such a severe recourse and explore less drastic options. One possible option to avoid this result may be to reserve authority to simply look back at the requisite number of market days prior to the event in question in order to establish an appropriate price for revenue protection. A commenter opposed these provisions on the basis that producers, who purchased revenue protection in good faith, are being forced to suffer the consequences of such catastrophic exogenous market events. It is unreasonable to offer price protection to producers and then reserve the right to withdraw the protection if the market suddenly moves unfavorably, regardless of the source. Their position is based on the widely accepted notion that no individual producer has the ability to influence market prices. A commenter recognized that the Secretary of Agriculture and FCIC must have the discretion to suspend revenue protection in order to safeguard the "Federal fisc" and ensure the financial integrity of the crop insurance program. However, the line between discretion and caprice is a fine one. Moreover, given the sensationalism endemic in the media, many news reports that suggest a dire outcome often prove to be premature or hyperbolic. For this reason, the commenter suggested that FCIC define the term "significantly different" or FCIC should delineate the conditions upon which FCIC will terminate revenue protection. A commenter stated when a producer has already purchased revenue protection it does not seem fair that it can be reverted to yield protection if deemed necessary by the Secretary of Agriculture or the RMA Administrator. The commenter stated they understand the logic with preventing producers who have not already purchased revenue protection from now doing so with the new information, but to automatically switch those who have already purchased the protection does not seem appropriate. It would seem that an alternative solution could be developed and still protect the pricing strategy developed by FCIC. A commenter believed more information must be provided about the circumstances under which this authority would be invoked. It could arbitrarily withdraw critical coverage. For example, if the Secretary had possessed such authority in 2005, the commenter questioned whether it would have been invoked in the aftermath of the market disruption that occurred with the bottleneck in the Mississippi River transportation system in the wake of hurricanes Katrina and Rita. If that is the case, such a decision would cause grave harm to farmers who rely upon having revenue coverage when engaging in forward marketing or similar transactions. A commenter stated they have grave concerns about the proposed provisions. They are confused by FCIC's comment stating the use of commodity exchanges is relatively new. They stated that commodity exchanges have existed for hundreds of years. The Chicago Board of Trade has been in existence since 1848 and these marketplaces are incredibly stable and have efficient methods of assimilating information and translating that information into the value of commodities. The commenter stated FCIC's comment that commodity exchanges can respond significantly and quickly is correct. The commenter stated they would propose that "the market" has greater knowledge and information than RMA or the Secretary of Agriculture. The commenter stated that to say the USDA can simply nullify the program when they see fit, would be the same as a private company (such as State Farm) telling their insureds the same thing. Would someone purchase a

policy if they thought it might not be there later? The commenter stated this provision seems to undermine the integrity of the program and they believe it is unworkable. The commenter stated it is hard to imagine how eliminating revenue protection during periods of price volatility can be a positive element of the program. Producers understand the elements of purchasing crop insurance. They understand (after years of education) how the policies work and they know that price volatility is part of the equation. Still, they see the overwhelming benefit of purchasing policies. To set up a system where agents and companies have to tell them that they are purchasing something that may "or may not" be there later is inconceivable. The commenter stated they strongly urge FCIC to eliminate this line of thought in developing the Common Crop Insurance Policy. A commenter stated the language allowing the suspension of revenue insurance if the markets are deemed "significantly" different from those used to rate the policy is vague, unnecessary, and undermines the purpose of revenue protection. The commenter stated Revenue Assurance was developed in 1997 to protect pre-harvest marketing activities. In a bad year, farmers rely on the policy to help fill pre-harvest contracts with bushels provided through insurance valued at the current harvest rate. Over the years, revenue insurance participation has increased because producers find value in its stability. However, the proposed "significant" language introduces uncertainty which will destroy producers' confidence. If the product's availability to protect pre-harvest marketing activities is questionable, then producers will not buy it and will just as soon revert to accepting delivery price at the elevator than to purchase puts and calls through a broker. The commenter understood the author of the proposed rule is trying to avoid a replay of the Christmas Eve "BSE Experience"; however, a suspension of revenue insurance would affect about one million policyholders with over twenty-three billion dollars of liability. On the contrary, there were fewer than 5,000 livestock policies sold in 2006. When the livestock policy is "turned back-on," the producer can purchase a policy the next business day. In contrast, revenue protection cannot be purchased until the next crop year. The commenter argued that revenue price discovery is based on a period of average daily settlements. A "hiccup" in trading would be absorbed over the discovery period lessening the effects of a "significant" event. Likewise, the commodity exchange has trading-limit safety valves which would naturally limit the effects of a "significant" event. To ensure the certainty of revenue protection providing protection for pre-harvest marketing activities, the commenter opposed any language that arbitrarily and vaguely gives the power to suspend the product or revert it to yield protection. A commenter stated if an insured buys this policy before an announcement he or she will have revenue protection, but if after the announcement he or she will have only yield protection. This will seriously weaken FCIC in insured's eyes. The commenter asked what is the person making this decision going to base it on. Markets can go up or down a great deal based on not only crop production but world events. The commenter questioned if it is possible for the decision maker to stop sales and then turn them back on if the market returns to normal. Many farm loans are based on insurance coverage. If the producer obtains a loan based on revenue protection and then revenue protection is suspended before the producer obtains insurance the lender may not honor the loan agreement. A commenter stated FCIC is proposing to set the projected price for a crop if there is insufficient price information and no revenue protection will be available. Producers who elected revenue protection will automatically have yield protection, unless the policy is canceled or the producer changes the plan of insurance by the cancellation date, and the projected price determined by FCIC will be used to establish the value of the guarantee and production to count. The commenter stated they understand the use of a projected price for a crop, but what protection does a customer have if they chose to insure both yield and revenue and FCIC drops them to a yield policy with no revenue coverage. The commenter asked if they should not have the opportunity to elect not to carry the coverage if FCIC cannot offer the product. The commenter questioned if FCIC should provide a deadline for the issuance of the price. A commenter stated they are concerned that FCIC reserves the right to convert previously purchased revenue protection into yield protection without due consideration for the additional risk shifted to producers as a result. Moreover, in differentiating between events that occur before the announcement of the projected prices and those that occur after, FCIC will create an administrative quagmire and expose the program to abuse, such as backdating of applications. To alleviate the burdens that always accompany the disparate treatment of policyholders, the commenter suggested that, in the event section 3(k)(1) is triggered, all policies convert to yield protection. A commenter stated section 3(k)(1)(ii) will be difficult for insurance providers to administer. The commenter stated FCIC should consider applying procedures outlined in section 3(k)(1)(i) to all producers if conditions in section 3(k)(1) exist. A commenter stated both sections 3(k)(1)(i) and (ii) refer to announcements that occur before the sales closing date. As this term is uniform for both subsections, it should be incorporated into subsection (1). In this regard, the commenter believes FCIC should delete the reference to the sales closing date. It is axiomatic that an insured cannot elect coverage after the sales closing date. Moreover, section 3(k)(1) does not refer to announcements that occur after the sales closing date. What happens in such instances? If such announcements do impact the operation of the policy, the policy should so state. A commenter stated that in section 3(k)(1)(i) & (ii) the use of "announcement" in the lead-in to (1) *and* in the subparts creates a source of potential ambiguity. The word, when used in the subparts, suggests some form of governmental declaration, which differs from use of the same word in the lead-in. To promote clarity, the lead-in should read: "If there has been an event that occurs during or after trading hours, including but not limited to a news report, which is believed * * *"

Response: The provisions that were initially proposed in section 3(k) have been moved to redesignated section 3(c). With respect to proposed section 3(k)(1), there may be difficulties in determining when market conditions are significantly different than those used to determine the rates. Therefore, FCIC has removed these provisions. To ensure actuarial soundness, a price volatility factor is included and FCIC has capped the amount the price can change in the CEPP. This will allow FCIC to determine the maximum liability for the purposes of rating. With respect to proposed section 3(k)(2), FCIC also removed the proposed provisions that would set the harvest price equal to the projected price if the required data were not available to set the harvest price. Instead, in section 3(c), FCIC has included provisions that specify that revenue protection will continue to be provided but FCIC will establish the harvest price. If the projected price cannot be established, FCIC will

establish the projected price but revenue protection will not be provided. The producer will receive yield protection unless the policy is canceled by the cancellation date or the producer changes the plan of insurance by the sales closing date. However, the Act is very clear that only losses due to natural disasters are covered. This would include the market price. Therefore, if FCIC can establish that the change in the market price was due to an uninsured cause of loss, such price change cannot be covered under the policy.

Comment: A few comments were received regarding section 3(k)(2). A few commenters stated the proposed language states if the projected price cannot be calculated, the policy reverts back to a yield protection policy. This could leave only 10 days for an agent to contact all of their policyholders. This could create a logistical nightmare for the agent needing to contact a large number of policyholders so they would be notified their revenue policy was switching to a yield policy and not allow them ample opportunity to change their coverage levels or cancel their policy. A few comments were received regarding section 3(k)(2)(ii), which specifies in the event that the fall harvest price cannot be calculated by the procedures outlined in the CEPP, the harvest price will be set equal to the projected price. The premium rates will reflect this risk so no adjustment to the premium rates will be made if such action occurs. They stated this language constitutes the denial of revenue protection to the grower after the fact and further denies the grower the right to a premium refund for coverage he or she does not receive. They stated neither of these situations is fair to the producer that purchased revenue protection to protect them from changes in the market environment. They recommended rather than canceling the affected revenue insurance contract, in the event of insufficient price information, a provisional adjustment to the CEPP be made. They believe that significant additional effort needs to be put forth to develop reasonable alternatives short of arbitrarily denying revenue coverage to the producer. FCIC should develop methods for looking back at a sufficient number of trading days in order to capture the market activity needed to establish either a projected or a harvest price that ensures revenue protection is always available. In the event of a potentially market altering occurrence, they see no reason why FCIC cannot simply look back at market activity in the days prior to this market changing event to establish the projected price if it is not deemed appropriate to include days affected by the event. They also do not consider adjustments to premium rates sufficient in the event that price protection is denied. However, if provisional adjustment fails to establish a fall price, it is the commenters' position that, at the very least, the producer should be rebated the premium difference between revenue protection and yield protection products. A commenter also stated the projected price is not always appropriate for determining both the value of the production guarantee and the value of the production to count for indemnity purposes.

Response: FCIC understands there may be very little time for agents to notify their policyholders if revenue protection is suspended. Based on historical trading, it is unlikely this will occur. However, setting the pricing period earlier to allow more time between the release of the price and the sales closing date may result in a reduction in the accuracy of the price. FCIC has determined that the benefit obtained by the additional time is more than offset by the potential for a price that does not accurately reflect the market price at the time insurance is purchased. If FCIC later determines that moving the price discovery period does not adversely affect the accuracy of the pricing, FCIC will revise the discovery period at that time. With respect to the calculation of the projected price, the CEPP contains information regarding the prices to be used for each crop's projected price and allows for additional daily settlement prices to be included based on alternative contracts if enough prices are not available in the specific contract applicable to the crop. As stated above, FCIC will consider all comments and make appropriate revisions when the provisions of the CEPP are finalized. The producer should not be required to pay premium for revenue protection if revenue protection is suspended. Therefore, the provisions have been revised to specify if the harvest price cannot be calculated by the procedures outlined in the CEPP, FCIC will determine the harvest price and revenue protection will continue to be effective. Additionally, the proposed provision that specified the premium would not be reduced has not been retained in the final rule. It is appropriate to include a provision in the policy clarifying revenue protection will not be available for the crop year if the required data for establishing the projected price cannot be calculated in accordance with the CEPP. If the projected price cannot be determined, then appropriate premium rates for revenue protection cannot be calculated.

Comment: A comment was received regarding section 3(k)(2)(i)(A) & (B). The commenter stated since (i) states "* * * no revenue protection will be available", the opening phrases of (A) ["If revenue protection is not available"] & (B) ["In such instances,"] are not necessary and should be deleted.

Response: The proposed provision has been revised and moved to section 3(c).

Comment: A commenter stated it can be very confusing for the producer if they sign up for revenue protection, which gets changed this year to yield protection, but next year would possibly be changed back to revenue protection. The commenter asked when it reverts back to revenue protection. The commenter asked whether it would be before they may possibly determine the market conditions are significantly different than the price used to establish rates again. Another commenter stated the last sentence in section 3(k)(3) should be revised to state "* * * unless you change the type of protection * * *" so it does not imply canceling the crop insurance policy.

Response: If the producer elects revenue protection and revenue protection is not provided for the current crop year, the producer's coverage will automatically be changed to yield protection for the current crop year and revert back to revenue protection for the next crop year as long as the projected price can be determined in accordance with the CEPP. Currently, changes in plans of insurance, such as switching from CRC to RA, require cancellation and rewriting of the policy. Now, producers can change plans of insurance by simply changing coverage. FCIC has clarified this provision accordingly and moved it to redesignated section 3(c).

Section 4 Contract Changes

Comment: A commenter asked if it is necessary to add "* * * or the Commodity Exchange Price Provisions" to the list of changes in section 4(b) that can be reviewed on the web site. They asked if it would be considered part of the "policy provisions."

Response: It is important to inform the public that any changes to the CEPP can be viewed on RMA's Web site not later than the contract change date contained in the Crop Provisions. The CEPP, if applicable, is a part of the policy and is listed with the other applicable documents in the definition of "policy." The change has been retained in the final rule.

Comment: A commenter stated section 4(c) still states the policyholder will receive "a copy of the changes to the Basic Provisions and Crop Provisions, and a copy of the Special Provisions * * *" without any mention of the new CEPP. Reference to the CEPP should be added here or the other references should be made more generic as in (b).

Response: The producer should be provided a copy of changes to the CEPP not later than 30 days prior to the cancellation date for the insured crop. The provisions have been amended accordingly.

Section 6 Report of Acreage

Comment: A few commenters believe the proposal should allow a producer who discovers an error in an acreage report to correct the acreage report without penalty provided that: (1) The producer offers evidence through FSA documentation, GPS mapping, or other verifiable means; and (2) the initial report was an inadvertent error rather than an attempt to misreport acres, as determined by the insurance provider. A few additional commenters believe FSA should also provide documentation of historical compliance by the producer demonstrating the lack of any pattern of misreporting in addition to the two items listed above.

Response: Many acreage-reporting errors may be inadvertent mistakes. However, it is difficult to determine when a mistake is or is not inadvertent. Further, whether the error was inadvertent or not, it could have the effect of changing liability, premiums, and indemnities. Therefore, accurate reporting is critical on each acreage report. This is different than reporting SSNs and EINs because misreporting there does not affect the coverage and the SSN and EIN are only reported on the application. There are numerous producers who have not filled out an application in years and they may not know their SSN or EIN was misreported. However, the current provisions do allow revisions without penalty in certain instances, including those in which information is clearly transposed or when the insurance provider or someone from USDA caused the error. No change has been made.

Comment: A commenter stated FCIC should allow producers to report all acreage information to their crop insurance agent or to FSA on a field-by-field basis. This information could then be downloaded to the other agency. Many of the problems in getting accurate information stem from forcing producers to report their acreage twice, in two different formats, and with two different deadlines for FSA and FCIC. The commenter stated they are always comparing information that has been reported to them to what has been reported to FSA. However, the real problem is by the time they find a difference, it is too late to make any changes. FCIC also forces producers to report acreage with 100 percent accuracy, which is not possible. The commenter stated almost all cases he has seen of misreported acreage are inadvertent errors, and there needs to be allowance for those. There is no incentive for a producer to misreport acreage. If producers over-report, they pay additional premium. If they under-report, their liability cannot be increased at loss time, so they get a decreased loss payment. If producers do not want to insure some of their crop(s), they do not have to buy insurance at anything but the CAT level, which is basically free. The commenter stated FSA is just completing the digitizing of their maps in their area and that is a good first step in standardizing the reporting process for producers.

Response: For crop insurance, producers must report acreage of a crop on a unit basis since the guarantee and indemnity is computed for each unit. FSA requires reporting by Farm Serial Number (FSN). The crop acreage within an insurance unit and within a FSN is not necessarily the same number of acres. If producers have many small fields and they report each field by line on the acreage report, the chance of transposed numbers or omitting a field greatly increases. However, as stated above, misreporting acreage, regardless of the reason, can affect liability, premiums, and indemnities. Therefore, every effort must be made to ensure accurate reporting. FCIC is currently working with FSA to find common identifiers for acreage that would allow producers to file one acreage report that can be used by both FSA and crop insurance. No change has been made.

Comment: A commenter stated section 6(a)(3)(ii)(C) identifies when the acreage report is due for planted, late planted and prevented planting acreage. In the past couple of years, the commenter has had situations in Arkansas and Mississippi where acreage was planted more than five days after the end of the late planting period. The commenter stated according to section 6(a)(3)(ii), (C) is applicable as the acreage reporting deadline because (A) and (B) had already passed. The commenter stated the producer could not have submitted a timely acreage report because the producer did not finish planting until after the indicated acreage reporting deadline. The commenter stated this was an acceptable practice in those areas because of how the dates were established. The commenter recommended this item be extended from 5 days after the end of the late planting period to 15 days after the end of the late planting period to account for these situations.

Response: The end of the late planting period is the last date the crop can be planted and be insurable unless the acreage was prevented from being planted. If the producer plants acreage after the late planting period, the producer is still required to submit the acreage report within the 5 days after the end of the late planting period. In such case, the producer should list all acreage of the crop. Acreage planted before the end of the late planting period should be listed as insurable and the planting dates provided. Acreage planted after the end of the late planting period should be listed as uninsured unless the insured crop was prevented from being planted, and the producer wants to insure it as planted acreage. No change has been made.

Comment: A few comments were received regarding section 6(c)(5). A few commenters recommended the provisions be amended to require a producer to report on a daily basis, any acreage planted during the late planting period. One of the commenters stated this information is necessary to apply the coverage reductions for late planted acreage described in section 16. A commenter stated this provision should address what happens if the acreage is not reported by day. The commenter asked if it will be assumed that all of the acreage was planted the date planting is complete for the unit. A few commenters stated there has been some confusion in the past as to the appropriate date to enter on an acreage report when the planting of a unit takes more than one day. To bring clarity to this issue, FCIC proposes to revise section 6(c)(5) to state the date to be entered on the acreage report must include the final date acreage was planted on the unit. The common sense approach to acreage reporting proposed in section 6(c)(5) should be retained in the final rule.

Response: FCIC has revised the provisions to combine sections 6(c)(1) and (5) because both are dealing with the amount of acreage planted before the final planting date and planted during the late planting period. Redesignated section 6(c)(1)(ii) requires the producer to report the amount of acres planted each day during the late planting period and this requirement is retained in the final rule. Such information is necessary

to determine the proper guarantee or dollar amount of insurance under section 16. The commenters are correct that the consequences of not reporting the acres planted each day during the late planting period should be included in the provisions. FCIC has revised the provisions to indicate failure to report each date acres were planted in the late planting period will result in the presumption that all acreage planted in the late planting period was planted on the last day planting took place in the late planting period and the guarantee will be adjusted accordingly. Although revised for clarity, FCIC has retained the provision that only requires the reporting of the last date the acreage in the unit was planted for acreage planted on or before the final planting date. This is for ease of administration because it provides a total of the timely planted insured acreage.

Comment: A few comments were received regarding section 6(d)(1). A commenter stated FCIC should amend this section to incorporate the interpretation provided by FAD–58 even though FCIC did not propose changes. Another commenter stated the 2006 LAM specifies the insurance provider cannot lower acres unless they have determined there is not a loss on the acreage. This results in the insurance provider going out and inspecting the acreage. The commenter asked if this language would be removed in the combo policy. The commenter stated that it seems unnecessary for the insurance provider to have to go out and inspect a crop where they are reducing liability. No one would want to reduce liability if they think there could be a loss.

Response: Section 6(d)(1) states the producer can revise acreage with consent from the insurance provider only when: (1) No cause of loss has occurred; (2) the approved insurance provider's appraisal has determined the crop will produce at least 90 percent of the yield used to determine the guarantee; (3) the information on the acreage report is clearly transposed; (4) the insurance provider or someone from USDA committed an error regarding the information on the acreage report; or (5) if expressly allowed by the policy. FAD–58 simply reiterates these requirements. Therefore, there is no need to incorporate these FAD–58 provisions into the policy. FAD–58 also deals with the procedures applicable once one of the criteria in section 6(d)(1) has been met and specifies what must be done in order to make the acreage adjustment. These procedures do not modify the requirements in section 6(d)(1) or add any new criteria that would permit a revision to the acreage. They just specify the manner in which such revision is made and this is no different than the manner in which loss adjustment is done. These requirements are more appropriately included in the procedures. FCIC is not allowing producers to substitute one certification of acreage for another without proof that the second certification is correct by an acreage measurement. It is unlikely producers would want to reduce liability or acres if they thought there could be a loss but if they did not think a loss was probable they might want to reduce acres to reduce premium. Therefore, an inspection must be made to ensure that the reduction in acreage is legitimate. No change has been made.

Comment: A commenter stated FCIC seeks to revise section 6(d)(2) to clarify once prevented planting acres are reported on the acreage report, the producer cannot change the crop or the type reported as being prevented from planting even though the acreage reporting date may not have passed. However, the producer can amend the acreage report to add additional acreage for the insured crop that was prevented from being planted. The common sense approach to acreage reporting proposed in section 6(d)(2) should be retained in the final rule.

Response: The commenter is correct that regardless of whether the acreage reporting date has passed, section 6(d)(2)(iii) precludes the information regarding crop or type from being revised. FCIC has retained the provision in the final rule.

Comment: Many comments were received regarding section 6(d)(3). A commenter stated producers should not be penalized if they request a certified acreage measurement service but the certified acreage measurement service fails to complete the acreage measurement. The commenter stated in this case, as a matter of equity, the producer should pay the premium owed and the appropriate indemnity should be paid. A commenter recommended the provisions regarding acreage measurement requests be removed from the Basic Provisions and be put in the Special Provisions in states for which this language was intended. If the language is not removed from the Basic Provisions, the commenter would prefer to keep the current language which states "Failure to provide the measurement to us will result in the application of section 6(g) if the estimated acreage is not correct and estimated acreage under this section will no longer be accepted for any subsequent acreage report." The commenter stated producers could request a measurement service and intentionally under report their acres for a lower premium under the proposed language. The commenter stated if producers do not think they will have a claim, they do not provide the measurement and they pay a lower premium. If the producers think they will have a claim, they provide the measurement service information. The commenter stated under the proposed language, this action is permissible and was not permissible under the current language. A commenter stated the language "you may request an acreage measurement * * *" could be interpreted by insureds to mean they may make this request to the insurance provider. The commenter stated insurance providers are not in a position to perform these services for free, yet insurance providers are not allowed to charge for these services. The commenter stated FSA charges for their measurement services and, therefore, insurance providers should not be expected to provide these services for free. The commenter suggested the language be modified to clarify insurance providers are not expected to provide free acreage measurement services. A commenter stated they understand FCIC cannot apply the sanctions set forth in section 6(g). However, the commenter found FCIC's solution to be inadequate. The commenter stated if an insured requests an acreage measurement, but fails to submit a measurement within 60 days of submitting a notice of loss, the reported acreage should be treated as certified acreage. The commenter also stated that in addition, the insured should be barred from submitting a request for an acreage determination in subsequent crop years. A commenter stated the provisions in section 6(d)(3)(ii)(B) and (iii)(A) seem to conflict. The commenter stated if this language is not revised as indicated above, the following changes need to be made to the current language: (a) Section 6(d)(3)(ii)(B) states the insurance provider will revise the premium and indemnity due once an acreage measurement is provided if the initial indemnity paid and premium charged was based on the insurance provider's measurement; (b) Section 6(d)(3)(iii)(A) cannot occur in any situation. The commenter stated the insurance provider can only revise the indemnity and premium if the insured provides an acreage measurement after the initial indemnity has been paid and the initial premium has been charged based on the insurance provider's measurement. If it is not provided, no revision could take place; and (c)

section 6(d)(3)(iii)(A) would not apply. The commenter recommended section 6(d)(3)(iii)(A) be removed and add the requirement to section 6(d)(3)(ii)(B) that the deadline for providing the acreage measurement is the termination date and failure to provide the acreage measurement by the termination date will result in the insurance provider no longer accepting an estimated acreage report from the producer for any subsequent acreage report. A commenter stated the provision in section 6(d)(3)(iii)(A) seems unnecessary if the insurance provider has determined acreage for claim purposes. The commenter stated the penalty described in section 6(d)(3)(iii)(B) should be sufficient. A commenter stated FCIC should reconsider whether the termination date is the appropriate deadline for subsection section 6(d)(3)(iii). In the commenter's opinion, 60 days after the acreage reporting date provides an insured ample opportunity to obtain and submit an acreage measurement. The commenter also recommended FCIC direct the insurance providers on how to address this issue, rather than giving insurance providers a variety of alternatives. The commenter stated one choice will lead to consistent action by insurance providers and treatment of policyholders. A few commenters stated the proposed language provides insurance providers with a choice [measure the acreage, or settle the claim based on reported acreage and then revise as needed if, or when, the insured's measurement information is received] that could put one insurance provider at odds with another from the producer's viewpoint. The commenters stated such a choice seems unnecessary. They stated producers who commit to providing the measurement service should be held responsible for doing so. The commenters added their biggest concern with the existing language is there is no ultimate deadline for the insured to provide the measurement information. They believe stipulation of a reasonable deadline is necessary. The commenters suggested the deadline be 15 calendar days prior to the premium billing date and that the provisions be revised as follows: "(3) You may request an acreage measurement prior to the acreage reporting date and submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date. You must provide the measurement to us and we will revise your acreage report if there is a discrepancy. (i) If an acreage measurement is not received by the time we receive a notice of loss, we will defer any prevented planting payment, replant payment, or indemnity until the acreage measurement is received for the unit. (ii) If you fail to provide the measurement to us by no later than 15 calendar days prior to the premium billing date in the Special Provisions, no prevented planting payment, replant payment, or indemnity will be due for the unit and premium will still be owed. We will no longer accept estimated acreage from you for any subsequent acreage report."

Response: Given the advances in technology, there should no longer be the lag times between the request for a measurement and the receipt of such measurement. However, when estimated acreages are provided, there needs to be a measurement to ensure that the proper premium and any indemnity is paid. Further, it is the producer who elects who will conduct the acreage measurement and the producer should be held responsible for the selection. Therefore, producers are held accountable for ensuring that acreage measurements are timely provided to the insurance provider. The provisions allowing acreage measurement should not be removed from the Basic Provisions because all producers, regardless of their location should have the same opportunity to request an acreage measurement. This is not a situation where such measurement will only be available in selected areas. In addition, FCIC never intended requests for acreage measurements be made to the insurance providers. FCIC has revised the provision to indicate producers may request the service from FSA or a business that provides such service. If a producer fails to provide the measurement, the reported acres should not be considered as the certified acres. All the participants in the program have a responsibility to ensure that the information used to determine premium and indemnity is correct. However, as proposed, a burden is placed on the system when the policy allows claims to be paid based on the estimated information and then any overpayments to be repaid. To ease this burden, FCIC has elected to adopt the recommendation requesting that the claim be deferred until the acreage measurement is provided or the insurance provider elects to conduct its own acreage measurement. Therefore, the two choices are maintained because there may be situations where the insurance provider may already be required to determine the acreage under existing procedures and may elect to use the determined acreage here. The commenters are correct that FCIC cannot require the insurance providers to perform a measurement service when it is not required by the procedures but they certainly should be provided the option to do so. If the producer does not provide the measurement to the insurance provider, the claim is never paid unless the insurance provider elects to perform the measurement. In this case the estimated acreage will not be accepted from the producer for subsequent crop years. Since the claim will not be settled until the correct acreage is known, the under-reporting provisions in section 6(g) will not apply for incorrect reporting of acreage for any acreage for which a measurement was requested. These revisions should eliminate any conflict between the provisions. FCIC has also revised the provisions to separate out the requirements for the payment of premium to avoid confusion with respect to whether premium must still be paid while the claim is deferred. FCIC has clarified that the premium must still be paid but that if the acreage measurement is not provided at least 15 days before the premium billing date, premium will be based on estimated acreage and revised if the acreage is later corrected by the measurement. Failure to provide the measurement by the termination date will result in the inability to use acreage estimates for all subsequent crop years.

Comment: A few comments were received regarding section 6(g). A commenter stated the removal of the liability adjustment factor (LAF) penalty is a very good change. A commenter supports the proposed revision that omits punitive penalties for errors in over and under reporting acreage and believes the remedy provided under the proposed revisions is adequate to deter any abuse. The commenter urged FCIC to retain it in the final rule. A few commenters suggested revising (1)(i) to read "A lower liability than the actual liability determined, the liability reported will not be increased and the premium will be adjusted to the amount we determine to be correct (in the event the insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity); or". The commenters stated this revision should eliminate the current problems associated with application of a LAF. The commenters believe this will allow for greater flexibility on the procedure side in the proper calculation and processing of claim payments and premium.

Response: FCIC did not propose removing the LAF provisions currently

contained in section 6(g)(1). However, it did propose removing the additional misreported information factor provisions currently contained in section 6(g)(2) and has not retained the misreported information factor provisions in this final rule. FCIC agrees the retained LAF provisions are adequate to deter abuse. The recommended change would require charging more premium than would be necessary to cover the risk for the coverage provided. Since no changes to section 6(g)(1) were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated the provisions contained in section 6(g) are contradictory because one area of section 6 reads that "the waiver of the misreporting provisions only applies to the acreage for which a measurement was requested" and then further states it is impossible to separate out the production guarantee and production to count for acreage because these are reported on a unit basis making it difficult to access a penalty for not reporting the measured acreage timely. The commenter recommended if the measurements are not provided to the insurance provider and a claim is filed, the existing misreported information factor procedures should apply. The commenter added if a claim is not filed, the premium should be surcharged.

Response: Redesignated section 6(d)(5) does provide for a waiver of misreporting penalties when an acreage measurement has been requested and results in a revision to the acreage report. If a producer requests a measurement for only a part of a unit and then misreports another part of the unit, the liability adjustment factor will be calculated by comparing the liability based on the correct measured acres plus the incorrect unmeasured acres and the liability for the correct amount of acreage in the unit. As stated above, the misreported information factor provisions have been removed from the provisions. Therefore, the misreported information factor provisions cannot be applied. Even if they were still in the policy, they could not be applied because if the acreage measurement is not provided, it is impossible to determine whether the acreage was incorrect or by how much. The only way to obtain the information is through measurement of the acreage by an insurance provider and since such measurement is at the election of the insurance provider, producers cannot be penalized when such an election is made. There is no basis to apply a surcharge to the premium when a producer fails to provide the measurement. Now that claims will not be paid until the measurement is provided, there is an incentive for producers to provide the measurements. If the producer does not provide the measurement, they will no longer be allowed to submit estimated acreage for any subsequent acreage report. The provisions in section 6(d)(3) have been revised accordingly.

Comment: Many comments were received regarding the provisions proposed in section 6(g)(2). Many of the commenters stated they agreed with removal of the misreported information factor penalty in section 6(g) for the following reasons: (1) The misreported information factor penalty duplicated penalties already in place for misreporting; (2) Prior rules carried a sufficient penalty for under or over reported acres; (3) The misreported information factor penalty was very difficult to administer and justify to the policyholder; (4) The penalty was too harsh on producers when in most instances the producer forgot to report the acreage in a certain field; (5) Prudent claims adjusting should quell any incentive to over-report acreage by not paying claims on the over-reported liability; (6) Producers have no other incentive to under-report or over-report acreage since they only penalize themselves by doing so; and (7) The penalties for misreporting were draconian, especially since a producer has little to gain from either under or over-reporting his or her acreage. Another commenter supported the proposed revision indicating if the share is misreported, the production guarantee and amount of insurance will not be revised but either the correct share or the reported share will be used to determine the indemnity depending on which is lower. The commenter stated this proposed change is a positive one and urged FCIC to retain it in the final rule. A few commenters stated they commented against the severity of the penalties when they were proposed and believed they were too harsh for producers making innocent reporting errors. The commenters commended FCIC for proposing to revoke this provision and urged them to retain this proposal in the final rule.

Response: Provided that insurance providers are diligent in verifying acreage, the remaining penalties for under or over-reported acres in section 6 of the Basic Provisions are adequate. FCIC will retain the revisions proposed in section 6(g)(2).

Section 7 Annual Premium and Administrative Fees

Comment: A commenter suggested perhaps the price information (whether the projected price in the CEPP or the price election in the actuarial documents) should continue to be referenced in section 7(d) instead of being deleted.

Response: The first sentence in section 7(d) is redundant with section 7(c)(1) because section 7(c)(1) expressly uses the price election or projected price in the calculation of premium. Therefore, a separate section is not needed stating that the price election or projected price will be used to calculate premium. No change has been made.

Comment: A commenter questioned if FCIC is going to retain the "grandfathering" of the old limited resource farmer definition in section 7(e)(4)(ii) in the new policy. The commenter thought this was going to be dropped. The commenter stated there is no mention of it in the definition in section 1.

Response: USDA has gone to a standard definition of "limited resource farmer" and to avoid any potential conflicts, FCIC has revised this definition to specify the term has the same meaning as the USDA definition found at *http://www.lrftool.sc.egov.usda.gov/LRP-D.htm.* With respect to the provisions in section 7(e)(4)(ii), since FCIC has not proposed to remove this provision, and the public was not provided an opportunity to comment, no change has been made.

Section 8 Insured Crop

Comment: A commenter stated FCIC should consider whether the reference to "* * * price election, if applicable * * *" in section 8(b)(2) should be revised to accommodate projected and harvest prices since sections 8(b)(2)(ii)(A) & (B) refer to projected and harvest prices in the CEPP. In addition, it is unclear why "* * * included in the actuarial documents * * *" is being changed to "* * * included on the actuarial documents * * *" here but not consistently throughout. Previously the standard seems to have been to use "included in" and "contained in" but "shown on".

Response: All prices should be referenced in section 8(b)(2) to avoid any confusion with respect to the applicable prices. However, FCIC has not retained proposed sections 8(b)(2)(i) and (ii) because the information contained therein was redundant with the information contained in section 18 regarding written agreements for

revenue protection. Section 8(b)(2) now simply states that insurance is not available unless allowed by written agreement in accordance with section 18. FCIC has also reviewed all references to the actuarial documents and revised them as necessary to be consistent.

Section 9 Insurable Acreage

Comment: A few comments were received regarding proposed section 9(a)(2). A commenter recommended adding the phrase "or wheat" after the phrase "sorghum silage." Another commenter stated the reference to "* * * except corn or sorghum silage * * *" is unclear as to whether it is considered a "* * * cover, hay, or forage crop * * *" Based on how it is addressed in proposed section 9(a)(3), it appears that corn/sorghum silage is not considered to be a cover, hay or forage crop for insurability purposes. The commenter stated they question whether it is necessary to include the exception here, and in proposed (a)(3), if that is the case. If it is determined to be necessary here, it needs to be rewritten for clarity. The commenter stated this can be accomplished by placing a comma between "silage" and "unless" prior to (i) and (ii).

Response: FCIC has restructured section 9(a) to more clearly delineate when acreage is insurable and when it is not insurable. Previously the provisions had double negatives, and multiple uses of the terms "except" and "unless" that made them confusing. The newly revised, streamlined provisions should eliminate these problems. Wheat can be produced for hay and, therefore, this exception has been added. However, it is considered a hay, not a forage and a parenthetical has been added after the reference to "hay." In the context of redesignated sections 9(a)(2)(i) and (ii), corn silage and sorghum silage are not considered to be cover or hay crops, but are considered to be forage crops. However, the provisions specify acreage planted to either of these crops in one of the last three years will be insurable. Since there may be additional acceptable silage types, FCIC has modified the provisions to refer to "insurable silage" to accommodate any expansion. In addition, the provisions in redesignated section 9(a)(1)(i)(C) have been revised to allow acreage to be insurable when a perennial crop was on the acreage for two of the three previous crop years.

Comment: A few commenters stated insurance providers should be required to provide notice to a producer if the producer may be eligible for an indemnity on a second crop. This notice should be provided in time to allow the producer to gather information required to request the indemnity, including harvesting, production, and marketing records.

Response: The producer is only eligible for an indemnity on a second crop if they have elected to insure the second crop. If such an election is made, as with any other crop, it is the producer's responsibility to provide notice to the insurance provider if there has been damage to the insured crop. It is not the responsibility of the insurance provider to notify the producer that they may be eligible for a payment. No change has been made.

Comment: A commenter stated that existing section 9(c) should be reconsidered in view of current underwriting procedures that do not allow any production history from irrigated acreage reported and insured as non-irrigated acreage to be used for acreage that is truly non-irrigated (since it would raise the approved yield above what could be reasonably expected for a non-irrigated farming practice).

Response: FCIC has considered the provision and revised section 9(c) to clarify that if a producer elects to insure irrigated acreage under a non-irrigated practice, the irrigated yield will only be used to establish the approved yield if the producer continues to use a good irrigation practice. If the producer does not use a good irrigation practice, the producer will receive a yield determined in accordance with section 3(h)(3).

Section 10 Share Insured

Comment: A few commenters stated they continue to oppose current provisions allowing a tenant to insure the landlord's share and vice versa. The commenters recommended requiring separate applications and policies. The commenters recommended removing the current provisions and the proposed provisions that would extend the ability to insure under one policy to parents and children, spouses, or members of the same household. The commenters recommend removing the provisions because: (1) "Person" is defined in the policy and each "person" should only be allowed to insure their own share; (2) As acknowledged in the preamble to the rule, there is already significant confusion regarding when spouses may obtain separate policies; (3) The provisions were implemented to minimize paperwork by having only one policy, but they have resulted in so much confusion it has required additional procedures; (4) The provisions provide a way to sidestep the general rules that a person must insure all his/her interest in the crop/county and at the same level, price, *etc.* For example, a landlord has two different acreages with two tenants. One tenant farms the good piece of ground and chooses CAT coverage and the other tenant farms the poor piece of ground and chooses 85 percent coverage; (5) There have been significant problems with the implementation of spousal SBI reporting requirements; (6) Additional problems are foreseen if children and other household members are added to the list of "other" shares covered under an individual entity's policy; (7) The language in this section does not set forth clear rules for when separate policies may be obtained; and (8) If a landlord does not wish to deal with crop insurance, the landlord can assign a power of attorney to his tenant so the tenant can obtain a policy on the landlord's share.

Response: Since removal of the provision was not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. FCIC has not retained the proposed change in the final rule to allow a person to insure the share of their spouse, child, parent, or other member of the household. FCIC had failed to include the reporting of the SBI's for all of these persons under proposed section 10(a)(3)(iii). Further, FCIC agrees this proposed change adds unnecessary complexity and confusion.

Comment: A few commenters stated they viewed the addition in section 10(a) as being positive because it allows members of the same household to insure each others share in the same manner as landlords and tenants. However, they stated it is not clear if the person completing the application for insurance has to have a share in the crop that will be insured. One of the commenters stated the provision allows someone to insure an interest in a crop even though they do not have an insurable interest in it.

Response: As stated above, FCIC has not retained the provisions proposed in section 10 in the final rule that would have allowed a person to insure the share of their spouse, child, parent, or other member of the household. FCIC has retained the current provision that allows a landlord or tenant to insure the other person's share. However, before a person can insure the other person's share, they must both have a share in the insured crop. FCIC has revised section 10(a) to make this clearer.

Comment: A commenter stated the proposed language in section 10(a) seems to contradict itself because if insurance "* * * will only attach to that

person's share * * *", it cannot then be extended to the other people listed in (1) and (2). The commenter recommended clarifying the provisions by combining the two sentences as follows: "* * * share in the insured crop, and will attach only to that person's share unless the application clearly states:" (1) The insurance is requested for an entity other than an individual (for example * * *); (2) You will insure your landlord's or tenant's share; or (3) The share insured includes the share of your spouse * * *"

Response: There was a potential contradiction and FCIC has revised the provisions to make it clear that insurance will attach only to the applicant's share except when the application specifies the insured is an entity and in landlord tenant situations. Additionally, as stated above, FCIC has not retained the provisions proposed in section 10 in the final rule that would have allowed a person to insure the share of their spouse, child, parent, or other member of the household.

Comment: A commenter stated both sections 10(a)(1) and (2) provide that "insurance will not extend to any other person having a share in the crop: unless the application clearly states * * *" Because the insurance policy is continuous from year to year, the insured may not complete an application each year. Accordingly, the commenter recommended that if, in a crop year after the completion of the application, an additional person obtains a share in the crop, insurance may be extended to that person upon completion of a company-approved form, such as a policy change form.

Response: As stated above, FCIC has not retained the proposed provisions authorizing a person to insure the share of their spouse, child, parent, or other member of the household. Therefore, this will no longer be a problem. With respect to landlords or tenants, there is no requirement that persons insure the share of other persons in an entity with a share of the crop or the landlord insure the tenant's share or vice versa. This is a choice that is made by the insured. Policy change forms are to change coverage, *i.e.,* coverage level percentages, price elections, types, *etc.* To extend coverage to another person there must be a new application to ensure the eligibility of the additional person. No changes have been made in response to this comment.

Comment: A commenter stated section 10(a)(2)(iii) appeared to be superfluous and, therefore, confusing. Section 10(b)(1)(i) provides that an insured's share will include "any acreage or interest reported by or for your spouse * * *" Similarly, the definition of "substantial beneficial interest" creates the presumption that a spouse has an interest in the insured. The commenter asked why is it necessary to state in section 10(a)(2)(iii) that an application includes the spouse's share. As this is a contentious issue, the commenter suggested FCIC combine the guidelines relating to spouses and spousal interests in one subsection rather than dividing them among several subsections. This will alleviate confusion and obviate the need to refer to multiple provisions.

Response: Proposed section 10(a)(2)(iii) is unnecessary and FCIC has removed the provision. The sections dealing with spouses and spousal interests cannot be combined. Section 2 and the definition of "substantial beneficial interest" involve the interest of the spouse in the insured for the purposes of determining which tax identification numbers have to be reported. Section 10 involves the interest of the spouse in the insured crop. This is to determine under what circumstance spouses can have separate policies. No changes have been made in response to this comment.

Comment: A few commenters stated the added language in sections 10(a)(2)(iii), (a)(3), and (b) [regarding insuring the share of the spouse, children, parents and/or other household members on an "individual" policy] does not seem to mesh and leads to the following questions and suggested changes: (1) Section 10(a)(2) requires that the application must clearly state the share of other family/household members is included, suggesting that those shares are not included if there is no such indication on the application. However, section 10(b)(1) states "We will consider to be included * * * any acreage or interest reported by or for * * *" [emphasis added] those other family/household members. This language would allow such acreage/interest to be added at acreage reporting time instead of requiring that it be specified by the sales closing date. If this is supposed to be an option elected on the application, then section 10(b) should continue to say "We may consider * * *" Changing it to "We will consider * * *" suggests it is mandatory instead of a choice; (2) The language in section 10(a)(2)(iii)(A)–(D) indicates that the individual's policy can (if stated on the application) include the share of: (A) The spouse, (B) a child, (C) a parent, or (D) other household members. This could be taken to mean that if the spouse's share is included, none of the others can be (or one child's share can be included but not more than one). Presumably the intent would be better served with "and/or"; and (3) The language in section 10(a)(2)(iii)(A)–(D) does not seem to match the added language in section 10(b)(1), with a distinction between spouses [in (i)] and children or other household members [in (ii)]; parents are not mentioned separately. If section 10(b)(1)(i) is intended to correspond to current procedures that require policies for married individuals to include the spouse's share unless they are legally separate or unless they can prove they have separate farming operations, this does not fit with the phrases suggesting there is a choice of whether or not to include the spouse's share. In addition, section 10(b)(1)(ii) states that a child or other household member is included "* * * unless the child or other member of the household can demonstrate such person has a separate share in the crop." The wording in paragraph (a)(2) would seem to suggest that "separate share" could be insured as long as it was clearly stated on the application.

Response: As stated above, FCIC has not retained the provisions proposed in section 10 in the final rule that would have allowed a person to insure the share of their spouse, child, parent, or other member of the household. FCIC has retained the provisions in section 10(b) that states if it is determined the spouse, child, parent or other household member does not have a separate farming operation or share in the crop, as applicable, there can be no separate policy and the share reported by the spouse, child, parent or other household member will be considered to be included in the insured's share. As stated above, there is a difference between having an interest in the insured and having a share of the crop. Section 10 only deals with the latter. Under section 2 and the definition of "substantial beneficial interest," spouses are presumed to have an interest in the insured and there is no exception as long as they remain married and not legally separated. However, spouses and children are presumed not to have a separate share of the crop. Therefore, they cannot have separate policies unless they can demonstrate they have a separate farming operation or share of the crop, as applicable. If they meet this burden, they must have separate policies.

Comment: A few commenters stated they have serious concerns regarding the addition of the introductory phrase in section 10(a)(3) "If a producer insures any of the shares under section 10(a)(2), * * *" When section 10(a)(2) applies, section 10(a)(3) requires "* * * evidence of the other party's approval

(lease, power of attorney, *etc.*) * * *" and [in (3)(i)] "* * * the percentage shares of each person * * *" not only when the landlord's/tenant's share is being insured, as in the current Basic Provisions, but also for spouses, children, parents and other household members. The commenters strongly recommended that these requirements continue to apply only to the tenant/landlord situations "* * * under section 10(a)(2)(i) & (ii) * * *" Otherwise, this expansion of these requirements would lead to the following serious problems: (1) Family members who do not have separate shares in the farming operation would not be likely to have any official documentation that they approved having their share included in the "individual" policy; (2) If, according to one interpretation of the new language in sections 10(b)(1) and (1)(ii), the interest of a child or other household member will be considered to be included "* * * unless the child or other member of the household can demonstrate such person has a separate share in the crop * * *", it would seem to be difficult (if not impossible) to designate the percentage of share for those children and household members. These shares are not separate and distinct as is the case with landlords and tenants; (3) If, according to the added phrase in section 2(b)(2)(i), the spouse is considered to have 50 percent interest in the insured entity, that leaves only 50 percent to be divided among the named insured, children, parents and other household members; and (4) Although the proposed language would require children and household members to report their percentage shares (if they actually can be determined), there is no clear indication whether their names and identification numbers would have to be listed on the SBI form, as required in section 10(a)(3)(ii) and (iii) for tenant/landlord policies. Refer to the definition of SBI: "* * * Any child * * * will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person * * *" If that is the intention, there is likely to be strong resistance to that added requirement. When the spousal SBI reporting requirements were added to procedure several years ago, it created an administrative burden on insurance providers to obtain the SBI information for spouses of policyholders and led to serious objections from some policyholders who did not want to provide that information for spouses who were not actively involved in the farming operation and were not a signing party to the policy contract. At that time, questions were raised whether the spousal SBI reporting requirements would be expanded to include the children and other household members (based on the policy language that "We may consider * * *" their interest to be included), and FCIC provided assurances that would not happen.

Response: As stated above, FCIC has elected not to retain the provisions in section 10(a)(2) related to spouses, parents, children, and other members of the household. Therefore, the requirement for providing leases, power-of-attorneys, *etc.,* only applies to landlord-tenant situations or entity situations. Further, as stated above, there is a difference between having an interest in the insured and having a share of the crop. Section 10 only deals with the latter. Under section 2 and the definition of "substantial beneficial interest," spouses are presumed to have an interest in the insured and there is no exception as long as they remain married and not legally separated. However, spouses and children are presumed not to have a separate share of the crop. Therefore, they cannot have separate policies unless they can demonstrate they have a separate farming operation or share of the crop, as applicable. If they meet this burden, they must have separate policies. There is no presumption of children having an SBI in the insured so they do not have to be reported as an SBI unless they have some other legal interest in the insured.

Comment: A commenter stated section 10(a)(3)(ii) requires that a landlord or tenant that insures the other's share must report that person's SSN. The same obligation should be imposed on a parent who insures a child's share and vice versa. It is the commenter's understanding that section 2 already imposes the obligation on an insured to report his or her spouse's SSN.

Response: Since, as stated above, FCIC has not retained the proposed provisions that would have allowed the producer to insure the share of his or her spouse, child, parent, or other member of the household, it is no longer necessary to require the identification number for such persons.

Comment: A commenter stated section 10(b) requires "separate equipment" to prove the spouses have separate farming operations. The 2007 Crop Insurance Handbook language requires separate accounting of inputs (*e.g.,* labor and equipment), but not "separate equipment." The CIH language seems to be more appropriate.

Response: FCIC has removed the requirement for separate equipment because many farming operations share equipment even though they are separate and distinct. This should be no different for spouses or children. However, they must still have all the other attributes of separate farming operations.

Comment: A few commenters asked if the change in section 10(b)(1) from "may consider" to "will consider" means the share of any spouse, children and/or other household members must be included or whether the phrase "* * * reported by or for * * *" means those shares do not have to be included if they do not want to report them.

Response: The provisions in section 10(b) mean any share reported by or for the spouse, child or other member of the household will be considered to be included in the insured person's share. As stated above, FCIC has clarified that only children that reside in the insured's household are considered to be included in the insured's share. This means the insured can still report 100 percent share of the crop and the spouse and children in the household are presumed to be included in that 100 percent. However, if the spouse or children in the household can show they have a separate farming operation or share, as applicable, they must separately insure their farming operation or share, as applicable, under a different policy. For example, a father and son who live in the same household both produce corn in the county. If the son can prove that he has a share of the crop (*i.e.,* the son receives a share of the crop in exchange for his labor), the son must have a separate policy to insure the corn produced on his farming operation. If the son was living outside the insured's household, the son could not obtain insurance unless he could show he has a separate share and again he would be required to insure his share under a separate policy.

Comment: A few commenters recommended clarifying provisions in section 10(b)(1)(i) regarding spouses with separate farming operations, by adding parentheses as follows: "* * * separate land (excluding transfers of acreage from one spouse to another), * * *"

Response: FCIC has revised the provisions accordingly.

Comment: A commenter recommended removal of provisions in section 10(b)(1)(i) regarding proof of separate farming operations. The combined interest can/should be insured under one individual/spousal policy. This option causes confusion with interpretation of separate farming

operations by producers which leads to coverage penalties described in section 10(b)(2)(i).

Response: There are legitimate situations where the two spouses have totally separate farming operations. If they can meet their burden of proof that the operations are separate, then two separate policies are needed. If there is only one farming operation, then it is appropriate that the interests of the spouses be combined in order to protect program integrity. Further, the proposed rule clarified which policy should be voided and the provisions have been retained. Therefore, there should no longer be confusion. No change has been made in regard to this comment.

Comment: A commenter asked whether a couple that is legally separated (not divorced), each with a farm, can qualify for two separate policies. The spouse would not have any SBI, so the commenter assumes they could each have a policy even if one is paying child support.

Response: If the spouses are legally separated, they would no longer have a SBI in each other. This simply means that the spouse's identification number would not have to be reported. This is a separate issue from whether the spouses have separate insurable interests in the insured crop. If the spouses can prove the two farming operations are separate, then they are entitled to separate policies regardless of whether child support or alimony is being paid.

Comment: A commenter stated forcing a husband and wife to have one policy creates some problems. FSA is still allowing a husband and wife to be two "persons" as far as payment eligibility is concerned, if certain criteria are met. One of these criteria are the "separateness" of their operations. Forcing them into one crop policy could jeopardize that "separateness." The commenter stated they have people who consider not insuring their crop because of this issue.

Response: The provisions allow separate policies for spouses who meet the requirements for separate farming operations. FCIC understands FSA may have different program requirements for spouses to be considered "separate." However, since the two programs have different purposes, the requirements may need to be different. The fact that FCIC may not consider the spouses to have separate shares should have no impact on the eligibility of a spouse for FSA programs. Each program is administered under its own requirements. Further, FCIC does not believe that its requirement spouses be insured under one policy if the they cannot meet the criteria for separate farming operations for the purposes of crop insurance adversely affects the spouses' ability to meet the FSA requirements for a separate farming operation. No change has been made.

Comment: A few commenters stated the concerns and recommendations listed below regarding the new section 10(b)(2) which states [in part]: "If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop * * *" that other policy will be void and there will be no premium due or indemnity paid. If each spouse takes out a separate policy and it is later determined they do not have separate farming operations, the proposed wording could result in the voidance of both policies (each one has a policy saying the "spouse's policy will be void"). Presumably the intent is that one policy would remain in effect. A commenter suggested where the producer's spouse, child, or other member of the household holds a policy that is voided, the acreage insured under the voided policy should be insured under the producer's policy. The commenter stated this change would be helpful, particularly in community property states, where inequities can otherwise result. The commenter urged FCIC to include this change in the final rule. An additional commenter stated no penalties should be imposed for spouses or other household members obtaining separate policies that are later determined to not qualify to have separate policies, until definitive rules are established. Per section 10(b)(2)(i), "The spouse's policy will be void and will be determined in accordance with section 22(a) * * *" There is some question as to whether the reference is appropriate. Section 22(a) addresses "Other Like Insurance," which is understood to mean duplicate coverage on the same acreage/share, while it is likely that separate spousal policies that do not qualify to be separate would not be insuring the same acreage or share (each would show 50% share, for example). If this situation is supposed to be covered by 22(a), it would seem to conflict with the statement in 10(b)(2)(i) that the "spouse's policy will be void * * *" since section 22(a)(1) & (2) provide guidelines for determining which of the duplicate policies remain in effect. It is not clear whether the intention is to specify which spouse's policy would remain in effect or whether it would be allowed for the parties involved to decide. At the least, it might help to change the reference to "22(a)(1) & (2)." The proposed language does not match the explanation given in the "Background" section of the proposed rule, which indicates the acreage and share must be combined. The proposed policy language only says the other policy will be void; it makes no mention of adding the acreage/share from the voided policy to the remaining policy. If an insurance provider determines the two spouses do not meet the requirements for insuring their farming operations under separate policies, the total coverage for both operations should be combined under a single policy and the other policy voided. Since both operations had full coverage in effect, there should be no loss of coverage but the coverage should be consolidated under a single policy at the time this determination is made. The penalties as currently outlined in the draft provisions are unduly harsh and should be reconsidered. When the determination is made that the two policies need to be combined, the language needs to address which policy's coverage takes precedence and should serve as the policy in effect for the remainder of the crop year (*i.e.,* level of coverage, price percentage, options, *etc.*). The provisions state "No premium will be due and no indemnity will be paid for a policy that is voided * * *" Presumably, this is because the premium and indemnity would apply to the other policy remaining in place. Otherwise, there should be some consideration of allowing the insurance provider to retain a percentage of the premium to cover the administrative costs incurred, as in other cases where the policy is voided. Proposed section 10(b)(2)(ii) should be changed as follows: "The policy for the child or other member of the household will be void;" or alternatively, change "child" to "child's policy". Also, in section 10(b)(2)(iii), change "* * * for a policy that is voided in accordance with sections 10(b)(2)(i) and (ii)" to "* * * for the voided policy." It is not necessary to refer to the two immediately preceding subsections given the context and the lead-in from section 10(b)(2).

Response: If spouses do not have separate farming operations, it was always intended that one policy be void and one policy should remain in effect and the acreage and shares from the voided policy should be combined under the remaining effective policy. The provisions have been clarified accordingly. The commenter is correct that section 22(a) is referring to the case in which there are duplicate policies on

the same share and acreage, while section 10(b) refers to different policies on separate acreage or shares. The provisions have been revised to refer only to sections 22(a)(1) and (2). These sections will specify which policy will remain in effect. Sections 22(a)(1) and (2) will determine the coverage levels, price elections, *etc.,* that apply. There is no penalty contained in section 10(b). Full coverage is provided under a single policy.

Comment: A commenter stated section 10(b)(2)(ii) provides that a spouse's policy will be void in accordance with section 22(a) if the spouse has a separate policy but does not have a separate farming operation or share in the crop, and asked if the spouse whose policy is voided is considered to have a SBI in the surviving policy. The commenter questioned if the spouse was not reported as having a SBI in the surviving policy, which is possible if the spouses considered their farming operations to be separate, whether the surviving policy is subject to the penalties in section 2(b). The commenter recommended FCIC clarify the ramification to the policy that is not voided.

Response: A SBI is not the same as a share. As stated above, SBI involves the spouse's interest in the insured. A share involves the spouse's interest in the crop. Therefore, regardless of whether there are separate policies or a single policy, the spouse's social security number must be included on the application. If the spouse's social security number is not reported on any application, the consequences in section 2 apply, not any consequence stated in section 10.

Section 11 Insurance Period

Comment: A commenter stated section 11(b)(2) specifies harvest of the unit is one of the events that triggers when coverage ends. The commenter asked if the intent of the policy is to cover grain in storage until all of the "unit" is harvested. The commenter stated current language could be interpreted to cover grain in storage. The commenter provided an example where a producer had a 200 acre unit and harvested 180 acres and stored the production in a bin. Lightning strikes the bin and all of the grain is destroyed. The commenter asked since the producer still had 20 acres left to harvest, and therefore had not completed harvest of the unit, whether the burned up grain should be counted as production since an insured cause of loss happened during the insurance period. The commenter stated if FCIC does not want this situation to be covered since the acreage was harvested, FCIC would need to clarify section 11 in more detail. The commenter suggested language such as harvest of the "crop" instead of unit could be used.

Response: FCIC has not proposed any changes to section 11. However, the commenter has raised a statutory issue that needs to be addressed. Section 508(a)(2) of the Act prohibits insurance extending beyond the period during which the insured commodity is in the field, except in the case of tobacco and potatoes. Therefore, the policy does not cover the insured crop after it has left the field. FCIC has added a new section 11(c) that specifies that coverage ends on any acreage within a unit where an event resulting in the end of the insurance period occurs on the acreage. Therefore, in the commenter's example, insurance would end on any acreage in the unit that had been harvested even though coverage remained in effect on the unharvested acreage. This will preclude coverage for any grain in storage because it will have come from acreage where the insurance period had already ended. However, this situation also applies to other events that can cause the insurance period to end. Therefore, FCIC has revised section 11(b) to clarify that coverage ends on each unit or part of a unit at the earliest of one of the events specified in sections 11(b)(1) through (6), even though the insurance period may not have ended for other acreage within the unit. FCIC has also clarified that the calendar date for the end of the insurance period may be contained in the Special Provisions because there have been occasions when the end of the insurance period stated in the Crop Provisions may no longer be reflective of the period of risk due to changing technologies, *etc.*

Section 12 Causes of Loss

Comment: A commenter suggested revising section 12(a) to add a reference to landlords as follows: "Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants and/or landlords, or employees."

Response: Negligence, mismanagement, or wrongdoing by any person is not intended to be covered by the policy. Section 508(a) of the Act only authorizes coverage for natural disasters. Further, there may be confusion regarding the distinction between proposed sections 12(a) and (g). Therefore, FCIC has revised section 12(a) to make it inclusive of any act by any person, that affects the yield, quality or price of the insured crop and proposed section 12(g) has not been retained in the final rule.

Comment: A few comments were received regarding the introductory text in section 12. A commenter stated the prefatory phrase in the opening paragraph is unwieldy and confusing. The commenter requested FCIC amend this provision as follows: "The insurance provided is only those unavoidable * * * When revenue protection is elected, protection also is provided against decline in the harvest price below the projected price." Another commenter stated the proposed language specifically identifies causes of loss that are not covered. Previous language (the current policy) has a much broader provision relative to causes of loss not covered ("* * * all other causes * * *"). The commenter asked whether this change was intended, and if so, what the rationale was for it. Further, the prior/current language indicates that coverage is against only unavoidable loss directly caused by specific causes. The proposed language removes the "directly caused by" language. The commenter asked what was the reason for this change.

Response: The proposed introductory text was not clear as it was intended and FCIC has revised the first sentence to improve readability and clarity. The provision providing coverage when the harvest price is less than the projected price is contained in the Crop Provisions and is subject to the same restrictions as any other cause of loss. Therefore, to avoid a potential conflict, FCIC has not added the provision to section 12. FCIC has also included the provisions omitted in the proposed rule stating that all other causes of loss, including those listed were not covered. The phrase "directly caused by" was removed because some losses are covered even though they are not directly caused by an insurable cause of loss but the insurable cause of loss was the proximate cause of the loss. For example, disease is not covered under the policy but adverse weather is covered. There could be a situation where the presence of excess moisture caused a disease in the insured crop. Excess moisture was not the direct cause of the loss but it was the proximate cause and, therefore, the loss is covered.

Comment: A commenter disagreed with the provisions added to section 12(d). The commenter felt FCIC is asking the insurance providers to make judgment calls, which will create more fraud, waste and abuse in ways that are already used in the prevented planting system.

Response: FCIC presumes that the judgment call referred to is the determination of whether the producer was unable to prepare the land for irrigation using the producer's established irrigation method. This is not similar to prevented planting because in prevented planting the judgment is whether the soil is too dry to permit germination or progress toward crop maturity if the crop was planted. However, the judgment here is only whether the acreage was too dry to permit the producer to prepare the soil without extensive damage. Further, under proposed section 14(e)(4)(iii) (Your Duties), the burden is on the insured to prove the loss was caused by an insured cause of loss. The burden is not on the insurance provider to prove that such a cause of loss did not occur. This clear enunciation of the burden should mitigate any potential fraud, waste, and abuse. No change has been made.

Comment: Many comments were received regarding the proposed addition of section 12(g). A few commenters were concerned about provisions that specify any act by a third person adversely affecting the yield or price, such as terrorism, chemical drift, theft, *etc.,* is a cause for loss for revenue protection coverage. A commenter stated the addition may make common sense regarding yield, but asked how it can apply to price. The commenter asked, for example, if a car bomb goes off in the Middle East and markets react, if this would be deemed a "terrorist act" and would FCIC disallow coverage because "prices changed due to a third party or terrorist." The markets do not operate in a vacuum. Theoretically, every single event happening in the world each day affects price. The commenter asked how FCIC can make decisions about what is and is not a "terrorist act" or the result of a "third person." Market efficiency ultimately rules and sorts everything out. The commenter asked how FCIC can ever say prices are not reacting to a "third person." Prices do what they do. Everyone in the system is aware of the risk, especially producers. The commenter stated they understand the need to suspend the system should catastrophic events occur (*i.e.,* government itself is unable to function). This can be better said than the open-ended language proposed. The commenter stated they would suggest language that simply says if markets are closed for an extended period due to acts of God or other reasons other than routine market policy or function, or if the government itself is essentially inoperable for a prolonged period due to acts of God or other acts beyond the government's control, then the Secretary of Agriculture has the right to suspend the policy/program. A commenter stated the proposed addition is impossible to administer and would create deep uncertainty in the reliability of revenue protection. A commenter opposed any provision that would consider actions by a terrorist that cause a price change for revenue policies to be due to an uninsurable cause. The commenter strongly recommended yield or revenue losses from terrorist activities be added as a named peril to all crop insurance policies. Furthermore, the commenter recommended FCIC develop a multiple-year terrorism policy that provides producers with such protection when a multiple year cleanup period is required. Such a policy could be based on the average of prior year's income tax returns. A commenter asked how market price fluctuations caused by an uninsured cause of loss will be determined. The commenter asked what the effect on the wheat market is if the World Trade Center gets bombed. Suppose commodity prices would have risen sharply five years ago, would there have been a push to reduce crop insurance coverage because of the attack? It seems there are always about a million reasons why the commodity markets move, and to try to determine that one of them is responsible for the movement seems impossible. The commenter believes the market price should be used, no matter what it is, as it is truly what producers can receive for their product, and truly represents their risk. Crop insurance needs to be a product that producers and their lenders can rely on through whatever is happening. A commenter stated they agree with the proposed changes, however, they believe the text could be improved by restating it as follows: "Any act by a third person, whether the result of negligence or intentional misconduct, that adversely affects the yield or price, such as terrorism, chemical drift, fire, theft, and similar third-party actions." The commenter stated their fundamental proposed change in the definition is the addition of the clarifying clause after "third person" in the first line. It is important to be explicit that third-party acts of negligence and intentional misconduct are not covered. That should present no problem because negligence itself is defined appropriately in section 1 of the Basic Provisions. Further, its applicability is implicit in new subsection (g) (*e.g.,* recognition that "chemical drift" is not an insured cause of loss). It is important to recognize negligence as a form of third-party action that could adversely affect yield or price, and it is critical to do so explicitly to avoid any risk of ambiguity. While acts such as terrorism are important to exclude, due to their inherent evil, negligent acts can have the same impact on yield or price and, therefore, should also be specifically excluded. Finally, the commenter recommended "fire" be added because it is one of the most common causes of loss resulting from third-party conduct. Another commenter suggested adding "fire" to the list in section 12(g), because fire and chemical drift are the two most common causes of loss caused by a third party. An additional commenter stated they are concerned that FCIC reserves the right to deny or withdraw coverage due to unfavorable market moves suspected of resulting from "third person acts." The commenter stated the proposed addition of a new section 12(g) states that "[a]ny act by a third person that adversely affects the yield or price, such as terrorism, chemical drift, theft, *etc.*" is a cause for loss of coverage. The commenter stated they oppose the denial of coverage solely on the basis of sudden unfavorable market moves, regardless of the source. A few commenters stated they oppose the denial or withdrawal of coverage when based on suspicion or speculation. The commenters stated any effort to determine price impacts directly attributable to third person acts (*i.e.,* terrorism) would be speculative at best. The interjection of such a subjective and unpredictable factor would lead to deep uncertainty relative to the reliability of revenue protection. Therefore, they urge these provisions be omitted in the final rule. A commenter stated the provisions are not clear with respect to who is authorized to make the official determination that an event has occurred because of the acts of a third person.

Response: The commenter is correct that it is difficult to determine if a price change or at least how much of a price change was due to third party action. However, FCIC must still be compliant with the provisions of the Act that do not allow man made acts to be covered. This limitation applies to price changes as well as other causes of loss. To ensure that the revenue protection is meaningful, FCIC is presuming that usual market price changes are an insured cause of loss. To interpret the Act in any other manner would effectively negate revenue coverage. Therefore, usual causes of price swings, such as over or under production

domestically or abroad, are considered normal market price changes. This is not the case with terrorism or the accidental release of a pest, unapproved genetically modified seed, *etc.* These are incidents that are not usual in the market and may involve a situation where a single person or limited number of people may have the ability to affect the price for all. However, even after an act of terrorism, *etc.,* there may still be other reasons for the price change. Therefore, FCIC has revised the cause of loss section in the Crop Provisions to clarify that the price change is covered unless FCIC can prove the price change was the direct result of an uninsured cause of loss in section 12(a) and can quantify the effect the uninsured cause had on the price. If FCIC cannot meet these burdens, the price change is covered under the policy. Under usual market conditions, this will be a very difficult burden to meet but if there are those instances where it can be met, the Act precludes payment. As stated above, FCIC has revised the provisions to add the requirements of proposed section 12(g) to section 12(a). This should eliminate any confusion whether the acts of persons that cause the loss are covered. Terrorism cannot be added as an insured cause of loss and FCIC cannot develop a multiple year terrorism policy. Section 508(a)(1) of the Act requires that to qualify for coverage under a plan of insurance, the losses of the insured commodity must be due to drought, flood, or other "natural" disaster (as determined by the Secretary). Therefore, the Act does not authorize coverage for terrorism.

Section 13 Replanting Payment

Comment: A few comments were received regarding replant payments. A commenter stated producers who incur 100 percent of the replant cost should receive 100 percent of the replant payment although the crop is insured by more than one person on a share basis. The commenter appreciated FCIC's openness to working to implement a fair and equitable provision in this regard notwithstanding any administrative challenges. The commenter proposed a workable solution to the current problem is to have tenants who buy insurance on a share basis receive 100 percent of the replant payment when the tenant provides verifiable evidence that he/she paid 100 percent of replant costs. Conversely, landlords would not receive a replant payment if they cannot provide evidence they bore any share of replant costs. A commenter recommended keeping the current language and adding "or Special Provisions" to the end of the paragraph.

Response: As stated in the background section of the proposed rule, FCIC proposed to remove the provisions that allow the person who incurs the total cost of replanting to receive a replant payment based on the total shares insured when more than one person insures the crop on a share basis. To make the provision work, FCIC required the two producers with a share in the crop to be insured with the same insurance provider before the producer incurring all the costs could receive the replant payment. This was necessary to allow the insurance provider to track the payments to ensure not more than 100 percent of the replant payment is paid out (*e.g.,* the tenant received a 100 percent replant payment from one insurance provider and the landlord received a 50 percent replant payment from another insurance provider). FCIC also required that both producers insure with the same insurance provider to ensure that the insurance provider making the 100 percent replant payment received 100 percent of the premium associated with replant payments (*e.g.,* if two producers with 50 percent shares insure with two insurance providers, each insurance provider would receive only 50 percent of the premium associated with the replant payments). Subsequently, FCIC received complaints that this resulted in disparate treatment based on which insurance provider the producer insured with because producers insured with different insurance providers could not receive 100 percent of the replant payment even if they incurred 100 percent of the costs. The recommended changes, while achieving equity by allowing the person who paid the replant costs to recoup the payment, would make the program vulnerable to mistakes and abuse if the producers are insured with different insurance providers. FCIC has not found a way to provide 100 percent of the replant payment to one producer that does not result in this disparate treatment or open the program to potential vulnerabilities. However, FCIC is open to new ideas. No change has been made.

Comment: A few comments were provided to section 13(c). A commenter stated that the proposed language could be misleading to policyholders who think their actual cost of replanting will be paid. The commenter questioned why FCIC needs to bring up the actual cost of replanting in the Basic Provisions if it is not intended to be used in any Crop Provisions. A commenter recommended FCIC substitute the term "limited" for "specified." It is doubtful the Crop Provisions or Special Provisions would permit replant payments in excess of an insured's actual cost. A commenter stated they consider the provisions positive regarding if the Replant Cost Study finds actual replanting costs paid are consistently higher than the amounts specified in the Crop Provisions, then the insurance provider does not have to verify replanting costs prior to paying replant claims. A commenter supported the proposed revision, which would allow replant payments to be more responsive to actual costs and the commenter urged FCIC to retain it in the final rule.

Response: FCIC does not agree that the word "limited" should be used. For certain crops, it has been determined the replant payment will be the amount specified in the Crop Provisions, regardless of the actual costs. However, for other crops, the actual costs will be used. Therefore, FCIC agrees that as proposed, the language can be confusing. FCIC has revised section 13(c) to specify the replant payment will be the lesser of the producer's actual cost for replanting or the amount specified in the Crop Provisions unless otherwise specified in the Special Provisions. The replant study that FCIC has contracted out is not complete and there may need to be some adjustment to the amount contained in the Crop Provisions. Revising section 13(c) to specify that the amount will be contained in the Crop Provisions unless otherwise specified in the Special Provisions will allow for an expedited adjustment. FCIC is attempting to reduce the burden on the producer and insurance provider to provide records for crops for which it has been determined that the actual costs always exceed the amount payable under the Crop Provisions by having the Crop Provisions no longer consider the actual costs.

Section 14 Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage

Comment: A commenter stated they do not understand FCIC's proposal in section 14. They understand what FCIC is trying to address but do not understand FCIC's proposed solution. The commenter stated this needs further clarification.

Response: FCIC proposed several changes to the provisions contained in section 14. Since the commenter did not specify which proposed change their comment applied to, FCIC cannot specifically respond to this comment. No change has been made in response to this comment.

Comment: A commenter stated it appears the burden of proof is greatly increasing for producers through several of the proposed provisions. While they completely endorse efforts to crack down on fraud and abuse, they also caution against overly strenuous and burdensome rules that may prove difficult for producers to remember and meet in a timely fashion. The commenter stated producers are extremely busy, and to expect them to remember numerous crop insurance rules, dates, time deadlines, and other regulations, or risk loss of coverage seems rather harsh. The commenter fears many producers may not be made aware of the numerous reporting deadlines being proposed such as reporting added land within 10 days, notice of damage within 72 hours, final planting dates, the date and amount of acreage planted per day during the late planting period, notice of expected revenue loss within 45 days after the harvest price is released, and for revenue coverage, the deadline to submit a claim for indemnity within 60 days after the latest date the harvest price is released. The commenter stated it will be imperative for producers to work with knowledgeable agents who can help them remember all of the reporting requirements and deadlines. However, for agents to be successful they must work with a large number of producers, which makes it difficult for them to have firsthand knowledge of all of the variables that must be reported.

Response: There have always been numerous dates that producers and agents must be aware of because they affect insurance coverage. However, these dates are necessary to properly administer the crop insurance policy. Without deadlines related to the submission of notices of loss and claims, it would be extremely difficult to correctly determine the cause and amount of loss. Further, while deadlines from the existing revenue products have been incorporated into this rule, they have been clarified to make them more workable and consistent with current deadlines in the Basic Provisions. However, as stated more fully below, some of the proposed provisions may have been impractical and have been revised in this final rule.

Comment: Many comments were received regarding the provision proposed in section 14(b) that requires notice of loss to be given the earlier of 72 hours of discovery of damage or within 72 hours after the end of the insurance period, regardless of whether the producer has harvested the crop. A few commenters stated that a 72-hour time period to report the discovery of damage or a potential loss is insufficient. They stated there are instances in which damage or loss may occur, but, because of the type of damage or loss, it may take more than 72 hours for the damage or loss to be apparent to the insured. Similarly, there may be instances where the insured is physically unable to report the damage or loss within 72 hours of discovery. For example, it would have been impossible for some of the producers in Louisiana to have reported losses during the recent hurricane disaster, since there was no electricity or phone service available for quite some time following the disaster. The commenters stated that by shortening the time period, it is likely a number of producers will be caught unaware of whether they sustained a loss by the notice of loss deadline. The commenters urged FCIC to retain the current 15 day loss notification deadline. A few commenters stated the tighter time-frame is too short. They recommended the current provision be retained. Another commenter stated the proposed change places an undue burden on the producer. The commenter stated the fact that whether a claim is reported within 72 hours or 15 days after the end of the insurance period does not hamper the ability to properly evaluate the damage. The commenter stated they see nothing wrong with leaving the 15 day requirement as it is today. A commenter stated the proposed change will cause a large number of unnecessary losses to be submitted just to ensure the policyholder has complied with the terms of the policy. The commenter stated this could result in less than reasonable or realistic loss ratios being submitted to FCIC and additional expense incurred by insurance providers with setting up losses and inspecting released claims. A commenter stated the 72-hour period will cause a significant increase in the number of delayed claim notices. The commenter stated although the selection of a deadline for submitting a notice of damage or potential loss is arbitrary, the 72-hour time period is too short to be reasonable or justified. A few commenters stated the proposed change will increase the workload on insurance providers and producers by making producers report all potential loss events. The commenters stated it appears FCIC is requiring notice of every potential loss event, including those that may not by themselves trigger an indemnity. The commenters stated producers should only be required to provide notice when they believe with reasonable certainty that a loss for which an indemnity will likely be paid has been sustained. The commenters stated implementation of this proposed change will create a considerable and unnecessary additional workload on the system. The commenters stated currently, producers may provide notice within 15 days after the insurance period ends and the common practice is for producers to provide a single notice of loss, especially when a series of events eventually trigger an indemnity. They recommend FCIC strike the proposed change and retain the current notice time-frame. The commenters stated the current rules are understood by both producers and insurance providers and will still allow for the orderly submission of required notices of loss. A commenter recommended there be an exception like that provided for producers who are unable to submit requests for written agreements by the sales closing date. A commenter stated reducing the number of days after the insurance period from 15 days to 72 hours (three days) is unnecessary and unfair to a producer, particularly for a producer with revenue coverage. The commenter stated it takes numerous calculations to determine if there is a loss and this proposed change will cause more producers to turn in unnecessary claims. A few commenters stated the notice provisions set forth in section 14 apply in the event of "damage or a potential loss of production or revenue." The commenters pointed out the Basic Provisions define "damage" but "potential loss," whether to production or revenue, is not defined. The commenters asked how a producer is to judge when there is a potential loss. They noted that in disputes involving notice or lack thereof, producers often allege they did not anticipate or did not know that loss would occur. The commenters asked how an insurance provider is to assess whether a producer knew or should have known of a potential loss when assessing whether a producer provided timely notice. The commenter recommended FCIC define the term "potential loss" or otherwise provide objective criteria for determining whether there was a "potential loss of production or revenue." A commenter stated the proposed change will require a producer to give notice within 72 hours after the end of the insurance period regardless of whether the producer knows if there has been damage to the crop. The commenter added that the proposed 72-hour requirement could cause a large number of unnecessary notices to be submitted just to ensure the producer has complied with policy provisions, which

could result in increased expenses incurred by insurance providers in inspecting and investigating these "precautionary" claims. A commenter believed the proposed change provides insufficient time in which to provide notice of loss, thereby creating considerable and unnecessary additional workload, and actually exacerbates the problem FCIC seeks to remedy. The commenter stated FCIC notes the change is "needed because there may be circumstances where the producer is unable to harvest the crop before the end of the insurance period or even 15 days after. In such case, the producer may have no knowledge whether a loss has occurred. Therefore, it would have been impossible for the producer to timely give notice." The commenter added that FCIC then goes on to state, "Now producers will have to give notice not later than 72 hours after the end of the insurance period regardless of whether the producer knows there is damage." The commenter stated by shortening the notice of loss deadline from 15 days after the insurance period ends to the earlier of within 72 hours of discovery of damage or 72 hours after the end of the insurance period, it is highly probable, if not absolutely certain, that the number of producers caught unaware of whether they sustained a loss by the notice of loss deadline will only increase and become an even greater problem for producers than it already is. The commenter stated the only solution will be for producers to report losses whenever in doubt, regardless of whether they know for certain that a loss has actually been sustained, thus imposing considerable new and unnecessary workload on the system. The commenter added this problem is further exacerbated by the requirement that the reporting of any loss, regardless of whether it is likely to trigger an indemnity or not, appears to be required within 72 hours of discovery. The commenter stated currently, producers may provide notice within 15 days after the insurance period ends and the common practice is for producers of a crop to provide notice of loss all at once. The commenter believes the current timeline maximizes the chance the producer will know by the notice of loss deadline whether or not a loss was sustained, provides for the orderly submission of notices of loss, and minimizes unnecessary additional workload. The commenter urged FCIC to maintain the current notice of loss deadline and requirements. A commenter opposed the proposed change because they do not believe it is practical. The commenter stated the 72-hour deadline would be virtually impossible for: (a) Producers who sell production because often they do not know whether their production is less than the insurance guarantee until they receive the settlement sheet from the elevator or processor and this commonly is not received within 72 hours; (b) producers to make insured loss determinations by insurance unit in the midst of harvesting, when their primary goal is to keep the harvest progressing as rapidly as possible to minimize further crop losses; (c) landlords who rely on their tenants to grow their crops because usually they do not have the results of the harvest within 72 hours; (d) producers who store their grain on the farm to make determinations of the amount of production on a unit basis within 72 hours of harvesting; and (e) producers who obtain the services of a third party to determine the amount of their production.

Response: FCIC proposed to revise the notice provisions contained in section 14(b) to require producers to give notice of damage within 72 hours of their initial discovery of damage or a potential loss of production, or to provide notice within 72 hours after the end of the insurance period. The commenters are correct that the proposed requirement to provide notice within 72 hours after the end of the insurance period may not provide adequate time for producers to determine if there is a loss. Therefore, FCIC has revised the provisions to require notice within 72 hours of the producer's initial discovery of damage (but not later than 15 days after the end of the insurance period, even if the insured has not yet harvested the crop). However, the later the notice is provided after the insured cause of loss, the more difficult it will be for the producer to prove that the damage was caused by such cause of loss. FCIC has also retained the proposed provisions that require producers, who do not initially discover damage by the 15th day after the end of the insurance period, to provide notice no later than 15 days after the end of the insurance period even if the crop is not harvested. This will eliminate any confusion regarding whether a delay in harvest will allow a delay in the notice. Producers are now required to report any damage even if harvest is not complete. This will allow insurance providers to timely adjust the loss and verify that the insured cause of loss occurred during the insurance period. Provisions contained in proposed section 14(b)(4)(i) allow the insurance provider to pay the claim when the notice is late, provided the insurance provider determines they still have the ability to accurately verify the amount and cause of the loss. Therefore, an exception, similar to the exception that is allowed for written agreements when extenuating circumstances prevent a producer from timely applying for the written agreement, is not necessary. Additionally, in cases of widespread losses, where an insured cause of loss such as a hurricane or flood prevented timely notice, insurance providers should be aware of the cause of loss and be able to make the claim determinations. These revisions should eliminate most of the problems raised by commenters regarding precautionary notices of loss and the burden they would impose on insurance providers. Further, the policy has always required that notice of loss be given within 72 hours of the discovery of damage. This requirement has not changed. However, as revised, if a producer does not know there is a loss until they harvest the crop, they can still give notice of damage after harvest provided notice is given within 15 days after the end of the insurance period. In all cases, the producer must be able to show the loss occurred due to an insured peril. The commenters are correct that insurance providers cannot determine whether a producer may believe he or she has a potential loss. Therefore, FCIC has removed the term "potential" from the provisions. Producers must give notice of the discovery of damage or loss of production or loss of revenue, as applicable.

Comment: A commenter recommended proposed sections 14(b)(1)(i) and 14(b)(1)(ii) (except section 14(b)(1)(ii)(B)) be combined since it is the same wording. The commenter also recommended the language in section 14(b)(1) be revised to: (1) Remove the phrase "For crops for which revenue protection is not available and crops for which revenue protection is available but not selected" so the provision will apply to all crops; and (2) Add at the end "For crops which revenue protection is elected and notices are not required under section 14(b)(1)(ii)(A), not later than 45 days after the latest date the harvest price is released for any crop in the unit where there is a potential revenue loss."

Response: FCIC has revised the provisions to eliminate redundancies and improve readability.

Comment: A commenter stated section 14(b)(1)(ii) has too many subsections and is confusing. More specifically, the term "within" in

subsections (A)(1) and (2) should be deleted. In addition, subsection (B), which is an exception to subsection (A), should be designated as subsection (1)(iii). The commenter recommended reorganizing this provision as follows: "(ii) For crops for which revenue protection is elected, the earlier of: (A) 72 hours of your initial discovery of damage or a potential loss of production; or (B) 72 hours after the end of the insurance period * * * (iii) If notices are not required under section 14(b)(1)(ii), not later than 45 days after the latest date the harvest price is released * * *".

Response: As stated above, FCIC has revised the provisions by removing the redundancies and combining the provisions where appropriate.

Comment: A commenter recommended FCIC clarify that proposed section 14(b)(2)(ii) pertains to revenue only losses and does not include losses that contain both production and revenue loss.

Response: FCIC is unsure of what provision the commenter is referencing. Proposed provisions contained in section 14(b)(2)(ii) pertain to notices of loss for prevented planting, which apply to prevented planting losses under all policies with prevented planting coverage, not just policies with revenue protection. No change has been made.

Comment: A commenter stated proposed section 14(b)(4) (redesignated section 14(b)(5)) provides penalties for a producer's failure to comply with certain notice requirements and, in doing so, differentiates between (i) the failure to report production losses or prevented planting acreage and (ii) revenue losses. With respect to the latter, subsection (b)(4) (redesignated subsection (b)(5)) expressly provides that the producer "will still be required to pay all premiums owed." However, there is no such statement with respect to the former. The commenter recommended that (i) and (ii) be consistent in their treatment of premium.

Response: The provision contained in proposed section 14(b)(4)(ii) requires the producer to give timely notice of a revenue loss. FCIC has removed the provision in the final rule and elected to treat failure to give notice of a revenue loss in the same manner as failure to give notice for a production loss. FCIC has revised the provisions contained in proposed section 14(b)(4) (redesignated section 14(b)(5)) to differentiate between notice of losses for claims purposes and notice of loss for prevented planting purposes. With respect to prevented planting, no premium will be owed or prevented planting payment made if the insurance provider cannot verify the crop was prevented from being planted because coverage is considered not to have attached to the acreage. With respect to an indemnity, no indemnity will be paid if the insurance provider cannot accurately adjust the loss, but the producer would still be required to pay the premium, because coverage would have attached and would have been provided during the insurance period until the loss occurred. FCIC has also revised the provision to refer to the ability of the insurance provider to accurately adjust the loss. As proposed, there could be a potential conflict with section 14(e), which places the burden on the producer to establish the loss, that the loss occurred during the insurance period, and that it was due to an insurable cause of loss.

Comment: A commenter stated proposed section 14(b)(4)(i) would be strengthened by adding "solely" between the words "considered" and "due." This change should foreclose any proration or allocation of fault argument made by a policyholder.

Response: FCIC agrees with the commenter and has revised the provisions in redesignated section 14(b)(5) accordingly.

Comment: A commenter recommended additional language be added to section 14(c)(1) that expands the policy requirement for leaving representative samples. They stated the current language only addresses cases where a notice of loss was provided within 15 days of harvest or after harvest had begun. The commenter recommended the following revision: (c)(1) If representative samples are required by the Crop Provisions, leave representative samples intact of the unharvested crop, (1) if you report damage less than 15 days before the time you begin harvest, (2) during harvest of the damaged unit or (3) as required by us throughout the growing season.

Response: When losses occur early in the season, it is appropriate for the insurance provider to require that representative samples be left intact. FCIC has revised the provisions to require the insured to also leave representative samples when required by the insurance provider.

Comment: A commenter stated section 14(c)(1) should be revised to provide: "* * * less than 15 days before the time you "will" begin harvest * * *"

Response: FCIC agrees with the commenter and has revised the provision accordingly. FCIC has also revised section 14(c)(2) to specify harvest on the remainder of the unit for clarification.

Comment: A commenter stated section 14(d)(3) should read "in accordance with the Settlement of Claim provisions of the applicable Crop Provisions" to tie it directly to the nomenclature used in the Crop Provisions.

Response: FCIC agrees with the commenter and has revised the provision accordingly.

Comment: A commenter recommended section 14(e)(1) be clarified so it is clear this information and the deadlines referenced in section 14(e)(3) also apply to information for replant payments.

Response: The commenter is correct that the deadlines were also intended to apply to replant payments and prevented planting payments. FCIC has revised the provisions in sections 14(e)(1), 14(e)(3)(i) and (ii) by removing the phrase "for indemnity" so the provisions will include all claims, not just those for indemnities.

Comment: A commenter stated section 14(e)(1) would be enhanced by adding at the end of the proposed text this additional language: "and if we have time to make a loss determination under applicable FCIC procedures." The commenter stated this addition simply reinforces the concept that late claims should not be adjusted if the insurance provider lacks sufficient time to follow approved procedures.

Response: Insurance providers have a responsibility to ensure that they have the personnel available to adjust losses in a timely manner. When there are widespread losses where it may be difficult to timely complete all the claims, FCIC has generally taken measures to relax the loss adjustment procedures as long as such action does not adversely affect program integrity. Therefore, the procedures should not be an impediment to the completion of claims. Extensions should be granted if the information needed to determine the amount of the loss is not available by the deadline to submit the claim (for example, the production records or quality test results are not yet available). Subsequent to the proposed rule, FCIC published a final rule on September 3, 2009, to implement the provisions in the 2008 Farm Bill that allow claims to be delayed in cases when producers have farm-stored grain production, FCIC has reformatted section 14(e)(1) to include these provisions.

Comment: A commenter suggested adding language in section 14(e)(2) to create a clear distinction between a "notice of loss" and a "claim for indemnity." The commenter

recommended the following language: "(e)(2) Failure to timely submit a claim and provide the required information necessary to determine the amount of indemnity, as stated in subpart 4 below, will result in no indemnity, prevented planting * * *" The commenter also stated this additional language would also need to be included in section 14(e)(3)(i) & (ii).

Response: FCIC has revised the provisions in section 14(e)(2) to specify failure to timely submit a claim or provide the required information "necessary to determine the amount of the claim" will result in no indemnity, prevented planting payment or replant payment. There is no need to add this language to sections 14(e)(3)(i) and (ii) because these sections simply provide the date by which the information referenced in section 14(e)(2) must be submitted. Further, section 14(e)(4) contains requirements beyond the information needed to be submitted with the claim. Therefore, it would not be appropriate to include such references in section 14(e)(2).

Comment: A commenter stated section 14(e)(3)(i) applies to "crops covered by yield protection and for which revenue is not available," and section 14(e)(3)(ii) to "crops covered by revenue protection." The commenter stated FCIC has omitted crops covered by yield protection and for which revenue coverage is available (*i.e.,* the insured selects yield protection though revenue protection is available). The commenter stated it is likely FCIC intended this third category to be addressed by subsection (i); however, FCIC's wording is imprecise and confusing. The commenter recommended FCIC amend subsection (i) to state: "crops covered by yield protection" because whether or not revenue coverage is available but not selected or simply not available is immaterial once yield protection attaches to the crop.

Response: As stated in previous comments, FCIC has divided section 3 of the Basic Provisions into yield protection, revenue protection and all other plans of insurance (*e.g.,* APH and dollar amount of insurance coverage). For the purpose of section 14(e)(3), the only distinction needed is between revenue protection and all other plans of insurance and FCIC has revised the provisions accordingly.

Comment: A commenter recommended sections 14(e)(3)(i) and (ii) need to be clarified so if revenue coverage is selected, and the loss is due to price drop only, the policyholder has 45 days, not 60, after the price announcement to file a loss. However, if a loss is due to both a production and revenue loss, the claim needs to be filed within 72 hours after the end of the insurance period.

Response: The commenter has confused the filing of the notice of loss with the filing of the claim. Section 14(b) contains the deadlines for filing a notice of loss. Section 14(e) contains the deadlines for filing a claim. If FCIC were to adopt the commenter's suggestion of a 45 day deadline, the deadline to submit the claim and the notice of loss would be the same day. As proposed, the producer will have an additional 15 days after the last date the notice of loss was filed to submit a claim. No change has been made.

Comment: A commenter stated the second prong of the notice provisions in section 14(e)(3)(ii) is confusing and amenable to different interpretations. For example, the reference to "the latest day" may cause confusion with respect to determining when the insurance period ends under section 11(b).

Response: The commenter is correct that the proposed language could cause confusion. FCIC has removed the reference to latest date and instead revised the provisions to refer to the date the insurance period ends for all acreage in the unit. When there is acreage in the unit where the insurance period ended on different dates, it is the last date the insurance period ends on the unit. For example, if a unit has corn acreage that was put to another use on July 15 and corn acreage where harvest was completed on September 30, the claim must be submitted not later than 60 days after September 30. This should make it clear that the 60 days starts running on the actual date the insurance period ended in the unit, not just the calendar date stated in the Crop Provisions. For revenue protection, FCIC has revised the provisions to make it clear that the 60 days starts to run on the later of the last date the harvest price is released for the crops in the unit or the date the insurance period ends for all acreage in the unit.

Comment: A commenter recommended changing the wording in section 14(e)(3)(ii) as follows: With regard to declaring the amount of the producer's loss by the later of 60 days after the latest date the harvest price is released for any crop or 60 days after the end of the insurance period for any unit of the crop in the county.

Response: Claims must be submitted by unit. Therefore, it is appropriate to establish the deadlines for the filing of the claim by unit. Further, the suggested change does not address the situation for units where there may be acreage with different ends of the insurance periods. As stated above, FCIC has revised the provision to clarify the 60 days starts to run on the date the insurance period ends for the unit. No change has been made in response to this comment.

Comment: A commenter recommended adding the following phrase before the parenthetical in section 14(e)(4)(i)(B)(*1*): "and that second crop acreage must have produced above the per acre guarantee in order for the insured to receive the rest of the indemnity on the first crop acreage."

Response: It is not appropriate to add the recommended language. There could be cases where there was a production loss but ultimately not a payable indemnity on the unit or cases where the second crop acreage did not contribute to any indemnity due for the unit (*e.g.,* a producer with revenue protection suffered a small production loss on the second crop acreage; however, after the revenue price was announced it was determined there was no payable indemnity for the unit or the second crop acreage did not contribute to any payable indemnity on the unit). Further, section 14(e)(4) involves the records that must be maintained to be eligible for an indemnity. Section 15 specifies how payments will be made on first and second crop acreage. Therefore, it could potentially be confusing to add the language in section 14. Additionally, provisions previously contained in this section were omitted in the proposed rule. These provisions allowed production to be prorated when separate records were not maintained for acreage subject to an indemnity reduction. Removal of these provisions was not addressed in the background section of the preamble of the proposed rule. Therefore, the public was not notified of the change and did not have an adequate opportunity to comment. These provisions have been added in section 14(e)(4)(i)(B)(*1*) of this final rule. In addition to the public not having an opportunity to comment, FCIC has determined that removing this provision would have a detrimental effect on producers and the crop insurance program. Retaining the provisions is appropriate and does not put the program in any risk of adverse selection or moral hazard.

Comment: A commenter recommended making the same deadline date for submitting claims in section 14(e)(3), regardless of whether the producer elected revenue or yield protection. The commenter recommended requiring the producer to submit a claim for indemnity not later than 60 days after the calendar date

contained in the Crop Provisions for the end of insurance period.

Response: For producers who elect revenue protection, the revenue portion of a loss cannot be determined until after the harvest price is announced. As stated above, FCIC has revised the provisions to make it clear that the actual date the insurance period ends for all acreage in the unit starts the 60 day deadline. It is possible that the end of the insurance period may be more than 60 days before the harvest price is announced. For example, the crop fails and the acreage is put to another use on July 1. The harvest price will be announced more than 60 days later. Therefore, producers must be given 60 days after the date the harvest price is announced to submit their claim. No change has been made.

Comment: A commenter stated proposed section 14(e)(4)(iii)(C) contains the language "* * * directly caused by * * *" one or more of the insured causes of loss. As they noted above in section 12, the "directly caused by" language no longer appears in the proposed language.

Response: Since FCIC removed the requirement in section 12 that the loss be "directly" caused by an insured cause of loss, FCIC has also removed the reference to "directly" in section 14(e)(4)(iii)(C).

Comment: A commenter stated sections 14(e)(4) and (5) would read better, and be clearer, if the references to the insured's "burden" were revised. They suggest changing (e)(4) from "* * * the burden is on you * * *" to "it is your responsibility" or "you must" [since this is under "Your Duties"], and changing (e)(5) from "meet any burden on you" to "meet any obligation" established in the relevant provision. The commenter stated these changes would eliminate any argument over the meaning of "burden." They believe the suggested language is linguistically superior. The commenter added they agree with the changes proposed in section 14 and, in support of changes proposed to be made, they note that they conform to existing case law involving the Federal Crop Insurance program. For instance, the new language in subsection (e)(5) is directly supported by controlling law. *See, e.g., FCIC* v. *Merrill,* 332 U.S. 380, 385 (1947), *and Scaife* v. *FCIC,* 167 F.2d 152, 154 (8th Cir. 1948).

Response: FCIC agrees the proposed provisions should be revised. FCIC has revised the provisions to specify producers must comply with the requirements contained in section 14(e)(4). FCIC has also revised section 14(e)(5) to specify failure of the producer to meet any of his or her duties specified in section 14(e)(4) will result in denial of the claim and premium is still owed except for prevented planting claims. This change is to be consistent with other changes made that no longer requires producers to pay premium when prevented planting coverage is denied.

Section 15 Production Included in Determining an Indemnity and Payment Reductions

Comment: A commenter suggested changing the language in section 15(b) to provide that either harvested or appraised production, as determined by the insurance provider, will be used to determine the production to be counted. This will strengthen the insurance providers' ability to use appraisals in cases where harvested production records that are reported are inconsistent with pre-harvest appraisals.

Response: There are issues with respect to possible differences between appraised and harvested production. However, allowing the insurance provider to elect which to use could result in disparate treatment. Rather than the recommended change, FCIC has inserted the word "verifiable" before the word "records." This requires the records to be verifiable through independent sources. If the records cannot be verified, they should not be accepted. However, if the records are verifiable records, they are presumed to be more accurate than the appraisal. Further, if there is a significant difference, the producer will have to show that the loss of production was due to an insurable cause of loss.

Comment: A commenter stated the references in unrevised section 15(b)(3)(i) & (ii) to "* * * the end of the insurance period * * *" conflict with the procedures in the Loss Adjustment Manual, which refer to "* * * the calendar date for the end of the insurance period * * *" Either the policy or the procedures need to be revised.

Response: The policy provisions are correct and the procedures have been revised to be consistent with the policy. Once the insurance period ends, regardless of the event that ends the insurance period, appraised production should be used to adjust the loss unless the producer can prove there was no subsequent damage to the crop.

Section 17 Prevented Planting

Comment: Several comments were received in support of the changes proposed in section 17 that clarify and reduce abuse of the prevented planting provisions, and provide additional flexibility for producers. A commenter stated they finally could commend FCIC for proposing changes that improve the prevented planting provisions through clarification of terms and conditions as well as some additional flexibility for producers. A few commenters supported the changes that provide clarification and reduce abuse of the prevented planting provisions. A commenter stated they view the incorporation of several modifications and clarifications, which came directly from the prevented planting workgroup, as positive. Another commenter stated while prevented planting is consistently one of the most vexing issues faced in the Federal crop insurance program by both insurance providers and producers alike, they believe the proposed revisions clarify a number of prevented planting issues. A commenter stated they support measures in the proposed rule to reduce abuse of the prevented planting provisions.

Response: FCIC appreciates the support for its efforts to clarify provisions, reduce program vulnerability, and also provide additional flexibility for producers.

Comment: A commenter thought the prevented planting and late planting programs were working fine.

Response: While FCIC agrees many of the current prevented planting provisions are sufficient, it also recognizes certain provisions needed revision based on questions and issues that have arisen, as well as comments FCIC received recommending revisions to the prevented planting provisions. FCIC believes the proposed changes improve readability of the provisions, provide clarification and additional flexibility for producers, and also help prevent abuse of the prevented planting provisions.

Comment: A commenter stated the revised provisions in section 17 are burdensome and confusing. The commenter feels because such detail has been incorporated into this section, and subsections (d)–(f) in particular, the procedures cannot be understood. The commenter doubts any producer could be expected to understand the concepts set forth in section 17 and the conditions precedent to the receipt of a prevented planting payment.

Response: There have been issues in the past with prevented planting raised by producers and insurance providers. To adequately address these issues, additional detail is necessary. These details should allow greater understanding and more consistent application of the provisions. Without further details regarding the perceived problems with the provisions cited,

FCIC is unable to make any revisions in response to this comment.

Comment: A commenter stated the revision proposed in section 17(a)(1) to specify a prevented planting payment may be made only in connection with insurable acreage seems to be simply a codification of common sense. There have been questions raised in the past, primarily in legal actions, with respect to whether the provisions concerning insurable acreage applied to prevented planting. The commenter stated the proposed revision should be retained in the final rule.

Response: FCIC has retained the proposed revision in the final rule.

Comment: Several commenters opposed the changes proposed in section 17(b)(4) that specify prevented planting coverage cannot be increased if any cause of loss has occurred prior to the time the producer requests the increased prevented planting coverage level. A commenter stated that currently, prevented planting coverage cannot be increased if there has been a cause of loss that could or will prevent planting. FCIC states the change is needed because it may be impossible to make such determinations at the time the producer is seeking to increase coverage because the insurance provider cannot predict whether the cause of loss really would prevent planting when other intervening events could change the outcome. While the commenter greatly appreciates FCIC working to resolve this legitimate concern, they fear the change does not alleviate the problem because it still may not be known by the insurance provider that a cause of loss has occurred at the time the producer seeks to increase prevented planting coverage. In fact, it may not be known until such time that the producer seeks a prevented planting payment after having already increased coverage under the new rule, at which time the increased coverage has to be denied after the fact. The commenter believes a more straightforward and workable solution is to disallow increased prevented planting coverage when it is known a peril will prevent planting. The commenter urged FCIC to include this modification in the final rule. Another commenter believed the proposed provision is overly broad because the insured could not increase prevented planting coverage if any cause of loss, however slight (such as an isolated incidence of hail), occurs during the prevented planting insurance period. The commenter suggested one solution to this difficulty is to eliminate the increased levels of prevented planting coverage. The commenter stated that likewise, the provisions contained in the Crop Provisions that allow policyholders with additional coverage to increase the prevented planting coverage above the prevented planting default level should be eliminated. The commenter stated producers already have the ability to increase or decrease coverage through their base policy level of protection (*e.g.,* CAT or level of additional coverage). A commenter asked FCIC to consider removing the additional levels of prevented planting coverage because it would eliminate the concern of producers increasing levels when losses have occurred and remove the burden for insurance providers to administer the requests for increased levels. A commenter recommended eliminating section 17(b) entirely because the commenter believes the base coverage level for prevented planting provides adequate levels of prevented planting coverage. The commenter stated these additional levels of prevented planting coverage are not needed and are difficult to administer. A commenter stated it will still be impossible for the insurance provider to know whether the cause of loss has occurred during the prevented planting insurance period. The commenter proposed the buy-up levels be eliminated or increase prevented planting coverage by 5 percent for each crop.

Response: There is an issue with determining whether a cause of loss that occurs before the coverage is increased will cause the acreage to be prevented from being planted. At the time the coverage is increased, it may be impossible to know whether the acreage will actually be prevented from being planted several months later since other intervening events could change the outcome. While FCIC agrees an isolated hail storm may result in an insurable cause of loss to a planted crop, it is not likely an isolated hail storm would be an event that prevents producers from planting. Therefore, FCIC has revised the proposed provisions to clarify an increase in the prevented planting coverage level will not be allowed if a cause of loss that "could" prevent planting has occurred prior to the time the producer requests the increased prevented planting coverage level, regardless of whether it is known if the cause of loss "will" actually prevent planting. This will only require examination of the type of cause of loss and if it is a type that could prevent planting, then, producers cannot increase their coverage. It would be too difficult to administer if insurance providers are required to look at the timing of occurrences or whether the cause of loss caused or contributed to the prevented planting. FCIC cannot incorporate the commenters' recommendations that the additional levels of prevented planting coverage be removed in the final rule since the recommended change was not proposed, the recommended change is substantive in nature, and the public was not provided an opportunity to comment on the recommended change.

Comment: A commenter supported the provisions proposed in section 17(d) that allow prevented planting coverage for some producers who do not plant due to drought conditions, even though other producers in the area do plant. The commenter hopes the paper work for those who choose to take prevented planting in that situation will decrease from what was required this year. The commenter added because of the paper work requirement, some producers said they should have just gone ahead and planted even though doing so was destined to result in crop failure (in this case, planting would result in higher costs to the government than prevented planting).

Response: The proposed provisions specify producers who do not plant in drought conditions when other producers plant in anticipation of receiving adequate precipitation, may be eligible for prevented planting coverage. However, the fact that other producers may be planting does not change the standards applicable to be eligible for prevented planting. The current requirement is that producers must provide documentation supporting that on the final planting date (or within the late planting period if the insured elects to try to plant within the late planting period) for non-irrigated acreage, there was insufficient soil moisture for germination of seed or progress toward crop maturity due to a prolonged period of dry weather, or for irrigated acreage, there was not a reasonable expectation of having adequate water to carry out an irrigated practice. Further, even if producers elect to plant the crop in drought conditions it does not mean that they will receive an indemnity. The issue is whether such planting meets the requirements of section 8(b)(1). No change has been made.

Comment: A commenter recommended, with respect to non-irrigated practices, that FCIC amend section 17(d) to require that, prior to the final planting date, an insured obtain the opinion of an "agricultural expert" recommending that, because of drought, the insured cannot or should not plant. The commenter stated under the current policy and procedures, an insurance provider is forced to gather information

regarding moisture, seed germination and similar data well after the final planting date. This often is difficult and hinders the insurance provider's ability to adjust the prevented planting loss. Likewise, an insured's decision not to plant because of drought should be based on soil conditions during the planting or late planting period. However, insureds frequently justify their decision not to plant based on the failure of crops planted, as opposed to the specific insured's individual situation. The commenter stated FCIC must revise the policy to address the problems associated with prevented planting claims due to drought.

Response: As stated above, provisions contained in section 17(d) require documentation of the drought conditions that prevented planting. FCIC has revised the provision to make it clear that it is the producer who is required to provide the applicable documentation consistent with the requirements of section 14(e)(2), which specifies it is the producers responsibility to establish that an insured cause of loss occurred during the insurance period. If the producer cannot meet this responsibility, no prevented planting payment should be made.

Comment: A commenter stated the addition of "* * * failure or breakdown of irrigation equipment or facilities * * *" in proposed section 17(d) could allow the insured to delay repairs when such an event occurred well in advance of the final planting date. The commenter stated this may be addressed in section 12(d)(1), which requires "* * * all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time * * *" The commenter stated there is a general reference to 12(d) in section 17(d)(1)(ii). However, the commenter does not believe this is entirely clear in section 17(d).

Response: The same causes of loss apply to both prevented planting and planted acreage. Therefore, to be eligible for a prevented planting payment due to failure of the irrigation equipment or facilities, the producer must make all reasonable efforts to restore the equipment or facilities within a reasonable amount of time in accordance with section 12(d). To make this clearer, FCIC has revised the provisions to separate failure of the irrigation equipment or facilities from the other causes and make section 12(d) expressly applicable to failure of the irrigation equipment or facilities. FCIC has also clarified the provisions in section 17(d). This should avoid any confusion.

Comment: A commenter stated they do not feel failure or breakdown of irrigation equipment or facilities should be added as a reason for qualifying for a prevented planting payment in section 17(d)(1).

Response: Failure or breakdown of the irrigation equipment or facilities is only a covered cause of loss if such failure or breakdown was caused by an insured cause of loss (for example, a tornado destroyed a producer's irrigation equipment). Further, FCIC is requiring that all reasonable efforts be made to restore the equipment or facilities. Therefore, program integrity should not be adversely affected by providing coverage for the results of a natural disaster. No change has been made as a result of this comment.

Comment: A commenter stated the requirement in the last sentence of proposed section 17(d)(2) ["* * * if it is possible for you to plant on or prior to the final planting date * * *"] needs to apply to producers who are prevented from planting during the late planting period as well.

Response: Producers are not required to plant during the late planting period. Therefore, producers cannot be denied a prevented planting payment for failure to plant during the late planting period. No change has been made.

Comment: A commenter stated their interpretation of prevented planting is that if a producer elects not to plant due to excessive moisture and others in the area plant, the producer will not be eligible for a prevented planting payment. The commenter stated some areas have very diverse soil types within the same field, there are upland acres and bottomland acres on the same farm serial number, some fields and areas do not drain as well as others, rainfall across an area or county can vary significantly, and conditions may vary so much across a county, it could be valid for a producer to not plant in one end of a county while another producer in the other end of the county plants. The commenter gave an example of a producer planting corn for silage very late since the producer needed the fodder for the cattle and another producer choosing not to plant corn for grain during the same time-frame since the producer missed the optimum window needed to produce corn for grain. The commenter suggested the same approach be taken for excessive precipitation as FCIC is proposing for drought. Producers should not be penalized because they elect not to take the risk. The commenter questioned what the definitions of area and similar conditions are.

Response: The definition of "prevented planting" requires the comparison of acreage with similar characteristics. Therefore, if two producers have similar acreage and one is able to plant and the other does not, there must be a determination of whether the requirements in section 8(b)(1) have been met for the acreage that was planted. If it is determined that the conditions under which the crop is planted are not generally recognized in the area, then the crop is not insurable and the producer that did not plant the crop would be eligible for a prevented planting payment. Further, it is possible that there may be situations where the planted crop is insurable under section 8(b)(1) and the producer that elects not to plant the crop is still eligible for prevented planting. For example, in some cases there may be a prolonged drought and some producers are prevented from planting, yet agricultural experts may recognize it is appropriate to plant in dry conditions because if conditions were to change and normal rainfall is received, it will still allow the producer to make a crop. Under such an uncertain situation, the policy would not require the producer to plant and the producer may be eligible for a prevented planting payment. The producer must plant the insured crop, whenever it is possible to plant the crop, even if it is later than the date the optimum yield could be expected as long as it is before the final planting date. Drought and excessive precipitation cannot be treated the same because in a drought situation the seed will not germinate until adequate moisture is received and it is not uncommon for weeks to go by with no precipitation. In an excessive moisture situation there is a better chance of producing the insured crop. Section 1 defines "area" as "Land surrounding the insured acreage with geographic characteristics, topography, soil types and climatic conditions similar to the insured acreage." This definition should also be sufficient to explain "similar characteristics" of the acreage referred to in the definition of "prevented planting." No change has been made.

Comment: A commenter stated the phrases "insured acres reported" and "acreage for which payment is made based on another crop" in section 17(e)(1)(i)(A) conflict with one another.

Response: The commenter is correct. In addition, as indicated more fully below, FCIC has revised section 17(h) so that if a crop that was prevented from being planted no longer has eligible prevented planting acreage but the producer has eligible prevented planting acreage for another higher dollar crop,

the remaining eligible acreage can be used for prevented planting but the payment will be based on the crop that was prevented from being planted. Therefore, there is no longer a need for the phrase "acreage for which payment is made based on another crop."

Comment: Several comments were received regarding the provisions proposed in section 17(e)(1)(i)(C) that allow irrigated acres to be increased for prevented planting purposes if irrigation equipment is added to the farm or if irrigated acreage is added to a farming operation. A few commenters believe this provision should enhance the current prevented planting provisions. A commenter stated they agree with the proposed change. They believe it follows a common sense approach and it should be retained. Another commenter stated the language in section 17(e)(1)(i)(C) which states, "* * * or if you acquired additional land for the current crop year * * *" should be changed to " * * * or if you acquire * * *" to match the tense used in the first phrase "If you add * * *" [and in (i)(B)].

Response: FCIC has retained the change in the final rule. Additionally, FCIC has changed the word "acquired" to "acquire" in section 17(e)(1)(i)(C) as suggested.

Comment: A few commenters agreed with the change proposed in section 17(e)(1)(ii)(A)(*2*), which allows a producer who is farming for the first time in a county and who purchases land after the sales closing date to notify the insurance provider within ten days of the purchase to be eligible for prevented planting. The commenters stated this should enhance the current prevented planting provisions. Another commenter supported the proposed allowance of submissions of intended acreage reports on new ground after the sales closing date and urged FCIC to retain this provision in the final rule.

Response: FCIC has retained the proposed provisions in the final rule.

Comment: A commenter questioned if the references to "intended acreage report" in section 17(e)(1)(ii)(A)(*1*)–(*2*) & (B)–(D) should be revised to "intended prevented planting acreage report" to limit this to that situation or whether FCIC should add a definition of "intended acreage report" to clarify when and why it would be used.

Response: FCIC has added a definition of "intended acreage report" to avoid any possible confusion between the intended acreage report, which is intended to report acreage by crop the producer intends to plant solely for the purpose of determining prevented planting acreage eligibility, and the acreage report, which is the report of actual planted and prevented planted acreage by crop in accordance with section 6.

Comment: A commenter suggested that in section 17(f)(3), the word "is" at the beginning of the third phrase ["* * * or is required * * * "] should not be added, since it is not included in the first two phrases.

Response: The proposed change will not be retained in the final rule.

Comment: A commenter did not support the change proposed in section 17(f)(4) because they believe it will allow adverse selection by permitting the first producer to claim prevented planting on a fall crop and the second producer to claim prevented planting on a spring crop, when neither have to produce records regarding prevented planting payments. The commenter stated this circumvents the double cropping requirements. The commenter suggested that the following example from FCIC's Claims Advisory be included anywhere there is reference to double cropping history. After posting FAD–045 regarding double cropping history, questions remain as to what records of acreage and production the Federal crop insurance policy requires to prove a double cropping history. Either: (1) The producer must provide records of acreage and production that show that the producer successfully double cropped both crops; or (2) the producer must provide acreage and production records that show the specific acreage was successfully double cropped with both crops. In either case, records must be only from the acreage that was double cropped and cannot be combined with records from acreage that was not double cropped. For example, if a producer has never double cropped in the county but is renting acreage on which another producer double cropped wheat and soybeans on seven out of twenty fields in two of the last four years, to prove a history of double cropping wheat and soybeans the records of acreage and production for wheat and for soybeans must be provided from the seven fields and these are the only fields that qualify for double cropping. If a producer has their own records of double cropping, they must still provide separate records from the seven fields that were double cropped; however, the producer can use the number of acres eligible for the double cropping anywhere in their farming operation.

Response: The provisions in section 17(f)(4) do not allow producers to circumvent the double cropping requirements. Provisions proposed in section 17(f)(4)(i), (ii), and (iii) set forth the double cropping requirements that must be met before prevented planting payments can be made for both a fall crop and a spring crop on the same acreage in the same crop year. A question was previously raised regarding what acreage the double cropping exemption would apply to when the producer submits his or her own double cropping history records, versus when the producer is farming newly obtained ground and submits the double cropping history records of a previous producer for the newly added ground. FCIC addressed this issue in both Final Agency Determination (FAD) 045 and in an FCIC Claims Advisory. These clarifications regarding records and the applicability of the double cropping history should also be reflected in section 17(f)(4) and FCIC has revised the double cropping history provisions contained in sections 15(i) and 17(f)(4).

Comment: A commenter stated that section 17(f)(4)(ii) is very confusing and hard to follow. The commenter stated the parenthetical phrase ["* * * (the crop that was prevented from being planted following another crop that was planted if qualifying under section 17(f)(5)(i)(A))"] is included twice and most, or all, of it does not seem to be necessary since "second crop" is defined in section 1. The commenter noted the parenthetical phrases end with a reference to "* * * if qualifying under section 17(f)(5)(i)(A)" and section 17(f)(5)(i)(A) refers back to section 17(f)(4)(ii) to determine if the insured meets "* * * the double cropping requirements in section 17(f)(4)." Therefore, the commenter believes the reference in section 17(f)(4) appears to be unnecessary since it ultimately rebounds back onto itself. The commenter added eliminating the parenthetical phrases would at least make the sentence a little easier to read and understand: "You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the second crop that was prevented from being planted was planted, or show the applicable acreage was double cropped in at least two of the last four crop years in which the second crop that was prevented from being planted was grown on it; and." The commenter stated the provision still includes some repetition that could be minimized, and believes some rewording could eliminate the potential confusion of the phrase "* * * second crop that was prevented from being planted was planted * * *"

Response: FCIC has revised section 17(f)(4)(ii) for clarity. As revised, the provisions make it clear that if a prevented planting payment has already been paid on the acreage, the producer is not eligible for a prevented planting payment on the insured crop unless, with respect to the insured crop: (1) The producer can provide acceptable records showing that the producer has a double cropping history with the insured crop that was prevented from planting for at least two of the previous four crop years; or (2) the acreage has a double cropping history with the insured crop that was prevented from planting for at least two of the previous four crop years. FCIC has also added provisions specifying that the insured's double cropping history can apply to any acreage in the county but the history for another producer is only applicable to the acreage that was double cropped. This is consistent with FAD–045 and clarifies the acreage to which the records must apply. FCIC has made a conforming change in section 15(i) in order to ensure that the provisions are consistent.

Comment: A commenter stated the provisions proposed in section 17(f)(6) specify cover crops or volunteer crops that are in place longer than twelve months prior to the final planting date for the insured crop will be considered pasture or forage and will result in no prevented planting payment. The commenter believes this revision to the prevented planting provisions should help remedy the situation where a producer claims to be prevented from planting on the same piece of ground a number of consecutive years and it is clear he or she has no real intention of planting.

Response: FCIC has retained the proposed revision in the final rule.

Comment: A commenter suggested the provisions proposed in sections17(f)(6), (i) & (ii) be revised by moving "Cover or volunteer plants that are seeded, transplanted, or that volunteer" to the end of (6), with a colon at the end, instead of repeating it in both (i) & (ii), which would then begin: "(i) More than 12 months * * *" and "(ii) Less than 12 months * * *", making the difference easier to identify. The commenter added as rewritten, the phrase that cover/volunteer plants will or will not "* * * be considered pasture or other forage crop * * *" does not work. Therefore, the commenter suggested revising either to "* * * pasture or forage crop * * *" or "* * * pasture or another forage crop * * *"

Response: FCIC has revised the provisions in section 17(f)(6) accordingly.

Comment: A commenter recommended revising section 17(f)(9)(i) by deleting the phrase "* * * to plant and produce a crop with the expectation of at least producing the yield used to determine your production guarantee or amount of insurance" since this is a duplicate of the same phrase in (9). The commenter added that since this would leave only "Inputs include, but are not limited to, sufficient equipment and manpower necessary", this could perhaps be consolidated into (9), something like "* * * proof that you had the inputs (*i.e.,* sufficient equipment and manpower) available * * *"

Response: FCIC has revised the provisions in section 17(f)(9) accordingly.

Comment: A commenter stated the added language in sections 17(f)(9)(ii)(A) & (B) referring to "* * * a substantial change in the availability of inputs * * *" in (A) and "* * * insufficient inputs * * *" in (B) could lead to questions of what is considered substantial or insufficient.

Response: The commenter is correct that the word "substantial" can be removed thereby eliminating questions regarding its meaning. Section 17(f)(9)(ii) has been revised to clarify the provision is referring to changes in inputs that could impact the ability to plant the insured crop. However, the word "insufficient" cannot be removed because the intent of the provision is to deny prevented planting coverage when the producer cannot show that he or she had the ability to actually plant the crop but for the insured cause of loss. It is possible that a producer can have a quantity of an input, such as 1,000 pounds of seed, but it would take considerably more inputs to plant all the acreage using good farming practices. If there are not adequate resources to produce the crop, the acreage cannot be considered to have been prevented from planting. FCIC has clarified that when determining the sufficiency of inputs, the insurance provider must consider all the crop acreage to avoid paying prevented planting claims when the producer uses all available inputs on planted acreage and then claims prevented planting on the remaining crop acreage.

Comment: Several comments were received regarding the provisions proposed in section 17(h) regarding prevented planting payments that are made based on another crop. A commenter stated while there may be no perfect solutions to the problems encountered when a crop's eligible prevented planting database acres are exhausted, the commenter believes the proposal in section 17(h) is a vast improvement over the current provisions. Another commenter stated allowing eligible acres for another crop to be used to determine overall acreage on which prevented planting payments will be made relative to the actual crop prevented from being planted is a positive change that reflects the actual loss on the farm. The commenter observed that important safeguards are put in place in order to prevent any abuse and urged FCIC to retain the proposed change in the final rule. A few other commenters also supported the provisions proposed in section 17(h).

Response: FCIC has retained provisions that prevent a prevented planting payment based on a value higher than the crop prevented from being planted.

Comment: A commenter stated they do not fully understand the need for the calculation in section 17(h)(1)(i)(A)(*1*), which simply gets one back to the amount of the crop for which the prevented planting was reported.

Response: The factor used in proposed section 17(h)(1)(i)(A)(*1*) added an unnecessary complication. FCIC has removed the factor and revised the provision to specify that when the insured crop that is prevented from being planted has insufficient eligible prevented planting acreage and the crop with remaining eligible prevented planting acreage has a value that is higher than the insured crop, the value of the insured crop will be used to determine the prevented planting payment and the producer would report all the prevented planting acreage as the insured crop for the purpose of determining future prevented planting eligible acreage.

Comment: A commenter stated the price terminology is the only difference in the calculations in section 17(i)(1)(ii)(A) & (B) when revenue protection is, or is not, available. Therefore, the commenter proposes consolidating this into, "(ii) The amount determined by multiplying the production guarantee (per acre) for timely planted acreage of the insured crop (or type, if applicable) by your price election or projected price (whichever is applicable);"

Response: FCIC has revised the provisions accordingly.

Section 18 Written Agreements

Comment: A commenter stated they agree continuous written agreements should continue to be in effect.

Response: FCIC has retained the provisions in the final rule that allow continuous written agreements.

Comment: A commenter encouraged FCIC to leave any revisions to Written Agreements in the Written Agreement Handbook instead of within the policy.

Response: The policy, since it is published as a regulation, carries the force of law, which is applicable to all program participants. The Written Agreement Handbook is FCIC issued procedure, which does not provide provisions of insurance. It simply provides instructions and guidance to address provisions in the policy. Accordingly, changes or revisions to the policy cannot be accomplished by modifying the Written Agreement Handbook alone. No changes have been made in response to this comment.

Comment: A commenter stated it is unclear whether the parenthetical phrase "* * * (except for a written agreement in effect for more than one year) * * *" in section 18(c) applies only to "the guarantee," as currently written, or also to the "premium rate" or whether it is not needed since the following phrase could cover multi-year written agreements "* * * or information needed to determine the guarantee and premium rate * * *". This potential ambiguity should be resolved in the final rule. Presumably the phrase "* * * projected and harvest prices in accordance with the Commodity Exchange Price Provisions * * *" is intended to require that the written agreement will identify which board/exchange and other CEPP information will apply to the requested crop/county, but perhaps this could be revised for brevity and clarity so it does not suggest that the written agreement will specify a harvest price that would not have been released at that time. They suggested the following approach: "(c) If approved by FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, crop practice, type or variety; guarantee and premium rate (or information needed to determine them); and the amount of insurance or the applicable price information (price election or the information needed to determine the projected and harvest prices), as follows: "(1) If a price election is applicable, it will not exceed the price election contained in the actuarial documents for the county (or the county used to establish the other terms of the written agreement). "(2) If revenue protection is available (or made available by the written agreement), the written agreement will include the information needed to determine the projected price and/or harvest price (if revenue protection is not selected, the harvest price is not applicable). "(3) If the applicable price election or projected price cannot be provided, or is not appropriate for the crop, the written agreement will not be approved." (Combined current and proposed language to cover both kinds of prices.) Another commenter questioned if the same type of written agreement will be available for both yield protection and revenue protection in section 18(c)(3).

Response: The placement of the parenthetical statement could lead to a misinterpretation of the intent of the language and the provisions were revised and reformatted to provide greater clarity. The same type of written agreement will be available for both yield protection and revenue protection under section 18(c)(3). The provisions of section 18(c) are intended to specify the terms that must be contained in the written agreement. These include the prices or the mechanisms to calculate them. However, section 18(c)(3) makes it clear that the written agreement will only offer revenue coverage for the crop if it is already provided in the county or State. Section 18(c)(4) clarifies if revenue coverage is not provided in the State, the written agreement will only offer yield protection. These prices will be based on existing CEPP.

Comment: A commenter stated they believe section 18(d) reads better if the lead-in is divided into two sentences: "Each written agreement will only be valid for the number of crop years specified in the written agreement. A multi-year written agreement:". To follow properly from the lead-in in (d), part of (3) should be changed to read: "* * * then insurance coverage will be in accordance * * *" to "* * * will have insurance coverage in accordance * * *" Also, FCIC should change in (4) the spelling of "cancelled" to "canceled" to be consistent with how it is spelled elsewhere, such as in (d)(3), or change the others to match this, since either spelling may be acceptable, depending on the source.

Response: As stated above, FCIC has revised the provisions to make the spelling of "canceled" consistent throughout the policy. FCIC has not proposed any changes to section 18(d). Therefore, the other recommended changes are not adopted.

Comment: A few commenters stated the provisions in section 18(e) permit an insured to submit a request for a written agreement after the sales closing date if the insured physically was unable to submit said request. However, section 2, which governs the submission of applications, does not contain a similar safe harbor. A commenter stated, for example, a tornado struck Springfield, IL just two days before the March 15, 2006, sales closing date disrupting power and telephones. For what reason is the physical inability to submit a request a legitimate excuse for a written agreement but not for an application? A commenter stated the late filed application procedure is completely deleted from the 2006 CIH apparently because there was no authorization in the policy. A commenter recognized FCIC did not propose changes to section 18(e)(1), though changes are proposed for other provisions of section 18. However, the commenter did not understand the seemingly arbitrary distinction, described above, and recommended FCIC remedy this inconsistency. A commenter stated written agreement requests may be made after the sales closing date with sufficient justification such as hospitalization.

Response: As stated above, to be eligible for insurance, applications must be submitted by the sales closing date, which are statutorily set for spring planted crops and cannot be revised. This precludes accepting late filed applications for such crops. Further, the sales closing dates are established to provide the maximum amount of time for applications to be submitted without adversely affecting program integrity. FCIC can ensure there is no adverse selection and maintain program integrity through its right of rejection of written agreements. No change has been made in response to this comment.

Comment: A few commenters stated they are not sure what is meant by the new language in proposed section 18(e)(2)(i)(A) "except acreage that qualifies under section 9(a)(1),". The commenters asked whether this means that it is uninsurable, or that it must be requested by the sales closing date. A commenter stated that section 9(a)(1) addresses acreage that is not considered "insurable acreage," with exceptions listed in 9(a)(1)(i)–(iii). The exception in section 9(a)(1)(ii) is if "The Crop Provisions or a written agreement specifically allow insurance for such acreage" that was not planted and harvested at least one of the last three years; part of this also is mentioned in section 18(e)(2)(i)(B). Since the possibility of a written agreement is allowed in section 9(a)(1)(ii), it does not seem that it should be precluded in section 18(e)(2)(i)(A). If section 18(e)(2)(i)(A) is intended to exclude some other part of section 9(a)(1), the reference needs to be more specific. If the exclusion is intended to apply to the timeframe of "On or before the acreage reporting date" in section 18(e)(2)(i), or something else, that also needs to be clarified. FCIC also should clarify that the reference to "the expiration date" is

the expiration date for the insured to accept the written agreement (as opposed to the expiration date for an annual written agreement). The commenter also recommended removal of the language "on the day the first field is appraised" as this is unreasonable to expect the insured to sign the written agreement the same day the crop was appraised. Another commenter stated as written, existing section 18(e)(2) does not follow from the lead-in in (e), which states "A request for a written agreement may be submitted: "(2) For the first year the written agreement will be in effect only:" If the information in (e)(2) is supposed to apply to those written agreement requests made "After the sales closing date but on or before the acreage reporting date * * *" in (1), it should be combined with (1). If it is supposed to apply to all first-year written agreements, it needs to be a separate subsection.

Response: The exception in proposed section 18(e)(2)(i)(A) was unclear and FCIC has removed it. The provisions have also been restructured to improve readability. The provisions requiring a written agreement to be signed by the insured by the earlier of the first date the crop was appraised to determine whether the potential production meets the requirement or the expiration date should not be removed. These appraisals are generally later in the production period and producers will have already received an offer for a written agreement contingent upon the result of the appraisal. Producers can always sign the offer before the appraisal and it will only come into effect if the appraised amount is sufficient. However, if producers are able to wait until after the appraisals are completed to sign, there is a potential vulnerability because producers may have more information regarding whether they will likely have a loss. The written agreement needs to be signed during the appraisal process and since the producer already knows the terms of the agreement, and insurance providers can set up appointments to ensure the producer is present to sign, it should not be a problem to obtain the signature at appraisal. The first date of appraisal is used because multiple appraisals may be required and this eliminated the question of what appraisal date is used. FCIC agrees the expiration date should be clarified and has revised the provisions in redesignated section 18(e)(2)(i)(A)(*2*) to specify it is the expiration date for the producer to accept the offer.

Comment: A commenter stated the added phrase "* * * or to insure a practice, type or variety where the actuarial documents in another county do not permit coverage * * *" is unclear in section 18(e)(2)(ii). The explanation in the "Background" of the proposed rule says this is to add a "* * * reference to the time a written agreement request must be submitted to insure a practice, type or variety where there are no actuarial documents for the practice, type or variety" but it is unclear whether this is referring to actuarial documents not existing in the county where coverage is desired, or not existing in any county in the entire country. If it is really intended to allow a written agreement request to insure non-irrigated rice (as an example of a practice that is not rated anywhere), perhaps it should be worded: "* * * or to insure a practice, type or variety for which there are no actuarial documents in any county." In addition, it would be interesting to know how often FCIC approves a written agreement for a completely unrated practice, type or variety, and on what basis.

Response: The proposed addition was never intended to change the current requirement that allows written agreements even though there are no actuarial documents in any county in the country that covers the requested practice, type or variety as long as the producer has adequate production history upon which the guarantee and premium rates can be established. This is consistent with section 508(a)(4)(B) of the Act. Therefore, FCIC has removed language that refers to situations in which there are no actuarial documents in any county.

Comment: A commenter stated section 18(e)(3) reads: "(e) A request for a written agreement may be submitted: "(3) On or before the sales closing date, for all requests for renewal of written agreements, except as provided in section 18(e)(1);". The commenter stated that FCIC needs to consider whether this should be set up as a separate subsection from (e), which also would separate this from the reference in (e)(4), which does not appear to involve straightforward renewal requests but does fit with the "may" in (e). It addresses the deadline for renewal requests, and the wording of (e)(3) suggests they "must" be submitted by the sales closing date (with the only exception being physical inability to do so), rather than "may."

Response: FCIC has revised section 18(e) by moving the provisions for renewal of written agreements by the sales closing date to section 18(a). This now places all the provisions regarding the sales closing date deadline in one subsection. The provisions in section 18(e) only reference written agreements that can be requested at a time other than the sales closing date.

Comment: A commenter stated in sections 18(f)(1)(i)–(vi), (2)(i)–(vi) & (3) the readability and substantive text of subsection (f) would be improved by revising the outline numbering. Currently, (1) reads "For all written agreement requests:" but (1)(i) does not apply to "* * * policies that do not require APH * * *" and (v) applies only to perennial crop policies. Therefore, we suggest: (a) eliminating the phrase in (1); (b) changing (1)(i)–(v) to (1)–(5); (c) deleting (2)(i), which would be covered by the second part of currently numbered (1)(i); (d) changing (2)(ii)–(v) to (6)(i)–(iv); and (e) combining (1)(vi), (2)(vi) & (3) into (7), or (7) & (8) if the requirements for "all other information that supports * * *" should be kept distinct from "Such other information as specified in the Special Provisions * * *".

Response: There are separate types of written agreements in section 18(f)(1) and (2), with different requirements so it is not practical to combine these. Further, while there are a few exceptions in section 18(f)(1), these exceptions are clearly stated. To combine and redraft the provisions as suggested by the commenter would not provide any additional clarification. No changes have been made in response to this comment.

Comment: A commenter stated unless every field in the country is identified with an FSA Farm Serial Number, perhaps the reference in section 18(f)(1)(iv) should include a qualifier similar to the one for legal descriptions. The commenter also referred to their comments on the proposed definition of "common land unit," as to whether these references should be added to the Basic Provisions until the details of the joint FCIC–FSA project are settled.

Response: The provision only requires the FSN, if available. In addition, as previously stated, FCIC agrees there are issues that should be resolved before the definition of "common land unit" is included in the policy provisions. Therefore, the proposed definition and the reference in section 18 will not be retained in the final rule. However, the term has been included in section 6(c) so it can be used in the future without requiring policy revisions.

Comment: A comment was received regarding section 18(i). A commenter stated the language "A written agreement will be denied unless" should be rewritten and reorganized to read: "(i) A written agreement will be approved if: "(1) FCIC approves the written agreement request; "(2) The crop meets the minimum appraisal amount

specified in section 18(e)(2)(i)(A), if applicable; and "(3) The original written agreement is signed by you and postmarked not later than the expiration date." The commenter stated they also believe this provision should include some reference to agreement or approval by the insurance provider, who is one of the parties to the policy contract.

Response: FCIC has revised the provision to require acceptance of the written agreement by the insurance provider before it is effective. FCIC has not adopted the recommendation that the provision specify when the written agreement will be approved because there may be other conditions for approval that are not stated in the list. Section 18(i) is intended to identify those requirements, which if not met, will result in denial.

Section 20 Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review

Comment: A commenter recommended FCIC amend section 20 to provide that any legal action resulting from FCIC's termination of revenue protection as per proposed section 3(k) shall be brought in accordance with 7 CFR part 400 subpart J or appeal in accordance with 7 CFR part 11.

Response: As stated above, the proposed provisions in section 3(k) have been revised and redesignated as section 3(c)(5). These provisions involve determinations made by FCIC or USDA regarding market forces and whether revenue protection should be available. Since those decisions are clearly made by FCIC, they fall within section 20(e). Therefore, there is no need to add other provisions to section 20.

Comment: A commenter stated the proposed changes are of three types in section 20: (1) Conforming changes; (2) linguistic improvements; and (3) changes driven by existing procedures regarding good farming practice determinations. The commenter stated as a general matter, changes of this sort are understandable. They stated that because section 20 was radically revised when the existing Basic Provisions were published in August 2004, there has been relatively little experience with the actual operation of the new arbitration and litigation provisions because policyholder disputes under the current provisions contained in section 20 have only recently been entering the litigative process. They believe this suggests an argument in favor of leaving the current text of section 20 basically intact, except for the limited changes made in the proposed rule and suggested herein. The commenter also stated the current provisions and the proposed provisions in section 20 are replete with cross-references, exceptions, and limitations. As such, the commenter does not believe the provisions are readily understood. The commenter is concerned with the complexity of the provisions contained in section 20, combined with a producer's potential argument that its terms are not easily comprehended, presents a State court trial judge with an opportunity to disregard their applicability and to rule that they deprive a producer of the right to a jury trial. While the commenter firmly believes that any such holding would be unwarranted, they remain concerned that this risk is present. Thus, the commenter encourages FCIC to restructure section 20 to make it flow more logically (as has been done with section 14) and to simplify the text.

Response: FCIC agrees with the commenter that the current and proposed provisions in section 20 should basically remain intact. However, FCIC is concerned that a major restructuring between proposed and final rule could lead to an inadvertent error or omission that would normally be caught in the public comment period. Further, the current structure, while it may be improved, reads as FCIC intended when the provisions were drafted. FCIC may revisit these provisions next time it revises the Basic Provisions. No change has been made.

Comment: A few commenters stated the text of section 20(a)(2) requires a written reasoned decision by an arbitrator. The commenters recognized this approach may be appropriate in significant cases, especially when judicial review is likely, but believe it adds unnecessarily to the cost of resolving smaller disputes. The commenter stated there can be occasions when it is not prudent, for reasons of precedent, to have a written reasoned decision. The commenter proposed, instead, the parties to the arbitration should determine by mutual agreement whether a written reasoned decision by the arbitrator is required. If the parties disagree on this issue, a written reasoned decision should be mandatory only if the insurance provider requests one.

Response: The provisions contained in section 20 allow arbitration as a method to resolve most disputes between producers and their insurance provider. However, other provisions in section 20(a) also require that if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC. The provisions also specify such interpretation will be binding in any arbitration. Failure to obtain any required interpretation from FCIC will result in the nullification of any arbitration award. If the arbitrator is not required to provide a written statement describing the factual findings and the determinations, there would be no way to determine if the arbitrator ruled on a policy provision or procedure without the required FCIC interpretation, or whether the arbitrator failed to apply the FCIC interpretation, which in either case would result in nullification of the arbitration award. In addition, it is possible that the arbitration award may have been the result of insurance provider, loss adjuster or agent error. Under such circumstances, the policy would not be eligible for reinsurance. Therefore, a written arbitration decision is necessary to the operation of the program. No change has been made.

Comment: A few comments were received regarding mediation. A commenter stated they understand the importance of mediation as an alternative dispute resolution mechanism. However, they believe mediation has limited utility with respect to disputes under crop insurance policies because the preamble to the Basic Provisions and the explicit terms of section 14(d) ("Our Duties") compel utilization of FCIC's established or approved loss adjustment procedures. The commenter stated the type of compromise inherent in mediation may not permit an insurance provider to reach a settlement that both resolves the dispute with the policyholder and simultaneously is sufficient to avoid criticism by the Compliance Division. The commenter stated if the final rule does not revise subsection (a), FCIC's published discussion of this comment (and any similar comments offered by insurance providers) should affirmatively state FCIC supports resolution of disputes by mediation, encourages utilization of mediation, and will respect the parties' decision to settle a dispute with the aid of a neutral third-party mediator. The commenter stated a clear statement that settlement discussions will not be second-guessed by hindsight should provide comfort to the parties. Another commenter stated since the preamble of the policy provides procedures issued or approved by FCIC will be used in administering the policy and adjusting losses, they question whether there is any room to resolve differences via mediation, as

mediation usually involves some type of compromise to achieve resolution. Therefore, they believe the mediation reference should be removed from the policy.

Response: FCIC supports resolution of disputes through the use of mediation, because mediation may be a faster, less expensive alternative than arbitration and litigation. However, while the commenter is correct that the insurance provider cannot waive or in any way modify any policy provision or procedure issued by FCIC, many of the disputes involve factual matters within the discretion of the insurance provider (for example, what the insured did or did not do, when something was done, the amount of appraised production, *etc.*). Such types of disputes may be agreed upon through mediation based on evidence available that supports the factual determination. It will be up to the parties to determine whether the dispute can be resolved through mediation. No change has been made.

Comment: A few commenters recommended language be added in section 20(f) as follows: "Any suit must be brought against us in the United States District Court for the district in which the insured acreage is located." The commenters believe this is necessary to ensure uniform application of Federal law. A commenter requested FCIC to note the text of 7 U.S.C. 1508(j)(1), which they read to support the recommended revision.

Response: Use of the word "us" in the recommended language in the reinsured version would refer to the insurance provider but 508(j)(2)(A) of the Act states if a claim for indemnity is denied by the Corporation or an insurance provider, an action on the claim may be brought against "the Corporation or Secretary" only in the United States district court for the district in which the insured farm is located. This statutory provision does not require a producer to file suit against the "insurance provider" in the United States district court. Even the revisions to section 508(j) of the Act as a result of the 2008 Farm Bill, which clarifies that producers can only sue FCIC when FCIC makes determinations under the policy or instructs the insurance provider to take certain actions under the policy, do not require producers to file suit against insurance providers in the United States District Court. Therefore, FCIC cannot preclude producers from filing claims against the insurance provider in State court. However, FCIC agrees section 20(e) of the reinsured version should be revised to be consistent with section 508(j)(2)(A) of the Act and specify any suit must be filed against FCIC in the United States district court for the district in which the insured farm is located.

Comment: A few commenters disagreed with the change proposed in section 20(j). They stated the current provision mirrors section V.F. of Appendix IV of the SRA and it should be retained. The commenters stated FCIC may accompany an insurance provider when it works a claim and provide instruction on how to pay the claim during the loss adjustment process. They believe if the insurance provider follows FCIC's instruction on how to pay the claim during the loss adjustment process, the insurance provider should not be held responsible for any litigation that may result. They pointed out in such a situation, no modifications, revisions, or corrections were made by FCIC, yet FCIC was directly involved in determining how the final payment would be made. The commenters stated if FCIC was directly involved in determining how the final payment would be made, FCIC should be responsible for any litigation that may occur as a result of its instructions and the insurance provider should not be held responsible for any litigation that may result.

Response: If FCIC participates in the actual adjustment of the claim, any suit filed by the producer should be against FCIC. Therefore, the proposed change will not be retained in the final rule.

Section 21 Access to Insured Crop and Records, and Record Retention

Comment: A commenter stated they appreciated the relaxed misreporting standards for production, especially within the 3-year record retention period. Such a rule change will permit true continuity of actual production from year to year in recordkeeping.

Response: FCIC is not sure which provision in section 21 the commenter is referring to. Therefore, FCIC cannot respond to the comment.

Comment: Several comments were received regarding section 21(b)(3). A commenter stated the preamble of the rule specified FCIC intends the language to apply in cases where the record retention period has expired. The language should specifically state this intent if that is indeed the intent. A few commenters stated the proposed language has FCIC determining if yields are knowingly misreported and the insurance provider may replace any yield in the APH it determines is incorrect. If FCIC and an insurance provider dispute that yields were incorrect, the insurance provider would have the option of only changing yields they feel are incorrect and not the yields FCIC feels are incorrect. The commenters stated if FCIC is determining if yields are knowingly misreported, they should determine which yields are incorrect. The commenters recommended removing the three references to "we" (insurance provider) and replacing with "FCIC." The revised wording could be "If FCIC determines you or anyone assisting you knowingly misreported any information related to any yield you have certified, FCIC will require us to replace all yields in your APH FCIC determines to be incorrect with the lesser of an assigned yield or the yield FCIC determines is correct." Even with the proposed language, a commenter expressed concern about how the producer could be held accountable for years beyond the record retention period for acreage and production evidence. The commenter questioned if this would not be difficult to argue in a court of law. A commenter recommended the provision specifically state the penalties provided are not exclusive of any other penalties that may be provided for by the Basic Provisions. A commenter stated the language contradicts requirements to retain records as stated in section 21(b)(2). The commenter stated it is not clear how yields can be determined to be incorrect if records are not available and are not required to be available. A few commenters suggested changing the end of the sentence to state: "yields in your APH determined to be incorrect * * * or the yield determined to be correct." A commenter stated as proposed, this subsection has a potential inconsistency; it opens with a reference to determinations made by FCIC, but closes with references to yield(s) "we [*i.e.,* the insurance provider] determine" to be either correct or incorrect. The commenter stated their change simply makes the close of this subsection consistent with the fact that FCIC is making the determinations that would result in yield adjustments.

Response: FCIC has revised the language so that either the insurance provider or FCIC, who has evidence that the producer or anyone assisting the producer knowingly misreported any information related to any certified yield, will replace the incorrect yields. The ability to correct or replace the yields should not be restricted as to who will take the action. Section 21(b)(3) is not dependent on the record retention period. At any time FCIC or the insurance provider obtains evidence that yields have been knowingly misreported, the yields will be replaced. FCIC cannot operate the program in an actuarially sound manner and maintain

program integrity if it were to allow the use of yields that it knows are incorrect. Such yields do not only affect a single year, they affect the guarantee, premium, and any indemnity, prevented planting or replant payment for each year the incorrect yield would remain in the database. However, no action can be taken by FCIC or the insurance provider unless it has evidence that shows the yields are incorrect. This evidence can be from third parties (*e.g.,* transportation records, records from a buyer of the insured crop, or other records obtained by the insurance provider, FCIC, or any person acting for the insurance provider or USDA authorized to investigate or review any matter relating to crop insurance). This provision does not hold the producer accountable for not having production records. It holds the producer accountable because other records obtained show that the information was misreported. Because this provision involves only the consequences for knowingly misreported yield information, and there are other provisions that also involve misreported information in general, the provision should specifically state the sanctions provided are not exclusive of any other sanctions that may be provided by the policy provisions or other applicable laws. FCIC has revised the provision accordingly. FCIC has also revised the provision to specify "the yield determined to be correct."

Section 22 Other Insurance

Comment: A commenter recommended section 22(c) be removed because there is no way an insurance provider can accurately appraise a crop before a fire because they do not know when lightning will strike. The commenter believes it is sufficient to have the language in section (b) to deal with fire when there is other insurance against fire.

Response: Section 22(c) provides the explanation of how the value referred to in section 22(b) is determined. Therefore, section 22(c) cannot be removed. However, as stated more fully below, since section 35 contains a methodology for determining the value of the crop, FCIC has revised section 22(c) to cross reference section 35. This eliminates the perceived need for any pre-loss appraisal.

Section 26 Interest Limitations

Comment: A commenter recommended language be added in section 26 to address what date would be used to calculate interest in cases where the insured did not sign the claim form. The commenter recommended the following language be inserted as the second sentence of this provision: "Until you provide all of the information and documents requested or required under paragraph 14, interest will not accrue and the sixty (60) day time period is tolled."

Response: Section 26 states that interest will not be computed until after the 60th day after the claim form is signed by the producer. Therefore, if the claim form is not signed by the producer, the computation of interest does not begin. Further, since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Section 28 Transfer of Coverage and Right to Indemnity

Comment: A few comments were received regarding section 28. A commenter stated the proposed change allows a transfer of (right to) coverage if the policyholder's share in the insured crop is transferred to a third party any time after the sales closing date and after which the new entity is unable to apply for his or her own policy. This is an extension to include the time between the sales closing date and when insurance attaches, and should resolve some of the successor-in-interest problems that arise because of that current time period. The need for the Transfer of Right to an Indemnity form previously was to address the situation where insurance had already attached (not just been applied for) so the original entity was responsible for paying the premium but could not collect an indemnity because he or she no longer had an insurable share, while the new entity could not apply for coverage after the sales closing date or report the share since it was not his/hers at the time coverage attached. This proposed change will require a significant rethinking of the reason and purpose for this procedure since it "backs up" the transfer to deal with the problem as one of not being able to apply for coverage rather than one of how to deal with existing coverage that has changed hands. This is not necessarily a bad idea; however, it needs to be thought through very carefully to avoid creating unintended consequences and new problems to replace the old. For example, this proposed change could have an effect on acreage reporting and prevented planting provisions. If the transfer takes place before the crop is planted (insurance attaches) and both the original entity and the new entity have policies for the crop in the county, this would allow the new entity to choose whether to: (a) do a Transfer of Coverage to use the original entity's coverage level, price, APH, *etc.,* for that crop year; or (b) report the "added land" on his or her own policy. Under the current procedure, this is not usually an option because the original entity would have filed an acreage report already. A commenter stated "right to coverage" is used five times in section 28 and is unclear of the full meaning and needs to be defined. A commenter agrees with the provisions, which allow for transfer of coverage after the sales closing date but prior to insurance attaching. A commenter stated that, per the proposed language, a transfer of coverage may be done after the sales closing date if an insured sells or leases all or part of their farming operation and the transfer of coverage may apply prior to acres being planted. The commenter questioned what happens if acres have been planted and coverage attached. The commenter was also concerned the reference to "enter into a relationship with another person to provide a share of the insured crop" could be misinterpreted as a new entity being formed. For example, a new partnership is being formed. The commenter questioned if this would be an entity change after the sales closing date and not be applicable for that year.

Response: The commenter is correct that the proposed provisions could involve the acreage reporting and prevented planting provisions. In addition, in considering the comments, FCIC realized there are numerous administrative and coverage issues that must be addressed prior to allowing transfers when coverage has not yet attached or for prevented planting coverage. Further, as drafted, there may be unintended consequences. Therefore, FCIC has not retained the proposed provisions in the final rule.

Section 29 Assignment of Indemnity

Comment: A few commenters questioned the proposed changes to section 29, which allowed assignments only to be made to legitimate creditors of the insured person. A commenter suggested the need for a clear definition of "legitimate creditor." The commenter did not think insurance providers are capable of making that decision and recommended either clearly defining the term or not referencing it at all. Another commenter stated they are concerned about how the rules for assignment of indemnity may be changed. They believe there are situations other than a normal creditor/grower relationship where this

provision is legitimate and they urged FCIC to be careful how this provision is revised.

Response: As previously stated, FCIC has removed the phrase "any legitimate" in the definition of "assignment of indemnity." FCIC has also revised section 29 to specify the producer may assign his or her right to an indemnity for the crop year only to creditors or other persons to whom the producer has a financial debt or other pecuniary obligation.

Comment: A few comments were received regarding sections 29(a) and (b). The commenters indicated section 29(a), which states: "You may assign your right to an indemnity for the crop year only to one or more of your creditors" was confusing when read in conjunction with subsection (b), which states the insurance provider will accept only "one assignment form for each crop." Some of the commenters stated although it is evident an insured may submit only one assignment form per crop, it is difficult to determine whether that form may include multiple creditors. A commenter stated the inclusion of the term "only" was confusing. An additional commenter stated current situations dictate they have the capability of having multiple lienholders on one crop. If FCIC's intent, as explained in the discussion preceding the Basic Provisions, is to prevent assignments to relatives or persons to whom there is no debt, section 29 should so state. The commenter recommended FCIC amend section 29(a) to state: "You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a legitimate financial debt."

Response: FCIC has determined more than one assignment form may be accepted. In this case, the multiple assignees will be treated the same as if multiple assignees are listed on one form. The provisions have been clarified that only one check will be issued in the name of the insured and all assignees. This is being done under the current provisions so this is not a change. It is up to the insured and assignees to divide the indemnity among them. The provisions have also been clarified to indicate more than one creditor may be listed on a single form. As stated above, FCIC has also revised the provisions to indicate an assignment may be made to any creditor or other person to whom the producer has a financial debt or other pecuniary obligation.

Comment: A commenter stated the provisions in section 29 no longer state the assignment "will not be effective until approved in writing by us" but now just states it "* * * must be provided to us." The commenter recommended retaining the previous language but suggested if the previous language is not retained, there needs to be some method to verify an assignment was sent and received by the insurance provider (*i.e.,* certified mail).

Response: The language was removed because it was considered redundant with the definition of "assignment of indemnity." However, as proposed, this definition fails to state the approval must be in writing. Since this is necessary in order to confirm acceptance, FCIC has revised the definition of "assignment of indemnity" to include the phrase "approved in writing."

Comment: A commenter stated they propose changing "* * * a lienholder with a lien * * *" to "* * * a lienholder * * *" in section 29(c) because "with a lien" does not add anything that is not covered by "lienholder."

Response: FCIC has revised the provision accordingly.

Comment: A few comments were received regarding section 29(f). The commenters stated the provision provides if the producer does not file a claim for indemnity within the 60-day period specified in section 14(e) the assignee may submit the claim not later than 45 days after the period for filing a claim has expired. The commenters questioned if this was the intent, and if so, why the assignee should be granted the additional 45 days, which would give an assignee more rights under the policy than the insured. A commenter questioned why the period for an assignee to file a claim has been extended from 15 days after the 60-day period after the end of the insurance period to 45 days ["after the period for filing a claim"]. The commenter stated allowing 45 days seems excessive and suggested 30 days should be sufficient.

Response: It is not a case of giving the assignee more rights than the insured. The insured is in control during the claims process and can ensure that documents are timely filed. However, with respect to an assignee, the assignee may not even know there has been a loss. Further, even if the loss is known, the assignee may not know the insured has failed to file a claim until after the period to file the claim has expired. Forty-five days may be too long because so much time will have passed since the end of the insurance period and it may make loss adjustment difficult. However, this must be balanced with a reasonable time for the assignee to obtain the necessary information to complete the claim. Therefore, FCIC has changed the number of days to 30 in section 29(e).

Section 30 Subrogation (Recovery of Loss From a Third Party)

Comment: A few commenters stated they oppose deletion of the subrogation provisions in section 30. A commenter stated it is important to convey in writing to policyholders their specific obligations to preserve the subrogation rights of insurance providers. Although State common law often recognizes some form of subrogation as an equitable right of an insurance provider, FCIC should not expect insurance providers to rely on potential deficiencies or inconsistencies in State law. Instead, there should be an unequivocal subrogation right established as a matter of Federal law in the Basic Provisions. The commenter stated FCIC's approach, as expressed in the July 14 explanatory text, is unrealistic. Although the proposed revisions exclude third-party negligence as an insured cause of loss, proposing to delete insurance providers' subrogation rights assumes arbitrators and courts will agree with a denial of a claim on that basis. If that is not the result of the dispute resolution process outlined in section 20, deleting section 30 may be viewed as a bar to recovery of losses on a subrogation claim. FCIC should recognize that possibility and not diminish insurance providers' rights to subrogation. The commenter stated the text of section 30 should be restored in its existing form. Another commenter stated the rule proposes to remove the subrogation article from the policy. While the commenter agreed with FCIC's depiction of the scope of coverage, they suggested the language not be deleted to maximize insurance providers' ability to recover potential overpayments when third party liability is established after payment. There could be situations where they have paid a claim, discovered the claim was not due to natural causes and cannot get the money back from the insured, then they should have the right to subrogate from the offending party. For example, fire is believed to be caused by lightning and the claim is paid accordingly, but later found to actually be caused by the railroad. The commenter stated after they pay the claim and their insured declares bankruptcy, they should still have the right to try to recover money from the railroad.

Response: There may be situations where the producer may have received an indemnity payment for what was thought to be an insurable cause of loss. However, it is later discovered that the cause was man-made and the producer

has a right to recover from a third party. The commenters want to have a right to recover against the third party. Subrogation generally involves the situation where a loss is payable under a policy but another party was also responsible to pay all or a portion of the loss. Under that situation, the insurance policy did cover the loss but someone else may have been more properly responsible to pay for the loss. This will never be the situation under the crop insurance policy because if the producer has a right to recover against a third party, that means the producer was never eligible to receive the indemnity under the policy. Therefore, subrogation is not an appropriate remedy. If a loss was caused by the actions of a third party, the insurance provider must collect the overpayment from the producer because the issue is coverage, not subrogation.

Section 31 Applicability of State and Local Statutes

Comment: A few commenters stated FCIC has not suggested any change with respect to section 31. The commenters recommended this section be revised to read as follows: "If the provisions of this policy conflict with or cover the same subjects or matters as the statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations either in conflict with Federal statutes, this policy, and the applicable regulations, or covering the same subjects or matters as Federal statutes, this policy, and the applicable Federal regulations, do not apply to this policy, and they are preempted." The commenters stated this suggested revision would strengthen the concept that Federal law, as expressed in a policyholder's MPCI policy, determines all of the parties' contractual rights and obligations.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made. However, FCIC's preemptive authority is limited to that contained in section 506(l) of the Act, which states that FCIC's regulations, contracts, and agreements preempt State law to the extent that State law is inconsistent.

Section 34 Units

Comment: A few comments were received regarding proposed section 34(a)(2)(i). A commenter stated the proposed rule would reduce the producer's ability to choose the enterprise unit definition that best suits their farm. They had this ability with the selection of IP, RA or CRC plans of insurance. Another commenter recommended condensing proposed sections 34(a)(2)(i)(A) & (B) into one paragraph instead of two to read "Acreage must be planted and located in two or more separate sections, section equivalents, FSA farm serial numbers or units established by a written unit agreement."

Response: The commenter is correct that the enterprise unit qualifications under the current IP, RA, and CRC plans of insurance are different. However, since these are being combined into a single policy, it is no longer practical to have different meanings to the same term. It would only add confusion and ambiguity to the policy. Further, FCIC has chosen the least restrictive of the qualifications between RA and CRC. The enterprise unit under IP coverage was all of the acreage of the crop in the county. FCIC has revised proposed section 34(a)(2)(i) (redesignated section 34(a)(4)(i)) to condense the provisions in proposed paragraphs (A) and (B) into one paragraph.

Comment: A few comments were received regarding premium discounts for enterprise units. A few commenters stated the proposal for measuring the premium discount on enterprise units is not clear and should be clarified so producers and agents know the basis. The rule states under the current provisions, the enterprise unit discount for CRC is based on acres and for RA it is based on sections. This information is found in the Special Provisions, which are not part of the proposed regulations. The proposed rule reads "FCIC is also proposing that an enterprise unit may be available for certain crops, as designated in the actuarial documents. The revised policy provides a premium discount if the producer elects a basic or enterprise unit." A few commenters strongly supported the provisions to provide premium discounts to producers who aggregate their acreage into the larger basic and enterprise units. A commenter supports using acres to determine the discount for enterprise units. Acres relate directly to total liability, so this is the better measurement to earn a discount. An insured may show several sections on the policy, but end up with minimal total acres. Therefore, the current RA method can provide a disproportionate discount for the actual risk exposure. A commenter stated it appears further adjustments in the current premium discounts are still required to fully reflect the corresponding reduction in risk exposure. Assuming the new provisions do not result in eliminating this disparity, the new provisions are unlikely to increase the number of producers selecting larger units for their policy coverage.

Response: FCIC has elected to use acres as the basis for the enterprise unit discount because, as the commenter correctly states, it is more directly related to the liability. As more experience is gained, FCIC may use a different method to determine enterprise unit discounts in the future. As with all rating information, including all applicable discounts, the enterprise unit discount will be contained in the actuarial documents or the cost estimator. FCIC has a mandate to set premium based on expected losses and a reasonable reserve. This mandate also applies to all discounts. Therefore, FCIC will continue to review the risk exposure for basic, whole-farm and enterprise units to determine the appropriate discount for each.

Comment: A commenter stated the method for processing multiple lines of acreage for the enterprise unit has been different in the past between RA and CRC. It is not clear which method is being adopted in this new combined policy and it warrants some additional discussion prior to implementation.

Response: FCIC assumes that the commenter is asking how the guarantee, premium, liability, and claim payments are determined by the insurance provider when the acreage report has multiple lines of information within the single enterprise unit. How this information is determined has been different between plans of insurance. However, such determinations are addressed in FCIC approved procedures and have not been made a part of the policy. It is the intent of FCIC to treat the multiple lines of acreage the same as is currently done under the APH plan of insurance (*e.g.,* irrigated and nonirrigated acreage within the same unit). The procedures will reflect this intent.

Comment: A commenter recommended clarifying that units by irrigated and non-irrigated acreage cannot be used to qualify for enterprise units or enterprise unit discounts.

Response: As stated above, proposed section 34(a)(2) (redesignated section 34(a)(4)) has been amended and the qualifications for an enterprise unit now require: (1) Coverage for all of the insurable acreage of the same insured crop in the county; and (2) acreage of the insured crop planted in at least two or more sections, section equivalents, FSA farm serial numbers, or units established by a written agreement. Therefore, the practice used is

immaterial. Further, on June 15, 2009, FCIC published an interim rule involving the new premium subsidy available for enterprise and whole farm units. FCIC published the final rule on November 23, 2009. The provisions of that final rule have been incorporated into this final rule. No change has been made in response to this comment.

Comment: A few comments were received regarding the proposed provision in section 34(a)(2)(ii) to allow separate enterprise units for fall and spring types of a crop. A few commenters stated it is as if winter and spring wheat, for example, were separate crops. This seems contrary to the enterprise unit requirement in proposed section 34(a)(2)(i) that "To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop * * *." It would allow the policyholder to receive the benefit of the enterprise unit discount while still having two units for the crop/county instead of one. This subsection states " * * * you may have an enterprise unit for spring wheat and a separate enterprise unit for winter wheat" but does not indicate whether the policyholder would be allowed to have an enterprise unit on one type and basic or optional units on the other type (which would be logical if these types were truly considered separate "crops" yet this further degrades the enterprise unit concept if allowed for the same crop just because there are winter and spring types. A commenter stated the explanation given in the background section of the proposed rule is that having both winter and spring types in one enterprise unit "* * * would delay the payment of any claim until any losses could also be determined for the spring types. This would make it difficult to establish the revenue protection guarantees or premium until such information is available for the spring variety." Presumably, the same problem would exist for winter and spring wheat types in one basic unit, which is still the default unit structure under section 2 of the Small Grains Crop Provisions. Policyholders may select optional units by winter and spring type. A few commenters stated FCIC also needs to clarify whether a policyholder with two sections of wheat would qualify for two enterprise units by type if one section was planted to winter wheat and the other section to spring wheat. This meets the requirement in proposed section 34(a)(2)(i) of at least two sections for the "insured crop," but probably not the intended requirement since it would result in two enterprise units, each made up of a single section (optional unit). A few commenters stated FCIC needs to consider how this would work with the Fall-Seeded Endorsement. They do not think this would resolve the problem that exists with having to wait to settle the winter wheat claim until the spring acreage can be included.

Response: Currently RA allows for winter wheat to be in an enterprise unit and spring wheat to be in an enterprise unit, but does not allow both winter and spring wheat to be in the same enterprise unit. The provisions for other plans of insurance provided for only one enterprise unit in this case. FCIC has elected to include both winter and spring wheat types in the same enterprise unit or whole-farm unit. Although no current policy provides for including both winter and spring wheat in a whole-farm unit, doing so makes the provisions consistent between unit structures and will result in less confusion in the marketplace. In addition, including all crop types in a single unit is consistent with the whole-farm unit concept, which includes all crops produced that are eligible for a whole-farm unit. Providing separate units results in several administrative problems. For example, if a producer failed to qualify for an enterprise unit for one type, the basic unit structure is assigned for that type. However, since a basic unit consists of both winter or fall and spring types, it made it impossible to retain the enterprise unit structure for the remaining type. The provisions are more consistent when both basic units and enterprise units contain both winter or fall and spring types. Further, the election for an enterprise unit must be made by the fall sales closing date. The provisions in this final rule have been revised accordingly. As stated above, FCIC has also clarified that to qualify for an enterprise unit, there must be at least two sections, section equivalents, FSA farm serial numbers, or units established by written agreement. Further, as incorporated from the final rule published on November 23, 2009, at least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit. This will prevent producers from planting a few acres in a separate section simply to qualify for the new premium subsidy. If there is planted acreage in more than two sections, section equivalents, FSA farm serial numbers or units established by written agreement, these can be aggregated to form at least two parcels to meet this requirement. For example, if a producer has 80 planted acres in section one, 10 planted acres in section two, and 10 planted acres in section three, the producer may aggregate sections two and three to meet this requirement.

Comment: A commenter stated that although the term "us" is defined to mean the insurance provider, the commenter recommended that, for improved clarity, FCIC amend proposed section 34(a)(3)(i)(A) to provide: "must be insured under revenue protection and with the same insurance provider."

Response: FCIC has revised the provision in redesignated section 34(a)(5) for clarity. However, since the insurance provider is referred to as "us" throughout the policy, it would not be appropriate to change the reference here and not in all other places where the term is referenced.

Comment: A few comments were received regarding whole-farm units. A few commenters stated proposed section 34(a)(3)(i)(B) requires that "A whole-farm unit must contain all of the insurable acreage planted to at least two crops eligible for revenue protection" but then proposed section 34(a)(3)(iii) states "Winter or fall types of an insured crop * * * cannot be included in a whole-farm unit." As stated above, it is not clear if the excluded winter type must be insured as a separate enterprise unit or if the policyholder may choose basic or optional units for the winter type. Presumably the winter type must be insured under revenue protection (if available) according to the wording in proposed section 34(a)(3)(i)(A), although it is not entirely clear on this since the winter type is in some respects being treated as a separate "crop." [ed.] They suggested combining (iii) with (i) so the winter type exception is included with the general requirement in (i)(B), or add a reference in (i)(B) to that exception. A few commenters stated they believe eliminating winter wheat from the whole-farm unit in proposed section 34(a)(3)(iii) is unjustified. A long wait for indemnity settlement should not impact the FCIC adversely, and the producer can make the decision whether the premium discount is worth the wait. The commenters stated they would also like to have included in the final rule, provisions for a 90 percent coverage level for those who elect the whole-farm unit. A few commenters stated reducing the ability to enroll winter wheat and barley in whole-farm units could dramatically affect a producer's option for indemnifying their crop. They urged FCIC to carefully consider how this change would impact production decisions and make changes

to the regulation to ensure that producers have the most options available to them. Another commenter opposed the exclusion of winter wheat producers from the whole-farm unit premium discount. The commenter stated producers have wheat in their crop mix to spread their yield risk. Additionally, producers currently wait several months for GRIP/GRP indemnity payments, which would be longer than the wait that would be needed until fall harvest. A commenter stated prohibiting winter wheat and winter barley from a whole-farm unit is completely counterproductive to the purpose of whole-farm units reduced risk through crop and land area diversification. Rather than viewing the different growing seasons of fall and spring planted crops as a hindrance, they should be embraced as a perfect example for a whole-farm unit diversification. Granted, FCIC may not be able to establish the guarantee or premium until the information regarding spring planted crops is available, however, fairly accurate estimates should be possible. If producers are willing to wait for the actual guarantee and premium calculations, so should FCIC. Producers applying for only spring planted crops also do not know their exact policy premium and guarantee until they report their actual planted acreage. The commenter recommended FCIC make whole-farm units as attractive as possible for producers. Producers who recognize whole-farm units as a broad, comprehensive risk management tool should be rewarded to the fullest extent possible within actuarial soundness. The commenter believed significantly higher participation in whole-farm units could result in substantial savings from reduced "spot-losses" of optional and basic units. Those savings should be reallocated to reduced premiums and higher coverage level options as incentives for whole-farm unit participation. The commenter urged FCIC to make fall seeded crops available for inclusion in whole-farm units. The commenter also urged FCIC to provide the highest financial and coverage level incentives possible to producers for whole-farm unit selection.

Response: As stated above, FCIC has elected to include both winter or fall and spring types in the same enterprise or whole-farm unit. For plans of insurance based on a producer's individual yield, the Act limits coverage to 85 percent. Therefore, FCIC does not have the discretion to raise coverage levels above that amount.

Comment: A few comments were received regarding proposed section 34(c)(1)(i). A commenter recommended FCIC delete the phrase "in accordance with FCIC approved procedures" in proposed section 34(c)(1)(i)(B). This terminology is not used in conjunction with any other method of optional unit division, and the commenter does not agree with its inclusion in proposed section 34(c)(1)(i)(B) only. A commenter opposed the changes to proposed section 34(c)(1), optional unit definition, for non-sectioned land and to replace it with an ambiguous general statement that provides for deferring the definition to FCIC procedures at a later date. From a practical sense, this removes the requirement to offer units by FSA Farm Serial number and sectional equivalent to such areas of the country. The commenter objected to giving up a known definition in the policy for an unknown one. There is also a fairness issue of specifying a definition for areas with square mile surveys and an unknown for other producers. Publishing a definition in procedures shortchanges affected producers because there is not a due process for procedural changes as there is for policy changes and producers must operate according to policy terms as they do not receive FCIC administrative procedures. The commenter also stated they were deeply concerned "sectional equivalents" were omitted from the proposed optional unit definition. With the very dramatic variation of climate and topography within a county that exists within Pennsylvania and the Northeastern states, this tool is necessary to make crop insurance a responsive risk management tool. Furthermore, "sectional equivalents" are necessary to provide eastern producers equity with the units by section in most of the rest of the U.S. If the objective is to provide such a benefit without the laborious written agreement process, the commenter recommended optional units by FSA tract numbers. This would also better facilitate workable common land units between FSA and FCIC which is a very important and necessary step to permit producers to file one common acreage report for the programs of both agencies. A few commenters stated the new language in proposed section 34(c)(1)(i)(B) about "Parcels of land that are grouped together that only have metes and bounds identifiers * * *" needs further clarification or explanation. The commenter stated it is unclear whether this is supposed to be the equivalent of the current "FCIC-approved procedures" for either the Unit Division Option (allowing policyholders in four states to aggregate contiguous parcels of land that are less than 640 acres in size to create their own optional units), or Written Unit Agreements, or both, or something different altogether. The commenter stated they would be able to provide better comments if they had a better idea of what "FCIC-approved procedures" are involved and/or will be revised or added. The distinction between the "parcels of land" in (A) & (B) is unclear. Based on the wording used, the differences are between parcels "* * * legally identified by other methods of measure * * *" and those "* * * grouped together that only have metes and bounds identifiers, in accordance with FCIC-approved procedures." This could suggest "metes and bounds identifiers" are not considered "legally identified" or that only "metes and bounds" require special procedures, but it could be difficult to know which category applies to certain "other" types of land identification. "Metes and bounds" is a lengthy description identifying the boundaries of a field (as opposed to the brief section-township-range or FSN identifiers) and, as far as the commenter knows, is no longer being created. It would be helpful to know which regions still use metes and bounds instead of other methods of land identification.

Response: The reference to FCIC procedures is needed for most optional unit situations except for optional units established by sections with readily discernable boundaries because the procedures provide instructions and guidance to address the complex and unique circumstances that occur when determining how to group other parcels of land to establish optional units. It is not possible to include all possible situations in the policy provisions. However, the commenter is correct and the reference to procedures should not have only been included in the provisions related to metes and bounds. Therefore, FCIC has added references to the procedures when referring to land legally identified by means other than sections. The provisions in section 34(c) provide the requirements regarding how optional units may be established. Under the current and proposed provisions, optional units may be offered by FSA Farm Serial Number and sectional equivalents (*e.g.,* Spanish grants) in the absence of sections. The proposed changes to subsection 34(c) do not eliminate the use of either Spanish grants or FSA Farm Serial Numbers as viable options, where available, in the absence of sections. However, FCIC agrees the language, as proposed, could lead to a misinterpretation of the intent of the revision. Accordingly, section

34(c) has been reformatted and clarified to clearly provide that section equivalents, such as Spanish grants, may be used to establish optional units, in the absence of sections, and that FSA farm serial numbers may be used when neither sections or section equivalents are available or their boundaries are not discernible. Metes and bounds are legal identifiers, and are still in use today in some parts of the country. However, FCIC has not retained provisions that specifically reference metes and bounds, instead the provisions reference parcels of land legally identified by other methods of measure.

Comment: A few comments were received regarding proposed section 34(c)(1)(ii)(B). The commenters stated, as worded, this means if "section equivalents under proposed section 34(c)(1)(i)" ARE "available," optional units by FSN are not allowed even if the policyholder did not choose to establish section equivalents. The commenters questioned whether that is the intent. If it is, the next question is whether the policyholder would be restricted to basic units, or whether he/she could still have optional units by FSN because the three situations listed are linked with the word "or," so as long as any one of these is the case, optional units can be established by FSN: "(A) The area has not been surveyed using sections; "(B) Section equivalents under section 34(c)(1)(i) are not available; or "(C) In areas where boundaries are not readily discernible."

Response: If sections are available, they must be used to establish optional units. It is only if sections are not available that section equivalents must be used to establish optional units. It is only if sections and section equivalents are not available that farm serial numbers may be used to establish optional units. The only exception to this priority is if the boundaries of the sections or section equivalents, as applicable, are not readily discernible or the availability of units by section or section equivalents, as applicable, is limited by the Crop Provisions or Special Provisions. The provisions have been revised to make this clearer.

Comment: A few comments were received regarding section 34(f). A commenter recommended FCIC add a third sentence to section 34(f) that states: "Prevented planting acreage will not apply to the calculation of any unit discount." Another commenter questioned how to treat the scenario when two optional units have one unit being planted and the other one prevented planting in section 34(b). Would the planted unit receive a basic unit discount based on the proposed language? The commenter stated the current procedure would not allow a basic unit discount on the planted or prevented planting unit. The commenter would not want the basic unit discount to apply in this situation.

Response: Although the proposed rule provided that unit discounts would not apply to prevented planting acreage, FCIC has determined there is no clear rational basis for there to be a difference in the unit discount provided for prevented planting acreage and planted acreage. Further, this conflicted with other provisions in the Basic Provisions that state planted and prevented planted acreage receive the same premium rate. Therefore, the proposed provision and any reference to section 34(f) are not retained in the final rule. However, as stated above, the eligibility for whole-farm and enterprise units is based on planted acreage, and prevented planted acreage will not be considered when establishing the unit structure.

Comment: A commenter stated the proposed rule does not offer an increased incentive for producers to elect basic or enterprise unit structures. Optional unit structures contribute too much confusion for both the agent and producer. Optional units are not only a source for potential errors/oversight by the producer and agent but can also be a source of fraud by the producer with the commingling of grain. The final rule of the Common Crop Insurance Regulations, Basic Provisions; and Various Crop Provisions would be a great opportunity to introduce larger surcharges for the election of optional units or larger rate decreases for the election of basic or enterprise units.

Response: FCIC must set rates based on the expected losses. To the extent that optional units have higher losses, such losses are considered in the premium rates. FCIC does not have the authority to increase premium rates or add a surcharge that was not related to the expected losses. However, subsequent to the publication of the proposed rule, the 2008 Farm Bill provided additional premium subsidy amounts as an incentive for producers to elect enterprise or whole-farm units. No change has been made in response to this comment.

Section 35 Multiple Benefits

Comment: A few comments were received regarding section 35(b). A commenter stated the revised section appears to eliminate collecting crop insurance and some, if not all, ad hoc disaster aid benefits. If producers are prevented or greatly limited from receiving ad hoc disaster payments, they will reduce their purchase of crop insurance. This would seem to be an undesired effect. If a producer pays a premium for a crop insurance benefit, the producer should receive the same ad hoc disaster payment as the producer who chose not to carry crop insurance and the producer should not have the crop insurance indemnity reduced. Congress decides whether to provide the extra benefits. If there is a limitation on benefits, it should be included in the ad hoc disaster aid and not the crop insurance indemnity. The commenter does not think there should be more limiting language in the new policy that will keep producers from collecting crop insurance indemnity payments. If this provision does not apply to GRIP/GRP, it should not be applied to the proposed rule. A commenter stated they are aware in some years Congress approves ad hoc disaster assistance that can provide benefits to producers that exceed the amount of actual loss. Of course this is not good policy, but even worse policy is to create an enormous disincentive for the crop insurance program by reducing a producer's crop insurance indemnity because of a disaster payment. The commenter stated this section provides the basis for determining "actual loss" which is the new benchmark for measuring benefits. However, subsection (c) still discusses the payment of benefits as a function of "any crop insurance indemnity." The commenter recommended subsections (b) and (c) be reconciled to eliminate this apparent inconsistency. A commenter proposed the following language to ensure that crop values are adequately expressed:

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The amount of the actual loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(1) The total value of the crop before the loss is your expected yield that has been adjusted for technology trends, adjusted for recent local adverse weather events, and adjusted for your adoption of recent new technology times the highest price election, projected price, or harvest price for the crop;

(2) The total value of the crop after the loss is your production to count times the lesser of the projected price, or harvest price, or APH price election for the crop;

(3) If you have an amount of insurance, the total value before the loss is the highest amount of insurance available for the crop that has also been adjusted for increased value for contracted prices or higher prices for quality, adjusted for technology trends, adjusted for recent local adverse weather events, and adjusted for your adoption of recent new technology; and

(4) If you have an amount of insurance, the total value after the loss is the production to count times the price contained in the Crop

Provisions for valuing production to count. A commenter stated the language in the first sentence does not define "all sources" that relate to the revenue produced by the crop insured. Specifically, does the crop insurance policy language of "all sources" in 35(b) support the language in 35(a)? It would appear that language along the lines of "The total amount received from all such sources, excluding payments from other USDA programs, may not exceed the amount of your losses" would be appropriate and would help clarify "all sources."

Response: Section 508(n) of the Act expressly states for additional coverage that the amount received under crop insurance and the amounts received under any other USDA program that provides a benefit for the same loss cannot exceed the amount of the actual loss. FCIC is bound by this provision and, therefore, it must be reflected in the policy. Section 35(b) is only intended to provide a means to calculate the amount of the actual loss specified in section 508(n) of the Act. Only Congress has the authority to provide an exception. Since Congress has provided an exception in the past, FCIC has revised the provision to specify any amount received for the same loss from any USDA agency in addition to the crop insurance payment will not exceed the difference between the crop insurance payment and the actual amount of the loss, unless otherwise provided by law. The suggested revision involving technology trends, local weather events, *etc.,* cannot be incorporated because there are no current procedures or methodologies for such adjustments. This rule does not apply to Group Risk Protection (GRP) or Group Risk Income Protection (GRIP). A different proposed rule will propose changes to those policies. FCIC has revised the provisions to clarify the meaning of "all sources." FCIC has also made other minor clarifications that do not change the meaning of the provisions.

Comment: A commenter recommended removing section 35(d). The commenter feels the Basic Provisions deal with policy and coverage issues and is a contract between an insurance provider and a producer. Although this proposed statement is informative to the producer for other USDA programs, the commenter stated there is no need for this paragraph in the Basic Provisions since it has no bearing or ramifications on the contract between the insurance provider and the producer. If a person did not purchase crop insurance, he/she would not have these Basic Provisions to look up and realize they may be adversely impacted by not purchasing crop insurance. Another commenter considers the use of the term "obtain" in "[f]ailure to obtain crop insurance may impact your ability to obtain benefits under other USDA programs" to be overbroad, misleading and, therefore, inaccurate. The commenter stated there are various situations in which an insured may not obtain an indemnity that does not impact the producer's eligibility or qualifying for other USDA benefits. Instead, it is the failure to comply with the terms and conditions of the Basic Provisions or to qualify for coverage that likely will impact a producer's ability to receive benefits under other USDA programs. The commenter recommended FCIC amend section 35(d) accordingly.

Response: The commenter is correct that the language in section 35(d) has no bearing or ramification on the contract between the insurance provider and the producer. Therefore, the proposed provision is not retained in the final rule.

Section 36 Substitution of Yields

Comment: A commenter recommended that to be consistent with the Crop Insurance Handbook, the term "T-yield" should be changed to "T–Yield" in sections 36(a) and (c).

Response: The reference needs to be consistent within the policy. Therefore, FCIC has removed the phrase "(T-yield)" from section 36(a) and has removed the phrases "T-yield" from section 36(c) and replaced them with the term "transitional yield" in all three places.

Crop Provisions—General Comments Applicable to All

Comment: A commenter stated the "order of priority" statement is not addressed in the proposed rule, but they recommend it be deleted from the Crop Provisions since the order of priority of the policy documents is covered in the Basic Provisions. This deletion is proposed in two subsequently issued proposed rules, for potatoes and for fresh market sweet corn. However, if it is not deleted, it needs to be updated to match the one in the Basic Provisions, which adds the CEPP. Otherwise, given that the order of priority is that the Crop Provisions take priority over the Basic Provisions, the "old" order would continue to apply to the Crop Provisions included in this proposed rule.

Response: FCIC has revised the Crop Provisions included in this final rule to remove the "order of priority" statement to avoid any conflict with the priority statement in the Basic Provisions.

Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: A few comments were received referencing the section titled Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities in all of the Crop Provisions proposed to be amended in the proposed rule. A commenter stated if sections 2(a) and (b) (of the Cotton Crop Provisions) are kept and not moved to section 3 of the Basic Provisions as recommended in other comments, the phrase "In addition to the requirements of section 3 of the Basic Provisions" currently at the beginning of (b) should be moved to be the introductory statement of this section since it applies to (a) as well as (b). A commenter stated at least two provisions that are essentially the same are included in this section. One or both of these are prefaced by "In addition to the requirements of section 3 of the Basic Provisions * * *" The commenter recommends FCIC consider whether one or both of these statements should be included in section 3(d) of the Basic Provisions instead of having to be repeated in each of the Crop Provisions with revenue protection available. The first of these is: "You must elect to insure your [crop name] with either revenue protection or yield protection by the sales closing date." Additional language is included in section 3(b) of the Small Grains Crop Provisions because only two of the small grain crops have this choice. It would seem logical to have this be section 3(d)(1) in the Basic Provisions, preceding the currently proposed 3(d)(1) that refers to the policyholder being able to change the selection of revenue or yield protection. An alternate location would be section 3(b) of the proposed Basic Provisions, which states that, among other things, the insured "* * * must select the same coverage, * * * the same protection (amount of insurance, yield coverage * * *, or yield protection or revenue protection, if available) * * *" but does not specify the sales closing date as the deadline by which these elections must be made. If this statement is not moved to the Basic Provisions, the commenter suggested a more specific reference in the Crop Provisions to section 3(d) and/or 3(b) of the Basic Provisions. The second statement is: "You must select the same percentage for both the projected price and the harvest price * * *". All but Cotton also include an example to illustrate the price percentage "* * * for each type must have the same percentage relationship to the maximum price offered * * *". For Coarse Grains, the example is specific to grain and

silage corn. For Small Grains, there is equivalent language in section 3(a) regarding the percentage of the price election for those crops for which revenue protection is not available. The commenter requested FCIC to consider moving some or all of this to section 3(d) of the proposed Basic Provisions, either preceding or in combination with 3(d)(3), which states if the policyholder does not select a price percentage in any subsequent year, the insurance provider will assign a percentage that has the same relationship to what was previously selected. The equivalent "price election percentage" language in section 3(a) of the Small Grains Crop Provisions could be moved to section 3(c) of the proposed Basic Provisions as well. A commenter stated the proposed language appears to require a producer to select two price percentages (one for the projected price and one for harvest price). The commenter recommended revising the sentence to "You must select a price percentage which will apply to both the projected price and the harvest price; and" which could avoid the appearance of having to report price percentages twice. A commenter stated the language which states, "You must select the same percentage for both the projected price and the harvest price" could be deleted because this is addressed in the Basic Provisions.

Response: The provisions regarding the selection of the same price percentage for the applicable prices are repetitive. Therefore, FCIC has removed this provision from all of the Crop Provisions contained in this rule and moved them to section 3 of the Basic Provisions. The provisions regarding the availability of revenue protection and yield protection have been retained in the final rule since the availability of revenue protection and yield protection is crop specific. Since the provision regarding the availability of revenue protection or yield protection is being retained in the Crop Provisions, the requirement that such election be made by the sales closing date should also be retained in each of the Crop Provisions. Further, since the provisions that specify the prices for each type must have the same percentage relationship are also repetitive, FCIC has removed the provisions from the Crop Provisions and moved them to the Basic Provisions in section 3(b). In addition, as stated above, redesignated section 3(c) of the Basic Provisions specifies only 100 percent of the projected and harvest prices will be available if revenue protection is elected.

Causes of Loss

Comment: A few comments were received referencing the section titled "Causes of Loss" in all of the Crop Provisions proposed to be amended in the proposed rule. A commenter recommended the reference to fire be revised to state "Fire, due to natural causes." This would clarify when fire is an insured cause of loss and would be consistent with the Federal Crop Insurance Act and the Crop Insurance Handbook. The commenter stated FCIC has proposed to change the tobacco provisions to reference "Fire, if caused by lightning" to help clarify this in the tobacco policy. It needs to be clarified in the other Crop Provisions as well. A commenter recommended the reference to fire be revised to state "Fire which is caused by a naturally occurring event." The commenter stated this wording is buried in the Basic Provisions, and believes that reaffirming the phrase in the Crop Provisions will avoid any confusion for the insured on what part of fire is or is not covered. A commenter also recommended rewording "Adverse weather conditions" to read "Adverse weather events or conditions."

Response: The Basic Provisions contain the requirements that are applicable to all policies and it includes the requirement that all causes of loss be naturally occurring. To repeat this requirement for a single cause of loss in the Crop Provisions will only create confusion regarding whether the other listed causes must be naturally occurring. There is no reason to be repetitive. The Basic Provisions are just as important as the Crop Provisions and are binding on all program participants. In addition, FCIC has clarified provisions contained in section 12(a) of the Basic Provisions by specifying fire, caused by anything other than a naturally occurring event, is not covered. Changing "adverse weather conditions" to read "adverse weather events or conditions" does not improve or clarify the provisions. There are many ways to describe weather.

Replanting Payments

Comment: A few comments were received referencing the section titled "Replanting Payments" in all of the Crop Provisions, except cotton, proposed to be amended in the proposed rule. A commenter stated they suggest revising the replanting sections of the Crop Provisions by deleting (a)(1) and (2) and revising sections (a) and (b) as follows: (a) A replanting payment is allowed if the insured crop is damaged by an insurable cause of loss to the extent * * *" and (b) In lieu of section 13(c) of the Basic Provisions, the maximum amount of the replanting payment per acre will be * * *". A commenter stated according to the preamble language, FCIC currently has a contract out to review the amount that is paid for a replanting payment for the various crops. There has been a concern that some of these amounts have not been changed for a number of years and may not reflect the increased costs of replanting. The commenter assumed this study will determine the correct amounts to be paid and appropriate Crop Provisions will be revised accordingly.

Response: Paragraphs (a)(1) and (2) in the replanting payments section of the Crop Provisions must remain intact as long as section 13 of the Basic Provisions limits the amount of a replanting payment to the actual cost of replanting. As stated in the proposed rule, FCIC is currently in the process of contracting a replant study to determine the appropriate costs of replanting. Replanting payments will be adjusted based on the results of the study. Even though recommendations have been given to increase the amount of the replanting payments, FCIC cannot increase the amounts until the replanting study is completed and determines that the current amounts are incorrect.

Duties in the Event of Damage or Loss

Comment: A commenter stated the proposed revision in the section titled "Duties in the Event of Damage or Loss" in all of the Crop Provisions proposed to be amended in the proposed rule that specifies representative samples are required in accordance with section 14 of the Basic Provisions is good since it simply refers to section 14 of the Basic Provisions without repeating the specifics.

Response: FCIC has retained the provisions in the final rule.

Settlement of Claim

Comment: A commenter stated that, in the settlement of claims sections of the Crop Provisions, the example shows how a claim is calculated for yield protection and revenue protection. In setting up the example, both the projected price and harvest price are used and then they are applied to the type of policy being calculated. The commenter stated it is confusing to have the harvest price before the example of calculating a production policy claim and believes the harvest price should only be at the beginning of the revenue policy claim calculation.

Response: In the claims examples in the Crop Provisions, FCIC usually sets

up the factual scenario and then calculates the possible indemnity payment. These proposed provisions are structured the same. What is important is the manner in which the indemnity is calculated for revenue protection and yield protection and these calculations are not confusing, nor would the calculations be any different if the reference to harvest price was moved. The example for yield protection clearly demonstrates the harvest price is not used for yield protection. No change has been made.

Comment: A commenter stated FCIC has added as defined terms "revenue protection guarantee" and "yield protection guarantee." However, with respect to the methodology for settling claims, FCIC retains the "production guarantee" terminology. More specifically, in subsection (b)(1)(i) for canola, coarse grains, cotton, rice, and small grains, which relates to yield losses, the policy refers to the "production guarantee." By contrast, in subsection (b)(1)(ii) for the crops listed above, which pertains to revenue losses, FCIC employs the new "revenue protection guarantee" language. The commenter stated this inconsistency is pointless and confusing. Accordingly, the commenter recommended FCIC amend subsection (b)(1) in the Crop Provisions for the crops listed above as follows: (1) Multiplying the number of insured acres of each insured crop or type, as applicable by your respective: (i) Yield protection guarantee (per acre) and your applicable * * * (ii) Revenue protection guarantee (per acre) if you elected revenue protection.

Response: FCIC has revised the Crop Provisions so that the claims provisions refer to the yield protection guarantee (per acre) or revenue protection guarantee (per acre) as applicable.

Comment: A few comments were received regarding the section titled "Settlement of Claim" in all of the Crop Provisions proposed to be amended in the proposed rule. A commenter stated a provision states the insurance provider will combine all optional units for which acceptable records of production were not provided. The commenter stated the Crop Insurance Handbook prohibits them from combining databases so the wording is misleading and should be clarified. The databases remain intact and the unit numbering changes from optional to basic. This section also needs to be revised to include how total production to count will be determined for revenue protection similar to the current language in the CRC Crop Provisions. A commenter stated the following comment applies to Small Grains 11(c)(1)(i), Cotton 10(c)(1)(i), Coarse Grains 11(c)(1)(i), and Rice 12(c)(1)(i), which were not amended in the proposed rule. For the crops proposed in the rule that have revenue protection available and revenue protection has been elected, and in the situation where the harvest price is less than the projected price, the provision fails to accurately determine the correct production to count for acreage that is abandoned; put to another use without consent; damaged solely by uninsured causes; or for which the insured failed to provide records of production that are acceptable to the insurance provider. The Crop Provisions as proposed state such acreage will be appraised at "not less than the production guarantee." For example, see Coarse Grains section 11(c)(1)(i) (not included in the Proposed Rule), and compare it to section 11(b), which does spell out the steps for revenue protection as well as for yield protection. The production guarantee (per acre) is a unit of measure determined by multiplying approved yield times the coverage level (no price/revenue consideration). The revenue protection guarantee (per acre) is determined using the greater of the projected price or the harvest price. However, the value of the production to count is determined using the harvest price. As an example, a corn policy with 1.0 acre insured, a production guarantee of 50.0 bu/acre, projected price of $2.00, and harvest price of $1.50 and the acreage is destroyed without consent. Total revenue guarantee = $100 ($1.0 \times 50.0 \times \$2.00$). Total revenue to count = $75 ($1.0 \times 50.0 \times \$1.50$). Even though the insured put the acreage to another use without consent, an indemnity is still due. Another commenter stated the following comment applies to Small Grains 11(d)(3), Coarse Grains 11(d)(2), Rice 12(d)(3), and Canola/Rapeseed 12(d)(3) which is not in the proposed rule. The commenter strongly recommends this subsection be revised to incorporate the current policy language in the Quality Adjustment Amendatory Endorsement. That amendatory language needs to become part of the revised Crop Provisions instead of continuing to require insurance providers and policyholders to read this outdated subsection and then read the revised language in the mandatory endorsement. Incorporating the amendatory language would eliminate the need to provide one more piece of paper to those insuring small grains, coarse grains and/or canola/rapeseed. The commenter stated the endorsement would continue to be required for policyholders insuring sunflowers, safflowers, dry beans and dry peas until those Crop Provisions are updated. Ideally, if these other Crop Provisions cannot be revised through the regulatory process for the same crop year as the ones in the proposed rule, the Quality Adjustment Amendatory Endorsement could be revised to delete the crops that no longer need it, but if that cannot be accomplished, insurance providers probably would prefer to explain to their policyholders which crops no longer needed it than to have to continue to include the endorsement with those policies.

Response: If a producer has optional units but does not keep acceptable records of production, the optional units will be combined into a basic unit for the purposes of determining the loss amount. The APH databases are established based on crop, type, practice, *etc.,* in accordance with 7 CFR part 400, subpart G and FCIC issued procedures. The combining of units for the purpose of the claims does not change how the databases are established or maintained. The Crop Provisions have been amended to clarify how the total production will be determined for both yield protection and revenue protection in section (c) of the Settlement of Claim section. The language in the Quality Adjustment Provisions—Amendatory Endorsement is already codified in the Code of Federal Regulations in each of the Crop Provisions so it is not necessary in the proposed and final rules. When the Basic Provisions and Crop Provisions are typeset for public use, the applicable information will be included in the new typeset policies.

Comment: A commenter recommended additional items be addressed while policies are open for changes and improvements: The inception point at which quality adjustment begins and the amount of discount allowed are out of sync with market requirements in Pennsylvania and the Northeast. This makes crop insurance less appealing to producers because it provides very little quality protection for this risk exposure. It is their belief protection against poor quality, due to an insurable cause, should trigger at the point where the market place begins to discount the price. Crop insurance is the only tool available for producers to manage this risk exposure. Part of this problem may be because Northeastern markets quality specifications are geared to needs for human consumption because increasing amounts of production is for this use, while grains in other parts of the country are grown for animal feed and ethanol where quality requirements may

not be as high. The commenter provided the following discount inception points for wheat, corn and soybeans according to current crop insurance policy provisions versus the market place: (1) Wheat, policy test weight – <50 lbs., market place – <58 lbs.; (2) corn, policy test weight – <49 lbs., market place – <52 lbs.; and 3) soybeans, policy test weight – <49 lbs., market place – <54 lbs. Previous experience with mature flooded corn, quality was so bad that FSA would not make loan deficiency payments, the Pennsylvania Health Department recommended destruction due to contamination and FCIC counted production at near full value. Another part of the problem with the current FCIC quality adjustment is the process used. Currently, FCIC requires quality determination by U.S. grain graders, which is a costly and time delaying process. The crop insurance program would be much more useful and producer friendly if quality adjustments were based on a price comparison between good and actual production from the marketplace. Example: If the commodity is only worth 50 percent of a good quality product, the production to count would be 50 percent of the gross production.

Response: Since no changes to these provisions were proposed, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Prevented Planting

Comment: A few comments were received regarding the section titled "Prevented Planting" in all of the Crop Provisions proposed to be amended in the proposed rule. A commenter recommended FCIC review or contract out for review the percent of the production guarantee provided for prevented planting purposes for all of the Crop Provisions that provide such coverage. The commenter was concerned the amount of prevented planting coverage being provided is too high. Another commenter stated there continues to be concerns about the amount of prevented planting payments that are made on an annual basis. The prevented planting language in the proposed rule does contain some language that will be beneficial (*i.e.,* by limiting the amount of prevented planting that is paid when shifting acres to another crop). The commenter stated it does not address what they consider to be the biggest incentive for producers to report acreage as prevented planting rather than attempt to plant a crop, which is the excessive amount of prevented planting coverage that is provided when the crop is prevented from being planted. The commenter's first recommendation for prevented planting would be to remove the provisions that allow the producer to increase the prevented planting coverage by 5 percent and 10 percent, respectively. The commenter's second recommendation is to reevaluate or contract out a study to examine the percentage of prevented planting coverage provided in the Crop Provisions. For example, the Coarse Grains Crop Provisions provide prevented planting coverage that is 60 percent of the production guarantee for timely planted acreage. It is the commenter's understanding that when prevented planting was originally added to these provisions that the ERS data supported a coverage amount of 50 percent of the production guarantee for timely planted acreage but when the policy was published as a final rule, the FCIC decided to offer actual coverage that was 10 percent higher. The commenter felt that if the prevented planting coverage amounts were more in line with the supporting data, producers would have a reduced incentive to file for prevented planting coverage.

Response: Since no changes to the percent of the producer's production guarantee for prevented planting coverage were proposed in any of the Crop Provisions, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule. No change has been made.

Small Grains Crop Provisions—General

Comment: A commenter stated a short rate for spring crops would be appropriate. The commenter stated there should be a graze off date for spring crops included in the final rule. If the producer ultimately decides to graze off a crop and thereby limit any indemnity, the producer should receive a reduction in premium rate. The commenter urged FCIC to include this change in the final rule.

Response: Since the suggested change was not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter stated triticale is a small grain crop growing like barley, buckwheat, flax, oats, rye, and wheat. Sometimes insurance companies will insure triticale as wheat. More and more acreage of triticale is being planted for grain. Official United States Standards for triticale are available and all the procedures for triticale could be just like wheat or other small grains. The commenter suggested adding triticale to the list of crops insured under the Small Grains Crop Provisions.

Response: Triticale is not currently insurable under the terms of the Small Grains Crop Provisions. Triticale cannot be considered or insured as wheat or any other small grain crop. Further, if producers report triticale as wheat on any of the crop insurance documents, they are making a false statement and could be subject to administrative, civil, or criminal sanctions. FCIC has contracted for research to determine the feasibility of a crop insurance program for triticale. Based on the outcome of the research and evaluation, it will be determined if an insurance program can be offered. No change can be made until the research and evaluation are completed.

Small Grains Crop Provisions—Section 1—Definitions

Comment: A commenter recommended definitions for "continuous cropping" and "summer fallow" be added either in these Crop Provisions or in the applicable Special Provisions where such practices are denoted.

Response: The terms "summerfallow" and "continuous cropping" are not used in the Small Grains Crop Provisions. If the terms are used in the actuarial documents, the definitions should also be included therein. No change has been made.

Comment: A commenter stated the definition of "prevented planting" which is not in the proposed rule and is "In lieu of the definition contained in the Basic Provisions * * *" but it has not been revised while the Basic Provisions definition has, deleting the reference in the first sentence to "* * * with proper equipment * * *", combining the next two sentences, and adding "Failure to plant because of uninsured causes, such as lack of proper equipment or labor to plant acreage, is not considered prevented planting." Unless it is intended for the Small Grains Crop Provisions to retain the previous wording in addition to adding the references to the "latest" final planting date and "applicable" late planting period needed for counties with both winter and spring types of the insured crop, this needs to be revised accordingly. Please consider if the added information for dual counties could be in addition to the Basic Provisions definition instead of having to replace it totally.

Response: The commenter is correct that the definition of "prevented planting" should be consistent between the Basic Provisions and the Small Grains Crop Provisions with the exception of the reference to the "latest final planting date." FCIC also agrees the definition in the Small Grains Crop Provisions does not have to replace the entire definition in the Basic Provisions. However, rather than include the differences required for small grains in the Basic Provisions as the commenter suggests, the definition in the Small Grains Crop Provisions has been revised so that it refers to the definition in the Basic Provisions, but replaces the phrase "final planting date" with "the latest final planting date." This avoids including provisions specific to small grains in the Basic Provisions.

Comment: A commenter stated the definition of "sales closing date," which was not in the proposed rule, is another unchanged definition that is "In lieu of the definition contained in the Basic Provisions * * *" but provides essentially the same information in the first sentence. Please consider deleting the first sentence and prefacing the second sentence with "In addition to the definition in the Basic Provisions * * *".

Response: FCIC agrees the definition contains repetitive provisions. In addition, information regarding counties with both fall and spring sales closing dates is contained in section 3(b). Therefore, the definition of "sales closing date" is not needed and has been removed in this final rule.

Small Grains Crop Provisions—Section 2—Unit Division

Comment: A few commenters stated separate classes of wheat should be allowed separate unit designations and coverage levels. Hard red winter wheat and hard red spring wheat, for instance, typically have separate sales closing dates but should also be afforded separate coverage levels and policy elections.

Response: Separate units are currently allowed for initially planted winter wheat and initially planted spring wheat. Therefore, hard red winter and hard red spring wheat already qualify for separate units in counties that have both winter and spring wheat final planting dates. In addition, the durum class and club wheat subclass can qualify for separate units in counties where the Special Provisions specify these wheat types. However, since separate units and separate coverage levels for all the various wheat classes were not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Small Grains Crop Provisions—Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

Comment: A commenter stated producers in dual counties should have the ability to take separate plans, levels, or endorsements on their winter and spring wheat. The commenter stated at the very minimum, if a producer does not seed winter wheat he/she should be able to change the plan on his/her spring wheat without having to cancel his/her wheat policy in the fall.

Response: Since separate insurance plans, coverage levels or endorsements for winter and spring wheat were not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. If a producer does not plant any winter wheat in a county with both fall and spring sales closing dates, they should be able to elect either yield or revenue coverage in the spring. Provisions proposed in section 3(b)(3) (now redesignated section 3(b)(2)) that allow the producer to change their elected coverage until the spring sales closing date were already included and have been retained in the final rule.

Comment: A commenter stated a concern regarding increased planting of winter wheat acres in Northern and Northeastern South Dakota. This concern relates to FCIC's designation of "winter wheat" or "spring wheat" counties. Winter wheat cannot be insured in spring counties until it has proven to have survived the winter. The commenter requested a change in the Small Grains Crop Provisions to insure winter wheat and spring wheat as two separate crops instead of two types of the same crop. This change would allow producers additional flexibility in their planting decisions. Additionally, with the release of new winter hardy varieties and agronomic practices such as no-till, there has been a combined effect of increasing winter wheat survivability in South Dakota.

Response: Since the recommended change was not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Small Grains Crop Provisions—Section 5—Cancellation and Termination Dates

Comment: A commenter recommends Yankton, Turner, Lincoln, Union and Clay counties in South Dakota be designated as winter wheat-growing counties. The commenter stated this is due to the large increase in winter wheat acres with a need for full coverage insurance.

Response: FCIC has amended the provisions accordingly.

Small Grains Crop Provisions—Section 6—Insured Crop

Comment: A commenter stated the phrase "We may agree, in writing, to insure a crop prohibited under * * *" in section 6(a)(4), which was not in proposed rule, indicates this is handled between the insurance provider and the applicant/insured rather than as a written agreement. If this is not true, please revise the wording.

Response: The current section 6(a)(4) does refer to a "written agreement" as does section 6(a)(2). To reduce confusion and improve consistency between terms used in various policy documents and FCIC issued procedures, section 6(a) has been restructured and the phrase "agree in writing" has been replaced with the phrase "written agreement."

Comment: A commenter stated FCIC is proposing to insure buckwheat in section 6(a)(5). As the insurance provided for buckwheat differs from that applicable to wheat, the commenter assumes FCIC will create a separate crop code for buckwheat. In addition, the commenter asked that FCIC clarify section 6(a)(5)(iii), as it is unclear what is meant by "purchase price." The commenter asked whether FCIC will publish a price election relative to buckwheat.

Response: Buckwheat is a separate crop and a separate crop code will be established for it. The phrase "purchase price" in proposed section 6(a)(5)(iii) (redesignated section 6(b)(3) in this final rule) refers to the amount the buyer will pay the producer for production under contract. FCIC has revised the provision to specify "the price to be paid for the contracted production" for clarity. The price election used to establish the amount of insurance protection will be based on the contract price.

Comment: A commenter stated FCIC should consider changing the reference to "* * * additional coverage is available for wheat or barley damaged * * *" in section 6(c), which was not in the proposed rule, since this does not use "additional coverage" in the way it is defined in the Basic Provisions (a

level higher than CAT) and so could be confusing.

Response: The commenter is correct that using a defined term in another manner may be confusing and has removed the word "additional" in redesignated section 6(d).

Small Grains Crop Provisions—Section 7—Insurance Period

Comment: A commenter stated the opening statement in section 7 reads: "In lieu of the requirements under section 11 of the Basic Provisions * * *" Unless it is intended for 7(a) to supersede the phrase "Except for prevented planting" and the explanation of what is meant by the date of acceptance of the application in the Basic Provisions, we would suggest deleting this opening and revising to state: "In accordance with section 11 of the Basic Provisions, and subject to any provisions provided by the Wheat or Barley Winter Coverage Endorsement (if elected by you): "(a) Insurance attaches * * *:" "(b) The calendar date for the end of the insurance period is the following applicable date * * *" Further, the rest of 7(b) duplicates Basic Provisions section 11(b)(1)–(3) & (5) except for referring to "Insurance ends" instead of "Coverage ends."

Response: FCIC has amended the provisions accordingly.

Comment: A commenter recommended clarifying if acres and share need to be reported by sales closing date in section 7(a)(2)(v). Currently, questions arise regarding the acreage reporting deadline when an insured is requesting winter acres to be added to a spring only county. The insurance provider performs an inspection to see if the stand qualifies for insurance, but does not need to determine acres. The commenter questioned if acres can be revised by the spring acreage reporting date or if they need to be reported by the sales closing date. The insured could experience a loss after the inspection in the spring and then request an increase in the number of acres to be insured. There is no deadline specified when acres must be reported. The commenter recommended adding "unless you request such coverage and amount of acres and share to be insured on or before the spring sales closing date."

Response: While there is no policy requirement to report the number of insured acres or share by the sales closing date (because the number of insured acres and share are determined when insurance attaches) the number of acres of fall planted wheat or barley should be included on the request for coverage. The provisions in section 7(a)(2)(v) have been revised accordingly. Only those acres accepted by the insurance provider should be included on the acreage report as insurable acres. If other than the accepted acres are subsequently reported on the acreage report, any applicable provisions regarding under or over-reporting acreage would then apply.

Small Grains Crop Provisions—Section 9—Replanting Payments

Comment: A commenter stated section 9(a)(1), which is not in the proposed rule, currently states "In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions." The commenter recommended deleting section 9(a)(1) and adding the following reference to section 13(c) of the Basic Provisions to section 9(c): "In lieu of section 13(c) of the Basic Provisions, the maximum amount of the replanting payment per acre will be * * *." The remaining sections in 9(a) would then be renumbered and section 9(a)(2) could be revised leaving only the reference to complying with the winter coverage endorsement.

Response: Since the recommended changes were not proposed, and the public was not provided an opportunity to comment, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended FCIC add a new section 9(f) to clarify replant provisions apply specifically to spring wheat. Since replant provisions are not applicable to winter wheat, the commenter believes clarification of this provision would be useful.

Response: Section 9(b) excludes replant payments for all winter types if there is only a fall final planting date. Therefore, this exclusion applies to more than just winter wheat. Further, there is a replant payment for fall types if there is both a spring and fall final planting date in the county. No change has been made.

Small Grains Crop Provisions—Section 11—Settlement of Claim

Comment: A commenter stated some livestock operations cannot use the same feed barley as other operations because of their nature. Barley that has a poor test weight and some other problems will not work in a confined operation, whereas this same feed would work in a feed lot. Therefore, it has less value.

Response: It is not clear if the commenter is suggesting different quality provisions dependant upon intended use of the grain. If so, it would be very difficult to develop and administer such provisions. Different quality protection levels would have to be developed based on intended use of grain and reported intentions may change during the crop year. No changes have been made.

Small Grain Crop Provisions—Section 12—Late Planting

Comment: A commenter stated there is a concern the final planting dates for winter crops in some areas are already late, and then when the late planting period is included, it becomes extremely late for the crop to get established prior to the winter months. The commenter recommended RMA's Regional Offices review final planting dates in the Special Provisions to make sure they are not too late.

Response: RMA's Regional Offices review final planting dates on a periodic basis and make changes as necessary. If the commenter or any interested party is concerned about the dates for specific crops or counties, they should advise the RMA Regional Office. Any interested person may find contact information for the applicable regional office on RMA's Web site at *http://www.rma.usda.gov/aboutrma/fields/rsos.html*. No change has been made.

Cotton Crop Provisions—Section 1—Definitions

Comment: A commenter stated the definition of "Production guarantee" which was not in the proposed rule is essentially a reworking of the "production guarantee (per acre)" definition in the Basic Provisions, specifying pounds as the unit of measure and adding "* * * any applicable yield conversion factor for non-irrigated skip-row planting patterns * * *" to the calculation. The commenter suggested changing the defined term to "Production guarantee (per acre)" and beginning the definition with "In lieu of the definition in section 1 of the Basic Provisions, * * *"

Response: FCIC has revised the definition accordingly.

Cotton Crop Provisions—Section 5—Insured Crop

Comment: Several comments were received regarding proposed changes to sections 5(b)(4) and (5). A commenter suggested FCIC clarify what "acreage following a small grain crop" means in section 5(b)(4). The commenter asked whether it refers to a small grain which is planted, planted but not harvested, or

refers to only if the crop is harvested. The commenter recommended replacing "following" with either "planted to a small grain crop" or reference to "harvest." A commenter stated the proposed revision (replacing (4) & (5)) is more restrictive since cotton would not be insured "following a small grain crop" whether or not the small grain crop had reached the heading stage. This probably is a good change because of soil moisture concerns and because it would be easier to administer not having to determine what percentage of the field had reached the heading stage. A few commenters stated they believe this provision would be burdensome on producers, insurance providers and FCIC and should be revised. A few commenters suggest FCIC allow cotton to be insured following a small grain crop if the acreage is irrigated or if planting a small grain or other approved crop as a cover crop is recognized as a good farming practice on non-irrigated acreage and documented in the county's Special Provisions. A commenter stated determining insurability of non-irrigated cotton by the county Special Provisions, rather than individual written agreement, would be less cumbersome to administer, more equitable to producers, and would allow decisions to be made by extension and other experts based on sound agronomic considerations. A commenter stated unless FCIC intends to address this in the Special Provisions for the Southeastern states, there will be a lot of cotton that is no longer insurable. There is a lot of acreage where a small grain crop is planted as a cover crop (never reaches the headed stage) and then cotton is subsequently planted. The commenter felt the previous language whereby the small grain crop must have reached the heading stage is a better indicator of whether or not the subsequent cotton crop should be insured. A commenter stated requiring a written agreement for the coverage of dry-land cotton preceded by a cover crop is an unnecessary attempt to reduce fraud and abuse that will discourage the use of established conservation practices. The commenter stated FCIC's proposed revisions of section 5(b)(4) eliminates a producer's ability to insure non-irrigated cotton following a cover crop or small grain crop planted in the same calendar year, except through the initiation of a written agreement. This provision will introduce inefficiencies and increase cost, forcing some producers to choose between planting a cover crop and purchasing insurance. This deterrent would serve only to increase adverse selection and introduce regional bias since irrigation is not practical in certain production areas. Given the importance of cover crops to the environment, the role of cover crops in established conservation programs and the bias introduced by requiring written agreements, annual written agreements should not be required when dry-land cotton is preceded by a cover crop. A few commenters recommended instead of revising the language, FCIC should create a set of requirements or restrictions on the management of cover crops designed to guard against moral hazard that would be specified within cotton's Special Provisions. For example, if the small grain or other approved crop is permitted in the county Special Provisions, the small grain or other approved crop on non-irrigated acreage must be fully terminated (burned down) a certain number of days (*e.g.,* 45 days) prior to the final planting date for cotton in order for non-irrigated cotton to be insured on the acreage in the same calendar year. However, any requirements or restrictions placed on cover crop management should: (a) Be consistent with guidelines and requirements established by existing conservation programs; (b) be sensitive to agronomic differences between cover crops; and (c) consider regional variations in cultural practices and weather patterns.

Response: FCIC agrees the proposed provisions may be overly restrictive and has removed them. However, soil moisture levels are still a concern in certain regions. Therefore, the Special Provisions in those regions will contain a statement to limit coverage appropriate for the area. This is consistent with the method in which other Crop Provisions address this same issue.

Cotton Crop Provisions—Section 8—Causes of Loss

Comment: A few commenters stated failure of the irrigation water supply provision in section 8(h) needs to more clearly delineate between failures which are not covered versus failures which are covered. Specifically, the commenters were concerned moving from current language ("Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.") to proposed language ("Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period.") could preclude coverage of legitimate losses resulting from unavoidable weather-related events. For example, the commenter asked whether the new language would cover losses of a producer whose insurance attached when the producer's well produced 500 gallons of water per minute but afterward only produced 300 gallons per minute due to prolonged periods of hot, dry weather. Similarly, the commenter asked whether the new language would cover losses of a producer whose insurance attached when water supplies from a local water reservoir were expected to be ample but afterward the governing body for the reservoir determines that normal water level deliveries are not possible, again due to weather conditions. In a third example, the commenter asked whether the new language would cover losses due to the breakage of the well casing or lining caused by shifting ground below the surface, which is an unavoidable weather-related event that can only be remedied by drilling a new well. The commenters believed it is vital all losses caused by weather-related events, including those that adversely impact the availability of irrigation water supplies, remain covered under the Federal crop insurance program.

Response: As indicated in the proposed rule, the provisions previously stated failure of the irrigation water supply was an insured cause of loss if the failure was due to an unavoidable cause of loss. FCIC has always considered the provision to limit the cause of the failure of the irrigation supply to be due to one of the insured perils. However, since the unavoidable causes of loss were not clearly referenced in section 8(h), they could have been interpreted to extend beyond the named perils. Now the provision is consistent with other Crop Provisions and ensures only named perils are covered under the policy. The specific situations raised by the commenter may be covered by the new language provided the failure of the irrigation water supply was due to a cause of loss specified in section 8 of the Cotton Crop Provisions (*e.g.,* adverse weather conditions, fire, earthquake, *etc.*) that occurred during the insurance period. However, if there are management decisions involving the allocation of water or other man-made causes also involved, such decisions or causes may not be insurable. Each individual situation must be examined and it is impossible to set a single standard. Further, causes of loss not listed in the applicable Crop Provisions, even if allowed by the Act, have not been included in the premium rates. Rates have been established based on the listed perils, which is consistent with

other Crop Provisions. No change has been made.

Cotton Crop Provisions—Section 10—Settlement of Claim

Comment: A commenter asked FCIC to consider changing unamended section 10(c) by replacing "The total production (pounds) to count * * *" with "The total production to count (in pounds) * * *" so "(pounds)" is not inserted in the middle of the common term "production to count."

Response: FCIC has revised the provisions accordingly.

Comment: A few commenters stated the percentage threshold for quality adjustment has been changed from 75 percent to 85 percent. A commenter suggests it may be good for the producer but it does not give any relief to the loss adjustment procedure. Cotton quality adjustment is long and laborious. Before it was "improved" to its present state, it was considerably simpler for loss adjustment. A large policy now could take days to do quality adjustment. The commenter suggests FCIC simplify the procedure once again. Claims staff could help, perhaps, with input on how to effect the simplification. This will result in increased time and workload to complete cotton losses as well as resulting in additional payments being made for quality losses. The commenter was opposed to this increase and recommended this threshold remain at 75 percent.

Response: FCIC has consulted with the National Cotton Council and they provided data that demonstrated that quality adjustment at the 85 percent level was more appropriate. FCIC is willing to work with the affected parties to determine whether there can be simplification of the loss adjustment process while still maintaining program integrity. No change has been made.

Cotton Crop Provisions—Section 11—Prevented Planting

Comment: A commenter stated clarification is needed to address prevented planting determinations for both the guarantee and acreage in section 11(a). To be most equitable for all producers, they recommended basing both determinations on a solid-plant basis. They suggested adding a reference to "eligible acreage" and changing "based on your approved yield" to "determined on a solid-planted basis" so it reads as follows: "(a) In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting production guarantee and eligible acreage will be determined on a solid-plant basis without adjustment for skip-row planting patterns."

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Sunflower Seed Crop Provisions—General

Comment: Many negative comments were received because the proposed rule did not provide revenue protection for sunflowers. The commenters urged FCIC to provide revenue protection for sunflowers in the final rule. They stated that elimination of revenue coverage would unduly diminish the risk management options currently available to sunflower producers and cause serious damage to the entire sunflower industry. Sunflower seed is much in demand because the oil is one of the healthiest. Major companies like Frito Lay have switched to sunflower oil because it is healthier and tastes good. Sunflower producers need to have the same or similar programs as producers of other crops. Planting sunflowers is an option for producers from Texas to North Dakota and is one of the best options in dryer climates. It is more drought tolerant than most crops and fits in limited irrigation areas. Commenters stated that sunflowers are an extremely important crop in North Dakota. In 2005, North Dakota ranked first in the nation's sunflower production, producing 44 percent of the national total. North Dakota also has several sunflower handling/processing facilities. A commenter stated that sunflowers will produce the most oil per acre of any crop including soybeans and canola. Each of these crops will produce about the same pounds of grain but sunflowers have 45 to 50 percent oil, soybeans have 18 to 20 percent oil, and canola has 38 to 40 percent oil. With bio-diesel becoming prevalent, it is very important to support sunflowers as they produce the most oil per acre. Commenters also stated that use of revenue products have grown significantly since the crop insurance reform legislation passed in 2000 and the commenters are concerned preventing these products from being used by sunflower producers will unfairly restrict these producers' risk management options. They understand a proposal has been submitted to the agency to address the agency's concerns on how to determine an appropriate base price for the product absent a futures contract(s) in the commodity. They hope FCIC will seriously consider this proposal or others that would preserve revenue coverage for sunflowers. The commenters stated, because of the very intense and competitive atmosphere for acreage among crops, U.S. sunflower producers need access to the risk management tools that are available to other major crop producers. Crop insurance programs influence what crops get planted. The amendments offered in the new policy would give producers a choice of revenue protection (against loss of revenue caused by low prices, low yields or a combination of both) or yield protection (for production losses only) within the same Basic Provisions and applicable Crop Provisions. Excluding revenue protection for sunflower producers would not allow them to consider and determine the best risk management tool for their operations. A commenter stated that market forces are constantly changing. This is due to farm program adjustments, trans fat labeling requirements, and food crops produced for energy. Health is driving increased demand for sunflower products. Sunflower oil is enjoying strong demand from domestic users due to its healthy and stable profile. An example is the recent announcement from the major U.S. snack food manufacturer, Frito Lay, of their decision to replace cottonseed oil with sunflower oil in two of their major potato chip brands. A release from Frito Lay clearly states this change to sunflower oil eliminates 60 million pounds of saturated fat from the U.S. diet annually. The Food and Drug Administration's requirement that trans fats be listed on all food product labels and the industry decision to produce NuSun® (mid-oleic sunflower oil) changed the historical price relationship between sunflower and soybean oils. Sunflower oil is one of the few naturally stable oils that can be used in food manufacturing without the need for hydrogenation. Because of this development, it is estimated U.S. sunflower acres will need to expand from the present 2 million to 4.5 million by 2010. However, the growth in acres to meet this demand could be restricted if producers are unable to insure sunflowers with revenue protection. The commenters stated the competition for existing acres is intense. Members of the National Sunflower Association (NSA) have identified their inability to buy appropriate crop insurance as the number one serious impediment to taking advantage of these new market opportunities. The commenters stated, the intent of Congress in providing major expansion of the crop insurance program in 2000 was clear: "make crop insurance more widely available." The

intent was not for the program to be administered in a manner that keeps producers from diversifying their operations and limiting the risk associated from growing only a few selected crops. Congress has also crafted farm policy to encourage planting flexibility so producers can respond to market forces. This holds especially true where market forces encourage production of crops like sunflowers. Having revenue protection for sunflowers will give producers additional flexibility and greater security. The commenters stated the **Federal Register** notice states, "Very few crop policies of sunflowers earned premium in 2003. Removal of this crop from eligibility is appropriate because the mechanism for price discovery does not adequately reflect either market value or changes in the market valuation during the period between planting and harvest." The commenters stated they have agreed with that statement for the last three years. They have met and corresponded with RMA and related USDA agencies in an effort to change the pricing mechanism for the RA crop insurance policy. In a letter to former RMA Administrator Ross Davidson in September 2005, the commenter suggested two potential methods of price discovery that would allow the RA policy to more adequately reflect the market value for sunflower seed. The commenters stated they did not receive a response to their proposal. The commenters stated they also agree with the statement in the **Federal Register** that the RA sunflower policy has seldom been used in the last several years. The problem with the present RA policy is that the formula used to obtain a sunflower 'strike' price is outdated. The old formula of taking the Chicago Soybean Oil Futures contract and dividing that number by two and subtracting one simply no longer represents a sunflower seed value. This formula worked reasonably well until the 2000 crop year. Prior to that time the majority of oil-type sunflower acres were of the linoleic fatty acid type. The vast majority of this sunflower oil was exported to countries in North Africa, the Middle East and Mexico. Values for the oil were at par or slightly greater than soybean oil values. However, this changed beginning in 2000 when the U.S. sunflower industry began the switch to NuSun. In the 2005 crop year, it is estimated 90 percent of the sunflower oil-type acres were either NuSun or high oleic, the latter sells at a premium to NuSun oil. The bottom line is the old FCIC formula visa via the Chicago Soybean Oil futures market no longer works. Producers were cautioned not to use the RA policy in the last several years because it did not reflect sunflower seed values. The Multi-Peril price elections better reflected sunflower values. The commenters recommended sunflowers not be eliminated from the Combo policies, however, it will be necessary to change the value. The commenter provided a chart which shows the existing formula and two additional formula modifications. One modification is to take the Chicago Soybean Oil Futures contract (per the RA formula) and simply divide that average number by two. The other choice is to divide by two and add one. The commenters stated the second alternative has the best relationship to the annual average of new crop NuSun prices offered at the Enderlin, North Dakota crushing plant. It is important to point out the NuSun price does not reflect an average 6 percent oil premium. Neither does it reflect high oleic which generally is priced at $1.50 cwt premium to NuSun. Nor does it reflect hulling types which are priced at $1.50 premium to NuSun. Nor does it reflect confection sunflower which is priced from $3 to 4 cwt over NuSun. The commenters stated there is also the factor of bio-diesel in the U.S. vegetable oil market that is changing all of the old pricing rules. The Chicago Soybean Oil futures contract often tracks the petroleum market due to bio-diesel. The commenters stated the point they want to emphasize is market dynamics change and the U.S. vegetable oil market is in a very dynamic time. Sunflowers are part of this dynamic process and producers should not be penalized in the loss of revenue protection due to an out-dated formula. The commenters stated on behalf of sunflower producers throughout the U.S., they strongly encourage FCIC to include revenue protection for sunflowers. They are willing to give any assistance FCIC may need to make this a reality for sunflower producers. If revenue protection is not provided for sunflowers, the loser will be the American farmer and the domestic industries that depend on sunflower production. Commenters stated that agriculture is currently experiencing dynamic changes. Renewable energy, shifts in nutritional and dietary demands, and other alternative uses are impacting the demand for and market prices of several crops including sunflowers. Seed and confectionary sunflower products are shipped worldwide. The commenter stated fifty percent of his company's business is sunflower exports to Europe. To exclude revenue protection for sunflowers will be to the detriment of U.S. farmers, the health of our citizens, and domestic industries.

Response: As stated more fully above, FCIC has reevaluated its decision and determined that there is an appropriate pricing method that would allow revenue protection for sunflowers. Therefore, the Sunflower Seed Crop Provisions have been amended to add revenue protection and to make other clarifications and simplifications similar to other Crop Provisions in the final rule.

Coarse Grains Crop Provisions—General

Comment: A few commenters stated producers of grain type corn, of which a portion of the acreage is harvested for silage, need to be allowed the option to continue to insure such acreage on a grain basis with CRC type protection that includes the harvest price option. A commenter stated this is necessary so grain and silage producers can have the same replacement price protection as grain only producers who choose to hedge in order to buy-out their hedge contract in the event of yield loss. The commenter acknowledged insuring grain type corn acreage cut for silage in a manner that provides producers with the needed risk management protection is challenging. The commenter stated in the Northeast, producing corn silage with very high nutrient value is critical for profitable livestock and dairy production. With all of the emphasis on maximizing the relative feed value (RFV) of the silage, if producers have reduced grain content in the corn silage, they purchase additional feedstuffs to balance the ration. The commenter stated producers need the replacement feed provision currently provided by the CRC program and thus need the market price option under the new policy. The commenter added in the Northeast, grain yields frequently have more yield variability than tonnage yields and insuring on a tonnage basis does not work well because the grain content of the silage could be off considerably but the impact on tonnage yield is still within the insurance deductible. Therefore, there is no indemnity to help to pay for the cost of feed supplements to make up for the reduction of grain content and RFV. Another commenter recommended the availability of revenue protection for corn silage should be retained, because the commenter believes revenue protection should be available to these producers. The commenter stated if market and/or agronomic decisions suggest producers should produce these crops, the Federal crop insurance program should not

create a disincentive. The commenter urged FCIC to provide revenue protection for corn silage in the final rule.

Response: Under the current revenue policies, only corn grown for harvest as grain is insurable. In this proposed rule, producers can insure both corn grown for grain and corn grown for silage under the revenue protection policy but the corn grown for silage will not receive protection against a change in price. The harvest price is the same as the projected price, which is established by FCIC. This is because corn silage is not traded under any commodity exchange and the correlation has not been established between corn silage prices and corn for grain or other crop prices that are established on a commodity exchange. Therefore, FCIC must establish the projected price for corn grown for silage. Since the projected price is not based on a commodity exchange, there is no basis to calculate a harvest price that is different than the projected price. No change has been made.

Comment: A commenter stated when Northeastern producers plant grain type corn, of which some will be harvested as grain and some as silage, they do not determine which acreage will be harvested for silage until harvest time. For this reason, past efforts by FCIC to require producers to designate acreage for grain and acreage for silage have always failed to work at the farm level.

Response: FCIC agrees the number of acres and the location of the acres ultimately harvested for silage and grain will depend on many factors that may change after the acreage has been reported. However, crop insurance guarantees and premiums are established based on the number of acres of each insured type reported on the acreage report. Therefore, producers who plant corn for both silage and grain must report the number of acres planted for each purpose. Provided the acreage is all located in the same unit, it does not matter which particular acreage in the unit was harvested for grain and harvested for silage. No change has been made.

Comment: A commenter supported the inclusion of corn silage to revenue coverage.

Response: FCIC has retained the provision in the final rule. However, the harvest price for corn grown for harvest as silage will be set equal to the projected price for corn silage since corn silage is not traded under any commodity exchange and no correlation has been established between corn silage prices and corn for grain or other crop prices that are established on a commodity exchange.

Coarse Grains Crop Provisions—Section 1—Definitions

Comment: A commenter stated the definition of "planted acreage" in section 1 provides, in part: "(corn must be planted in rows far enough apart to permit mechanical cultivation if the specific farming practice you use requires mechanical cultivation to control weeds) * * *". The commenter stated that, assumedly, the producer has the discretion to determine if a particular practice requires mechanical cultivation. The commenter asked if there is a minimum row width that de facto is too narrow to permit mechanical cultivation, and if so, the policy should so state. Another commenter stated they have some concerns with the added phrase which states, "(corn must be planted in rows far enough apart to permit mechanical cultivation if the specific farming practice you use requires mechanical cultivation to control weeds) * * *". The commenter stated the addition of the phrase depends on the sufficiency of the research completed to date for determining yield variations based on practice differences. The commenter believes if FCIC's research shows no material differences based on practices used, this change may be appropriate. However, if yields differ based on these practices, the proposed change could allow coverage on narrow-row corn even if it was not planted to the hybrid variety needed for that farming practice.

Response: FCIC has determined that the current requirement that corn must be planted in rows far enough apart to permit mechanical cultivation is no longer necessary and has removed it in the final rule. Given the characteristics of the new varieties and available chemicals, mechanical cultivation may not be used in many areas. Further, FCIC cannot establish the necessary row spacing because it depends on many factors. If the practice used to plant the crop is not generally recognized for the area, under section 8(b)(1) of the Basic Provisions, the crop will not be insured.

Coarse Grains Crop Provisions—Section 7—Insurance Period

Comment: A few comments were received regarding the change proposed in section 7(b) to move the calendar date for the end of the insurance period for corn insured as silage in several states from September 30 to October 20. A few commenters suggested Virginia should be included in the list of states with the October 20 calendar date for the end of insurance period for corn grown as silage. One of the commenters stated NASS data should support that Virginia has very similar climatic conditions as the states listed. Another commenter suggested Virginia be added to the list of states (including Maryland, Pennsylvania, and West Virginia) to which the calendar date for the end of insurance period for silage is October 30. The commenter stated the silage planting and harvest dates and growing season in Virginia's western counties are similar to those in West Virginia. The commenter noted there have been several occasions where the September 30 end of insurance period passes before all silage has been harvested. A commenter recommended the calendar date for the end of the insurance period for corn insured as silage be established as September 30 rather than September 20 to assure that protection continues through harvest completion in years when crop maturity is late and can result in crop destruction from hurricanes. A commenter stated the proposed change in section 7(b)(1) extends the calendar date for the end of the insurance period from September 30 to October 20 for corn insured as silage in all Texas counties. The commenter also noted section 7(a)(1) was not changed in the proposed rule. Therefore, the calendar date for corn insured as grain in south Texas remains September 30 (and December 10 in other Texas counties). The commenter noted FCIC's explanation for this change is that the extra time is needed to complete silage harvest, but they question why the grain date in south Texas remains so early by comparison.

Response: FCIC has revised the calendar date for the end of insurance period for corn silage in Virginia to October 20. Additionally, FCIC has determined such change is also appropriate for North Carolina and has revised the provision accordingly. FCIC assumes that the commenter was referring to the October 20 date stated in the proposed rule for the referenced states (including Maryland, Pennsylvania, and West Virginia), not October 30 as a commenter suggested, and has revised the provision accordingly. A commenter recommended that the end of the insurance period be moved from September 20 to September 30 but the proposed rule uses September 30 and it is retained in the final rule. It is not appropriate to move the end of the insurance period for all states to October 20. FCIC proposed the changes for the listed states because of the particular agronomic conditions in those states. Not all states have the same agronomic

conditions. If the commenter has information about a particular State, it can provide such information to FCIC for consideration at a future date. The commenter is correct that, as proposed, there was an inconsistency in the end of the insurance period for corn for grain and silage in Texas. However, since silage is harvested before grain, the end of the insurance period dates should have a similar relationship. Therefore, the calendar date for the end of the insurance period for corn insured as silage in Texas should remain as September 30. Additionally, FCIC has determined the calendar date for the end of the insurance period for corn insured as silage in New Mexico and Oklahoma should also remain as September 30 because the corn silage is normally harvested in those states by September 30. FCIC has revised the provision accordingly.

Coarse Grains Crop Provisions—Section 8—Causes of Loss

Comment: A commenter stated the shift from current language granting coverage for losses caused by a failure of irrigation water supplies resulting from unavoidable weather related events could inadvertently preclude coverage of legitimate losses. The commenter stated it is vital that all losses caused by weather related events, including those that adversely impact the availability of irrigation water supplies, remain covered under the Federal crop insurance program. They recommended the Agency substitute the more inclusive wording of the current provision in place of the proposed language.

Response: Failure of the irrigation water supply that occurs during the insurance period is a covered cause of loss if such failure is due to a cause of loss specified in the Crop Provisions. FCIC has always considered the provision to limit the cause of the failure of the irrigation supply to be due to one of the insured perils. However, the provision previously referred to an unavoidable cause of loss, which could have been interpreted to extend coverage beyond the named perils and beyond those of natural disasters and that would be a violation of the Act. Further, other causes of loss, even if allowed by the Act, have not been included in the premium rates. Rates have been established based on the listed perils, which is consistent with other Crop Provisions. No change has been made.

Coarse Grains Crop Provisions—Section 9—Replanting Payments

Comment: Several commenters suggested revising the proposed provisions in section 9(b) to increase the number of bushels used to compute the replant payment amount. A commenter stated the number of bushels used to compute the replant payment for corn should be increased from 8 to 12 bushels and the number of bushels used for soybeans should be increased from 3 to 5 bushels. A commenter stated the current coarse grains replanting maximums are: corn grain 8 bushel, corn silage 1 ton, grain sorghum 7 bushel, and soybeans 3 bushel. The commenter stated there was a previous proposal to increase the maximum coarse grain replanting payments as follows: corn grain 10 bushel, corn silage 1.25 ton, grain sorghum 8 bushel, and soybeans 4 bushel. Replant increases were justified due to increased input costs, *etc.* The commenter asked why no consideration was given to this recommendation when there was overwhelming support for these increases. A commenter stated the existing level of replant cost reimbursement is considerably outdated. The commenter stated with the ever rising cost of inputs for nitrogen based fertilizer, chemicals, *etc.,* and the fuel cost to replant, the number of bushels used to compute the replant payment should be increased for corn from 8 to 10 bushels and for soybeans from 3 to 4 bushels. Another commenter believes the current replant payment schedule is outdated. The commenter stated with the introduction of Round-Up Ready seed, replant costs have increased and replant payments should more closely reflect these costs. The commenter noted in some areas, the cost to plant an acre of Round-Up Ready corn is about $40 per acre. Therefore, using the current APH price election, a replant payment per acre will only amount to $16 or 40 percent of the cost of seed alone. The commenter stated the cost to plant an acre of Round-Up Ready soybeans is about $42 per acre. However, a replant payment per acre will only amount to $15.45 or 36 percent of the cost of seed alone.

Response: FCIC is aware average costs associated with replanting have increased significantly in recent years. FCIC has contracted for a replant study. Based on the outcome of the study, FCIC will make appropriate revisions to compensate producers for a portion of the replanting costs based on the most current average replanting costs available. No change has been made.

Comment: A commenter stated they understand a study is underway that could change the number of bushels used in the replanting payment calculations for these crops. Since such changes would have to be put in the Special Provisions until the next revision of the Coarse Grains Crop Provisions, it might be worth considering whether to delete the specific numbers in (1)–(4) and revise (b) to read "* * * the number of bushels (tons for corn insured as silage) for the applicable crop as specified in the Special Provisions * * *".

Response: FCIC has revised section 13 of the Basic Provisions to allow the amounts contained in the Crop Provisions to be revised in the Special Provisions. Therefore, there is no need to remove the amounts from the Crop Provisions because such amounts will apply until the study is complete. However, FCIC has added a provision to ensure that the amounts could be adjusted in the Special Provisions. The same change has been made in the other Crop Provisions contained in this rule.

Coarse Grains Crop Provisions—Section 10—Duties in the Event of Damage or Loss

Comment: A few comments were received regarding the provisions proposed in section 10(c). A commenter stated the proposed language begins with, "In lieu of any policy provision providing otherwise * * *", having to do with when acreage will be harvested in a different manner than originally reported, raises the question of how this fits into the order of priority, and whether this is supposed to supersede any provision in the Special Provisions. A commenter recommended the provisions contained in section 10(c) be revised to allow corn, which is ultimately cut for silage, to be insured as grain as long as it is appraised before harvest and thus be allowed revenue coverage with up and down price protection. The commenter stated the major value component of corn silage is how much grain content is in the silage and the value of the grain and if the price of corn is low, the value of the silage is proportionately lower and if corn prices are high, the value of the silage is proportionally higher. The commenter added drought damaged corn with no grain in it makes silage a lot less valuable than silage full of grain. If the producer has to supplement their silage for their dairy or other livestock with grain, they must go out in the market and buy grain, thus they need price protection on corn cut for silage, just like they need it for corn harvested for grain. The commenter stated in the

Midwest (like Illinois) corn cut for silage has been insurable as grain for years. It has been appraised before harvest but eligible for corn revenue coverage. The commenter stated most farmers do not know how many acres they will cut for silage until they are in the midst of silage cutting, so it makes the most sense to insure it as grain and pay claims based on corn grain appraisals. The commenter believes allowing corn cut for silage to be insured as grain as long as proper notice is given to the company so it can be appraised before harvest should also remove the harsh requirements or loss of coverage referred to in section 2(c). A commenter stated section 10(c) requires the producer to provide notice to the insurance provider before harvest if the producer intends to harvest acreage in a manner different than as reported and imposes penalties if the producer fails to provide such notice. The commenter pointed out the critical element of this provision is intent. The commenter asked how an insurance provider should determine the intent of the producer. The commenter stated if the manner in which the producer insures the crop is sufficient manifestation of intent, then the policy should state this clearly. The commenter stated because of the various legal connotations associated with the concept of intent, they question whether "intends" is the appropriate term. To this end, the commenter suggested amending section 10(c) as follows: "In lieu of any policy provision providing otherwise, if you harvest any acreage in a manner other than as you reported * * * you must notify us before harvest begins * * *" The commenter stated the removal of the term "intend" enables the insurance provider to focus on the producer's actions rather than on the producer's mindset. In addition, the commenter recommended an exception to the penalty set forth in the final sentence of section 10(c) stating that if a producer fails to provide timely notice, but leaves representative samples that enable the insurance provider to accurately perform appraisals or adjust a loss, the insured should not be penalized for said failure. The commenter further stated if the insurance provider and the integrity of the loss adjustment process are not prejudiced, imposing such a significant penalty is Draconian. A commenter stated that in the **Federal Register,** FCIC stated "it is too difficult to convert silage production to grain * * * after the crop has been harvested." On this point the commenter agreed; however the commenter believes Section 10 D (3), Appraisals for Acreage that will be Harvested, of the Crop Insurance Handbook effectively addresses this situation in a manner that does not impose undue hardship on the producer or undue loss adjustment expense on the insurance provider. The commenter pointed out this procedure provides for an appraisal when over 50 percent of the unit is harvested in a manner other than reported. The commenter hoped the intention of the proposed rule is to keep the 50 percent rule, and not force adjusters to visit every grain producer who chops some silage, or every silage producer who fills the bunker and shells the small remaining acreage. Another commenter stated section 10 of the Coarse Grains Crop Provisions states if the producer intends to harvest any acreage in a manner other than as reported, the acreage must be appraised in accordance with section 11(c)(1)(i)(E). The commenter asked if this eliminates procedure in the Crop Insurance Handbook that allows harvest of less than 50 percent of a unit without an appraisal. The commenter stated the most common example of this is when a producer insures corn in a grain only county and harvests a portion, usually less than 50 percent of the unit, as silage. The commenter added many farmers in livestock areas do this. The commenter stated if the insurance provider must appraise all crops when harvested in a different manner than insured, the insurance provider's loss adjusting expenses will increase.

Response: The commenter is correct that there may be a conflict between the priority contained in the Basic Provisions and the "in lieu of" language in section 10(c). To eliminate this conflict, FCIC has removed the "in lieu of" provision. Under the current revenue plans of insurance for corn, only corn planted for harvest as grain is insurable. Under the proposed rule, any acreage planted for harvest either as grain or silage is insurable under revenue protection. However, a variety of corn that is adapted for silage use only is only insurable as silage. Further, although insured under revenue protection, as stated above, the harvest price for corn insured as silage will be set equal to the projected price for corn silage since corn silage is not traded under any commodity exchange. The commenter is correct that the use of the word "intent" is not appropriate. Therefore, FCIC has revised the provisions, similar to the suggested language, to require the producer to provide notice if the producer will harvest in another manner. At some point a decision must be made and the provisions obligate the producer to notify the insurance provider before actual harvest begins. Provisions contained in section 14(d)(1)(ii) of the Basic Provisions require the producer to obtain consent before the producer puts the insured crop to an alternative use. Harvesting a crop insured as grain for silage would be considered an alternative use. Therefore, notice is already required. There is nothing to preclude the insurance provider from authorizing the producer to leave representative strips and basing the appraisal on such strips. However, to be consistent with the other notice requirements in the Basic Provisions, the producer must still provide notice that the producer is harvesting the crop in a manner other than it was reported for coverage. Further, section 14(d)(3) of the Basic Provisions states that the sanction for failure to report putting the insured crop to an alternative use is the assignment of an amount of production or value in accordance with the claims provisions in the Crop Provisions. Therefore, FCIC cannot remove the sanction in section 10(c) of the Coarse Grains Crop Provisions without setting up a conflict in the policy provisions. The procedures contained in the Crop Insurance Handbook that specify how corn production will be determined for acreage harvested in a manner other than as reported when such acreage is less than 50 percent of the unit will remain in effect. However, these procedures only apply when there is no loss and there must be a determination of production for APH purposes. The Crop Insurance Handbook provisions regarding the 50 percent are not applicable when determining production to count for claim purposes. If a producer will harvest any acreage in a manner other than as reported, the insurance provider must make the appraisals required in redesignated section 14(d)(2) of the Basic Provisions to determine the production to count for such acreage for claim purposes.

Coarse Grains Crop Provisions—Section 11—Settlement of Claim

Comment: A commenter requested FCIC consider changing section 11(c) "The total production in bushels (tons for corn insured as silage) to count * * *" to "The total production to count (in bushels for grain or tons for corn insured as silage) * * *" similar to the wording in deleted subsection (d).

Response: FCIC has revised the introductory text in section 11(c) to read as follows: "The total production to count (in bushels for corn insured as grain or in tons for corn insured as silage) from all insurable acreage in the unit will include:".

Comment: A commenter stated section 11(e) as revised would allow quality adjustment only for "corn insured as silage", which was changed from "corn insured or harvested as silage." The commenter asked that FCIC refer to their comment to 11(c) above.

Response: Under the changes proposed in section 11, the silage quality adjustment provisions will be contained in redesignated section 11(e). This adjustment, which reduces the silage production to count when the insurance provider's appraisal of grain content is less than 4.5 bushels of grain per ton of silage, is only applicable to corn insured as silage. If corn is insured as grain but harvested as silage, the grain quality adjustment standards will apply. Therefore, FCIC removed the language "or harvest" from the provisions regarding quality adjustment in redesignated section 11(d) to avoid any conflicts.

Comment: A commenter stated quality protection for poor quality silage also needs to be updated because currently, no quality adjustment occurs until the grain content falls below 4.5 bushels per ton. The commenter stated this current standard needs updated since comparing NASS 10-year State average yield data for grain versus silage in Pennsylvania results in a ratio of 7 bushels of grain per ton of silage. The commenter believes the ratio is probably higher in intense livestock operations. Therefore, the commenter recommended that the inception point of quality adjustment for silage should be changed from 4.5 to about 6.5 bushels per ton.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Comment: A commenter recommended a new section 11(f)(3) be added to address some of the aflatoxin issues that recently occurred in Texas. The commenter recommended the following language: "Any acreage insured as grain or silage that ends up being harvested as silage will not be eligible for quality adjustment for any mycotoxin." The commenter stated this recommended change is supported by the agronomic research indicating these mycotoxins (*i.e.,* aflatoxin) are not present at the stage of growth such acreage is normally chopped for silage. The commenter stated this recommended addition would prohibit the producer being paid a loss for mycotoxins that might develop in representative samples of the insured crop left by the producer for the insurance provider's appraisal, even though the value of the harvested silage crop was not impacted with a reduced value from the mycotoxins.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Malting Barley Price and Quality Endorsement—General

Comment: A commenter appreciated the efforts of FSA to educate malting barley producers of the proposed rule changes for malting barley crop insurance. The commenter thought the proposed changes were significant and was pleased to be properly notified. The commenter also appreciated the extended public comment period that enabled additional comments to be submitted.

Response: Education assistance is helpful and FCIC appreciates any efforts made by FSA. FCIC agreed to extend the comment period because of the complexity of the proposed changes and the need for additional time to review them. This additional time allowed commenters to more thoroughly analyze the proposed changes and to provide more meaningful comments.

Comment: A commenter stated the malting barley coverage was not ample because if a producer has a loss there is still a large gap between what the producer is responsible for and what the insurance provider will pay.

Response: The commenter does not identify any specific gap in insurance coverage. Therefore, FCIC is not sure how to respond. If the commenter is referring to the difference between the bushel production guarantee and the average historical yield (the deductible), this amount is mandated by the Act. The Act provides for deductible levels as low as 15 percent (85 percent coverage level) and this coverage level is available in most areas where malting barley coverage is provided.

Comment: A commenter stated the Malt Barley Option is an improvement in the Pacific Northwest for producers to be able to sign a malt barley contract with buyers other than a brewery or maltster. Great Western Malting is the major purchaser of malt barley in Washington State and Great Western Malting uses the private grain companies and co-operative grain companies as a contracting agent with the producers. In essence, with the old rule, malt growers were not eligible to participate in the contract price and option because no brewery or maltster contracted production in the barley growing area of Washington State.

Response: The proposed rule allows the malting barley additional value price to be based on the sale price specified in a production contract with a buyer other than a brewery or maltster and this provision is retained in this final rule.

Comment: Several commenters stated U.S. barley crop acreage has declined by 75 percent in the last 20 years (1987 to 2006). The commenters stated this dramatic decline can be attributed to several factors, but central among them is a lack of cost effective risk management tools. Some of the other factors include increased pressure from imported barley, and increasing production and transportation costs. The commenters stated malting barley has become a specialty crop in the U.S. and, now more than ever, producers need access to affordable and workable crop insurance to maintain a viable production base in the U.S.

Response: It is important to provide cost effective risk management tools for barley producers and FCIC will continue to work with producer organizations and other interested parties to provide an affordable and effective barley crop insurance program.

Comment: Several commenters expressed concern barley producers in multi-year drought or hail situations have suffered yield losses that affect their actual production history and preclude their ability to obtain meaningful and adequate crop coverage. A commenter stated he has farmed for 35 years and has been in a hail belt for seven years on some of his farm and is in an eight-year drought. A few commenters urged FCIC to include a mechanism in the provisions to address this serious APH erosion problem. A commenter stated under the proposed changes to the Malting Barley Price and Quality Endorsement, it appears a producer could be severely punished or even dropped from the program because of a lack of malt production. A commenter stated most times, the reason for barley to not make malt is related entirely to weather conditions. The weather conditions could be hail, drought, rain at harvest, or many other things. Weather related disasters are a part of the business. It becomes a major problem if bad weather conditions occur a few years in a row and it raises premium rates, or worse, causes producers to have their coverage dropped. In the proposed rule, it mentions a producer must provide sales records for at least four crop years to be eligible for coverage. The commenter

asked if this also means FCIC will only use 4 crop years to determine production criteria. A few producers recommended using at least 10 years or every year of a producer's production history to determine the history. This would eliminate a few bad years in a row affecting a producer's production history. Another good example of this would be a few hail years. A commenter also asked if a producer chose a 70 percent level of coverage, would a 70 percent fulfillment rate for that year be enough to prevent a penalty from occurring that particular year. A commenter stated adjusting the premium rates should take into account more than mother nature, and rates could increase but if the rates rise each year, it will make it much more expensive to carry the insurance. A commenter stated FCIC should not reduce APH yields due to a reduction in price caused by a loss in crop quality. Numerous examples exist in which a producer produced an average or above average yield (in bushels per acre), but the quality of the crop was less than optimal, thus resulting in a lower price to the grower. Losses due to quality need to be reflected in the price to prevent reduced approved yields.

Response: There are problems associated with multiple years of poor weather and resulting reductions in APH yields. However, the manner in which APH yields are calculated are set in section 508(g) of the Act and generally require the use of a simple average of actual yields with some exceptions that apply because of loss years. To mitigate the adverse impact of multiple years of disasters, Congress implemented provisions that allow producers to replace low yields in the feed barley APH databases with yields equal to 60 percent of the applicable transitional yield. These provisions have helped stabilize feed barley APH yields and the underlying insurance coverage for malting barley insured under Option B of the Malting Barley Price and Quality Endorsement. With respect to the issue of the reduction in APH due to poor quality, FCIC cannot make any changes at this time because none were proposed and the public was not provided an opportunity to comment. While FCIC is concerned with reduced APH yields, it is also concerned with program integrity and actuarial soundness. The proposed provisions requiring producers to provide malting barley yield history for Option B require producers to prove they have a history of successfully producing barley of sufficient quality for malting purposes were intended to address such issues. However, based on comments received and further review, FCIC has replaced the proposed provisions with alternative provisions that are less complex to administer, yet still address program integrity and actuarial soundness issues. The new provisions permit coverage under Option B only if the producer can prove he or she produced and sold an amount of malting barley equal to 75 percent or more of the amount of contracted bushels in one of the three crop years malting barley was planted immediately preceding the previous crop year. For example, if the producer wishes to insure 2011 crop year malting barley and had a malting barley contract to produce 10,000 bushels in 2009, the producer must have produced and sold at least 7,500 bushels of 2009 crop year malting barley production. Producers may qualify for coverage based on any one of the three crop years in which they planted an approved malting barley variety prior to the previous crop year. If the producer does not meet this requirement, he or she may still insure malting barley under Option A. However, the producer must elect Option A prior to the applicable sales closing date and meet all other requirements for insurance under Option A. Failure to do so will result in no coverage under Option A or Option B. FCIC agrees continued rate increases will impact the affordability of malting barley insurance and believes these changes in Option B may help reduce the need for future rate increases.

Comment: A commenter encouraged FCIC to develop specific underwriting guides for malting barley, as well as feed barley, wheat, and other cereal crops. Underwriting guides assist in developing appropriate administrative mechanisms that are reflective of rating issues while simultaneously ensuring program compliance.

Response: The Crop Insurance Handbook contains specific underwriting requirements for malting barley, feed barley, wheat and other crops. Further, the commenter has not identified any specific area where these underwriting guidelines are deficient. Therefore, it is not necessary to provide separate handbooks for malting barley, wheat, or other crops.

Malting Barley Price and Quality Endorsement—Section 1—Definitions

Comment: A commenter stated adding a specific definition of "additional value price" is appropriate in order to provide greater clarity to producers, buyers, and agents. The commenter stated examples need to be included that describe the methodology by which the additional value price is derived.

Response: FCIC proposed to add a definition of "additional value price" and will retain the definition in the final rule. Additionally, both Option A and Option B provide step-by-step instructions that should be used to calculate the additional value price per bushel. Therefore, an example should not be needed in the definition. No changes have been made.

Comment: A commenter stated moving the definitions to the beginning of the endorsement is good and recommended adding the definition of "malt" since "malt extract" is already defined and both terms are used in the endorsement.

Response: FCIC has revised the endorsement accordingly.

Comment: A commenter encouraged FCIC to explore (in cooperation with the Federal Grain Inspection Service (FGIS)) the validity of parameter tests (*e.g.,* protein, germination, *etc.*) utilized by barley buyers. If barley buyers are utilizing tests based upon defendable scientific parameters, then these tests should be adopted by FCIC for use in insurance product enhancement, thus preventing producers from inadvertent loss due to differences in testing procedures between FGIS and barley buyers. The commenter provided an example in which a buyer rejects malting barley based upon an objective test (*e.g.,* protein) and the producer files a claim for insurance. The insurance adjuster has the barley tested at an FGIS approved facility and it is acceptable according to the FGIS test, but is still unacceptable to the buyer. In this case, the producer sustained a loss for which no indemnity is paid. The commenter further stated testing procedures must be consistent between FGIS and buyers.

Response: FCIC is willing to explore any issues regarding validity of testing procedures with FGIS. However, FCIC cannot insure the decisions of the buyer of whether to purchase the barley. Further, there may be situations where the barley is acceptable to one buyer but not acceptable to another. Therefore, an objective test must be used. The current policy recognizes current tests utilized by barley buyers provided the tests meet the definition of "objective test" contained in the endorsement and requires tests be conducted in accordance with procedures approved by the American Society of Brewing Chemists, FGIS or the Food and Drug Administration, depending on which test is being performed. Problems may occur when both the malting barley buyer and the insurance provider have "objective tests" performed on the same production and the test results are different. In this case, the policy must

provide a priority to determine which test result will be used to settle a claim. The proposed provisions specify the tests used in case of conflict will be those performed at an official grain inspection location established under the U.S. Grain Standards Act except for germination tests, or performed at a laboratory selected by the insurance provider for germination tests. It is FCIC's understanding that grain buyers will generally accept official FGIS tests to determine if grain will be accepted even if their own tests show different results. Therefore, instances in which grain is rejected even though found acceptable through FGIS testing should be minimal. The objective test provisions have been retained in the final rule.

Comment: A commenter questioned why "protein content" was removed from the definition of "objective test" since it is still being used in the policy. Another commenter stated that using the same protein test as the maltsters is a positive change.

Response: "Protein content" was not removed from the definition. While it is not specifically listed, it is included under the procedures approved by FGIS. As stated above, testing for protein content that is performed by buyers of malting barley may be acceptable provided their tests are performed in accordance with FGIS approved procedures.

Malting Barley Price and Quality Endorsement—Section 4

Comment: A commenter stated if the Malting Barley Endorsement is available in any counties with both fall and spring sales closing dates for barley, the references in sections 4 and 4(c) to "sales closing date" as the deadline to elect, cancel or change the Malting Barley Option (A or B) might need to be revised.

Response: The commenter is correct that the proposed provisions did not address situations in which more than one sales closing date may be applicable. FCIC has restructured section 4 and added a new paragraph (d) that specifies that the endorsement can be elected until the spring sales closing date in counties with spring and fall sales closing dates only when the producer has no fall planted acreage of approved malting barley varieties.

Malting Barley Price and Quality Endorsement—Section 6

Comment: Several commenters stated one of the significant constraints for many of their barley producers is the inability to ensure malting barley under optional units that reflect diverse geography, growing conditions and management practices (irrigated versus non-irrigated). The commenters stated a large number of their producers opt to take feed barley coverage only so they can insure their risks under an appropriate unit structure. However, that has resulted in a couple of undesirable results, namely a smaller pool of participants under the malt barley endorsement and a lack of effective coverage for the higher valued malting barley crop. They believe malting barley should be insurable under optional units, like other crops. Another commenter stated it has been a problem having a variety of feed barley (only for feed), which has been "production to count" against those varieties which he grows for malt. The commenter stated there should be two separate units—one for feed varieties and one for malt varieties as they are very different (like apples and oranges).

Response: Since no changes to provisions regarding unit structure were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made. However, production of a feed barley variety should not be insured under the malting barley endorsement nor should any feed barley production be production to count against the malting barley production guarantee.

Malting Barley Price and Quality Endorsement—Section 7

Comment: A commenter recommended the second sentence in section 7 be amended to provide: "In the event you choose a percentage of the additional value price that is less than 100 percent * * *"

Response: FCIC has revised section 7 accordingly. The provision has also been clarified to indicate the producer cannot select more than 100 percent of the additional value price.

Comment: A commenter recommended adding a reference to the possibility of more than one additional value price from multiple malting barley contracts. Presumably, if there are multiple additional value prices, the same percentage would apply to all, and the premium calculation would be done separately for each, as in section 13(b)–(c) and in the example of reporting different shares in section 6.

Response: If more than one additional value price is applicable, the same percentage would apply to all additional value prices. The provisions in section 7 have been revised accordingly.

Malting Barley Price and Quality Endorsement—Section 8

Comment: A few commenters referenced the following new provisions in section 8 "* * * The premium rate you pay will be adjusted by a factor contained in the actuarial table based on your history of fulfilling the production specified in malting barley contracts in prior years, as applicable." According to the explanation in the Proposed Rule, "* * * This is similar to other insured crops where the premium rate increases as the yield decreases and vice versa * * *". The commenters stated additional clarification is needed because: (1) Similar language to this is not seen in the other Crop Provisions in this proposed rule; (2) rate adjustments already exist and it is not clear what change is proposed; (3) it is not clear if the provision applies only to Option B or if it applies to both options since there is no limiting language; (4) the information to be found in the actuarial table is not available for review; and (5) the explanation refers to yield increases/decreases but makes no mention of quality.

Response: The proposed provision was unique to the Malting Barley Price and Quality Endorsement because it referred to an "option factor" that is applied to the applicable premium rate. However, as stated above, the proposed provisions which would have required producers insuring under Option B to provide records of past malting barley production have been changed. Therefore, the "option factor" will no longer be adjusted based on such records and the provisions that referenced the factor have been removed in this final rule.

Comment: A commenter stated the new provision in section 8 that refers to premium rate adjustment should be further reviewed as it appears it will be difficult to administer.

Response: As stated above, FCIC has replaced the provisions regarding fulfillment rates with alternative provisions that will address FCIC's concerns with program integrity and actuarial soundness. Therefore, the premium rate adjustment based on fulfillment rates is no longer applicable.

Malting Barley Price and Quality Endorsement—Section 10

Comment: A few commenters stated section 10 is dealing with losses not settled by May 31 of the following year. One commenter is not sure what the problem is with the existing process. They have some maltsters that do not take delivery by that time frame, so producers are not certain if their barley

is malt quality, or not. Under the current system, the loss can be left open until final disposition of the barley. Under the proposed change it appears the producer must verify the barley won't be sold (even for feed?) or the loss will just be closed and the barley will be assumed to be malt quality. This will not work for those maltsters who take late delivery of barley. Another commenter recommended clarifying references to "* * * not be sold * * *" in sections 10(b)(2)(i) and (iii).

Response: The commenter is correct that the provisions do not adequately address when buyers take late delivery. Therefore, FCIC agrees claims could be deferred if the producer agrees to defer settlement until the production is sold and the provisions have been revised accordingly. However, there may be cases in which the production to count is below the production guarantee and the producer may want to settle the claim even though the quality and sale price have not been determined by the buyer. In this case, the producer may agree to settle the claim at any time prior to disposition of the grain, but no quality adjustment can be allowed because there is no selling price upon which to base quality adjustment.

Comment: A commenter stated in section 10(a)(1)–(3) as written "It" in (a)(2) & (3) refers to "your claim" in (a), but perhaps is meant to refer to "All insured production" at the beginning of (a)(1). If so, move "all insured production" to the end of (a) and delete the opening word(s) in (a)(1)–(3).

Response: The word "it" is intended to refer to the production. The provisions have been revised as recommended.

Comment: A commenter stated section 10(b) refers to when "any production fails" to meet the criteria in (a)(2) but does not mention (a)(3). The wording of (a)(1)–(3) indicates that (a)(2) "and" (3) must be considered together and separately from (a)(1), which is separated from the others by the word "or".

Response: Section 10(b) refers to the quality criteria in section 14(a)(2), not the criteria in 10(a)(2) and (3). Therefore, no change is necessary.

Malting Barley Price and Quality Endorsement—Section 11

Comment: Several commenters stated a producer who has enrolled in the Malt Barley Quality Endorsement and has a valid malting contract should be indemnified for prevented planting at the malt barley additional value rather than feed barley value.

Response: Since the recommended change was not proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Malting Barley Price and Quality Endorsement—Section 14(a)(2)

Comment: A few commenters stated the beverage and food products produced from malting barley are numerous and quality factors can vary from year to year, depending on market needs. The rulemaking process does not allow for timely responses to the needs of the end-user and malting barley producer. This is a particular concern with the established malting barley quality factors. The commenters strongly urged malting barley quality factors be determined annually under the Special Provisions, and not specified under this rule. Another commenter stated quality factors should be subjected to re-rating on an annual basis.

Response: The quality standards of the industry may require revision from time to time to reflect changes in standards. However, rather than repeating all of the quality standards in the Special Provisions for all applicable counties, the provisions in section 14(a)(2) have been revised to allow the Special Provisions to contain different or additional standards, as may be applicable. Those standards can only be changed if done prior on or before the contract change date.

Comment: A few commenters supported the proposed change to replace "sprout damage" with "injured by sprout." Some of the commenters stated that "injured by sprout" is the official USDA/FGIS term used for the test. One commenter stated the proposed rule contains a different term—"sprout injury" and if these terms are considered equivalent by FCIC, they have no problem with the current wording, but if they are not equivalent then the proper term would be "injured by sprout." Another commenter stated section 14(a)(2) for both Option A and B changed "Sprout damaged" to "Injured by sprout" in the quality standards chart. However, additional clarification was not provided as to the difference between "Sprout damaged" and "Injured by sprout." The malting barley companies and breweries are using the "Pearling" method and the State grain labs literally use a razor blade to cut the kernel to determine sprout. This was supposed to be addressed by FCIC, or at least according to the State Grain Lab personnel in Montana, it was supposed to be clarified. The State Grain Lab is using pearling but not for malt barley.

Response: "Injured by sprout" is the proper term and the provision has been revised accordingly. FCIC has also revised the names of other quality factors listed in section 14(a)(2) so they match the terms in the chart at the end of the same section. This will make the terms consistent throughout the section. The only test acceptable for determining "injured by sprout" is that done in accordance with FGIS standards and these standards require the grain to be pearled. Tests not performed in accordance with FGIS standards are not considered "objective tests" as defined in the endorsement and cannot be used. The State grain labs in Montana will still perform standard tests on malting barley, which may include cutting kernels to determine damage. However, they will also perform tests for "injured by sprout," which includes pearling, when a request is made for such test.

Comment: Several commenters supported the proposed change that lowers the protein requirement to match the maltsters standards as well as redefining sprout damage. One of the commenters stated these are very positive moves within the malt barley endorsement, and that it has been a financial hardship in the past having a product which could not be delivered as malt barley and yet the producer could not collect insurance for it. Another commenter asked why the quality standard for six-row barley is not lowered from 14.0 percent to 13.5 percent as well, thus providing consistency between the two types.

Response: The changes in protein and sprout quality standards improve insurance coverage for malting barley and have been retained in the final rule. Malting barley buyers generally have different protein standards for six and two rowed malting barley. Fourteen percent is generally acceptable for six rowed barley while 13.5 percent is generally acceptable for two rowed barley. No change has been made.

Comment: Many commenters oppose the change for the mycotoxin maximum under Option B (MPCI) from contract specifications to 2 parts per million (ppm). A few commenters said such a change is unacceptable without the existence of a mycotoxin (DON) rider covering the producer from losses occurring in the gap between contract specifications and 2 ppm. A commenter stated FCIC should also narrow the gap with mycotoxins and vomitoxins to match the malt industry standard. A commenter said adding a level for mycotoxin creates another window of discrepancy, as most malt contracts have NO tolerance for toxins. A producer could have barley a maltster

will not accept, and yet get no insurance indemnity. A commenter stated mycotoxins should follow the contract specifications of the malt buyer, not the mycotoxin limit of 2.0 ppm proposed in the endorsement.

Response: FCIC understands some contracts contain a standard stricter than the proposed 2.0 ppm. However, FCIC has found production contracts vary depending on individual buyer requirements. For example, some production contracts deduct 5 cents per bushel for 1.1 to 2.0 ppm, some have no discount for 2.0 ppm, some require non-detectable levels (less than 0.5 ppm), and some accept higher levels but pay the market price for such production. Current RA and IP plans of insurance provide insurance against levels greater than 2.0 ppm. The 2.0 ppm standard represents a quality level generally acceptable in the marketplace and provides adequate insurance protection against mycotoxins in most situations. To accommodate those situations where the production contract requires levels lower than 2.0 ppm, FCIC has revised the provisions to allow additional coverage if the Special Provisions allow the additional coverage. Although the provisions have been revised, such coverage will not be provided until a premium rate is developed for such coverage and provided in the cost estimator or actuarial documents.

Comment: A commenter stated there is a considerable percentage difference between the standards for "injured by mold" and "mold damage" (5.0 percent for injured by mold vs. 0.4 percent for mold damage). The current nomenclature is confusing and appears to be redundant when viewed by growers. Efforts should be made to combine these constituents into a single category (similar to injured by sprout). The same comment was made regarding "injured by frost" and "frost damage."

Response: "Injured by mold" and "mold damaged" are not the same and denote different levels of harm. The lower the level of harm, the higher the tolerance generally is for such harm. Further, each term is individually defined by FGIS. FCIC is willing to discuss removing one or the other with any interested parties. However, since both the injury and damage categories are currently covered for mold and frost, there was no proposal to eliminate one or the other, and the public was not provided an opportunity to comment on the recommended changes, the recommendations cannot be incorporated in the final rule.

Malting Barley Price and Quality Endorsement—Section 14(b)

Comment: Several comments were received regarding the quality adjustment provisions in section 14(b), including those provisions that make an allowance for reconditioning costs. One commenter stated counting production sold for any use at a price greater than the projected price is reasonable and assists in more closely achieving actuarial soundness while simultaneously minimizing fraud, waste, and abuse. Other commenters supported changes in calculating conditioning incentives in the proposed rule. The commenters stated such incentives can provide growers with additional income, reduce insurance indemnities, and provide the end-user with additional product. They further stated many producers are capable of on-farm conditioning and strongly encouraged that producers be allowed to condition their own production at established regional rates.

Response: FCIC has retained the proposed provisions. However, FCIC is not aware of any established regional rates for conditioning. Costs for conditioning may vary based on the level of damage, energy and labor costs, *etc.* Therefore, the cost of reconditioning will be based on the actual cost of reconditioning. No changes have been made.

Comment: A commenter stated the provisions dealing with barley sold for less than the contracted price need to be revised. The provisions seem to anticipate the price received will always be higher than the feed barley projected price, which may not be the case. It seems if the price is lower than the feed barley projected price, the formula would yield a negative production to count number, which is not what is wanted. The commenter stated he understands the concept, and the problem. A farmer has a $3 malt contract, and delivers barley to the maltster that is of marginal quality. The maltster offers to give him $2.50, and take the barley as "feed" barley. If the feed barley projected price is $2, under the current system, the farmer receives the entire amount of the malt barley endorsement equaling $1. Under the proposed change he would only receive the $.50 difference between his sale price and his contract price. Under the current system, the farmer would get $2.50 for his barley plus $1 for his insurance payment. The $3.50 total is more than his contract price was, so he is money ahead by selling for a lower price. The proposed change would eliminate that possibility, but it creates some new issues. The farmer has no incentive to seek the best price for his barley, because his insurance payment is going to make him whole. Instead of conditioning barley, to deliver some that is of malt quality, he could just sell it all for feed. He could also seek to deliver the barley as close to home as possible, even at a lower price, because again, the insurance will make him whole. The commenter stated he knows it is possible under the current system to have some strange pricing/delivery/conditioning issues, but he is not certain the proposed changes would do anything to make the situation better. In his experience, almost all the malt barley growers try very hard to deliver on their contracts, and to do whatever they have to do to condition/size their barley to make that happen, and the current insurance program does not seem to deter them from that goal.

Response: The damaged barley may be sold for an amount lower than the projected price and the calculation would result in a negative number. In this instance the quality adjustment factor would be zero and no production should be counted (provided failure to meet applicable quality standards and the reduction in value is due to an insured cause of loss). The provision in proposed section 14(b)(4) has been revised accordingly. FCIC also agrees the previous provisions could have resulted in some instances in which a producer could receive more per bushel for production than they could have if there were no loss. However, these instances should have been very limited because the price received for feed barley would generally be close to the price election for feed barley. Further, it is unlikely producers will want to sell production for a price lower than the market price of the damaged production. Insurance providers are monitoring the market to ensure that producers are not creating losses by accepting less than the market price for their barley. If the producer sells for less than a reasonable market price, the insurance provider should not allow adjustment associated with the price reduction below the market price. In addition, producers have an incentive to produce and sell good quality malting barley to reduce negative impacts on their malting barley APH yield if insured under Option A, or eligibility for malting barley insurance under Option B.

Malting Barley Price and Quality Endorsement—Option A

Comment: Several commenters supported the proposed change in Option A to use the sales price

established in the contract or price agreement minus the projected price for feed barley or the price designated in actuarial documents.

Response: The proposed changes have been retained in this final rule.

Comment: A commenter stated a producer is not only required to have a malting barley price agreement, the producer must also provide the insurance provider with a copy of the agreement before the acreage reporting date. The commenter suggested FCIC modify section 4(a)(1)(vi) of Option A to state, "Provided by the acreage reporting date, a malting barley price agreement for the sale of 5,720 bushels at $2.72 per bushel."

Response: FCIC has revised the provision to include the reference to providing the malting barley price agreement by the acreage reporting date.

Malting Barley Price and Quality Endorsement—Option B

Comment: Many commenters had concerns regarding the addition of provisions in section 1(a) of Option B that require producers to prove their "malting barley contract fulfillment rates." The provisions will be used to impact eligibility and the premium rate. Without knowing more of the specifics of this proposal, it is impossible to deem it worthy, or not. If the proposal is to have a 10 percent premium increase for a very low fulfillment rate, that is very manageable. If the proposal is to eliminate eligibility for anyone who has less than a 90 percent fulfillment rate, that is totally unacceptable. This entire section creates a lot more work for producers and their agents. Compiling information about barley delivered, and comparing it to contracts that were in place takes a huge amount of time, for producers, agents, and company adjusters and auditors. The 4-year window is too short, if having 2 bad years out of 4 could make someone ineligible for coverage. Producers should be able to consider all the years in their databases if that kind of eligibility penalty is proposed. For most producers, this would be the entire 10 years. Fulfillment rates for 10 years would better depict the success of a malt barley crop, as it would reflect years of natural disaster as well as years of good conditions. Rather than require 4 years of consecutive records, an alternative should be considered (*e.g.*, the producer must provide production records and malting barley contracts for 4 of the previous 6 years). If a producer has been successfully producing malt barley for 20 years then has 4 years of hail or drought, the producer's eligibility or rate should not be challenged. The producer has no control over these external forces. Going back to retrieve that information requires keeping records longer than the required retention period. This whole section is very troubling because of all the possible implications and complications it could impose. The current policy already contains many of these features. A producer's coverage is based on their proven history, and if their history is below "normal" they pay a higher premium rate, and have lower coverage levels. A simple, manageable, understandable program is needed to gain the producer's trust and to keep them insured. Contracts for malting barley purchases reflect the demand for this specialty crop with the current acreage trends and contracting is conducted with a realistic expectation of producers fulfilling the contracts. It is not sensible for a contracting entity to risk over purchasing, nor to contract with producers having little prospect of success. The recent loss ratio experiences of the malting barley endorsement are the result of multiple years of adverse weather and environmental conditions that have resulted in a loss of yield, malting quality or a combination of both, and are not the result of fraud, poor crop management or inappropriate contracting practices. The contract fulfillment provision should not be implemented because it will amount to an elimination of effective insurance coverage for the majority of malting barley production under contract with the U.S. malting and brewing industry. Contract fulfillment rates, if implemented, should only be used to calculate premiums and not be used to determine program eligibility.

Response: There have been issues with respect to whether producers seeking insurance have the experience to produce malting barley or are producing it on land suitable for the production of malting barley. Malting barley receives an additional price and producers must demonstrate that they can produce malting barley to be eligible to receive the higher price. Nothing in the malting barley price and quality endorsement affects the producer's ability to insure their barley under the Small Grains Crop Provisions. However, the commenters are correct that the use of the fulfillment rates as proposed may be too restrictive. Therefore, as stated above, as a condition of eligibility, FCIC has changed the provisions to require that producers have produced and sold at least 75 percent of their contracted amount in at least one of the three most recent crop years they produced malting barley before the previous crop year.

Comment: A commenter stated the new language in section 1(a) of Option B can be interpreted to mean the producer must have planted malting barley in each year for the four years preceding the current crop year (*i.e.*, the producer must have planted barley in 2004, 2005, 2006, and 2007 in order to obtain coverage). This seems rigid, and if the producer missed one of those years, they would not be eligible to obtain coverage.

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: A commenter stated in Option B, FCIC introduces the concept of an "average malting barley contract fulfillment rate" however, FCIC has not defined this term, and FCIC's description of its purpose is unclear. The commenter recommended FCIC define "average malting barley contract fulfillment rate" and clarify the related provisions.

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: A commenter recommended clarifying the provisions by redesignating the second sentence of proposed section 1(a)(2) in Option B as section 1(a)(3).

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: Several commenters had the following recommendations regarding the contract fulfillment rate amounts: (1) A fulfillment rate over 100 percent should be able to be counted; (2) A contract fulfillment rate of 75 percent should be used in years when the covered crop is produced in a county that has been declared a Federal crop disaster county, if the producer so elects; and (3) Losses not covered under the endorsement (*i.e.*, losses not related to quality per se such as prevented planting, hail damage, *etc.*) should not be used to calculate the fulfillment rates or should be treated as missing years with the same 75 percent default fulfillment rate.

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: A commenter stated using contract fulfillment rates to determine eligibility is an underwriting issue as well as a rating issue. Using fulfillment rates in determining premiums is reasonable, but the fulfillment rates (and the reasons why contracts are not fulfilled) should also be documented. Producers who are successfully fulfilling contracts should be rewarded

through lower premiums. What FCIC ultimately needs is an underwriting guide for malt barley insurance.

Response: As stated above, the proposed provisions have not been retained in the final rule.

Comment: Many comments were received regarding the additional value price. Many commenters stated the proposed rule caps the "additional value price" under option B at $1.25 instead of the current $2.00. The commenters strongly oppose this change, as it does not offer malting barley growers needed protection and runs counter to current price trends in U.S. malting barley markets. A few commenters stated according to NASS, the price differential producers receive for malting and feed barley has risen steadily over the past ten years (1995–2004) and should this continue at the same pace it would reach $1.53 by the time the rule is implemented (2009). Contract premiums of more than $1.25 for malting barley over feed barley prices are being offered in every region of the country. Some commenters stated for example, NASS figures indicate that producers in Montana received an average premium for malting barley of $1.22 over the last ten years and exceeded the proposed cap in four of those years. Some commenters stated it should be noted that the NASS reported prices paid to producers are a combination of contracted and open market purchases and may significantly under represent contract prices. Some commenters stated it could be argued that the current "additional value price" cap of $2.00 offers insufficient coverage for malting barley producers and therefore, lowering the cap at all is unacceptable. A commenter stated FCIC needs to utilize historical barley price data and related derivation methods to document how the $1.25 cap was determined. The commenter stated transparency is necessary in the calculation process. If historical price data and forecasted trends indicate that the value of $1.25 per bushel is not reflective of price relationships, then the $1.25 per bushel value (cap) would be deemed inappropriate and thus must be replaced with the appropriate derived value. A commenter stated they now have wheat prices near $5, and barley producers are considering growing wheat for the first time. Maltsters may have to come to the table with higher contract prices to guarantee their supply, but if that higher price is capped by an artificial insurance limit, that could discourage producers from raising barley. The difference between the value of feed barley and the value of malt barley could vary greatly, as they are really two entirely different products.

Response: The maximum additional value price under Option B should remain at $2.00 per bushel and FCIC has revised the provisions accordingly.

Rice Crop Provisions—Section 1—Definitions

Comment: A commenter asked if the definition of "planted" which was not in the proposed rule should be "planted acreage" and begin "In lieu of the definition in the Basic Provisions * * *" Otherwise, rice has separate definitions of "planted" and "planted acreage."

Response: FCIC has removed the definition of "planted" and replaced it with a definition of "planted acreage" and specified it is in addition to the definition contained in section 1 of the Basic Provisions. This should eliminate any potential conflicts.

Rice Crop Provisions—Section 12—Settlement of Claim

Comment: A commenter stated in regards to section 12(d)(1), which is not in the proposed rule, the moisture adjustment percentage is changed in the Special Provisions for California. Consider adding a reference here to the possibility of such regional variations in the Special Provisions.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Canola and Rapeseed Crop Provisions—Section 1—Definitions

Comment: A commenter stated FCIC should consider if the definition of "Planted acreage" which is not in the proposed rule should be "In lieu of the definition in the Basic Provisions * * *" instead of "In addition to * * *" It is unclear what is left in the BP definition that would still apply in addition to this definition.

Response: Since no changes to this section were proposed, and the public was not provided an opportunity to comment on the recommended change, the recommendation cannot be incorporated in the final rule. No change has been made.

Canola and Rapeseed Crop Provisions—Section 6—Insured Crop

Comment: A commenter stated the provisions proposed in section 6(b) concerning counties with both fall and spring final planting dates is essentially the same as section 7(a)(2)(iii) of Small Grains Crop Provisions. In the Canola and Rapeseed Crop Provisions, this issue is proposed to be addressed in section 6, entitled "Insured Crop." However, in the Small Grains Crop Provisions, the language appears in section 7, entitled "Insurance Period." The commenter recommends that proposed section 6(b) of the Canola and Rapeseed Crop Provisions be incorporated into section 7 (Insurable Acreage). Another commenter suggested rearranging section 6(b) for better clarity. The commenter stated FCIC should compare this to Small Grains section 7(a)(2)(iii)(A) & (B), and note that is under "Insurance Period" rather than under "Insured Crop."

Response: FCIC agrees section 6(b) of the Canola and Rapeseed Crop Provisions may not be an appropriate location. FCIC has placed these provisions in the "Insurable Acreage" section of the Crop Provisions to be consistent with references to the requirement to replant in the "Insurable Acreage" section of the Basic Provisions. FCIC agrees the provisions should be clarified and has revised them accordingly.

Canola and Rapeseed Crop Provisions—Section 8—Insurance Period

Comment: A commenter recommended the unamended provision in section 8 be revised to read "* * * the calendar date for the end of the insurance period is * * *", as it is in the other Crop Provisions.

Response: FCIC has revised the provisions accordingly.

Canola and Rapeseed Crop Provisions—Section 10—Replanting Payment

Comment: A commenter stated section 10(a)(4) indicates the replanted crop must be planted at a sufficient rate to achieve at least the yield used to determine the production guarantee. This becomes problematic when the crop is replanted after the final planting date. If the crop is initially planted after the final planting date, it is insurable with reduced coverage to recognize the reduced crop potential from planting the crop so late. Therefore, assuming it is still practical to replant after the final planting date, and if the producer does so, the replanted crop would not meet the requirements of this section of the policy since the crop potential for the replanted crop would be expected to be less than the yield used to determine the production guarantee. This language needs to be modified as has been done in previous versions of the Basic Provisions definition of "Replanting" (2001 version of the Basic Provisions

was revised for 2004 to make this change).

Response: The commenter is correct that the language should be clarified. The provisions proposed in section 10(a)(4) have been revised to indicate seeding must be at a rate considered appropriate by agricultural experts for the crop, type and practice. A conforming change has been made in the Small Grains Crop Provisions.

In addition to the changes described above, FCIC has made editorial changes, corrected references to specific policy sections, and made revisions necessary to conform to changes in provisions previously made due to the Food, Conservation, and Energy Act of 2008 as follows:

Basic Provisions

1. Added a definition of "verifiable records" in section 1. Since this term is used in the Basic Provisions, the definition is added to refer the reader to the definition contained in 7 CFR part 400, subpart G.

2. Revised the provisions in redesignated section 2(b)(9) to clarify if information regarding persons with a substantial beneficial interest changes after the sales closing date for the previous crop year, the new information must be provided by the sales closing date for the current crop year. In addition, an allowance has been added for cases where the information changed less than 30 days before the sales closing date for the current crop year. In this case, the new information does not have to be provided until the sales closing date for the next crop year.

3. Revised redesignated section 2(b)(10)(i) to remove reference to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This reference was removed because there are reasons other than PRWORA that may result in denial of a request for assignment of a number.

4. Revised section 2(f)(2)(i)(D) to clarify the crop year a policy will be terminated for failure to make a payment under any written payment agreement. Under the current provisions questions were asked regarding the meaning of "crop year prior to the crop year in which you failed to make the scheduled payment." FCIC is clarifying the applicable crop year and providing an example.

5. Revised section 3 to specify a producer may change the plan of insurance (*e.g.*, yield protection or revenue protection) not later than the sales closing date because the Basic Provisions now cover more than just the APH plan and there is no need to require producers to cancel and reapply. Changing plans of insurance is no different than changing coverage levels, *etc.*, since the same policy documents apply.

6. Revised redesignated section 3(f) to clarify producers must report all production of the crop, including production from both insured and uninsured acreage. There were questions regarding whether uninsured acreage had to be reported and FCIC is clarifying that all production for the crop means from all acreage, whether insured or not.

7. Removed current sections 7(e)(5) and (6), which are reserved, and redesignated section 7(e)(7) as section 7(e)(5).

8. Revised section 9(a) to allow the Special Provisions to provide coverage for acreage otherwise excluded under the provisions. Coverage was already allowed in the Crop Provisions or written agreement so this change is not substantive. Also added a provision to allow insurance on acreage that has not been planted or harvested in one of the three previous crop years because it was in a hay or forage crop rotation. There was a potential for a conflict because the proposed rule stated that acreage is not insurable if the only crop planted and harvested was a cover crop, hay or forage crop. However, the existing provisions also state that the acreage is insurable if the acreage was not planted and harvested because of a crop rotation. Since hay and forage crops can be used in crop rotations, the provision had to be clarified that if these crops are used in a crop rotation, the acreage is insurable.

9. Clarified provisions in proposed sections 17(e)(1)(i) and (ii) regarding the determination of eligible acres for prevented planting. Questions have been raised regarding the ability to submit an intended acreage report when a producer has not planted a crop for which prevented planting insurance was available or has not received a prevented planting insurance guarantee. The proposed rule stated the intended acreage report could be used if the producer did not plant a crop in any of the four most recent crop years. There are some who interpreted this to mean that if the producer did not plant a crop for which prevented planting insurance was available or has not received a prevented planting insurance guarantee in any one of the four most recent crop years, the producer could file an intended acreage report and this is not correct. The provision was intended to only allow an intended acreage report if the producer never planted a crop or had a prevented planting guarantee in the previous four crop years. The requirement has been clarified accordingly. FCIC also added the parenthetical that was contained in proposed section 17(e)(1)(i) to (ii) so that the provisions are consistent.

10. Revised section 18(i)(2) to specify the signed written agreement must be postmarked or delivered to the insurance provider not later than the expiration date for the producer to accept the offer. The proposed provision did not recognize that the document could also be hand delivered.

11. Revised section 20(a)(1)(iii) [For Reinsured Policies] to clarify an interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability, and to remove provisions regarding appealability and a Director's review from the National Appeals Division. Including the Director's Review in section 20(a)(1)(iii) mistakenly created the impression that an interpretation of a policy provision could be appealed to the National Appeals Division. However, the National Appeals Division is precluded by statute (7 U.S.C. 6992(d)) and 7 CFR part 11 from hearing appeals regarding matters of general applicability. The only appeal right is to have the Director of the National Appeals Division determine whether the decision was adverse to the producer and appealable, or a matter of general applicability and not appealable.

12. Added new sections 20(b)(3) [For FCIC Policies] and 20(k) [For Reinsured Policies] to clarify that if a determination made by FCIC is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If the producer wants to seek judicial review of any FCIC determination that is a matter of general applicability, the producer must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review. This clearly distinguishes between matters that are appealable to the National Appeals Division and specified in section 20(e) from those that are not appealable.

13. Revised section 24(a) [For reinsured policies] to clarify that after the termination date, FCIC will collect any unpaid administrative fees and any interest owed thereon for any catastrophic risk protection policy. Previous provisions were not clear that FCIC would collect these amounts for only catastrophic risk protection policies. Insurance providers will collect these unpaid amounts for additional coverage policies.

14. Revised section 34(a) to specify a producer can elect an enterprise unit for any crop for which revenue protection is available, or for crops for which revenue protection is not available only if allowed by the Special Provisions. The revised provisions also specify a whole-farm unit can be elected only for crops for which revenue protection is elected and is provided unless limited by the Special Provisions, or for crops for which revenue protection is not available and for yield protection only if allowed by the Special Provisions. These revisions were made because, after publication of the proposed rule, FCIC determined that whole-farm and enterprise units would automatically be available for all crops for which revenue protection is available and it was not necessary to repeat this information on every Special Provisions. Additionally, the provisions have been revised to allow changes in unit structure until the spring sales closing date in counties with both fall and spring sales closing dates, if the producer does not have any insured fall planted acreage of the insured crop. This change is made to be consistent with provisions in the Canola and Rapeseed and Small Grains Crop Provisions that allow a producer to change their coverage level, percentage of price, *etc.*, when there is no fall-planted acreage of the insured crop. FCIC has also revised redesignated sections 34(a)(4)(vii) and 34(a)(5)(v) to specify what unit structure would be in effect if the producer failed to qualify for an enterprise or whole-farm unit. These revisions were made to be consistent with other provisions in the policy that allow until the acreage reporting date to elect basic or optional units.

Small Grains Crop Provisions

15. Revised section 5 to allow cancellation and termination dates to be shown in the Special Provisions. There have been cases in which cropping patterns have changed in counties (*e.g.*, winter wheat is now grown where only spring wheat was grown in the past) and it is reasonable to change program dates accordingly. Allowing these dates to be modified in the Special Provisions will allow program dates to be changed when necessary without the delays associated with the regulatory process.

16. Revised section 7(b) to remove provisions that specify the different events that end the insurance period. This language was duplicative of the provisions contained in section 11 of the Basic Provisions.

Cotton Crop Provisions

17. Amended section 4 by revising the January 15 cancellation and termination date for Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof to January 31. The Consolidated Appropriations Act (H.R. 3194) for 2000 mandated the earliest sales closing date for any spring planted crop would be January 31. Cancellation and termination dates generally correspond to the sales closing dates in order to avoid the potential for coverage attaching before the policy is terminated or canceled. Therefore, the termination and cancellation dates needed to be revised. Previously, FCIC implemented the revision to the applicable crops in the Special Provisions. This change will eliminate any potential conflict between the regulations and the Special Provisions.

Coarse Grains Crop Provisions

18. Revise section 10(b) to remove provisions regarding the submission of a claim when there is more than one calendar date for the end of the insurance period for the unit (*e.g.*, when there is grain and silage in the same unit). These provisions are duplicative of the new provisions contained in section 14 of the Basic Provisions.

Malting Barley Price and Quality Endorsement

19. Revised the definition of "malt extract." The revisions clarify that malt extract may, in some cases, be condensed or evaporated to a syrup or powder. The proposed definition indicated the extract was always condensed to a powder and this is not always the case.

Rice Crop Provisions

20. Amended section 5 by revising the January 15 cancellation and termination date for Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas; and all Texas Counties south thereof to January 31. The Consolidated Appropriations Act (H.R. 3194) for 2000 mandated the earliest sales closing date for any spring planted crop would be January 31. Cancellation and termination dates generally correspond to the sales closing dates in order to avoid the potential for coverage attaching before the policy is terminated or canceled. Therefore, the termination and cancellation dates needed to be revised. Previously, FCIC implemented the revision to the applicable crops in the Special Provisions. This change will eliminate any potential conflict between the regulations and the Special Provisions.

Canola and Rapeseed Crop Provisions

21. Changed the cancellation and termination dates for Alabama from August 31 to September 30. This change makes these dates in Alabama consistent with the dates used in Georgia. This change is made because the agronomic conditions in these two states are similar and the program dates should be the same.

Other Crop Provisions

22. After it had published the proposed rule, FCIC discovered there will be other crop policies that are affected because references have been changed in this final rule and no longer match those referenced in certain Crop Provisions. As a result, FCIC has revised the Texas Citrus Tree Crop Insurance Provisions, Pear Crop Insurance Provisions, Sugarcane Crop Insurance Provisions, Macadamia Tree Crop Insurance Provisions, Macadamia Nut Crop Insurance Provisions, Onion Crop Insurance Provisions, Dry Pea Crop Insurance Provisions, Plum Crop Insurance Provisions, and Cabbage Crop Insurance Provisions to correct specific references to the revised Common Crop Insurance Regulations, Basic Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457, as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

■ 2. Amend § 457.8 as follows:

■ A. Throughout § 457.8, where they appear:

■ i. Remove the word "cancelled" and add the word "canceled" in its place,

■ ii. Remove the phrase "high risk" and add the phrase "high-risk" in its place,

■ iii. Remove the phrase "the organic agricultural industry" and add the phrase "organic agricultural experts" in its place,

■ iv. Remove the phrase "whole farm" and add the phrase "whole-farm" in its place, and

■ v. Remove the phrase "the RMA Web site" and add the phrase "RMA's Web site" in its place;

■ B. Revise paragraph (b) and add new paragraphs (c) through (f), immediately

before the Common Crop Insurance Policy, to read as follows:

§ 457.8 The application and policy.

* * * * *

(b) FCIC or the reinsured company may reject or discontinue the acceptance of applications in any county or of any individual application upon FCIC's determination that the insurance risk is excessive.

(c) If the producer had a Crop Revenue Coverage, Revenue Assurance, Income Protection, or Indexed Income Protection crop insurance policy in effect for the 2010 crop year and has not canceled or changed such coverage in accordance with such policy, revenue protection will continue in effect under the Common Crop Insurance Policy Basic Provisions and no new application is required. Revenue protection will be at the same coverage level, 100 percent of price, with any applicable options, endorsements, and enterprise or whole-farm unit structures that were in effect the previous year still in effect, as long as all qualifications are met and such coverage remains available.

(1) If the producer had revenue coverage under the Revenue Assurance crop insurance policy for the 2010 crop year and:

(i) The producer had the fall harvest price option, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions based on the greater of the projected price or the harvest price; or

(ii) The producer did not have the fall harvest price option, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions and the harvest price exclusion.

(2) If the producer had revenue coverage under the Income Protection or Indexed Income Protection crop insurance policy for the 2010 crop year, for the 2011 crop year the producer will have revenue protection under the Common Crop Insurance Policy Basic Provisions and the harvest price exclusion.

(3) If the producer has revenue protection under paragraph (c) of this section, the producer may exclude coverage for hail and fire if the requirements are met.

(d) If the producer had coverage under an Actual Production History crop insurance policy for a crop under the Common Crop Insurance Policy Basic Provisions for the 2010 crop year, and that crop now has revenue protection available, the producer will have yield protection for the crop under the Common Crop Insurance Policy Basic Provisions in effect for the 2011 crop year at the same coverage level, and percentage of price, any applicable options or endorsements, and enterprise unit structures that were in effect the previous year continue in effect, as long as all qualifications are met and such coverage remains available.

(e) If the producer had coverage under Actual Production History or another crop insurance policy for a crop under the Common Crop Insurance Policy Basic Provisions for the 2010 crop year and that crop does not have revenue protection available for the 2011 crop year, the producer will continue with the same crop insurance policy (*e.g.*, Actual Production History or amount of insurance) until canceled or terminated.

(f) With respect to any crop insurance policy specified in paragraphs (c) through (e) of this section:

(1) The producer may change their coverage (coverage level, percent of price, *etc.*) in accordance with section 3 of the Common Crop Insurance Policy Basic Provisions or the producer may cancel such coverage in accordance with section 2 of the Common Crop Insurance Policy Basic Provisions. If the producer changes their crop insurance policy (*e.g.*, Actual Production History, yield protection, revenue protection, amount of insurance, *etc.*) for any crop year, the producer must elect the coverage level, percentage of price, any applicable options, endorsements, and unit structure (enterprise or whole-farm) that will be in effect under the new crop insurance policy.

(2) If a producer has a properly executed Power of Attorney on file with the insurance provider, such Power of Attorney will remain in effect under the Common Crop Insurance Policy Basic Provisions until it is terminated.

(3) If the producer has a current written agreement in effect for the crop for multiple crop years, such written agreement will remain in effect if the terms of the written agreement are still applicable, the conditions under which the written agreement was provided have not changed, and the crop insurance policy remains with the same insurance provider.

* * * * *

§ 457.8 [Amended]

■ 3. Further amend § 457.8 by revising the"Agreement to Insure" sections after the second paragraph of both the "FCIC Policies" and "Reinsured Policies" sections that precede "Terms and Conditions Basic Provisions" as follows:

FCIC Policies

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures issued by us, the order of priority is: (1) The Act; (2) the regulations; and (3) the procedures issued by us, with (1) controlling (2), *etc.* If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) these Basic Provisions, with (1) controlling (2), *etc.*

Reinsured Policies

* * * * *

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) The Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), *etc.* If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) these Basic Provisions, with (1) controlling (2), *etc.*

§ 457.8 [Amended]

■ 4. Further amend § 457.8 in section 1 as follows:

■ A. Add definitions of "Commodity Exchange Price Provisions (CEPP)," "Cooperative Extension System," "harvest price," "harvest price exclusion," "insurable interest," "intended acreage report," "organic agricultural experts," "projected price," "revenue protection," "revenue protection guarantee (per acre)," "RMA's Web site," "verifiable records," "yield

protection," and "yield protection guarantee (per acre)."

■ B. Revise the definitions of "actuarial documents," "agricultural experts," "assignment of indemnity," "average yield," "catastrophic risk protection," "claim for indemnity," "conventional farming practice," "delinquent debt," "enterprise unit," "liability," "limited resource farmer," "policy," "prevented planting," "price election," "production report," "section," "share," "substantial beneficial interest," "void," and "whole-farm unit."

■ C. Remove the definition of "organic agricultural industry."

■ D. Redesignate the definitions of "Code of Federal Regulations (CFR)," "consent," "second crop," and "section" in alphabetical order.

The revised and added text reads as follows:

1. Definitions.

* * * * *

Actuarial documents. The information for the crop year which is available for public inspection in your agent's office and published on RMA's Web site and which shows available crop insurance policies, coverage levels, information needed to determine amounts of insurance, prices, premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop, insurable acreage, and other related information regarding crop insurance in the county.

* * * * *

Agricultural experts. Persons who are employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

* * * * *

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us in writing, whereby you assign your right to an indemnity payment for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation.

Average yield. The yield calculated by totaling the yearly actual yields, assigned yields in accordance with sections 3(f)(1) (failure to provide production report), 3(h)(1) (excessive yields), and 3(i) (second crop planted without double cropping history on prevented planting acreage), and adjusted or unadjusted transitional yields, and dividing the total by the number of yields contained in the database.

* * * * *

Catastrophic risk protection. The minimum level of coverage offered by FCIC. Catastrophic risk protection is not available with revenue protection.

* * * * *

Claim for indemnity. A claim made on our form that contains the information necessary to pay the indemnity, as specified in the applicable FCIC issued procedures, and complies with the requirements in section 14.

* * * * *

Commodity Exchange Price Provisions (CEPP). A part of the policy that is used for all crops for which revenue protection is available, regardless of whether you elect revenue protection or yield protection for such crops. This document includes the information necessary to derive the projected price and the harvest price for the insured crop, as applicable.

* * * * *

Conventional farming practice. A system or process that is necessary to produce an agricultural commodity, excluding organic farming practices.

Cooperative Extension System. A nationwide network consisting of a State office located at each State's land-grant university, and local or regional offices. These offices are staffed by one or more agricultural experts, who work in cooperation with the Cooperative State Research, Education and Extension Service, and who provide information to agricultural producers and others.

* * * * *

Delinquent debt. Has the same meaning as the term defined in 7 CFR part 400, subpart U.

* * * * *

Enterprise unit. All insurable acreage of the same insured crop in the county in which you have a share on the date coverage begins for the crop year, provided the requirements of section 34 are met.

* * * * *

Harvest price. A price determined in accordance with the Commodity Exchange Price Provisions and used to value production to count for revenue protection.

Harvest price exclusion. Revenue protection with the use of the harvest price excluded when determining your revenue protection guarantee. This election is continuous unless canceled by the cancellation date.

* * * * *

Insurable interest. Your percentage of the insured crop that is at financial risk.

* * * * *

Intended acreage report. A report of the acreage you intend to plant, by crop, for the current crop year and used solely for the purpose of establishing eligible prevented planting acreage, as required in section 17.

* * * * *

Liability. Your total amount of insurance, value of your production guarantee, or revenue protection guarantee for the unit determined in accordance with the Settlement of Claim provisions of the applicable Crop Provisions.

Limited resource farmer. Has the same meaning as the term defined by USDA at *http://www.lrftool.sc.egov.usda.gov/LRP-D.htm.*

* * * * *

Organic agricultural experts. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative Extension System, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

* * * * *

Policy. The agreement between you and us to insure an agricultural commodity and consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

* * * * *

Prevented planting. Failure to plant the insured crop by the final planting date designated in the Special Provisions for the insured crop in the county, or within any applicable late planting period, due to an insured cause of loss that is general to the surrounding area and that prevents other producers from planting acreage with similar characteristics. Failure to plant because of uninsured causes such as lack of proper equipment or labor to plant the acreage, or use of a particular production method, is not considered prevented planting.

Price election. The amounts contained in the Special Provisions, or in an addendum thereto, that is the value per pound, bushel, ton, carton, or other applicable unit of measure for the purposes of determining premium and indemnity under the policy. A price

election is not applicable for crops for which revenue protection is available.

* * * * *

Production report. A written record showing your annual production and used by us to determine your yield for insurance purposes in accordance with section 3. The report contains yield information for previous years, including planted acreage and production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, by measurement of farm-stored production, or by other records of production approved by us on an individual case basis in accordance with FCIC approved procedures.

* * * * *

Projected price. The price for each crop determined in accordance with the Commodity Exchange Price Provisions. The applicable projected price is used for each crop for which revenue protection is available, regardless of whether you elect to obtain revenue protection or yield protection for such crop.

* * * * *

Revenue protection. A plan of insurance that provides protection against loss of revenue due to a production loss, price decline or increase, or a combination of both. If the harvest price exclusion is elected, the insurance coverage provides protection only against loss of revenue due to a production loss, price decline, or a combination of both.

Revenue protection guarantee (per acre). For revenue protection only, the amount determined by multiplying the production guarantee (per acre) by the greater of your projected price or your harvest price. If the harvest price exclusion is elected, the production guarantee (per acre) is only multiplied by your projected price.

RMA's Web site. A Web site hosted by RMA and located at *http://www.rma.usda.gov/or* a successor Web site.

* * * * *

Section. For the purposes of unit structure, a unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

Share. Your insurable interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest.

* * * * *

Substantial beneficial interest. An interest held by any person of at least 10 percent in you (*e.g.,* there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you. The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership. However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 2). The spouse of any individual applicant or individual insured will be presumed to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under the applicable State dissolution of marriage laws. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person.

* * * * *

Verifiable records. Has the same meaning as the term defined in 7 CFR part 400, subpart G.

Void. When the policy is considered not to have existed for a crop year.

Whole-farm unit. All insurable acreage of all the insured crops planted in the county in which you have a share on the date coverage begins for each crop for the crop year and for which the whole-farm unit structure is available in accordance with section 34.

* * * * *

Yield protection. A plan of insurance that only provides protection against a production loss and is available only for crops for which revenue protection is available.

Yield protection guarantee (per acre). When yield protection is selected for a crop that has revenue protection available, the amount determined by multiplying the production guarantee by your projected price.

§ 457.8 [Amended]

■ 5. Further amend § 457.8 in section 2 as follows:

■ a. Amend paragraph (a) by adding at the end of the paragraph the following sentence "In accordance with section 4, FCIC may change the coverage provided from year to year.";

■ b. Revise paragraph (b);

■ c. Amend paragraph (e)(2) by removing "14(c)" and adding "14(e)" in its place;

■ d. Amend paragraph (f)(1)(i)(C) by adding the word "written" before the phrase "payment agreement";

■ e. Amend paragraph (f)(1)(ii) by removing the phrase "2(f)(2)(i)(D) or (E)" and adding the phrase "2(f)(2)(i)(A), (B), (D), or (E)" in its place;

■ f. Revise paragraphs (f)(2)(i)(A), (B), (C), and (D);

■ g. Amend paragraph (f)(2)(ii) by removing the phrase "2(f)(2)(i)(D) and (E)" and adding the phrase "2(f)(2)(i)(A), (B), (D), or (E)" in its place;

■ h. Revise paragraph (f)(3)(ii);

■ i. Amend paragraph (f)(3)(iii) by removing the semicolon at the end of the text and adding a period in its place;

■ j. Amend paragraph (f)(4) by removing the semicolon at the end of the text and adding a period in its place;

■ k. Revise paragraph (f)(5);

■ l. Revise paragraph (g); and

■ m. Amend paragraph (k) by adding the word "other" between the words "any" and "applicable".

The revised text reads as follows:

2. Life of Policy, Cancellation, and Termination.

* * * * *

(b) With respect to your application for insurance:

(1) You must include your social security number (SSN) if you are an individual (if you are an individual applicant operating as a business, you may provide an employer identification number (EIN) but you must also provide your SSN); or

(2) You must include your EIN if you are a person other than an individual;

(3) In addition to the requirements of section 2(b)(1) or (2), you must include the following for all persons who have a substantial beneficial interest in you:

(i) The SSN for individuals; or

(ii) The EIN for persons other than individuals and the SSNs for all individuals that comprise the person with the EIN if such individuals also have a substantial beneficial interest in you;

(4) You must include:

(i) Your election of revenue protection, yield protection, or other available plan of insurance; coverage level; percentage of price election or percentage of projected price, as applicable; crop, type, variety, or class; and any other material information

required on the application to insure the crop; and

(ii) All the information required in section 2(b)(4)(i) or your application will not be accepted and no coverage will be provided;

(5) Your application will not be accepted and no insurance will be provided for the year of application if the application does not contain your SSN or EIN. If your application contains an incorrect SSN or EIN for you, your application will be considered not to have been accepted, no insurance will be provided for the year of application and for any subsequent crop years, as applicable, and such policies will be void if:

(i) Such number is not corrected by you; or

(ii) You correct the SSN or EIN but:

(A) You cannot prove that any error was inadvertent (Simply stating the error was inadvertent is not sufficient to prove the error was inadvertent); or

(B) It is determined that the incorrect number would have allowed you to obtain disproportionate benefits under the crop insurance program, you are determined to be ineligible for insurance or you could avoid an obligation or requirement under any State or Federal law;

(6) With respect to persons with a substantial beneficial interest in you:

(i) The insurance coverage for all crops included on your application will be reduced proportionately by the percentage interest in you of persons with a substantial beneficial interest in you (presumed to be 50 percent for spouses of individuals) if the SSNs or EINs of such persons are included on your application, the SSNs or EINs are correct, and the persons with a substantial beneficial interest in you are ineligible for insurance;

(ii) Your policies for all crops included on your application, and for all applicable crop years, will be void if the SSN or EIN of any person with a substantial beneficial interest in you is incorrect or is not included on your application and:

(A) Such number is not corrected or provided by you, as applicable;

(B) You cannot prove that any error or omission was inadvertent (Simply stating the error or omission was inadvertent is not sufficient to prove the error or omission was inadvertent); or

(C) Even after the correct SSN or EIN is provided by you, it is determined that the incorrect or omitted SSN or EIN would have allowed you to obtain disproportionate benefits under the crop insurance program, the person with a substantial beneficial interest in you is determined to be ineligible for insurance, or you or the person with a substantial beneficial interest in you could avoid an obligation or requirement under any State or Federal law; or

(iii) Except as provided in sections 2(b)(6)(ii)(B) and (C), your policies will not be voided if you subsequently provide the correct SSN or EIN for persons with a substantial beneficial interest in you and the persons are eligible for insurance;

(7) When any of your policies are void under sections 2(b)(5) or (6):

(i) You must repay any indemnity, prevented planting payment or replant payment that may have been paid for all applicable crops and crop years;

(ii) Even though the policies are void, you will still be required to pay an amount equal to 20 percent of the premium that you would otherwise be required to pay; and

(iii) If you previously paid premium or administrative fees, any amount in excess of the amount required in section 2(b)(7)(ii) will be returned to you;

(8) Notwithstanding any of the provisions in this section, if you certify to an incorrect SSN or EIN, or receive an indemnity, prevented planting payment or replant payment and the SSN or EIN was not correct, you may be subject to civil, criminal or administrative sanctions;

(9) If any of the information regarding persons with a substantial beneficial interest in you changes after the sales closing date for the previous crop year, you must revise your application by the sales closing date for the current crop year to reflect the correct information. However, if such information changed less than 30 days before the sales closing date for the current crop year, you must revise your application by the sales closing date for the next crop year. If you fail to provide the required revisions, the provisions in section 2(b)(6) will apply; and

(10) If you are, or a person with a substantial beneficial interest in you is, not eligible to obtain a SSN or EIN, whichever is required, you must request an assigned number for the purposes of this policy from us:

(i) A number will be provided only if you can demonstrate you are, or a person with a substantial beneficial interest in you is, eligible to receive Federal benefits;

(ii) If a number cannot be provided for you in accordance with section 2(b)(10)(i), your application will not be accepted; or

(iii) If a number cannot be provided for any person with a substantial beneficial interest in you in accordance with section 2(b)(10)(i), the amount of coverage for all crops on the application will be reduced proportionately by the percentage interest of such person in you.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the billing date for the crop year (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity, prevented planting or replant payment will be owed);

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity, prevented planting or replant payment will be owed);

(C) For all other policies that are issued by us under the authority of the Act, the termination date that coincides with the termination date for the policy with the delinquent debt or, if there is no coincidental termination date, the termination date immediately following the date you become ineligible;

(D) For execution of a written payment agreement and failure to make any scheduled payment, the termination date for the crop year prior to the crop year in which you failed to make the scheduled payment (for this purpose only, the crop year will start the day after the termination date and end on the next termination date, *e.g.,* if the termination date is November 30 and you fail to make a payment on November 15, 2011, your policy will terminate on November 30, 2010, for the 2011 crop year); or

* * * * *

(3) * * *

(ii) Execute a written payment agreement and make payments in accordance with the agreement (We will not enter into a written payment agreement with you if you have

previously failed to make a scheduled payment under the terms of any other payment agreement with us or any other insurance provider); or

* * * * *

(5) For example, for the 2011 crop year, if crop A, with a termination date of October 31, 2010, and crop B, with a termination date of March 15, 2011, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2010, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2011, and an indemnity for the 2010 crop year may still be owed. If you enter into a written payment agreement on September 25, 2011, the earliest date by which you can obtain crop insurance for crop A is to apply for crop insurance by the October 31, 2011, sales closing date and for crop B is to apply for crop insurance by the March 15, 2012, sales closing date. If you fail to make a payment that was scheduled to be made on April 1, 2012, your policy will terminate as of October 31, 2011, for crop A, and March 15, 2012, for crop B, and no indemnity, prevented planting payment or replant payment will be due for that crop year for either crop. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

* * * * *

(g) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of any insured person:

(1) If any married individual insured dies, disappears, or is judicially declared incompetent, the named insured on the policy will automatically convert to the name of the spouse if:

(i) The spouse was included on the policy as having a substantial beneficial interest in the named insured; and

(ii) The spouse has a share of the crop.

(2) The provisions in section 2(g)(3) will be applicable if:

(i) Any partner, member, shareholder, *etc.,* of an insured entity dies, disappears, or is judicially declared incompetent, and such event automatically dissolves the entity; or

(ii) An individual, whose estate is left to a beneficiary other than a spouse or left to the spouse and the criteria in section 2(g)(1) are not met, dies, disappears, or is judicially declared incompetent.

(3) If section 2(g)(2) applies and the death, disappearance, or judicially declared incompetence occurred:

(i) More than 30 days before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) Thirty days or less before the cancellation date, or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted prior to the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity, replant payment or prevented planting payment will be paid to the person or persons determined to be beneficially entitled to the payment and such person or persons must comply with all policy provisions and pay the premium.

(4) If any insured entity is dissolved for reasons other than death, disappearance, or judicially declared incompetence:

(i) Before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) On or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted prior to the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity, replant payment or prevented planting payment will be paid to the person or persons determined to be beneficially entitled to the payment and such person or persons must comply with all policy provisions and pay the premium.

(5) If section 2(g)(2) or (4) applies, a remaining member of the insured person or the beneficiary is required to report to us the death, disappearance, judicial incompetence, or other event that causes dissolution not later than the next cancellation date, except if section 2(g)(3)(ii) applies, notice must be provided by the cancellation date for the next crop year. If notice is not provided timely, the provisions of section 2(g)(2) or (4) will apply retroactive to the date such notice should have been provided and any payments made after the date the policy should have been canceled must be returned.

* * * * *

§ 457.8 [Amended]

■ 6. Further amend § 457.8 in section 3 as follows:

■ a. Revise paragraphs (b), (c), (d);

■ b. Redesignate paragraphs (e) through (j) as paragraphs (f) through (k), respectively, and add a new paragraph (e);

■ c. Amend redesignated paragraph (f) by revising the introductory text;

■ d. Revise redesignated paragraph (g);

■ e. Amend the introductory text of redesignated paragraph (h) by removing the phrase "3(f)" and adding the phrase "3(g)" in its place;

■ f. Amend redesignated paragraph (h)(1) by removing the phrase "3(e)(1)" and adding the phrase "3(f)(1)" in its place and by removing the phrase ", and you may be subject to provisions of section 27";

■ g. Amend redesignated paragraph (h)(2)(i) by removing the word "and" after the semicolon at the end;

■ h. Amend redesignated paragraph (h)(2)(ii) by removing the word "insured" and adding the word "insurable" in its place and removing the word "or" at the end and adding the word "and" in its place;

■ i. Add a new paragraph (h)(2)(iii);

■ j. Amend redesignated paragraph (i)(2) by removing the phrase "3(h)(1)" and adding the phrase "3(i)(1)" in its place;

■ k. Amend redesignated paragraph (i)(3) by removing the phrase "3(h)(2)" and adding the phrase "3(i)(2)" in its place; and

■ l. Amend redesignated paragraph (j) by adding at the end of the paragraph the following sentence, "If you elected a whole-farm unit, you may exclude hail and fire coverage only if allowed by the Special Provisions."

The revised and added text reads as follows:

3. Insurance Guarantees, Coverage Levels, and Prices.

* * * * *

(b) With respect to the insurance choices:

(1) For all acreage of the insured crop in the county, unless one of the conditions in section 3(b)(2) exists, you must select the same:

(i) Plan of insurance (*e.g.,* yield protection, revenue protection, actual production history, amount of insurance, *etc.*);

(ii) Level of coverage (all catastrophic risk protection or the same level of additional coverage); and

(iii) Percentage of the available price election, or projected price for yield

protection. For revenue protection, the percentage of price is specified in section 3(c)(2). If different prices are provided by type or variety, insurance will be based on the price provided for each type or variety and the same price percentage will apply to all types or varieties.

(2) You do not have to select the same plan of insurance, level of coverage or percentage of available price election or projected price if:

(i) The applicable Crop Provisions allow you the option to separately insure individual crop types or varieties. In this case, each individual type or variety insured by you will be subject to separate administrative fees. For example, if two grape varieties in California are insured under the Catastrophic Risk Protection Endorsement and two varieties are insured under an additional coverage policy, a separate administrative fee will be charged for each of the four varieties; or

(ii) You have additional coverage for the crop in the county and the acreage has been designated as "high-risk" by FCIC. In such case, you will be able to exclude coverage for the high-risk land under the additional coverage policy and insure such acreage under a separate Catastrophic Risk Protection Endorsement, provided the Catastrophic Risk Protection Endorsement is obtained from the same insurance provider from which the additional coverage was obtained. If you have revenue protection and exclude high-risk land, the catastrophic risk protection coverage will be yield protection only for the excluded high-risk land.

(c) With respect to revenue protection, if available for the crop:

(1) You may change to another plan of insurance and change your coverage level or elect the harvest price exclusion by giving written notice to us not later than the sales closing date for the insured crop;

(2) Your projected price and harvest price will be 100 percent of the projected price and harvest price issued by FCIC;

(3) If the harvest price exclusion is:

(i) Not elected, your projected price is used to initially determine the revenue protection guarantee (per acre), and if the harvest price is greater than the projected price, the revenue protection guarantee (per acre) will be recomputed using your harvest price; or

(ii) Elected, your projected price is used to compute your revenue protection guarantee (per acre);

(4) Your projected price is used to calculate your premium, any replant payment, and any prevented planting payment; and

(5) If the projected price or harvest price cannot be calculated for the current crop year under the provisions contained in the Commodity Exchange Price Provisions:

(i) For the projected price:

(A) Revenue protection will not be provided and you will automatically be covered under the yield protection plan of insurance for the current crop year unless you cancel your coverage by the cancellation date or change your plan of insurance by the sales closing date;

(B) Notice will be provided on RMA's Web site by the date specified in the applicable projected price definition contained in the Commodity Exchange Price Provisions;

(C) The projected price will be determined by FCIC and will be released by the date specified in the applicable projected price definition contained in the Commodity Exchange Price Provisions; and

(D) Your coverage will automatically revert to revenue protection for the next crop year that revenue protection is available unless you cancel your coverage by the cancellation date or change your coverage by the sales closing date; or

(ii) For the harvest price:

(A) Revenue protection will continue to be available; and

(B) The harvest price will be determined and announced by FCIC.

(d) With respect to yield protection, if available for the crop:

(1) You may change to another plan of insurance and change your percentage of price and your coverage level by giving written notice to us not later than the sales closing date for the insured crop;

(2) The percentage of the projected price selected by you multiplied by the projected price issued by FCIC is your projected price that is used to compute the value of your production guarantee (per acre) and the value of the production to count; and

(3) Since the projected price may change each year, if you do not select a new percentage of the projected price on or before the sales closing date, we will assign a percentage which bears the same relationship to the percentage that was in effect for the preceding year (*e.g.,* if you selected 100 percent of the projected price for the previous crop year and you do not select a new percentage for the current crop year, we will assign 100 percent for the current crop year).

(e) With respect to all plans of insurance other than revenue protection and yield protection (*e.g.,* APH, dollar amount plans of insurance, *etc.*):

(1) In addition to the price election or amount of insurance available on the contract change date, we may provide an additional price election or amount of insurance no later than 15 days prior to the sales closing date.

(i) You must select the additional price election or amount of insurance on or before the sales closing date for the insured crop.

(ii) These additional price elections or amounts of insurance will not be less than those available on the contract change date.

(iii) If you elect the additional price election or amount of insurance, any claim settlement and amount of premium will be based on your additional price election or amount of insurance.

(2) You may change to another plan of insurance or change your coverage level, amount of insurance or percentage of the price election, as applicable, for the following crop year by giving written notice to us not later than the sales closing date for the insured crop.

(3) Your amount of insurance will be the amount of insurance issued by FCIC multiplied by the coverage level percentage you elected. Your price election will be the price election issued by FCIC multiplied by the percentage of price you elected.

(4) Since the amount of insurance or price election may change each year, if you do not select a new amount of insurance or percentage of the price election on or before the sales closing date, we will assign an amount of insurance or percentage of the price election which bears the same relationship to the amount of insurance or percentage of the price election that was in effect for the preceding year (*e.g.,* if you selected 100 percent of the price election for the previous crop year and you do not select a new percentage of the price election for the current crop year, we will assign 100 percent of the price election for the current crop year).

(f) You must report all production of the crop (insured and uninsured) to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date, unless otherwise stated in the Special Provisions or as specified in section 18:

* * * * *

(g) It is your responsibility to accurately report all information that is used to determine your approved yield.

(1) You must certify to the accuracy of this information on your production report.

(2) If you fail to accurately report any information or if you do not provide any

required records, you will be subject to the provisions regarding misreporting contained in section 6(g), unless the information is corrected:

(i) On or before the production reporting date; or

(ii) Because the incorrect information was the result of our error or the error of someone from USDA.

(3) If you do not have written verifiable records to support the information on your production report, you will receive an assigned yield in accordance with section 3(f)(1) and 7 CFR part 400, subpart G for those crop years for which you do not have such records.

(4) At any time we discover you have misreported any material information used to determine your approved yield or your approved yield is not correct, the following actions will be taken, as applicable:

(i) We will correct your approved yield for the crop year such information is not correct, and all subsequent crop years;

(ii) We will correct the unit structure, if necessary;

(iii) Any overpaid or underpaid indemnity or premium must be repaid; and

(iv) You will be subject to the provisions regarding misreporting contained in section 6(g)(1), unless the incorrect information was the result of our error or the error of someone from USDA.

(h) * * *

(2) * * *

(iii) We determine there is no valid agronomic basis to support the approved yield; or

* * * * *

§ 457.8 [Amended]

■ 7. Further amend § 457.8 in section 4 by revising paragraphs (b) and (c) to read as follows:

4. Contract Changes.

* * * * *

(b) Any changes in policy provisions, amounts of insurance, premium rates, program dates, price elections or the Commodity Exchange Price Provisions, if applicable, can be viewed on RMA's Web site not later than the contract change date contained in the Crop Provisions (except as allowed herein or as specified in section 3). We may only revise this information after the contract change date to correct clear errors (*e.g.,* the price for oats was announced at $25.00 per bushel instead of $2.50 per bushel or the final planting date should be May 10 but the final planting date in the Special Provisions states August 10).

(c) After the contract change date, all changes specified in section 4(b) will also be available upon request from your crop insurance agent. You will be provided, in writing, a copy of the changes to the Basic Provisions, Crop Provisions, Commodity Exchange Price Provisions, if applicable, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. If available from us, you may elect to receive these documents and changes electronically. Acceptance of the changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

* * * * *

§ 457.8 [Amended]

■ 8. Further amend § 457.8 in section 6 as follows:

■ a. Revise paragraph (c);

■ b. Revise paragraph (d)(2);

■ c. Remove paragraph (d)(3) and redesignate paragraphs (d)(4), (5) and (6) as paragraphs (d)(3), (4) and (5), respectively;

■ d. Revise redesignated paragraph (d)(3);

■ e. Amend redesignated paragraph (d)(5) by removing the phrase "section 6(d)(1), (2), (4), or (5)" and adding the phrase "section 6(d)(1), (2), or (3)" in its place;

■ f. Revise the introductory text of paragraph (g)(1); and

■ g. Revise paragraph (g)(2).

The revised text reads as follows:

6. Report of Acreage.

* * * * *

(c) Your acreage report must include the following information, if applicable:

(1) The amount of acreage of the crop in the county (insurable and not insurable) in which you have a share and the date the insured crop was planted on the unit as follows:

(i) The last date any timely planted acreage was planted and the number of acres planted by such date; and

(ii) The date of planting and the number of acres planted per day for acreage planted during the late planting period (If you fail to report the number of acres planted on a daily basis, all acreage planted in the late planting period will be presumed to have been planted on the last day planting took place in the late planting period for the purposes of section 16);

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The land identifier for the crop acreage (*e.g.,* legal description, FSA farm serial number or common land unit number if provided to you by FSA, *etc.*) as required on our form.

(d) * * *

(2) For prevented planting acreage:

(i) On or before the acreage reporting date, you can change any information on any initially submitted acreage report, except as provided in section 6(d)(2)(iii) (*e.g.,* you can correct the reported share, add acreage of the insured crop that was prevented from being planted, *etc.*);

(ii) After the acreage reporting date, you cannot revise any information on the acreage report (*e.g.,* if you have failed to report prevented planting acreage on or before the acreage reporting date, you cannot revise it after the acreage reporting date to include prevented planting acreage) but we will revise information that is clearly transposed or if you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your acreage report; and

(iii) You cannot revise your initially submitted acreage report at any time to change the insured crop, or type, that was reported as prevented from being planted;

(3) You may request an acreage measurement from FSA or a business that provides such measurement service prior to the acreage reporting date, submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, and if the acreage measurement shows the estimated acreage was incorrect, we will revise your acreage report to reflect the correct acreage:

(i) If an acreage measurement is only requested for a portion of the acreage within a unit, you must separately designate the acreage for which an acreage measurement has been requested;

(ii) If an acreage measurement is not provided to us by the time we receive a notice of loss, we may:

(A) Defer finalization of the claim until the measurement is completed, and:

(*1*) Make all necessary loss determinations, except the acreage measurement; and

(*2*) Finalize the claim in accordance with applicable policy provisions after you provide the acreage measurement to us (If you fail to provide the measurement, your claim will not be paid); or

(B) Elect to measure the acreage, and:

(*1*) Finalize your claim in accordance with applicable policy provisions; and

(*2*) Estimated acreage under this section will not be accepted from you for any subsequent acreage report; and

(iii) Premium will still be due in accordance with sections 2(e) and 7. If

the acreage is not measured as specified in section 6(d)(3)(ii) and the acreage measurement is not provided to us at least 15 days prior to the premium billing date, your premium will be based on the estimated acreage and will be revised, if necessary, when the acreage measurement is provided. If the acreage measurement is not provided by the termination date, you will be precluded from providing any estimated acreage for all subsequent crop years.

* * * * *

(g) * * *

(1) Except as provided in section 6(g)(2), if you submit information on any report that is different than what is determined to be correct and such information results in:

* * * * *

(2) If your share is misreported and the share is:

(i) Under-reported, any claim will be determined using the share you reported; or

(ii) Over-reported, any claim will be determined using the share we determine to be correct.

* * * * *

§ 457.8 [Amended]

■ 9. Further amend § 457.8 in section 7 as follows:

■ a. Amend paragraph (c)(1) by removing the phrase "the price election" and adding the phrase "your price election or your projected price, as applicable," in its place;

■ b. Amend paragraph (c)(2) by removing the phrase "the amount of insurance" and adding the phrase "your amount of insurance" in its place;

■ c. Amend paragraph (d) by removing the first sentence;

■ d. Amend paragraph (e) by removing reserved paragraphs (e)(5) and (e)(6); and

■ e. Amend paragraph (e) by redesignating paragraph (e)(7) as (e)(5).

§ 457.8 [Amended]

■ 10. Further amend § 457.8 in section 8 by revising paragraph (b)(2) to read as follows:

8. Insured Crop.

* * * * *

(b) * * *

(2) For which the information necessary for insurance (price election, amount of insurance, projected price and harvest price, as applicable, premium rate, *etc.*) is not included in the actuarial documents, unless such information is provided by a written agreement in accordance with section 18;

* * * * *

§ 457.8 [Amended]

■ 11. Further amend § 457.8 in section 9 by revising paragraphs (a) and (c) to read as follows:

9. Insurable Acreage.

(a) All acreage planted to the insured crop in the county in which you have a share:

(1) Except as provided in section 9(a)(2), is insurable if the acreage has been planted and harvested or insured (including insured acreage that was prevented from being planted) in any one of the three previous crop years. Acreage that has not been planted and harvested (grazing is not considered harvested for the purposes of section 9(a)(1)) or insured in at least one of the three previous crop years may still be insurable if:

(i) Such acreage was not planted:

(A) In at least two of the three previous crop years to comply with any other USDA program;

(B) Due to the crop rotation, the acreage would not have been planted in the previous three years (*e.g.,* a crop rotation of corn, soybeans, and alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial tree, vine, or bush crop was on the acreage in at least two of the previous three crop years;

(ii) Such acreage constitutes five percent or less of the insured planted acreage in the unit;

(iii) Such acreage was not planted or harvested because it was pasture or rangeland, the crop to be insured is also pasture or rangeland, and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(iv) The Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(2) Is not insurable if:

(i) The only crop that has been planted and harvested on the acreage in the three previous crop years is a cover, hay (except wheat harvested for hay) or forage crop (except insurable silage). However, such acreage may be insurable only if:

(A) The crop to be insured is a hay or forage crop and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(B) The hay or forage crop was part of a crop rotation;

(ii) The acreage has been strip-mined. However, such acreage may be insurable only if:

(A) An agricultural commodity, other than a cover, hay (except wheat harvested for hay), or forage crop (except insurable silage) has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed; or

(B) A written agreement specifically allows insurance for such acreage;

(iii) The actuarial documents do not provide the information necessary to determine the premium rate, unless insurance is allowed by a written agreement;

(iv) The insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(v) The acreage is interplanted, unless insurance is allowed by the Crop Provisions;

(vi) The acreage is otherwise restricted by the Crop Provisions or Special Provisions;

(vii) The acreage is planted in any manner other than as specified in the policy provisions for the crop unless a written agreement specifically allows insurance for such planting;

(viii) The acreage is of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 15 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made on a first insured crop unit basis (*e.g.,* if the first insured crop unit contains 40 planted acres that may be subject to an indemnity reduction, then no second crop can be insured on any of the 40 acres). In this case:

(A) If the first insured crop is insured under this policy, you must provide written notice to us of your election not to insure acreage of a second crop at the time the first insured crop acreage is released by us (if no acreage in the first insured crop unit is released, this election must be made by the earlier of the acreage reporting date for the second crop or when you sign the claim for indemnity for the first insured crop) or, if the first insured crop is insured under the Group Risk Protection Plan of Insurance or successor provisions (7 CFR part 407), this election must be made before the second crop insured under this policy is planted, and if you fail to provide such notice, the second crop acreage will be insured in accordance with the applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

(B) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must

provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(C) You must report the crop acreage that will not be insured on the applicable acreage report; or

(ix) The acreage is of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or organic agricultural experts for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(A) You must provide records acceptable to us that show:

(*1*) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(*2*) The applicable acreage has had three or more crops produced and harvested on it in the same crop year in at least two of the last four years in which the insured crop was grown on the acreage; and

(B) The amount of insurable acreage will not exceed 100 percent of the greatest number of acres for which you provide the records required in section 9(a)(2)(ix)(A).

* * * * *

(c) Notwithstanding the provisions in section 8(b)(2), if acreage is irrigated and a premium rate is not provided for an irrigated practice, you may either report and insure the irrigated acreage as "non-irrigated," or report the irrigated acreage as not insured (If you elect to insure such acreage under a non-irrigated practice, your irrigated yield will only be used to determine your approved yield if you continue to use a good irrigation practice. If you do not use a good irrigation practice, you will receive a yield determined in accordance with section 3(h)(3)).

* * * * *

§ 457.8 [Amended]

■ 12. Further amend § 457.8 in section 10 by revising paragraphs (a) and (b) to read as follows:

10. Share Insured.

(a) Insurance will attach:

(1) Only if the person completing the application has a share in the insured crop; and

(2) Only to that person's share, except that insurance may attach to another person's share of the insured crop if the other person has a share of the crop and:

(i) The application clearly states the insurance is requested for a person other than an individual (*e.g.,* a partnership or a joint venture); or

(ii) The application clearly states you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share. If you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share, you must provide evidence of the other party's approval (lease, power of attorney, *etc.*) and such evidence will be retained by us:

(A) You also must clearly set forth the percentage shares of each person on the acreage report; and

(B) For each landlord or tenant, you must report the landlord's or tenant's social security number, employer identification number, or other identification number we assigned for the purposes of this policy, as applicable.

(b) With respect to your share:

(1) We will consider to be included in your share under your policy, any acreage or interest reported by or for:

(i) Your spouse, unless such spouse can prove he/she has a separate farming operation, which includes, but is not limited to, separate land (transfers of acreage from one spouse to another is not considered separate land), separate capital, separate inputs, separate accounting, and separate maintenance of proceeds; or

(ii) Your child who resides in your household or any other member of your household, unless such child or other member of the household can demonstrate such person has a separate share in the crop (Children who do not reside in your household are not included in your share); and

(2) If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop, as applicable:

(i) The policy for one spouse or child or other member of the household will be void and the policy remaining in effect will be determined in accordance with section 22(a)(1) and (2);

(ii) The acreage or share reported under the policy that is voided will be included under the remaining policy; and

(iii) No premium will be due and no indemnity will be paid for the voided policy.

* * * * *

§ 457.8 [Amended]

■ 13. Further amend § 457.8 in section 11 as follows:

■ a. Revise paragraph (b); and

■ b. Add a new paragraph (c).

The revised and added text reads as follows:

11. Insurance Period.

* * * * *

(b) Coverage ends on each unit or part of a unit at the earliest of:

(1) Total destruction of the insured crop;

(2) Harvest of the insured crop;

(3) Final adjustment of a loss on a unit;

(4) The calendar date contained in the Crop Provisions or Special Provisions for the end of the insurance period;

(5) Abandonment of the insured crop; or

(6) As otherwise specified in the Crop Provisions.

(c) Except as provided in the Crop Provisions or applicable endorsement, in addition to the requirements of section 11(b), coverage ends on any acreage within a unit once any event specified in section 11(b) occurs on that acreage. Coverage only remains in effect on acreage that has not been affected by an event specified in section 11(b).

§ 457.8 [Amended]

■ 14. Further amend § 457.8 in section 12 as follows:

■ a. Revise the introductory paragraph; and

■ b. Revise paragraphs (a) and (d).

The revised text reads as follows:

12. Causes of Loss.

Insurance is provided only to protect against unavoidable, naturally occurring events. A list of the covered naturally occurring events is contained in the applicable Crop Provisions. All other causes of loss, including but not limited to the following, are not covered:

(a) Any act by any person that affects the yield, quality or price of the insured crop (*e.g.,* chemical drift, fire, terrorism, *etc.*);

* * * * *

(d) Failure or breakdown of the irrigation equipment or facilities, or the inability to prepare the land for irrigation using your established irrigation method (*e.g.,* furrow irrigation), unless the failure, breakdown or inability is due to a cause of loss specified in the Crop Provisions.

(1) You must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time unless we determine it is not practical to do so.

(2) Cost will not be considered when determining whether it is practical to restore the equipment or facilities;

* * * * *

§ 457.8 [Amended]

■ 15. Further amend § 457.8 in section 13 by revising paragraphs (a) and (c) to read as follows:

13. Replanting Payment.

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable). If the crops to be replanted are in a whole-farm unit, the 20 acres or 20 percent requirement is to be applied separately to each crop to be replanted in the whole-farm unit.

* * * * *

(c) The replanting payment per acre will be:

(1) The lesser of your actual cost for replanting or the amount specified in the Crop Provisions or Special Provisions; or

(2) If the Crop Provisions or Special Provisions specify that your actual cost will not be used to determine your replant payment, the amount determined in accordance with the Crop Provisions or Special Provisions.

* * * * *

§ 457.8 [Amended]

■ 16. Further amend § 457.8 in section 14 as follows:

■ a. Revise the text under "Your Duties";

■ b. Amend the paragraphs under "Our Duties" by redesignating paragraphs (a) through (d) as paragraphs (f) through (i); and

■ c. Add a new paragraph (j) to the text under "Our Duties".

The revised and added text reads as follows:

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.

Your Duties:

(a) In the case of damage or loss of production or revenue to any insured crop, you must protect the crop from further damage by providing sufficient care.

(b) Notice provisions:

(1) For a planted crop, when there is damage or loss of production, you must give us notice, by unit, within 72 hours of your initial discovery of damage or loss of production (but not later than 15 days after the end of the insurance period, even if you have not harvested the crop).

(2) For crops for which revenue protection is elected, if there is no damage or loss of production, you must give us notice not later than 45 days after the latest date the harvest price is released for any crop in the unit where there is a revenue loss.

(3) In the event you are prevented from planting an insured crop that has prevented planting coverage, you must notify us within 72 hours after:

(i) The final planting date, if you do not intend to plant the insured crop during the late planting period or if a late planting period is not applicable; or

(ii) You determine you will not be able to plant the insured crop within any applicable late planting period.

(4) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

(5) If you fail to comply with these notice requirements, any loss or prevented planting claim will be considered solely due to an uninsured cause of loss for the acreage for which such failure occurred, unless we determine that we have the ability to accurately adjust the loss. If we determine that we do not have the ability to accurately adjust the loss:

(i) For any prevented planting claim, no prevented planting coverage will be provided and no premium will be owed or prevented planting payment will be paid; or

(ii) For any claim for indemnity, no indemnity will be paid but you will still be required to pay all premiums owed.

(c) Representative samples:

(1) If representative samples are required by the Crop Provisions, you must leave representative samples of the unharvested crop intact:

(i) If you report damage less than 15 days before the time you will begin harvest or during harvest of the damaged unit; or

(ii) At any time when required by us.

(2) The samples must be left intact until we inspect them or until 15 days after completion of harvest on the remainder of the unit, whichever is earlier.

(3) Unless otherwise specified in the Crop Provisions or Special Provisions, the samples of the crop in each field in the unit must be 10 feet wide and extend the entire length of the rows, if the crop is planted in rows, or if the crop is not planted in rows, the longest dimension of the field.

(4) The period to retain representative samples may be extended if it is necessary to accurately determine the loss. You will be notified in writing of any such extension.

(d) Consent:

(1) You must obtain consent from us before, and notify us after you:

(i) Destroy any of the insured crop that is not harvested;

(ii) Put the insured crop to an alternative use;

(iii) Put the acreage to another use; or

(iv) Abandon any portion of the insured crop.

(2) We will not give consent for any of the actions in section 14(d)(1)(i) through (iv) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(3) Failure to obtain our consent will result in the assignment of an amount of production or value to count in accordance with the Settlement of Claim provisions of the applicable Crop Provisions.

(e) Claims:

(1) Except as otherwise provided in your policy, you must submit a claim declaring the amount of your loss by the dates shown in section 14(e)(3), unless you:

(i) Request an extension in writing by such date and we agree to such request (Extensions will only be granted if the amount of the loss can not be determined within such time period because the information needed to determine the amount of the loss is not available); or

(ii) Have harvested farm-stored grain production and elect, in writing, to delay measurement of your farm-stored production and settlement of any potential associated claim for indemnity (Extensions will be granted for this purpose up to 180 days after the end of the insurance period).

(A) For policies that require APH, if such extension continues beyond the date you are required to submit your production report, you will be assigned the previous year's approved yield as a temporary yield in accordance with applicable procedures.

(B) Any extension does not extend any date specified in the policy by which premiums, administrative fees, or other debts owed must be paid.

(C) Damage that occurs after the end of the insurance period (for example, while the harvested crop production is in storage) is not covered; and

(2) Failure to timely submit a claim or provide the required information necessary to determine the amount of the claim will result in no indemnity, prevented planting payment or replant payment:

(i) Even though no indemnity or replant payment is due, you will still be

required to pay the premium due under the policy for the unit; or

(ii) Failure to timely submit a prevented planting claim will result in no prevented planting coverage and no premium will be due.

(3) You must submit a claim not later than:

(i) For policies other than revenue protection, 60 days after the date the insurance period ends for all acreage in the unit (When there is acreage in the unit where the insurance period ended on different dates, it is the last date the insurance period ends on the unit. For example, if a unit has corn acreage that was put to another use on July 15 and corn acreage where harvest was completed on September 30, the claim must be submitted not later than 60 days after September 30); or

(ii) For revenue protection, the later of:

(A) 60 days after the last date the harvest price is released for any crop in the unit; or

(B) The date determined in accordance with section 14(e)(3)(i).

(4) To receive any indemnity (or receive the rest of an indemnity in the case of acreage that is planted to a second crop), prevented planting payment or replant payment, you must, if applicable:

(i) Provide:

(A) A complete harvesting, production, and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured.

(B) Records as indicated below if you insure any acreage that may be subject to an indemnity reduction as specified in section 15(e)(2):

(*1*) Separate records of production from such acreage for all insured crops planted on the acreage (*e.g.,* if you have an insurable loss on 10 acres of wheat and subsequently plant cotton on the same 10 acres, you must provide records of the wheat and cotton production on the 10 acres separate from any other wheat and cotton production that may be planted in the same unit). If you fail to provide separate records for such acreage, we will allocate the production of each crop to the acreage in proportion to our liability for the acreage; or

(*2*) If there is no loss on the unit that includes acreage of the second crop, no separate records need to be submitted for the second crop and you can receive the rest of the indemnity for the first insured crop.

(C) Any other information we may require to settle the claim.

(ii) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(A) Show us the damaged crop;

(B) Allow us to remove samples of the insured crop; and

(C) Provide us with records and documents we request and permit us to make copies.

(iii) Establish:

(A) The total production or value received for the insured crop on the unit;

(B) That any loss occurred during the insurance period;

(C) That the loss was caused by one or more of the insured causes specified in the Crop Provisions; and

(D) That you have complied with all provisions of this policy.

(iv) Upon our request, or that of any USDA employee authorized to conduct investigations of the crop insurance program, submit to an examination under oath.

(5) Failure to comply with any requirement contained in section 14(e)(4) will result in denial of the claim and any premium will still be owed, unless the claim denied is for prevented planting.

Our Duties:

* * * * *

(j) For revenue protection, we may make preliminary indemnity payments for crop production losses prior to the release of the harvest price if you have not elected the harvest price exclusion.

(1) First, we may pay an initial indemnity based upon your projected price, in accordance with the applicable Crop Provisions provided that your production to count and share have been established; and

(2) Second, after the harvest price is released, and if it is not equal to the projected price, we will recalculate the indemnity payment and pay any additional indemnity that may be due.

* * * * *

§ 457.8 [Amended]

■ 17. Further amend § 457.8 in section 15 as follows:

■ a. Revise paragraph (b)(1);

■ b. Revise paragraph (c); and

■ c. Add new paragraphs (i)(1) and (2).

The added and revised text reads as follows:

15. Production Included in Determining an Indemnity and Payment Reductions.

* * * * *

(b) * * *

(1) You must provide us with the amount of harvested production (If you fail to provide verifiable records of harvested production, no indemnity will be paid and you will be required to return any previously paid indemnity for the unit that was based on an appraised amount of production); and

* * * * *

(c) If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made as described in our form used to exclude hail and fire.

* * * * *

(i) * * *

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.,* if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that another producer double cropped in at least two of the last four crop years, you may only use the history of double cropping for the same physical acres from which double cropping records were provided (*e.g.,* if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

* * * * *

§ 457.8 [Amended]

■ 18. Further amend § 457.8 in section 17 as follows:

■ a. Revise the introductory text of paragraph (a)(1);

■ b. Revise paragraphs (a)(2) and (3);

■ c. Revise paragraph (b)(4);

■ d. Revise paragraphs (c), (d), and (e);

■ e. Revise paragraphs (f) and (h); and

■ f. Revise paragraph (i)(1).

The revised text reads as follows:

17. Prevented Planting

(a) * * *

(1) You are prevented from planting the insured crop on insurable acreage by an insured cause of loss that occurs:

* * * * *

(2) You include on your acreage report any insurable acreage of the insured crop that was prevented from being planted; and

(3) You did not plant the insured crop during or after the late planting period. Acreage planted to the insured crop during or after the late planting period

is covered under the late planting provisions.

(b) * * *

(4) You cannot increase your elected or assigned prevented planting coverage level for any crop year if a cause of loss that could prevent planting (even though it is not known whether such cause will actually prevent planting) has occurred during the prevented planting insurance period specified in section 17(a)(1)(i) or (ii) and prior to your request to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage except as specified in section 15(f). If the amount of premium you are required to pay (gross premium less the subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Prevented planting coverage will be provided against:

(1) Drought, failure of the irrigation water supply, failure or breakdown of irrigation equipment or facilities, or the inability to prepare the land for irrigation using your established irrigation method, due to an insured cause of loss only if, on the final planting date (or within the late planting period if you elect to try to plant the crop), you provide documentation acceptable to us to establish:

(i) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed or progress toward crop maturity due to a prolonged period of dry weather. The documentation for prolonged period of dry weather must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

(ii) For irrigated acreage:

(A) Due to an insured cause of loss, there is not a reasonable expectation of having adequate water to carry out an irrigated practice or you are unable to prepare the land for irrigation using your established irrigation method:

(*1*) If you knew or had reason to know on the final planting date or during the late planting period that your water will be reduced, no reasonable expectation exists; and

(*2*) Available water resources will be verified using information from State Departments of Water Resources, U.S. Bureau of Reclamation, Natural Resources Conservation Service or other sources whose business includes collection of water data or regulation of water resources; or

(B) The irrigation equipment or facilities have failed or broken down if such failure or breakdown is due to an insured cause of loss specified in section 12(d).

(2) Causes other than drought, failure of the irrigation water supply, failure or breakdown of the irrigation equipment or facilities, or your inability to prepare the land for irrigation using your established irrigation method, provided the cause of loss is specified in the Crop Provisions. However, if it is possible for you to plant on or prior to the final planting date when other producers in the area are planting and you fail to plant, no prevented planting payment will be made.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 17(f)(4). The eligible acres for each insured crop will be determined as follows:

(i) If you have planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have received a prevented planting insurance guarantee in any one or more of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

(A) The number of eligible acres will be the maximum number of acres certified for APH purposes, or insured acres reported, for the crop in any one of the four most recent crop years (not including reported prevented planting acreage that was planted to a second crop unless you meet the double cropping requirements in section 17(f)(4)).

(B) If you acquire additional land for the current crop year, the number of eligible acres determined in section 17(e)(1)(i)(A) for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that:

(*1*) You submit proof to us that you acquired additional acreage for the current crop year by any of the methods specified in section 17(f)(12);

(*2*) The additional acreage was acquired in time to plant it for the current crop year using good farming practices; and

(*3*) No cause of loss has occurred at the time you acquire the acreage that may prevent planting (except acreage you lease the previous year and continue to lease in the current crop year).

(C) If you add adequate irrigation facilities to your existing non-irrigated acreage or if you acquire additional land for the current crop year that has adequate irrigation facilities, the number of eligible acres determined in section 17(e)(1)(i)(A) for irrigated acreage of a crop may be increased by multiplying it by the ratio of the total irrigated acres that you are farming this year (if greater) to the total irrigated acres that you farmed in the previous year, provided the conditions in sections 17(e)(1)(i)(B)(*1*), (*2*) and (*3*) are met. If there were no irrigated acres in the previous year, the eligible irrigated acres for a crop will be limited to the lesser of the number of eligible non-irrigated acres of the crop or the number of acres on which adequate irrigation facilities were added.

(ii) If you have not planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have not received a prevented planting insurance guarantee in all of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

(A) The number of eligible acres will be:

(*1*) The number of acres specified on your intended acreage report, which must be submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us; or

(*2*) The number of acres specified on your intended acreage report, which must be submitted to us within 10 days of the time you acquire the acreage and that is accepted by us, if, on the sales closing date, you do not have any acreage in a county and you subsequently acquire acreage through a method described in section 17(f)(12) in time to plant it using good farming practices.

(B) The total number of acres listed on the intended acreage report may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report.

(C) If you acquire additional acreage after we accept your intended acreage report, the number of acres determined in section 17(e)(1)(ii)(A) may be increased in accordance with section 17(e)(1)(i)(B) and (C).

(D) Prevented planting coverage will not be provided for any acreage included on the intended acreage report or any increased amount of acreage determined in accordance with section 17(e)(1)(ii)(C) if a cause of loss that may prevent planting occurred before the acreage was acquired, as determined by us.

(iii) For any crop that must be contracted with a processor to be insured:

(A) The number of eligible acres will be:

(*1*) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year;

(*2*) The result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted (for the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used); or

(*3*) Notwithstanding sections 17(e)(1)(iii)(A)(*1*) and (*2*), if a minimum number of acres or amount of production is specified in the processor contract, this amount will be used to determine the eligible acres.

(B) If a processor cancels or does not provide contracts, or reduces the contracted acreage or production from what would have otherwise been allowed, solely because the acreage was prevented from being planted due to an insured cause of loss, we will determine the number of eligible acres based on the number of acres or amount of production you had contracted in the county in the previous crop year. If the applicable Crop Provisions require that the price election be based on a contract price, and a contract is not in force for the current year, the price election will be based on the contract price in place for the previous crop year. If you did not have a processor contract in place for the previous crop year, you will not have any eligible prevented planting acreage for the applicable processor crop. The total eligible prevented planting acres in all counties cannot exceed the total number of acres or amount of production contracted in all counties in the previous crop year.

(2) Any eligible acreage determined in accordance with section 17(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 16(b).

(f) Regardless of the number of eligible acres determined in section 17(e), prevented planting coverage will not be provided for any acreage:

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less (If the crop is in a whole-farm unit, the 20 acre or 20 percent requirement will be applied separately to each crop in the whole-farm unit). Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field unless:

(i) The acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any one of the four most recent crop years;

(ii) You were prevented from planting a first insured crop and you planted a second crop in the field (There can only be one first insured crop in a field unless the requirements in section 17(f)(1)(i) or (iii) are met); or

(iii) The insured crop planted in the field would not have been planted on the remaining prevented planting acreage (*e.g.,* where rotation requirements would not be met or you already planted the total number of acres specified in the processor contact);

(2) For which the actuarial documents do not provide the information needed to determine the premium rate, unless a written agreement designates such premium rate;

(3) Used for conservation purposes, intended to be left unplanted under any program administered by the USDA or other government agency, or required to be left unharvested under the terms of the lease or any other agreement (The number of acres eligible for prevented planting will be limited to the number of acres specified in the lease for which you are required to pay either cash or share rent);

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year, excluding share arrangements, unless:

(i) It is a practice that is generally recognized by agricultural experts or organic agricultural experts in the area to plant the insured crop for harvest following harvest of the first insured crop, and additional coverage insurance offered under the authority of the Act is available in the county for both crops in the same crop year;

(ii) For the insured crop that is prevented from being planted, you provide records acceptable to us of acreage and production that show, in at least two of the last four crop years:

(A) You have double cropped acreage on which the insured crop that is prevented from being planted in the current crop year was grown (You may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.,* if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres)); or

(B) The acreage you are prevented from planting in the current crop year was double cropped with the insured crop that is prevented from being planted (You may only use the history of double cropping for the same physical acres from which double cropping records were provided (*e.g.,* if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped)); and

(iii) The amount of acreage you are double cropping in the current crop year does not exceed the number of acres for which you provided the records required in section 17(f)(4)(ii);

(5) On which the insured crop is prevented from being planted, if:

(i) Any crop is planted within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable, unless:

(A) You meet the double cropping requirements in section 17(f)(4);

(B) The crop planted was a cover crop; or

(C) No benefit, including any benefit under any USDA program, was derived from the crop; or

(ii) Any volunteer or cover crop is hayed, grazed or otherwise harvested within or prior to the late planting period or on or prior to the final planting date if no late planting period is applicable;

(6) For which planting history or conservation plans indicate the acreage would have remained fallow for crop rotation purposes or on which any pasture or forage crop is in place on the

acreage during the time planting of the insured crop generally occurs in the area. Cover plants that are seeded, transplanted, or that volunteer:

(i) More than 12 months prior to the final planting date for the insured crop that was prevented from being planted will be considered pasture or a forage crop that is in place (*e.g.,* the cover crop is planted 15 months prior to the final planting date and remains in place during the time the insured crop would normally be planted); or

(ii) Less than 12 months prior to the final planting date for the insured crop that was prevented from being planted will not be considered pasture or a forage crop that is in place;

(7) That exceeds the number of acres eligible for a prevented planting payment;

(8) That exceeds the number of eligible acres physically available for planting;

(9) For which you cannot provide proof that you had the inputs (including, but not limited to, sufficient equipment and manpower) available to plant and produce a crop with the expectation of producing at least the yield used to determine your production guarantee or amount of insurance. Evidence that you previously had planted the crop on the unit will be considered adequate proof unless:

(i) There has been a change in the availability of inputs since the crop was last planted that could affect your ability to plant and produce the insured crop;

(ii) We determine you have insufficient inputs to plant the total number of insured crop acres (*e.g.,* you will not receive a prevented planting payment if you have sufficient inputs to plant only 80 acres but you have already planted 80 acres and are claiming prevented planting on an additional 100 acres); or

(iii) Your planting practices or rotational requirements show the acreage would have remained fallow or been planted to another crop;

(10) Based on an irrigated practice production guarantee or amount of insurance unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice production guarantee will be limited to the number of acres allowed for that practice under sections 17(e) and (f);

(11) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years:

(i) Types for which separate projected prices or price elections, as applicable, amounts of insurance, or production guarantees are available must be included in your APH database in at least one of the four most recent crop years (Crops for which the insurance guarantee is not based on APH must be reported on your acreage report in at least one of the four most recent crop years) except as allowed in section 17(e)(1)(ii) or (iii); and

(ii) We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 17(e) and (f); or

(12) If a cause of loss has occurred that may prevent planting at the time:

(i) You lease the acreage (except acreage you leased the previous crop year and continue to lease in the current crop year);

(ii) You buy the acreage;

(iii) The acreage is released from a USDA program which prohibits harvest of a crop;

(iv) You request a written agreement to insure the acreage; or

(v) You acquire the acreage through means other than lease or purchase (such as inherited or gifted acreage).

* * * * *

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 17(e)(1), we will use acreage from another crop insured for the current crop year for which you have remaining eligible prevented planting acreage.

(1) The crop first used for this purpose will be the insured crop that would have a prevented planting payment most similar to the payment for the crop that was prevented from being planted.

(i) If there are still insufficient eligible prevented planting acres, the next crop used will be the insured crop that would have the next closest prevented planting payment.

(ii) In the event payment amounts based on other crops are an equal amount above and below the payment amount for the crop that was prevented from being planted, eligible acres for the crop with the higher payment amount will be used first.

(2) The prevented planting payment and premium will be based on:

(i) The crop that was prevented from being planted if the insured crop with remaining eligible acreage would have resulted in a higher prevented planting payment than would have been paid for the crop that was prevented from being planted; or

(ii) The crop from which eligible acres are being used if the insured crop with remaining eligible acreage will result in a lower prevented planting payment than would have been paid for the crop that was prevented from being planted.

(3) For example, assume you were prevented from planting 200 acres of corn and you have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment and 90 acres of grain sorghum eligibility that would result in a $30 per acre payment. Your prevented planting coverage will be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and an additional 10 acres of corn (using potato eligible acres and paid as corn at $40 per acre). Your prevented planting payment would be $7,100 ($4,000 + $2,700 + $400).

(4) Prevented planting coverage will be allowed as specified in section 17(h) only if the crop that was prevented from being planted meets all the policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop whose eligible acres are being used.

(5) An additional administrative fee will not be due as a result of using eligible prevented planting acreage as specified in section 17(h).

(i) * * *

(1) Multiplying the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage, by:

(i) Your amount of insurance per acre; or

(ii) The amount determined by multiplying the production guarantee (per acre) for timely planted acreage of the insured crop (or type, if applicable) by your price election or your projected price, whichever is applicable;

* * * * *

§ 457.8 [Amended]

■ 19. Further amend § 457.8 in section 18 as follows:

■ a. Revise paragraphs (a), (c) and (e);

■ b. Amend paragraph (f)(1)(ii) by adding the phrase "in which the crop was planted" between the phrases "crop year" and "during the base period";

■ c. Revise paragraph (f)(1)(iv);

■ d. Revise paragraphs (f)(2)(i)(A) and (f)(2)(ii)(A);
■ e. Revise paragraph (g);
■ f. Amend paragraph (h)(5) by removing the word "determines" and adding the word "determine" in its place;
■ g. Revise paragraph (i);
■ h. Amend paragraph (j) by removing the word "Multiyear" and adding the word "Multi-year" in its place;
■ i. Amend paragraph (m) by removing "(e)" and adding "(a)" in its place and removing the word "and" after the semicolon;
■ j. Amend paragraph (n) by removing the period at the end of the text and adding the phrase "; and" in its place; and
■ k. Add a new paragraph (o).

The revised and added text reads as follows:

18. Written Agreements.

* * * * *

(a) You must apply in writing for each written agreement (including renewal of a written agreement) no later than the sales closing date, except as provided in section 18(e);

* * * * *

(c) If approved by FCIC, the written agreement will include all variable terms of the contract, including, but not limited to, the crop; practice, type or variety; guarantee; premium rate; and projected price, harvest price, price election or amount of insurance, as applicable, or the information needed to determine such variable terms. If the written agreement is for a county:

(1) That has a price election or amount of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety, the written agreement will contain the price election or amount of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety;

(2) That does not have price elections or amounts of insurance stated in the Special Provisions, or an addendum thereto, for the crop, practice, type or variety, the written agreement will contain a price election or amount of insurance that does not exceed the price election or amount of insurance contained in the Special Provisions, or an addendum thereto, for the county that is used to establish the other terms of the written agreement, unless otherwise authorized by the Crop Provisions;

(3) For which revenue protection is not available for the crop, but revenue protection is available in the State for the crop, the written agreement will contain the information used to establish the projected price and harvest price, as applicable, for that State; or

(4) In a State for which revenue protection is not available for the crop, but revenue protection is available for the crop in another State, the written agreement is available for yield protection only, and will contain the information needed to determine the projected price for the crop from another State as determined by FCIC;

* * * * *

(e) A request for a written agreement may be submitted:

(1) After the sales closing date, but on or before the acreage reporting date, if you demonstrate your physical inability to submit the request on or before the sales closing date (*e.g.,* you have been hospitalized or a blizzard has made it impossible to submit the written agreement request in person or by mail);

(2) For the first year the written agreement is requested:

(i) On or before the acreage reporting date to:

(A) Insure unrated land, or an unrated practice, type or variety of a crop; although, if required by FCIC, such written agreements may be approved only after appraisal of the acreage by us and:

(*1*) The crop's potential is equal to or exceeds 90 percent of the yield used to determine your production guarantee or amount of insurance; and

(*2*) You sign the written agreement no later than the date the first field is appraised or by the expiration date for you to accept the offer, whichever comes first; or

(B) Establish optional units in accordance with FCIC procedures that otherwise would not be allowed, change the premium rate or transitional yield for designated high-risk land, or insure acreage that is greater than five percent of the planted acreage in the unit where the acreage has not been planted and harvested or insured in any of the three previous crop years;

(ii) On or before the cancellation date to insure a crop in a county that does not have actuarial documents for the crop (If the Crop Provisions do not provide a cancellation date for the county, the cancellation date for other insurable crops in the same State that have similar final planting and harvesting dates will be applicable); or

(iii) On or before the date specified in the Crop Provisions or Special Provisions; or

(3) For adding land or a crop to either an existing written agreement or a request for a written agreement, provided the request is submitted by the applicable deadline specified in section 18;

(f) * * *

(1) * * *

(iv) The legal description of the land (in areas where legal descriptions are available) and the FSA farm serial number including tract and field numbers, if available. The submission must also include an FSA aerial photograph, or field boundaries derived by a Geographic Information System or Global Positioning System, or other legible maps delineating field boundaries where you intend to plant the crop for which insurance is requested;

* * * * *

(2) * * *

(i) * * *

(A) A completed APH form signed by you (only for crop policies that require APH) based on verifiable production records for at least the three most recent crop years in which the crop was planted; and

* * * * *

(ii) * * *

(A) A completed APH form signed by you (only for crop policies that require APH) based on verifiable production records for at least the three most recent crop years for a similar crop from acreage:

* * * * *

(g) A request for a written agreement will not be accepted if:

(1) The request is submitted to us after the applicable deadline contained in sections 18(a) or (e);

(2) All the information required in section 18(f) is not submitted to us with the request for a written agreement (The request for a written agreement may be accepted if any missing information is available from other acceptable sources);

(3) The request is to add land to an existing written agreement or to add land to a request for a written agreement and the request to add the land is not submitted by the applicable deadline specified in sections 18(a) or (e); or

(4) The request is not authorized by the policy;

* * * * *

(i) A written agreement will be denied unless:

(1) FCIC approves the written agreement;

(2) The original written agreement is signed by you and delivered to us, or postmarked, not later than the expiration date for you to accept the offer;

(3) We accept the written agreement offer; and

(4) The crop meets the minimum appraisal amount specified in section 18(e)(2)(i)(A)(*1*), if applicable;

* * * * *

(o) If you disagree with any determination made by FCIC under section 18, you may obtain administrative review in accordance with 7 CFR part 400, subpart J or appeal in accordance with 7 CFR part 11, unless you have failed to comply with the provisions contained in section 18(g) or section 18(i)(2) or (4).

* * * * *

§ 457.8 [Amended]

■ 20. Further amend § 457.8 in section 20 (for FCIC policies) as follows:

■ a. Revise paragraph (b);

■ b. Revise paragraph (c); and

■ c. Redesignate paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and add a new paragraph (d).

The revised and added text reads as follows:

[For FCIC Policies]

20. Appeal, Reconsideration, Administrative and Judicial Review.

* * * * *

(b) If you disagree with our determinations:

(1) Except for determinations specified in section 18(g), section 18(i)(2) or section 20(b)(2) or (3), you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal);

(2) Regarding whether you have used good farming practices (excluding determinations of the amount of assigned production for uninsured causes for your failure to use good farming practices), you may request reconsideration in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J (reconsideration). To appeal or request administrative review of determinations of the amount of assigned production, you must use the appeal or administration review process; or

(3) Any determination made by us that is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If you want to seek judicial review of any determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR part 11.6 prior to seeking judicial review.

(c) If you fail to exhaust your right to appeal, you will not be able to resolve the dispute through judicial review.

(d) You are not required to exhaust your right to reconsideration prior to seeking judicial review. If you do not request reconsideration and you elect to file suit, such suit must be brought in accordance with section 20(e)(2) and must be filed not later than one year after the date the determination regarding whether you used good farming practices was made.

* * * * *

§ 457.8 [Amended]

■ 21. Further amend § 457.8 in section 20 (For reinsured policies) as follows:

■ a. Revise paragraph (a)(1)(iii);

■ b. Revise paragraph (d) and the introductory text of paragraph (e); and

■ c. Add a new paragraph (k).

The revised and added text reads as follows:

[For Reinsured Policies]

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

(a) * * *

(1) * * *

(iii) An interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability.

* * * * *

(d) With respect to good farming practices:

(1) We will make decisions regarding what constitutes a good farming practice and determinations of assigned production for uninsured causes for your failure to use good farming practices.

(i) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice before filing any suit against FCIC.

(ii) If you disagree with our determination of the amount of assigned production, you must use the arbitration or mediation process contained in this section.

(iii) You may not sue us for our decisions regarding whether good farming practices were used by you.

(2) FCIC will make determinations regarding what constitutes a good farming practice. If you do not agree with any determination made by FCIC:

(i) You may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J; or

(ii) You may file suit against FCIC.

(A) You are not required to request reconsideration from FCIC before filing suit.

(B) Any suit must be brought against FCIC in the United States district court for the district in which the insured acreage is located.

(C) Suit must be filed against FCIC not later than one year after the date:

(*1*) Of the determination; or

(*2*) Reconsideration is completed, if reconsideration was requested under section 20(d)(2)(i).

(e) Except as provided in sections 18(n) or (o), or 20(d) or (k), if you disagree with any other determination made by FCIC or any claim where FCIC is directly involved in the claims process or directs us in the resolution of the claim, you may obtain an administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal).

* * * * *

(k) Any determination made by FCIC that is a matter of general applicability is not subject to administrative review under 7 CFR part 400, subpart J or appeal under 7 CFR part 11. If you want to seek judicial review of any FCIC determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

§ 457.8 [Amended]

■ 22. Further amend § 457.8 in section 21 as follows:

■ a. Revise paragraph (b); and

■ b. Amend paragraph (f)(1) by removing the phrase "3(e)(1)" and adding the phrase "3(f)(1)" in its place.

The revised text reads as follows:

21. Access to Insured Crop and Records, and Record Retention.

* * * * *

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance:

(1) Complete records of the planting, replanting, inputs, production, harvesting, and disposition of the insured crop on each unit for three years after the end of the crop year (This requirement also applies to all such records for acreage that is not insured);

(2) All records used to establish the amount of production you certified on your production reports used to compute your approved yield for three years after the calendar date for the end of the insurance period for the crop year for which you initially certified such records, unless such records have already been provided to us (*e.g.,* if you are a new insured and you certify 2007 through 2010 crop year production records in 2011 to determine your approved yield for the 2011 crop year, you must retain all records from the

2007 through 2010 crop years through the 2014 crop year. If you subsequently certify records of the 2011 crop year in 2012 to determine your approved yield for the 2012 crop year, you must retain the 2011 crop year records through the 2015 crop year and so forth for each subsequent year of production records certified); and

(3) While you are not required to maintain records beyond the record retention period specified in section 21(b)(2), at any time, if we or FCIC have evidence that you, or anyone assisting you, knowingly misreported any information related to any yield you have certified, we or FCIC will replace all yields in your APH database determined to be incorrect with the lesser of an assigned yield determined in accordance with section 3 or the yield determined to be correct:

(i) If an overpayment has been made to you, you will be required to repay the overpaid amount; and

(ii) Replacement of yields in accordance with section 21(b)(3) does not exempt you from other sanctions applicable under the terms of the policy or any applicable law.

* * * * *

§ 457.8 [Amended]

■ 23. Further amend § 457.8 in section 22 by revising paragraph (c) to read as follows:

22. Other Insurance.

* * * * *

(c) For the purpose of section 22(b), the amount of loss from fire will be the difference between the total value of the insured crop before the fire and the total value of the insured crop after the fire. This amount will be determined in accordance with the provisions in section 35.

§ 457.8 [Amended]

■ 24. Further amend § 457.8 in section 23 by revising the last sentence to read as follows:

23. Conformity to Food Security Act.

* * * We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less an amount for expenses and handling equal to 20 percent of the premium paid or to be paid by you.

* * * * *

§ 457.8 [Amended]

■ 25. Further amend § 457.8 in section 24 (For reinsured policies) by revising the last sentence of paragraph (a) to read as follows:

[For reinsured policies]

24. Amounts Due Us.

(a) * * * After the termination date, FCIC will collect any unpaid administrative fees and any interest owed thereon for any catastrophic risk protection policy and we will collect any unpaid administrative fees and any interest owed thereon for additional coverage policies.

* * * * *

§ 457.8 [Amended]

■ 26. Further amend § 457.8 in section 27 by revising paragraph (b) to read as follows:

27. Concealment, Misrepresentation or Fraud.

* * * * *

(b) Even though the policy is void, you will still be required to pay 20 percent of the premium that you would otherwise be required to pay to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

* * * * *

§ 457.8 [Amended]

■ 27. Further amend § 457.8 by revising section 29 to read as follows:

29. Assignment of Indemnity.

(a) You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation. You may be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lienholder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

(1) To any lienholder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lienholder or person on a properly executed assignment of indemnity provided to us; or

(2) To pay to all lienholders or other persons to whom you have a financial debt or other pecuniary obligation any amount greater than the total amount of indemnity owed under the policy.

(d) If we have received the properly executed assignment of indemnity form:

(1) Only one payment will be issued jointly in the names of all assignees and you; and

(2) Any assignee will have the right to submit all loss notices and forms as required by the policy.

(e) If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within the period specified in section 14(e), the assignee may submit the claim for indemnity not later than 30 days after the period for filing a claim has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

§ 457.8 [Amended]

■ 28. Further amend § 457.8 by removing and reserving section 30.

§ 457.8 [Amended]

■ 29. Further amend § 457.8 in section 34 as follows:

■ a. Revise the heading;

■ b. Revise paragraph (a);

■ c. Amend paragraph (b)(3) by adding the word "and" after the semicolon at the end;

■ d. Amend paragraph (b)(4) by removing the phrase "; and" and adding a period in its place; and

■ e. Revise paragraph (c)(1).

The revised and added text reads as follows:

34. Units.

(a) You may elect an enterprise unit or whole-farm unit in accordance with the following:

(1) For crops for which revenue protection is available, you may elect:

(i) An enterprise unit if you elected revenue protection or yield protection; or

(ii) A whole-farm unit if you elected:

(A) Revenue protection and revenue protection is provided unless limited by the Special Provisions; or

(B) Yield protection only if whole-farm units are allowed by the Special Provisions;

(2) For crops for which revenue protection is not available, enterprise units or whole-farm units are available only if allowed by the Special Provisions;

(3) You must make such election on or before the earliest sales closing date for the insured crops in the unit and report such unit structure on your acreage report:

(i) For counties in which the actuarial documents specify a fall or winter sales closing date and a spring sales closing date, you may change your unit election on or before the spring sales closing date (earliest spring sales closing date for

crops in the unit if electing a whole-farm unit) if you do not have any insured fall planted acreage of the insured crop;

(ii) Your unit selection will remain in effect from year to year unless you notify us in writing by the earliest sales closing date for the crop year for which you wish to change this election; and

(iii) These units may not be further divided except as specified herein;

(4) For an enterprise unit:

(i) To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop in:

(A) Two or more sections, if sections are the basis for optional units where the insured acreage is located;

(B) Two or more section equivalents determined in accordance with FCIC issued procedures, if section equivalents are the basis for optional units where the insured acreage is located or are applicable to the insured acreage;

(C) Two or more FSA farm serial numbers, if FSA farm serial numbers are the basis for optional units where the insured acreage is located;

(D) Any combination of two or more sections, section equivalents, or FSA farm serial numbers, if more than one of these are the basis for optional units where the acreage is located or are applicable to the insured acreage (*e.g.,* if a portion of your acreage is located where sections are the basis for optional units and another portion of your acreage is located where FSA farm serial numbers are the basis for optional units, you may qualify for an enterprise unit based on a combination of these two parcels);

(E) One section, section equivalent, or FSA farm serial number that contains at least 660 planted acres of the insured crop. You may qualify under this paragraph based only on the type of parcel that is utilized to establish optional units where your insured acreage is located (*e.g.,* if having two or more sections is the basis for optional units where the insured acreage is located, you may qualify for an enterprise unit if you have at least 660 planted acres of the insured crop in one section); or

(F) Two or more units established by written agreement; and

(ii) At least two of the sections, section equivalents, FSA farm serial numbers, or units established by written agreement in section 34(a)(4)(i)(A), (B), (C), (D), or (F) must each have planted acreage that constitutes at least the lesser of 20 acres or 20 percent of the insured crop acreage in the enterprise unit. If there is planted acreage in more than two sections, section equivalents, FSA farm serial numbers or units established by written agreement in section 34(a)(4)(i)(A), (B), (C), (D), or (F), these can be aggregated to form at least two parcels to meet this requirement. For example, if sections are the basis for optional units where the insured acreage is located and you have 80 planted acres in section one, 10 planted acres in section two, and 10 planted acres in section three, you may aggregate sections two and three to meet this requirement.

(iii) The crop must be insured under revenue protection or yield protection, unless otherwise specified in the Special Provisions;

(iv) If you want to change your unit structure from enterprise units to basic or optional units in any subsequent crop year, you must maintain separate records of acreage and production:

(A) For each basic unit, to be eligible to use records to establish the production guarantee for the basic unit; or

(B) For optional units, to qualify for optional units and to be eligible to use such records to establish the production guarantee for the optional units;

(v) If you do not comply with the production reporting provisions in section 3(f) for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 3(f)(1);

(vi) You must separately designate on the acreage report each section or other basis in section 34(a)(4)(i) you used to qualify for an enterprise unit; and

(vii) If we discover you do not qualify for an enterprise unit and such discovery is made:

(A) On or before the acreage reporting date, your unit division will be based on the basic or optional units, whichever you report on your acreage report and qualify for; or

(B) At any time after the acreage reporting date, we will assign the basic unit structure; and

(5) For a whole-farm unit:

(i) To qualify:

(A) All crops in the whole-farm unit must be insured:

(*1*) Under revenue protection (if you elected the harvest price exclusion for any crop, you must elect it for all crops in the whole-farm unit), unless the Special Provisions allow whole-farm units for another plan of insurance and you insure all crops in the whole-farm unit under such plan (*e.g.,* if you plant corn and soybeans for which you have elected revenue protection and you plant canola for which you have elected yield protection, the corn, soybeans and canola would be assigned the unit structure in accordance with section 34(a)(5)(v));

(*2*) With us (*e.g.,* if you insure your corn and canola with us and your soybeans with a different insurance provider, the corn, soybeans and canola would be assigned the unit structure in accordance with section 34(a)(5)(v)); and

(*3*) At the same coverage level (*e.g.,* if you elect to insure your corn and canola at the 65 percent coverage level and your soybeans at the 75 percent coverage level, the corn, soybeans and canola would be assigned the unit structure in accordance with section 34(a)(5)(v));

(B) A whole-farm unit must contain all of the insurable acreage of at least two crops; and

(C) At least two of the insured crops must each have planted acreage that constitutes 10 percent or more of the total planted acreage liability of all insured crops in the whole-farm unit (For crops for which revenue protection is available, liability will be based on the applicable projected price only for the purpose of section 34(a)(5)(i)(C));

(ii) You will be required to pay separate administrative fees for each crop included in the whole-farm unit;

(iii) You must separately designate on the acreage report each basic unit for each crop in the whole-farm unit;

(iv) If you want to change your unit structure from a whole-farm unit to basic or optional units in any subsequent crop year, you must maintain separate records of acreage and production:

(A) For each basic unit, to be eligible to use such records to establish the production guarantee for the basic units; or

(B) For optional units, to qualify for optional units and to be eligible to use such records to establish the production guarantee for the optional units; and

(v) If we discover you do not qualify for a whole-farm unit for at least one insured crop because, even though you elected revenue protection for all your crops:

(A) You do not meet all of the other requirements in section 34(a)(5)(i), and such discovery is made:

(*1*) On or before the acreage reporting date, your unit division for all crops for which you elected a whole-farm unit will be based on basic or optional units, whichever you report on your acreage report and qualify for; or

(*2*) At any time after the acreage reporting date, we will assign the basic unit structure for all crops for which you elected a whole-farm unit; or

(B) It was not possible to establish a projected price for at least one of your crops, your unit division will be based on the unit structure you report on your

acreage report and qualify for only for the crop for which a projected price could not be established, unless the remaining crops in the unit would no longer qualify for a whole-farm unit, in such case your unit division for the remaining crops will be based on the unit structure you report on your acreage report and qualify for.

* * * * *

(c) * * *

(1) Optional units may be established if each optional unit is located in a separate section where the boundaries are readily discernible:

(i) In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such as Spanish grants, provided the boundaries are readily discernible, if such parcels can be considered as the equivalent of sections for unit purposes in accordance with FCIC issued procedures; or

(ii) In the absence of sections as described in section 34(c)(1) or other methods of measure used to establish section equivalents as described in section 34(c)(1)(i), optional units may be established if each optional unit is located in a separate FSA farm serial number in accordance with FCIC issued procedure;

* * * * *

§ 457.8 [Amended]

■ 30. Further amend § 457.8 by revising section 35 to read as follows:

35. Multiple Benefits.

(a) If you are eligible to receive an indemnity and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) Any amount received for the same loss from any USDA program, in addition to the crop insurance payment, will not exceed the difference between the crop insurance payment and the actual amount of the loss, unless otherwise provided by law. The amount of the actual loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(1) For crops for which revenue protection is not available:

(i) If you have an approved yield, the total value of the crop before the loss is your approved yield times the highest price election for the crop; and

(ii) If you have an approved yield, the total value of the crop after the loss is your production to count times the highest price election for the crop; or

(iii) If you have an amount of insurance, the total value of the crop before the loss is the highest amount of insurance available for the crop; and

(iv) If you have an amount of insurance, the total value of the crop after the loss is your production to count times the price contained in the Crop Provisions for valuing production to count.

(2) For crops for which revenue protection is available and:

(i) You elect yield protection:

(A) The total value of the crop before the loss is your approved yield times the applicable projected price (at the 100 percent price level) for the crop; and

(B) The total value of the crop after the loss is your production to count times the applicable projected price (at the 100 percent price level) for the crop; or

(ii) You elect revenue protection:

(A) The total value of the crop before the loss is your approved yield times the higher of the applicable projected price or harvest price for the crop (If you have elected the harvest price exclusion, the applicable projected price for the crop will be used); and

(B) The total value of the crop after the loss is your production to count times the harvest price for the crop.

(c) FSA or another USDA agency, as applicable, will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

§ 457.8 [Amended]

■ 31. Further amend § 457.8 in section 36 as follows:

■ a. Amend paragraph (a) by removing the phrase "(T-yield)"; and

■ b. Amend paragraph (c) by removing the phrase "T-yield" and adding the phrase "transitional yield" in its place in all three instances that it appears.

■ 32. Amend § 457.101 by revising the introductory text to read as follows:

§ 457.101 Small grains crop insurance

The small grains crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.101 [Amended]

■ 33. Further amend § 457.101 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.101 [Amended]

■ 34. Further amend § 457.101 in section 1 as follows:

■ a. Remove the definition of "sales closing date"; and

■ b. Revise the definition of "prevented planting" to read as follows:

1. Definitions.

* * * * *

Prevented planting. As defined in the Basic Provisions, except that the references to "final planting date" contained in the definition in the Basic Provisions are replaced with the "latest final planting date."

* * * * *

§ 457.101 [Amended]

■ 35. Further amend § 457.101 by revising section 3 to read as follows:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) Revenue protection is not available for your oats, rye, flax, or buckwheat. Therefore, if you elect to insure such crops by the sales closing date, they will only be protected against a loss in yield;

(b) Revenue protection is available for wheat and barley. Therefore, if you elect to insure your wheat or barley:

(1) You must elect to insure your wheat or barley with either revenue protection or yield protection by the sales closing date; and

(2) In counties with both fall and spring sales closing dates for the insured crop:

(i) If you do not have any insured fall planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(ii) If you have any insured fall planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, after the fall sales closing date.

* * * * *

§ 457.101 [Amended]

■ 36. Further amend § 457.101 in section 5 by revising the introductory text and all the information under the heading "WHEAT" in the table to read as follows:

5. Cancellation and Termination Dates.

The cancellation and termination dates are as follows, unless otherwise specified in the Special Provisions:

Crop, State and county	Cancellation date	Termination date
Wheat:		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Nebraska counties except Box Butte, Dawes, and Sheridan; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; all other States except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels, Roosevelt, Sheridan, and Valley; Box Butte, Dawes, and Sheridan Counties, Nebraska; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Minnehaha and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee Counties, Wisconsin, and all Wisconsin counties north thereof; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Nevada; and Utah.	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, and Minnehaha Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	March 15.

* * * * *

§ 457.101 [Amended]

■ 37. Further amend § 457.101 in section 6 as follows:

■ a. Revise paragraphs (a)(2) and (3);

■ b. Remove paragraph (a)(4);

■ c. Redesignate paragraphs (b) through (d) as (c) through (e) and add a new paragraph (b); and

■ d. Amend redesignated paragraph (d) by removing the word "additional".

The revised and added text reads as follows:

6. Insured Crop.

(a) * * *

(2) That is planted for harvest as grain (a grain mixture in which barley or oats is the predominate grain may also be insured if allowed by the Barley or Oat Special Provisions, or if a written agreement allows insurance for such mixture. The production from such mixture will be considered as the predominate grain on a weight basis); and

(3) That is not, unless insurance is allowed by a written agreement:

(i) Interplanted with another crop except as allowed in section 6(a)(2);

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

(b) Buckwheat will be insured only if it is produced under a contract with a business enterprise equipped with facilities appropriate to handle and store buckwheat production. The contract must be executed by you and the business enterprise, in effect for the crop year, and a copy provided to us no later than the acreage reporting date. To be considered a contract, the executed document must contain:

(1) A requirement that you plant, grow and deliver buckwheat to the business enterprise;

(2) The amount of production that will be accepted or a statement that all production from a specified number of acres will be accepted;

(3) The price to be paid for the contracted production or a method to determine such price; and

(4) Other such terms that establish the obligations of each party to the contract.

* * * * *

§ 457.101 [Amended]

■ 38. Further amend § 457.101 in section 7 as follows:

■ a. Revise the introductory text;

■ b. Revise paragraphs (a)(2)(iii) and (v); and

■ c. Revise paragraph (b).

The revised text reads as follows:

7. Insurance Period.

In accordance with section 11 of the Basic Provisions, and subject to any provisions provided by the Wheat or Barley Winter Coverage Endorsement (if elected by you):

(a) * * *

(2) * * *

(iii) Whenever the Special Provisions designate both fall and spring final planting dates:

(A) Any winter barley or winter wheat that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop to maintain insurance based on the winter type unless we agree that replanting is not practical. If it is not practical to replant to the winter type of wheat or barley but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the winter type in force.

(B) Any winter barley or winter wheat acreage that is replanted to a spring type of the same crop when it was practical to replant the winter type will be insured as the spring type and the production guarantee, premium, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type.

(C) Notwithstanding sections 7(a)(2)(iii)(A) and (B), if you have elected coverage under a barley or

wheat winter coverage endorsement (if available in the county), insurance will be in accordance with the endorsement.

* * * * *

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or fall planted wheat is not insured unless you request such coverage on or before the spring sales closing date, and we determine, in writing, that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(a)(2)(v)(C).

(A) Your request for coverage must include the location and number of acres of fall planted barley or wheat.

(B) The fall planted barley or fall planted wheat will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable.

(C) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date.

(D) Any acreage of such fall planted barley or fall planted wheat that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant.

(E) If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

(b) The calendar date for the end of the insurance period is the following applicable date:

(1) September 25 in Alaska;

(2) July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee; or

(3) October 31 in all other states.

■ 39. Further amend § 457.101 in section 8 as follows:

■ a. Amend the introductory text by removing the phrase "(Causes of Loss)";

■ b. Amend paragraph (g) by removing the word "or" at the end;

■ c. Revise paragraph (h); and

■ d. Add a new paragraph (i).

The revised and added text reads as follows:

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.101 [Amended]

■ 40. Further amend § 457.101 in section 9 as follows:

■ a. Revise paragraph (a)(6);

■ b. Revise paragraph (c); and

■ c. Revise paragraph (e).

The revised text reads as follows:

9. Replanting Payments.

(a) * * *

(6) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that is considered appropriate by agricultural experts for the insured crop, type and practice.

* * * * *

(c) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be:

(1) The lesser of 20 percent of the production guarantee or the number of bushels for the applicable crop specified below:

(i) Two bushels for flax or buckwheat;

(ii) Four bushels for wheat; or

(iii) Five bushels for barley or oats;

(2) Multiplied by:

(i) Your price election for oats, flax or buckwheat; or

(ii) Your projected price for wheat or barley; and

(3) Multiplied by your share.

* * * * *

(e) Replanting payments will be calculated using your price election or your projected price, as applicable, and your production guarantee for the crop type that is replanted and insured. For example, if damaged spring wheat is replanted to durum wheat, your projected price applicable to durum wheat will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on your production guarantee and your price election or your projected price, as applicable, for the crop type initially planted:

(1) Any damaged winter crop type that is replanted to a spring crop type, but that retains insurance based on the winter crop type; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

§ 457.101 [Amended]

■ 41. Further amend § 457.101 by revising section 10 to read as follows:

10. Duties in the Event of Damage or Loss

Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.101 [Amended]

■ 42. Further amend § 457.101 in section 11 as follows:

■ a. Revise paragraph (b);

■ b. Amend the introductory text of paragraph (c) by removing the phrase "(bushels)" and adding the phrase "(in bushels)" after the word "count";

■ c. Revise the introductory text of paragraph (c)(1)(i); and

■ d. Add a new paragraph (c)(2).

The revised and added text reads as follows:

11. Settlement of Claim.

* * * * *

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres of each insured crop or type, as applicable by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection for barley or wheat;

(ii) Production guarantee (per acre) and your price election for oats, rye, flax, or buckwheat; or

(iii) Revenue protection guarantee (per acre) if you elected revenue protection for barley or wheat;

(2) Totaling the results of section 11(b)(1)(i), (ii), or (iii), whichever is applicable;

(3) Multiplying the production to count of each insured crop or type, as applicable, by your respective:

(i) Projected price for wheat or barley if you elected yield protection;

(ii) Price election for oats, rye, flax, or buckwheat; or

(iii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i), (ii), or (iii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of wheat in the unit with a production guarantee (per acre) of 45 bushels, your projected price is $3.40,

your harvest price is $3.45, and your production to count is 2,000 bushels.

If you elected yield protection:

(1) 50 acres × (45 bushel production guarantee × $3.40 projected price) = $7,650.00 value of the production guarantee

(3) 2,000 bushel production to count × $3.40 projected price = $6,800.00 value of the production to count

(5) $7,650.00 − $6,800.00 = $850.00

(6) $850.00 × 1.000 share = $850.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (45 bushel production guarantee × $3.45 harvest price) = $7,762.50 revenue protection guarantee

(3) 2,000 bushel production to count × $3.45 harvest price = $6,900.00 value of the production to count

(5) $7,762.50 − $6,900.00 = $862.50

(6) $862.50 × 1.000 share = $863.00 indemnity.

(c) * * *

(1) * * *

(i) For oats, rye, flax, or buckwheat, and barley or wheat under yield protection, not less than the production guarantee (per acre), and for barley or wheat under revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(2) All harvested production from the insurable acreage.

* * * * *

§ 457.101 [Amended]

■ 43. Further amend § 457.101 in section 13 by revising paragraph (b) to read as follows:

13. Prevented Planting.

* * * * *

(b) Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 44. Amend § 457.104 by revising the introductory text to read as follows:

§ 457.104 Cotton crop insurance provisions.

The cotton crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.104 [Amended]

■ 45. Further amend § 457.104 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.104 [Amended]

■ 46. Further amend § 457.104 in section 1 by removing the definition of "production guarantee" and adding the definition of "production guarantee (per acre)" to read as follows:

1. Definitions.

* * * * *

Production guarantee (per acre). In lieu of the definition contained in the Basic Provisions, the number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for non-irrigated skip-row planting patterns, and multiplying the result by the coverage level percentage you elect.

* * * * *

§ 457.104 [Amended]

■ 47. Further amend § 457.104 by revising section 2 to read as follows:

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your cotton with either revenue protection or yield protection by the sales closing date.

§ 457.104 [Amended]

■ 48. Further amend § 457.104 by revising section 3 to read as follows:

3. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

§ 457.104 [Amended]

■ 49. Further amend § 457.104 in section 4 as follows:

■ a. Amend the introductory text by removing the phrases "(Life of Policy, Cancellation and Termination)"and "(§ 457.8)"; and

■ b. Amend the table by removing the phrase "January 15" and adding the phrase "January 31" in its place and removing the word "Reagon" and adding the word "Reagan" in its place.

§ 457.104 [Amended]

■ 50. Further amend § 457.104 by revising section 5 to read as follows:

5. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the cotton lint, in the county for which premium rates are provided by the actuarial documents:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions or by written agreement):

(1) Colored cotton lint;

(2) Planted into an established grass or legume; or

(3) Interplanted with another spring planted crop.

§ 457.104 [Amended]

■ 51. Further amend § 457.104 in section 6 by removing the phrases "(Insurable Acreage)" and "(§ 457.8)" in the introductory text;

§ 457.104 [Amended]

■ 52. Further amend § 457.104 in section 7 by removing the phrases "(Insurance Period)" and "(§ 457.8)" in the introductory text of paragraph (b);

§ 457.104 [Amended]

■ 53. Further amend § 457.104 in section 8 as follows:

■ a. Remove the phrases "(Causes of Loss)" and "(§ 457.8)" in the introductory text;

■ b. Remove the word "or" at the end of paragraph (g);

■ c. Revise paragraph (h); and

■ d. Add a new paragraph (i).

The revised and added text reads as follows:

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.104 [Amended]

■ 54. Further amend § 457.104 by revising section 9 to read as follows:

9. Duties in the Event of Damage or Loss.

(a) In addition to your duties under section 14 of the Basic Provisions, in the event of damage or loss, the cotton stalks must remain intact for our inspection. The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss given to us.

(b) Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.104 [Amended]

■ 55. Further amend § 457.104 in section 10 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Amend the introductory text in paragraph (c) by removing the phrase "(pounds)" and adding the phrase "(in pounds)" after the phrase "to count";

■ c. Revise the introductory text of paragraph (c)(1)(i);
■ d. Amend paragraph (c)(1)(iv)(A) by removing the word "of" after the phrase "harvested production" and adding the word "or" in its place; and
■ e. Revise paragraph (d).

The revised text reads as follows:

10. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 10(b)(1)(i) or 10(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 10(b)(3)(i) or 10(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 10(b)(4) from the result of section 10(b)(2); and

(6) Multiplying the result of section 10(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of cotton in the unit with a production guarantee (per acre) of 525 pounds, your projected price is $.65, your harvest price is $.70, and your production to count is 25,000 pounds.

If you elected yield protection:

(1) 50 acres × (525 pound production guarantee × $.65 projected price) = $17,062.50 value of the production guarantee

(3) 25,000 pound production to count × $.65 projected price = $16,250.00 value of production to count

(5) $17,062.50 − $16,250.00 = $812.50

(6) $812.50 × 1.000 share = $813.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (525 pound production guarantee × $.70 harvest price) = $18,375.00 revenue protection guarantee

(3) 25,000 pound production to count × $.70 harvest price = $17,500.00 value of the production to count

(5) $18,375.00 − $17,500.00 = $875.00

(6) $875.00 × 1.000 share = $875.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(d) Mature white cotton may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for cotton of like quality (price quotation "A") for the applicable growth area is less than 85 percent of price quotation "B."

(1) Price quotation "B" is defined as the price quotation for the applicable growth area for cotton of the color and leaf grade, staple length, and micronaire reading designated in the Special Provisions for this purpose.

(2) Price quotations "A" and "B" will be the price quotations for the Upland Cotton Warehouse Loan Rate published by FSA on the date the last bale from the unit is classed. If the date the last bale classed is not available, the price quotations will be determined on the date the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin.

(3) If eligible for adjustment, the amount of production to count will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation "A" by 85 percent of price quotation "B."

* * * * *

§ 457.104 [Amended]

■ 56. Further amend § 457.104 by revising section 11(b) to read as follows:

11. Prevented Planting.

* * * * *

(b) Your prevented planting coverage will be 50 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 57. Amend § 457.106 as follows:
■ A. Revise the introductory text to read as set forth below;
■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict;
■ C. Amend section 2(b) by removing the phrase "34(a) (1), (3), and (4)" and adding the phrase "34(b)(1), (3), and (4)" in its place; and
■ D. Amend section 6 by removing the phrase "section 5 (Annual Premium)" and adding the phrase "section 7" in its place.

The revised text reads as follows:

§ 457.106 Texas citrus tree crop insurance provisions.

The Texas Citrus Tree Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 58. Revise the introductory text of § 457.108 to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

The sunflower seed crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.108 [Amended]

■ 59. Further amend § 457.108 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

* * * * *

§ 457.108 [Amended]

■ 60. Further amend § 457.108 by revising section 2 to read as follows:

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your sunflowers with either revenue protection or yield protection by the sales closing date.

§ 457.108 [Amended]

■ 61. Further amend § 457.108 by revising section 3 to read as follows:

3. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

§ 457.108 [Amended]

■ 62. Further amend § 457.108 in section 4 by removing the term "(§ 457.8)";

§ 457.108 [Amended]

■ 63. Further amend § 457.108 in section 5 by removing the phrases "(Insured Crop)" and "(§ 457.8)";

§ 457.108 [Amended]

64. Further amend § 457.108 in section 6 by removing the phrases "(Insurable Acreage)" and "(§ 457.8)";

§ 457.108 [Amended]

■ 65. Further amend § 457.108 in section 7 by removing the phrases "(Insurance Period)" and "(§ 457.8)";

§ 457.108 [Amended]

■ 66. Further amend § 457.108 in section 8 as follows:
■ a. Amend the introductory text by removing the phrases "(Causes of Loss)" and "(§ 457.8)";
■ b. Amend paragraph (g) by removing the word "or" at the end;
■ c. Revise paragraph (h); and
■ d. Add a new paragraph (i).

The revised and added text reads as follows:

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.108 [Amended]

■ 67. Further amend § 457.108 by revising section 9 to read as follows:

9. Replanting Payments.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 9(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions; and

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your projected price, multiplied by your share.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(d) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as applicable.

§ 457.108 [Amended]

■ 68. Further amend § 457.108 by revising section 10 to read as follows:

10. Duties in the Event of Damage or Loss.

Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.108 [Amended]

■ 69. Further amend § 457.108 in section 11 as follows:
■ a. Revise paragraphs (a) and (b);
■ b. Amend the introductory text of paragraph (c) by removing the phrase "(pounds)" and adding the phrase "(in pounds)" after the phrase "to count";
■ c. Revise the introductory text of paragraph (c)(1)(i); and
■ d. Revise paragraph (d)(4).

The revised text reads as follows:

11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 11(b)(1)(i) or 11(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i) or 11(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of sunflowers in the unit with a production guarantee (per acre) of 1,250 pounds, your projected price is $.11, your harvest price is $.12, and your production to count is 54,000 pounds.

If you elected yield protection:

(1) 50 acres × (1,250 pound production guarantee × $.11 projected price) = $6,875.00 value of the production guarantee

(3) 54,000 pound production to count × $.11 projected price = $5,940.00 value of production to count

(5) $6,875.00 − $5,940.00 = $935.00

(6) $935.00 × 1.000 share = $935.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (1,250 pound production guarantee × $.12 harvest price) = $7,500.00 revenue protection guarantee

(3) 54,000 pound production to count × $.12 harvest price = $6,480.00 value of the production to count

(5) $7,500.00 − $6,480.00 = $1,020.00

(6) $1,020.00 × 1.000 share = $1,020.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee, and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(d) * * *

(4) Sunflower seed production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced in accordance with quality adjustment factor provisions contained in the Special Provisions.

* * * * *

§ 457.108 [Amended]

■ 70. Further amend § 457.108 by revising section 12 to read as follows:

12. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 71. Amend § 457.111 as follows:
■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 2(c) by removing the phrase "34(a) (1)" and adding the phrase "34(b)(1)" in its place.

The revised text reads as follows:

§ 457.111 Pear crop insurance provisions.

The Pear Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 72. Revise the introductory text of § 457.113 to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

The coarse grains crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.113 [Amended]

■ 73. Further amend § 457.113 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.113 [Amended]

■ 74. Further amend § 457.113 in section 1 by revising the definitions of "planted acreage" and "production guarantee (per acre)" to read as follows:

1. Definitions.

* * * * *

Planted acreage. In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Production guarantee (per acre). In lieu of the definition contained in the Basic Provisions, the number of bushels (tons for corn insured as silage) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

* * * * *

§ 457.113 [Amended]

■ 75. Further amend § 457.113 by revising section 2 to read as follows:

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your corn, grain sorghum, or soybeans with either revenue protection or yield protection by the sales closing date.

§ 457.113 [Amended]

■ 76. Further amend § 457.113 by revising section 3 to read as follows:

3. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

§ 457.113 [Amended]

■ 77. Further amend § 457.113 in section 4 as follows:

■ a. Amend the introductory text by removing the term "(§ 457.8)";

■ b. Amend paragraph (a) by removing the date of "January 15" and adding "January 31" in its place; and

■ c. Amend paragraph (b) by removing the date of "February 15" and adding "January 31" in its place.

§ 457.113 [Amended]

■ 78. Further amend § 457.113 in section 5 as follows:

■ a. Amend the introductory text of paragraph (a) by removing the phrases "(Insured Crop)" and "(§ 457.8)";

■ b. Amend paragraph (a)(3)(i) by removing the word "paragraph" and adding the word "section" in its place;

■ c. Amend the introductory text of paragraph (b) and paragraph (b)(1) by removing the word "subsection" and adding the word "section" in its place in both places;

■ d. Revise the introductory text of paragraph (b)(2);

■ e. Amend paragraph (b)(2)(i) by removing the phrase "high-oil, high-protein," and adding the phrase "high-oil or high-protein (except as authorized in section 5(b)(2))," in its place; and

■ f. Amend the introductory text of paragraph (d) and paragraph (e) by removing the word "subsection" and adding the word "section" in its place in both places.

The revised text reads as follows:

5. Insured Crop.

* * * * *

(b) * * *

(2) Yellow dent or white corn, including mixed yellow and white, waxy or high-lysine corn, high-oil corn blends containing mixtures of at least 90 percent high yielding yellow dent female plants with high-oil male pollinator plants, or commercial varieties of high-protein hybrids, and excluding:

* * * * *

§ 457.113 [Amended]

■ 79. Further amend § 457.113 in section 7 as follows:

■ a. Amend the introductory text by removing the word "under" and adding the word "of" in its place and removing the phrases "(Insurance Period)" and "(§ 457.8)"; and

■ b. Revise paragraph (b) to read as follows:

7. Insurance Period.

* * * * *

(b) For corn insured as silage:	
(1) Connecticut, Delaware, Idaho, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and West Virginia.	October 20.
(2) All other states	September 30.

* * * * *

§ 457.113 [Amended]

■ 80. Further amend § 457.113 in section 8 as follows:

■ a. Amend the introductory text by removing the phrases "(Causes of Loss)" and "(§ 457.8)";

■ b. Amend paragraph (g) by removing the word "or" at the end of the paragraph;

■ c. Revise paragraph (h); and

■ d. Add a new paragraph (i).

The revised and added text reads as follows:

8. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.113 [Amended]

■ 81. Further amend § 457.113 by revising section 9 to read as follows:

9. Replanting Payments.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 9(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions; and

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or the number of bushels (tons for corn insured as silage) for the applicable crop specified below, multiplied by your projected price, multiplied by your share:

(1) 8 bushels for corn grain;

(2) 1 ton for corn silage;

(3) 7 bushels for grain sorghum; and

(4) 3 bushels for soybeans.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(d) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as applicable.

§ 457.113 [Amended]

■ 82. Further amend § 457.113 by revising section 10 to read as follows:

10. Duties in the Event of Damage or Loss.

(a) Representative samples are required in accordance with section 14 of the Basic Provisions.

(b) For any corn unit that has separate dates for the end of the insurance period (grain and silage), in lieu of the requirement contained in section 14 of the Basic Provisions to provide notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), you must provide notice within 72 hours of your initial discovery of damage (but not later than 15 days after the latest end of the insurance period applicable to the unit).

(c) If you will harvest any acreage in a manner other than as you reported it for coverage (*e.g.*, you reported planting it to harvest as grain but will harvest the acreage for silage, or you reported planting it to harvest as silage but will harvest the acreage for grain), you must notify us before harvest begins. Failure to timely provide notice will result in production to count determined in accordance with section 11(c)(1)(i)(E).

§ 457.113 [Amended]

■ 83. Further amend § 457.113 in section 11 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Amend the introductory text in paragraph (c) by removing the phrase "in bushels (tons for corn silage) (see subsection 11(d))" and adding the phrase "(in bushels for corn insured as grain or in tons for corn insured as silage)" after the phrase "to count";

■ c. Revise the introductory text of paragraph (c)(1)(i);

■ d. Amend paragraph (c)(1)(i)(C) by removing the word "or" at the end of the paragraph;

■ e. Amend paragraph (c)(1)(i)(D) by adding the word "or" at the end of the paragraph;

■ f. Add a new paragraph (c)(1)(i)(E);

■ g. Amend paragraph (c)(1)(iii) by removing the phrase "subsection 11(e)" and adding the phrase "section 11(d)" in its place;

■ h. Amend paragraph (c)(1)(iv) by removing the first sentence and adding the phrase "Potential production on insured acreage you will put to another use or abandon, if you and we agree on the appraised amount of production." in its place and removing the word "if" in the second sentence and adding the word "when" in its place;

■ i. Remove paragraph (d) and redesignate paragraphs (e) through (g) as paragraphs (d) through (f), respectively;

■ j. Amend the introductory text of redesignated paragraph (d) by removing the phrase "or harvested" in both places and removing the phrase "subsection 11(f)" and adding the phrase "section 11(e)" in its place;

■ k. Amend redesignated paragraph (d)(4) by removing the phrase "paragraphs 11(e)" and adding the phrase "sections 11(d)" in its place;

■ l. Amend the introductory text of redesignated paragraph (e) by removing the phrase "or harvested"; and

■ m. Revise redesignated paragraph (e)(2).

The revised and added text reads as follows:

11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres of each insured crop or type, as applicable, by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 11(b)(1)(i) or 11(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count of each insured crop or type, as applicable, by your respective:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 11(b)(3)(i) or 11(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 11(b)(4) from the result of section 11(b)(2); and

(6) Multiplying the result of section 11(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of corn in the unit with a production guarantee (per acre) of 115 bushels, your projected price is $2.25, your harvest price is $2.20, and your production to count is 5,000 bushels.

If you elected yield protection:

(1) 50 acres × (115 bushel production guarantee × $2.25 projected price) = $12,937.50 value of the production guarantee

(3) 5,000 bushel production to count × $2.25 projected price = $11,250.00 value of the production to count

(5) $12,937.50 − $11,250.00 = $1,687.50

(6) $1,687.50 × 1.000 share = $1,688.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (115 bushel production guarantee × $2.25 projected price) = $12,937.50 revenue protection guarantee

(3) 5,000 bushel production to count × $2.20 harvest price = $11,000.00 value of the production to count

(5) $12,937.50 − $11,000.00 = $1,937.50

(6) $1,937.50 × 1.000 share = $1,938.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee, or for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(E) For which you fail to give us notice before harvest begins if you report planting the corn to harvest as

grain but harvest it as silage or you report planting the corn to harvest as silage but harvest it as grain.

* * * * *

(e) * * *

(2) If the normal silage harvesting period has ended, or for any acreage harvested as silage or appraised as silage after the calendar date for the end of the insurance period as specified in section 7(b), we may increase the silage production to count to a 65 percent moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

* * * * *

§ 457.113 [Amended]

■ 84. Further amend § 457.113 by revising section 12 to read as follows:

12. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 85. Amend § 457.116 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict;

■ C. Amend section 2(b) by removing the phrase "3.(c)" and adding the phrase "3(f)" in its place; and

■ D. Amend section 6 by removing the phrase "9(a)(3)" and adding the phrase "9(a)(2)(iv)" in its place.

The revised text reads as follows:

§ 457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 86. Revise § 457.118 to read as follows:

§ 457.118 Malting barley price and quality endorsement.

The malting barley price and quality endorsement provisions for the 2011 and succeeding crop years are as follows:

FCIC policies: United States Department of Agriculture, Federal Crop Insurance Corporation.

Reinsured policies: (Appropriate title for insurance provider).

Both FCIC and reinsured policies:

Small Grains Crop Insurance Malting Barley Price and Quality Endorsement

(This is a continuous endorsement. Refer to section 2 of the Basic Provisions.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Basic Provisions and Small Grains Crop Provisions, subject to the terms and conditions described herein.

1. Definitions.

Additional value price. The value per bushel determined in accordance with section 3 of Option A or section 3 of Option B, as applicable.

Approved malting variety. A variety of barley specified in the Special Provisions.

Brewery. A facility where malt beverages are commercially produced for human consumption.

Contracted production. A quantity of barley the producer agrees to grow and deliver, and the buyer agrees to accept, under the terms of the malting barley contract.

Crop year. In addition to the definition in the Basic Provisions and only for APH purposes under the terms of this endorsement, the period within which the crop is actually grown and designated by the calendar year in which the insured crop is normally harvested.

Licensed grain grader. A person authorized by the U.S. Department of Agriculture to inspect and grade barley in accordance with the U.S. Standards for malt barley.

Malt. A substance produced by germinating barley under controlled conditions and then drying it.

Malt extract. A substance made by adding warm water to ground malt and separating the liquid from the solid. In some cases, the liquid extract may be condensed or evaporated to a syrup or powder.

Malting barley contract. An agreement in writing:

(a) Between the producer and a brewery or a business enterprise that produces or sells malt or malt extract to a brewery, or a business enterprise owned by such brewery or business;

(b) That specifies the amount of contracted production, the purchase price or a method to determine such price; and

(c) That establishes the obligations of each party to the agreement.

Malting barley price agreement. An agreement that meets all conditions required for a malting barley contract except that it is executed with a business enterprise that is not described in the definition of a malting barley contract, but that normally contracts to purchase malting barley production and has facilities appropriate to handle and store malting barley production.

Objective test. A determination made by a qualified person using standardized equipment that is widely used in the malting industry that follows a procedure approved by the:

(a) American Society of Brewing Chemists when determining percent germination;

(b) Federal Grain Inspection Service when determining quality factors other than percent germination; or

(c) Food and Drug Administration (FDA) when determining concentrations of mycotoxins or other substances or conditions identified by the FDA as being injurious to human or animal health.

Subjective test. A determination:

(a) Made by a person using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader;

(b) That uses non-standardized equipment; or

(c) That does not follow a procedure approved by the American Society of Brewing Chemists, the Federal Grain Inspection Service, or the Food and Drug Administration.

2. This endorsement provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions.

3. You must have the Basic Provisions and the Small Grains Crop Provisions in force to elect to insure malting barley under this endorsement.

4. You must elect either Option A or Option B on or before the sales closing date:

(a) No coverage will be provided under:

(1) Either Option A or Option B of this endorsement if you fail to elect either Option A or Option B, or if you elect Option B but fail to have a malting barley contract in effect by the acreage reporting date; or

(2) Option B of this endorsement if you have not met the production requirements specified in section 1(a) of Option B (in such case, you will only have coverage under the Small Grains Crop Provisions unless you elect coverage under Option A on or before the sales closing date);

(b) If you elect coverage under Option A, and subsequently enter into a malting barley contract, your coverage will continue under the terms of Option A;

(c) Your election (Option A or Option B) will continue from year to year unless you cancel or change your election on or before the sales closing date, or your coverage is otherwise

canceled or terminated under the terms of your policy; and

(d) In counties with both fall and spring sales closing dates, you may elect this endorsement until the spring sales closing date only if you do not have any fall planted acreage of approved malting barley varieties.

5. All acreage in the county planted to approved malting varieties that is insurable under the Small Grains Crop Provisions for feed barley and your elected Option will be insured under this endorsement, except any acreage on which you produce seed under the terms of the seed contract.

6. In lieu of the definitions and provisions regarding units and unit division in the Basic Provisions and the Small Grains Crop Provisions, all malting barley acreage in the county insured under this endorsement will be considered as one basic unit regardless of whether such acreage is owned, rented for cash, or rented for a share of the crop. Your shares in the malting barley acreage insured under this endorsement must be designated separately on the acreage report. For example, if you have 100 percent share in 50 acres and 75 percent share in 10 acres you must list the 50 acres separately from the 10 acres on your acreage report and include the percent share for each.

7. You must select a percentage of the additional value price on or before the sales closing date (you can select only one percentage even if more than one additional value price is applicable, and this percentage must be 100 percent or less). In the event you choose a percentage less than 100 percent of the additional value price, we will multiply that percentage by the additional value price specified in Option A or Option B, as applicable, to determine the additional value price applicable to this endorsement.

8. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee (per acre) by your additional value price, by the premium rate, by the acreage planted to approved malting barley varieties, by your share at the time coverage begins. The premium rate you pay will be adjusted by a malting barley factor contained in the actuarial documents, as applicable.

9. In addition to the reporting requirements contained in section 6 of the Basic Provisions, you must provide all the information required by the Option you elect.

10. In accordance with section 14 of the Basic Provisions:

(a) We will settle your claim within 30 days if all production:

(1) Meets the quality criteria specified in section 14(a)(2) of this endorsement; or

(2) Grades U.S. No. 4 or worse in accordance with the grades and grade requirements for the subclasses six-rowed and two-rowed barley, or for the class barley in accordance with the Official United States Standards for Grain; and

(3) Is not accepted by a buyer for malting purposes; or

(b) Whenever any production fails one or more of the quality criteria specified in section 14(a)(2) of this endorsement and grades U.S. No. 3 or better, we will not agree upon the amount of loss until the earlier of:

(1) The date you sell, feed, donate, or otherwise utilize such production for any purpose; or

(2) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested. If you still retain any insured production on or after this date, we will:

(i) Defer completion of your claim if you agree to such deferment; or

(ii) If you do not agree to defer your claim, we will complete your claim; however, no adjustment for quality deficiencies will be made and all remaining unsold insured production will be considered to have met the quality standards specified in this endorsement.

11. This endorsement for malting barley does not provide prevented planting coverage. Such coverage is only provided in accordance with the provisions of the Small Grains Crop Provisions for feed barley.

12. Production from all acreage insured under this endorsement and any production of feed barley varieties must not be commingled prior to our making all determinations under section 14. Failure to keep production separate as required herein will result in denial of your claim for indemnity.

13. In the event of loss or damage covered by this endorsement, we will settle your claim by:

(a) Multiplying the insured acreage by your malting barley production guarantee (per acre) determined in accordance with section 2 of Option A or Option B, as applicable;

(b) Multiplying the result in section 13(a) by your respective additional value price per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with section 14 by your additional value price per bushel (If more than one additional value price is applicable, the highest additional value price will be used until the number of bushels covered at the higher additional value price is reached and the remainder of the production will be multiplied by the lower additional value price. For example, if variety A is grown under a malting barley price agreement and 1000 bushels of variety A are insured using an additional value price of $0.68 per bushel but only 500 bushels of variety A are produced, the 500 bushels would be valued at $0.68 per bushel and all other production of other varieties will be valued at the lower additional value price unless such production is acceptable under the terms of the malting barley price agreement, in which case 500 bushels of the other varieties would also be valued at $0.68 per bushel);

(d) Subtracting the result of section 13(c) from the result in section 13(b); and

(e) Multiplying the result of section 13(d) by your share.

14. The amount of production to be counted against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1)(i), (ii) and (iv) of the Small Grains Crop Provisions;

(2) Harvested production and unharvested production that meets, or would meet if properly handled, either the acceptable percentage or parts per million standard contained in any applicable malting barley contract or malting barley price agreement for protein, plump kernels, thin kernels, germination, blight damaged, injured by mold, mold damaged, injured by sprout, injured by frost, frost damaged, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human health, or the following quality standards (additional or different quality standards may be specified or made available in the Special Provisions), whichever is less stringent:

	Six-rowed Malting Barley	Two-rowed Malting Barley
Protein (dry basis)	14.0% maximum	13.5% maximum.

	Six-rowed Malting Barley	Two-rowed Malting Barley
Plump kernels	65.0% minimum	75.0% minimum.
Thin kernels	10.0% maximum	10.0% maximum.
Germination	95.0% minimum	95.0% minimum.
Blight damaged	4.0% maximum	4.0% maximum.
Injured by mold	5.0% maximum	5.0% maximum.
Mold damaged	0.4% maximum	0.4% maximum.
Injured by sprout	1.0% maximum	1.0% maximum.
Injured by frost	5.0% maximum	5.0% maximum.
Frost damaged	0.4% maximum	0.4% maximum.
Mycotoxins	2.0 ppm maximum	2.0 ppm maximum.

(3) Harvested production that does not meet the quality standards contained in section 14(a)(2), but is accepted by a buyer. If the price received is less than the total of the additional value price and the feed barley projected price announced by FCIC, the production to count may be reduced or the values used to settle the claim may be adjusted in accordance with sections 14(b), (c), and (d).

(b) For the quantity of production that qualifies under section 14(a)(3), the amount of production to count will be determined by:

(1) Subtracting the projected price for feed barley from the sale price per bushel of the damaged production (If the sale price is less than the market value of the damaged production, the sale price will be the market value);

(2) Subtracting the weighted average cost per bushel for conditioning the production, if any, (not to exceed the discount you would have received had you sold the barley without conditioning, for example, if the price per bushel of the production without conditioning is $2.80 and the price for such production after conditioning is $2.90, the discount is $0.10 and the cost of conditioning can not exceed $0.10 per bushel) from the result of section 14(b)(1);

(3) Dividing the result of section 14(b)(1) or (2), as applicable, by 100 percent of the additional value price (The weighted average additional value price will be used in the event more than one additional value price is applicable, for example, if 1000 bushels of variety A are insured with an additional value price of $0.68 and 500 bushels are insured with an additional value price of $0.40, the weighted average additional value price would be $0.59); and

(4) Multiplying the result of section 14(b)(3) (if less than zero, no production will be counted; or, if more than 1.000, no adjustment will be made) by the number of bushels of damaged production.

(c) No reduction in the amount of production to count will be allowed for:

(1) Moisture content;

(2) Damage due to uninsured causes;

(3) Costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 14(a)(2); or

(4) Any other costs associated with normal handling and marketing of malting barley.

(d) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

OPTION A (FOR MALTING BARLEY PRODUCTION, REGARDLESS OF WHETHER GROWN UNDER A MALTING BARLEY CONTRACT OR PRICE AGREEMENT)

1. To be eligible for coverage under this option:

(a) You must provide us with acceptable records of your sales of malting barley and the number of acres planted to malting varieties for at least the four crop years in your APH database prior to the crop year immediately preceding the current crop year (for example, to determine your production guarantee for the 2011 crop year, records must be provided for the 2006 through the 2009 crop years, if malting barley varieties were planted in each of those crop years);

(1) Failure to provide acceptable records or reports as required herein will make you ineligible for coverage under this endorsement; and

(2) You must provide these records to us no later than the production reporting date specified in the Basic Provisions; and

(b) If you produce malting barley under a malting barley contract or malting barley price agreement, you must provide us with a copy of your current crop year contract or agreement on or before the acreage reporting date if you want the additional value price based on such contract or price agreement. All terms and conditions of the contract or agreement, including the contract price or future contract price, must be specified in the contract or agreement and be effective on or before the acreage reporting date.

2. Your malting barley production guarantee (per acre) will be the lesser of:

(a) The production guarantee (per acre) for feed barley for acreage planted to approved malting varieties calculated in accordance with the Basic Provisions; or

(b) A yield per acre calculated by:

(1) Dividing the number of bushels of malting barley sold each year by the number of acres planted to approved malting barley varieties in each respective year;

(2) Adding the results of section 2(b)(1);

(3) Dividing the result of section 2(b)(2) by the number of years approved malting barley varieties were planted; and

(4) Multiplying the result of section 2(b)(3) by your coverage level.

3. The additional value price per bushel will be determined as follows:

(a) For production grown under a malting barley contract or a malting barley price agreement, the additional value price per bushel will be the following amount, as applicable:

(1) The sale price per bushel established in the malting barley contract or malting barley price agreement (not including discounts or incentives that may apply) minus the projected price for barley;

(2) The amount per bushel for malting barley (not including discounts or incentives that may apply) above a feed barley price that is determined at a later date, provided the method of determining the price is specified in the malting barley contract or malting barley price agreement; or

(3) If your malting barley contract or malting barley price agreement has a

variable price option, you must select a price or a method of determining a price that will be treated as the sale price and your additional value price per bushel will be calculated under section 3(a)(1) or (2), as applicable.

(b) The additional value price per bushel designated in the actuarial documents will be used if:

(1) Production is not grown under a malting barley contract or malting barley price agreement; or

(2) The malting barley contract or malting barley price agreement is not provided to us by the acreage reporting date.

(c) Under no circumstances will the additional value price exceed $1.25 per bushel.

(d) The number of bushels eligible for coverage using an additional value price determined in section 3(a) will be the lesser of:

(1) The amount determined by multiplying the number of acres planted to an approved malting barley variety by your malting barley production guarantee (per acre) determined in accordance with section 2; or

(2) The amount determined by multiplying the number of bushels specified in the malting barley contract or malting barley price agreement by your coverage level.

(e) Under no circumstances will the number of bushels determined in section 3(d) that will receive an additional value price determined in accordance with section 3(a) exceed the amount determined by multiplying 125 percent of the greatest number of acres that you certified for malting barley APH purposes in any crop year contained in your malting barley APH database by your malting barley production guarantee (per acre) determined in accordance with section 2. Any bushels in excess of this amount will be insured using the additional value price designated in the actuarial documents.

4. Loss Example.

In accordance with section 13, your loss will be calculated as follows:

(a) Assume the following:

(1) A producer has:

(i) 400 acres of barley insured under the Small Grains Crop Provisions, of which 200 acres are planted to feed barley and 200 acres are planted to an approved malting barley variety;

(ii) 100 percent share;

(iii) A feed barley approved yield of 55 bushels per acre;

(iv) A malting barley approved yield, based on malting barley sales records and the number of acres planted to approved malting barley varieties, of 52 bushels per acre;

(v) Selected the 75 percent coverage level; and

(vi) Provided a malting barley price agreement by the acreage reporting date for the sale of 5,720 bushels at $2.72 per bushel;

(2) The projected price for feed barley is $1.92 per bushel;

(3) The additional value price per bushel from the actuarial documents is $0.40;

(4) In accordance with section 3(a)(1), the additional value price per bushel for production grown under a malting barley price agreement is $0.80 ($2.72 malting barley price agreement price minus $1.92 projected price); and

(5) The total production from the 200 acres of malting barley is 7,250 bushels, all of which fails to meet the quality standards specified in section 14(a) and in the malting barley price agreement:

(i) 4,750 bushels are sold for $2.31 per bushel; and

(ii) After conditioning at a cost of $0.05 per bushel, an additional 2,500 bushels are sold for $2.20 per bushel;

(b) The amount of insurance protection is determined as follows:

(1) 4,290 bushels eligible for coverage using the additional value price from the malting barley price agreement [the lesser of 4,290 bushels (5,720 bushels grown under a malting barley price agreement × .75 coverage level) or 7,800 bushels (200 acres planted to approved malting barley varieties × 39.0 bushel per acre (52 bushels per acre malting barley approved yield × .75 coverage level) malting barley production guarantee)] × $0.80 additional value price = $3,432.00 amount of insurance protection for the bushels grown under the malting barley price agreement;

(2) 3,510 bushels eligible for coverage using the additional value price from the actuarial documents (7,800 bushel total malting barley production guarantee − 4,290 bushels covered using the additional value price from the malting barley price agreement) × $0.40 additional value price = $1,404.00 amount of insurance protection for the bushels not grown under a malting barley price agreement; and

(3) $3,432.00 + $1,404.00 = $4,836.00 total amount of insurance protection for the unit;

(c) In accordance with section 14, the total amount of production to count is determined as follows:

(1) Damaged production that is not reconditioned:

(i) $2.31 price per bushel − $1.92 projected price for feed barley = $0.39;

(ii) $0.39 ÷ $0.62 weighted average additional value price ($4,836.00 total insurance protection ÷ 7,800 bushel production guarantee = $0.62 weighted average additional value price) = 0.63; and

(iii) 0.63 × 4,750 bushels of damaged production sold at $2.31 = 2,993 bushels of production to count;

(2) Damaged production that is reconditioned:

(i) $2.20 price per bushel − $1.92 projected price for feed barley = $0.28;

(ii) $0.28 − $0.05 reconditioning cost = $0.23;

(iii) $0.23 ÷ $0.62 weighted average additional value price = 0.37; and

(iv) 0.37 × 2,500 bushels of damaged production sold at $2.20 = 925 bushels of production to count; and

(3) Total production to count is 3,918 bushels (2,993 + 925);

(d) The value of production to count is $3,134.00 (3,918 bushels × $0.80 additional value price (all production to count is valued at the higher additional value price since the amount of production to count did not exceed the number of bushels covered at the higher additional value price)); and

(e) The indemnity amount is $1,702.00 ($4,836.00 total amount of insurance protection for the unit − $3,134.00 value of production to count).

OPTION B (FOR PRODUCTION GROWN UNDER MALTING BARLEY CONTRACTS ONLY)

1. To be eligible for coverage under this option:

(a) On or before the sales closing date, for at least one of the three crop years you planted malting barley immediately preceding the previous crop year:

(1) You must have had a malting barley contract and produced and sold at least 75 percent of the contracted amount for the crop year such contract was applicable, or such other amount specified in the Special Provisions (*e.g.,* if you wish to insure 2011 crop year malting barley and you had a malting barley contract to produce 10,000 bushels in 2009, you must have produced and sold at least 7,500 bushels of 2009 crop year malting barley production); and

(2) You must provide us a copy of your prior malting barley contract and acceptable records of sales of malting barley required to establish compliance with section 1(a)(1) of Option B;

(b) The maximum amount of production that may be insured under Option B will be limited to the lesser of the amount of malting barley contained in the current crop year's malting barley contract or 200 percent of the amount contracted for the crop year used to demonstrate compliance with section 1(a)(1) of Option B; and

(c) On or before the acreage reporting date, you must provide us with a copy of your malting barley contract for the current crop year:

(1) All terms and conditions of the contract, including the contract price or method to determine the price, must be specified in the contract and be effective on or before the acreage reporting date;

(2) If you fail to timely provide the contract, or any terms are omitted, we may elect to determine the relevant information necessary for insurance under Option B, or deny liability; and

(3) Only contracted production or acreage is covered by Option B.

2. Your malting barley production guarantee (per acre) will be the lesser of:

(a) The production guarantee (per acre) for feed barley for acreage planted to approved malting barley varieties calculated in accordance with the Basic Provisions; or

(b) A yield per acre calculated by:

(1) Dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties in the current crop year; and

(2) Multiplying the result of section 2(b)(1) by the coverage level percentage you elected under the Small Grains Crop Provisions.

3. The additional value price per bushel will be the following amount, as applicable:

(a) The sale price per bushel established in the malting barley contract (without regard to discounts or incentives that may apply) minus the projected price for feed barley;

(b) The amount per bushel for malting barley (not including discounts or incentives that may apply) above a feed barley price that is determined at a later date, provided the method of determining the price is specified in the malting barley contract; or

(c) If your malting barley contract has a variable premium price option, you must select a price or a method of determining a price that will be treated as the sale price and your additional value price per bushel will be calculated under section 3(a) or (b), as applicable; and

(d) Under no circumstances will the additional value price per bushel exceed $2.00 per bushel.

4. Loss Example.

In accordance with section 13, your loss will be calculated as follows:

(a) Assume the following:

(1) A producer has:

(i) 400 acres of barley insured under the Small Grains Crop Provisions, of which 200 acres are planted to feed barley and 200 acres are planted to an approved malting barley variety;

(ii) 100 percent share;

(iii) A feed barley approved yield of 55 bushels per acre;

(iv) A malting barley approved yield, based on contracted production and the number of acres planted to approved malting barley varieties of 52 bushels per acre;

(v) Selected the 75 percent coverage level; and

(vi) A malting barley contract for the sale of 10,000 bushels of malting barley at $2.60 per bushel;

(2) The projected price for feed barley is $1.92 per bushel;

(3) In accordance with section 3, the additional value price per bushel for production grown under the malting barley contract is $0.68 ($2.60 malting barley contract price minus $1.92 projected price); and

(4) The total production from the 200 acres of malting barley is 7,250 bushels, all of which fails to meet the quality standards specified in section 14(a) and in the malting barley contract:

(i) 4,750 bushels are sold for $2.31 per bushel; and

(ii) After conditioning at a cost of $0.05 per bushel, an additional 2,500 bushels are sold for $2.20 per bushel;

(b) In accordance with section 2, the amount of insurance protection is determined as follows:

(1) The lesser of 41.3 bushels per acre production guarantee (55 bushels × 75 percent coverage level) for feed barley or 37.5 bushels per acre (10,000 bushels contracted ÷ 200 acres = 50.0 bushels per acre and 50.0 × 75 percent coverage level = 37.5);

(2) 37.5 bushels per acre × 200 acres = 7,500 bushels total malting barley production guarantee; and

(3) 7,500 bushels × $0.68 additional value price = $5,100.00 total amount of insurance for the unit;

(c) In accordance with section 14, the total amount of production to count is determined as follows:

(1) Damaged production that is not reconditioned:

(i) $2.31 price per bushel − $1.92 projected price for feed barley = $0.39;

(ii) $0.39 ÷ $0.68 additional value price = 0.57; and

(iii) 0.57 × 4,750 bushels of damaged production sold at $2.31 = 2,708 bushels of production to count;

(2) Damaged production that is reconditioned:

(i) $2.20 price per bushel − $1.92 projected price for feed barley = $0.28;

(ii) $0.28 − $0.05 reconditioning cost = $0.23;

(iii) $0.23 ÷ $0.68 additional value price = 0.34; and

(iv) 0.34 × 2,500 bushels of damaged production sold at $2.20 = 850 bushels of production to count; and

(3) Total production to count is 3,558 bushels (2,708 + 850);

(d) The value of production to count is $2,419.00 (3,558 bushels × $0.68 additional value price); and

(e) The indemnity amount is $2,681.00 ($5,100.00 total amount of insurance protection for the unit − $2,419.00 value of production to count).

■ 87. Amend § 457.130 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 2(a) by removing the phrase "34(a) (1), (3), and (4)" and adding the phrase "34(b)(1), (3), and (4)" in its place.

The revised text reads as follows:

§ 457.130 Macadamia tree crop insurance provisions.

The macadamia tree crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 88. Amend § 457.131 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 2(a) by removing the phrase "34(a)(1)" and adding the phrase "34(b)(1)" in its place.

The revised text reads as follows:

§ 457.131 Macadamia nut crop insurance provisions.

The macadamia nut crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 89. Amend § 457.135 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 9(a) by removing the phrase "14(c)" and adding the phrase "16 of the Basic Provisions" in its place.

The revised text reads as follows:

§ 457.135 Onion crop insurance provisions.

The onion crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 90. Amend § 457.140 as follows:

■ A. Revise the introductory text of § 457.140 to read as set forth below; and

■ B. Amend section 3(a) by removing the phrase "3(b)(1)" and adding the phrase "3(b)" in its place.

The revised text reads as follows:

§ 457.140 Dry pea crop insurance provisions.

The dry pea crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 91. Revise the introductory text of § 457.141 to read as follows:

§ 457.141 Rice crop insurance provisions.

The rice crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.141 [Amended]

■ 92. Further amend § 457.141 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.141 [Amended]

■ 93. Further amend § 457.141 in section 1 by removing the definition of "planted" and adding the definition of "planted acreage" to read as follows:

1. Definitions.

* * * * *

Planted acreage. In addition to the definition in section 1 of the Basic Provisions, land on which there is uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods (Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement):

(a) Drill seeding—Using a grain drill to incorporate the seed to a proper soil depth;

(b) Broadcast seeding—Distributing seed evenly onto the surface of an un-flooded seedbed followed by either timely mechanical incorporation of the seed to a proper soil depth in the seedbed or flushing the seedbed with water; or

(c) Broadcast seeding into a controlled flood—Distributing the rice seed onto a prepared seedbed that has been intentionally covered to a proper depth by water. The water must be free of movement and be completely contained on the acreage by properly constructed levees and gates.

* * * * *

§ 457.141 [Amended]

■ 94. Further amend § 457.141 by revising section 3 to read as follows:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions, you must elect to insure your rice with either revenue protection or yield protection by the sales closing date.

§ 457.141 [Amended]

■ 95. Further amend § 457.141 in section 4 by removing the phrases "(Contract Changes)" and "(§ 457.8)";

§ 457.141 [Amended]

■ 96. Further amend § 457.141 in section 5 as follows:

■ a. Amend the introductory text by removing the phrases "(Life of Policy, Cancellation and Termination)" and "(§ 457.8)"; and

■ b. Amend the table by removing the date of "January 15" and adding "January 31" in its place.

§ 457.141 [Amended]

■ 97. Further amend § 457.141 in the introductory text of section 6 by removing the phrases "(Insured Crop)" and "(§ 457.8)" and adding the phrase "or by written agreement" at the end of the text;

§ 457.141 [Amended]

■ 98. Further amend § 457.141 in the introductory text of section 7 by removing the phrases "(Insurable Acreage)" and "(§ 457.8)";

§ 457.141 [Amended]

■ 99. Further amend § 457.141 in section 8 by removing the phrases "(Insurance Period)" and "(§ 457.8)";

§ 457.141 [Amended]

■ 100. Further amend § 457.141 in section 9 as follows:

■ a. Amend the introductory text of paragraph (a) by removing the phrases "(Causes of Loss)" and "(§ 457.8)";

■ b. Amend paragraph (a)(7) by removing the word "or" at the end;

■ c. Amend paragraph (a)(8) by removing the period at the end and adding "; or" in its place; and

■ d. Add a new paragraph (a)(9) to read as follows:

9. Causes of Loss.

(a) * * *

(9) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

* * * * *

§ 457.141 [Amended]

■ 101. Further amend § 457.141 by revising section 10 to read as follows:

10. Replanting Payment.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 10(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage; and

(4) The replanted crop must be seeded at a rate that is normal for initially planted rice (if new seed is planted at a reduced seeding rate into a partially damaged stand of rice, the acreage will not be eligible for a replanting payment).

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 400 pounds, multiplied by your projected price, multiplied by your share.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

§ 457.141 [Amended]

■ 102. Further amend § 457.141 by revising section 11 to read as follows:

11. Duties in the Event of Damage or Loss.

Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.141 [Amended]

■ 103. Further amend § 457.141 in section 12 as follows:

■ a. Revise paragraphs (a) and (b); and

■ b. Revise the introductory text of paragraph (c)(1)(i).

The revised text reads as follows:

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 12(b)(1)(i) or 12(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count by your:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 12(b)(3)(i) or 12(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 12(b)(4) from the result of section 12(b)(2); and

(6) Multiplying the result of section 12(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of rice in the unit with a production guarantee (per acre) of 3,750 pounds, your projected price is $.0750, your harvest price is $.0700, and your production to count is 150,000 pounds.

If you elected yield protection:

(1) 50 acres × (3,750 pound production guarantee × $.0750 projected price) = $14,062.50 value of the production guarantee

(3) 150,000 pound production to count × $.0750 projected price = $11,250.00 value of the production to count

(5) $14,062.50 − $11,250.00 = $2,812.50

(6) $2,812.50 × 1.000 share = $2,813.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (3,750 pound production guarantee × $.0750 projected price) = $14,062.50 revenue protection guarantee

(3) 150,000 pound production to count × $.0700 harvest price = $10,500.00 value of the production to count

(5) $14,062.50 − $10,500.00 = $3,562.50

(6) $3,562.50 × 1.000 share = $3,563.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

§ 457.141 [Amended]

■ 104. Further amend § 457.141 by revising section 13 to read as follows:

13. Prevented Planting.

Your prevented planting coverage will be 45 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

■ 105. Amend § 457.157 as follows:

■ A. Revise the introductory text of § 457.157 to read as set forth below;

■ B. Remove the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict; and

■ C. Amend section 2(b) by removing the phrase "34(a)(1)" and adding the phrase "34(b)(1)" in its place.

The revised text reads as follows:

§ 457.157 Plum crop insurance provisions.

The Plum Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

■ 106. Revise the introductory text of § 457.161 to read as follows:

§ 457.161 Canola and rapeseed crop insurance provisions.

The canola and rapeseed crop insurance provisions for the 2011 and succeeding crop years are as follows:

* * * * *

§ 457.161 [Amended]

■ 107. Further amend § 457.161 by removing the paragraph immediately preceding section 1 which refers to the order of priority in the event of conflict.

§ 457.161 [Amended]

■ 108. Further amend § 457.161 by revising section 3 to read as follows:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You must elect to insure your canola and rapeseed with either revenue protection or yield protection by the sales closing date; and

(b) In counties with both fall and spring sales closing dates for the insured crop:

(1) If you do not have any insured fall planted acreage of the insured crop, you may change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, until the spring sales closing date; or

(2) If you have any insured fall planted acreage of the insured crop, you may not change your coverage level, or your percentage of projected price (if you have yield protection), or elect revenue protection or yield protection, after the fall sales closing date.

* * * * *

§ 457.161 [Amended]

■ 109. Further amend § 457.161 in section 5 by adding the phrase "Alabama and" before the word "Georgia".

§ 457.161 [Amended]

■ 110. Further amend § 457.161 by revising section 7 to read as follows:

7. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions;

(b) Whenever the Special Provisions designate only a fall final planting date, any acreage of canola or rapeseed damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall type of the insured crop unless we agree that replanting is not practical;

(c) Whenever the Special Provisions designate both fall and spring final planting dates:

(1) Any fall canola or rapeseed that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a fall type of the insured crop to maintain insurance based on the fall type unless we agree that replanting is not practical. If it is not practical to replant to the fall type of canola or rapeseed but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the fall type in force; and

(2) Any fall canola or rapeseed acreage that is replanted to a spring type of the same crop when it was practical to replant the fall type will be insured as the spring type and the production guarantee, premium, projected price, and harvest price applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type; and

(d) Whenever the Special Provisions designate a spring final planting date, any acreage of spring canola or rapeseed damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical; or

(e) Whenever the Special Provisions designate only a spring final planting

date, any acreage of fall planted canola or rapeseed is not insured unless you request such coverage on or before the spring sales closing date, and we determine in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. However, if we fail to inspect the acreage by the spring final planting date, insurance will attach as specified in section 7(e)(3):

(1) Your request for coverage must include the location and number of acres of fall planted canola or rapeseed;

(2) The fall planted canola or rapeseed will be insured as a spring type for the purpose of the production guarantee, premium, projected price, and harvest price, if applicable;

(3) Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date;

(4) Any acreage of such fall planted canola or rapeseed that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant; and

(5) If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

§ 457.161 [Amended]

■ 111. Further amend § 457.161 by revising section 8 to read as follows:

8. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is October 31 of the calendar year in which the crop is normally harvested.

§ 457.161 [Amended]

■ 112. Further amend § 457.161 in section 9 as follows:

■ a. Amend paragraph (g) by removing the word "or" at the end;

■ b. Revise paragraph (h); and

■ c. Add a new paragraph (i).

The revised and added text reads as follows:

9. Causes of Loss.

* * * * *

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 9(a) through (g) that also occurs during the insurance period; or

(i) For revenue protection, a change in the harvest price from the projected price, unless FCIC can prove the price change was the direct result of an uninsured cause of loss specified in section 12(a) of the Basic Provisions.

§ 457.161 [Amended]

■ 113. Further amend § 457.161 by revising section 10 to read as follows:

10. Replanting Payment.

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these Crop Provisions;

(2) Except as specified in section 10(a)(1), you must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage; and

(4) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that is considered appropriate by agricultural experts for the insured crop, type and practice.

(b) Unless otherwise specified in the Special Provisions, the amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your projected price, multiplied by your share.

(c) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(d) If the acreage is replanted to an insured crop type that is different than the insured crop type originally planted on the acreage:

(1) The production guarantee, premium, and projected price and harvest price, as applicable, will be adjusted based on the replanted type;

(2) Replanting payments will be calculated using your projected price and production guarantee for the crop type that is replanted and insured; and

(3) A revised acreage report will be required to reflect the replanted type, as applicable.

§ 457.161 [Amended]

■ 114. Further amend § 457.161 by revising section 11 to read as follows:

11. Duties in the Event of Damage or Loss.

Representative samples are required in accordance with section 14 of the Basic Provisions.

§ 457.161 [Amended]

■ 115. Further amend § 457.161 in section 12 as follows:

■ a. Revise paragraphs (a) and (b);

■ b. Revise the introductory text of paragraph (c)(1)(i);

■ c. Revise paragraph (d)(4);

■ d. Remove paragraph (d)(5); and

■ e. Revise paragraph (e), including removing the example.

The revised text reads as follows:

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the number of insured acres of each type, as applicable, by your respective:

(i) Yield protection guarantee (per acre) if you elected yield protection; or

(ii) Revenue protection guarantee (per acre) if you elected revenue protection;

(2) Totaling the results of section 12(b)(1)(i) or 12(b)(1)(ii), whichever is applicable;

(3) Multiplying the production to count of each type, as applicable, by your respective:

(i) Projected price if you elected yield protection; or

(ii) Harvest price if you elected revenue protection;

(4) Totaling the results of section 12(b)(3)(i) or 12(b)(3)(ii), whichever is applicable;

(5) Subtracting the result of section 12(b)(4) from the result of section 12(b)(2); and

(6) Multiplying the result of section 12(b)(5) by your share.

For example:

You have 100 percent share in 50 acres of canola in the unit with a production guarantee (per acre) of 650 pounds, your projected price is $.1220, your harvest price is $.1110, and your production to count is 31,000 pounds.

If you elected yield protection:

(1) 50 acres × (650 pound production guarantee × $.1220 projected price) = $3,965.00 value of the production guarantee

(3) 31,000 pound production to count × $.1220 projected price = $3,782.00 value of the production to count

(5) $3,965.00 − $3,782.00 = $183.00

(6) $183.00 × 1.000 share = $183.00 indemnity; or

If you elected revenue protection:

(1) 50 acres × (650 pound production guarantee × $.1220 projected price) = $3,965.00 revenue protection guarantee

(3) 31,000 pound production to count × $.1110 harvest price = $3,441.00 value of the production to count

(5) $3,965.00 − $3,441.00 = $524.00

(6) $524.00 × 1.000 share = $524.00 indemnity.

(c) * * *

(1) * * *

(i) For yield protection, not less than the production guarantee and for revenue protection, not less than the amount of production that when multiplied by the harvest price equals the revenue protection guarantee (per acre) for acreage:

* * * * *

(d) * * *

(4) Canola production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced in accordance with the quality adjustment factors contained in the Special Provisions.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

* * * * *

§ 457.161 [Amended]

■ 116. Further amend § 457.161 by revising section 14 to read as follows:

14. Prevented Planting.

Your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have additional coverage and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

* * * * *

■ 117. Amend § 457.171 as follows:

■ A. Revise the introductory text to read as set forth below;

■ B. Amend section 12(b) by removing the phrase "14(a)(2)(Your Duties)" and adding the phrase "14(b)(1)" in its place; and

■ C. Amend section 12(e) by removing the phrase "14(a)(3)(Your Duties)" and adding the phrase "14(c)" in its place.

The revised text reads as follows:

§ 457.171 Cabbage crop insurance provisions.

The Cabbage Crop Insurance Provisions for the 2011 and succeeding crop years are as follows:

* * * * *

Signed in Washington, DC, on March 17, 2010.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2010–6432 Filed 3–29–10; 8:45 am]

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Federal Register

Tuesday,
March 30, 2010

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 575

Tire Fuel Efficiency Consumer Information Program; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2010–0036]

RIN 2127–AK45

Tire Fuel Efficiency Consumer Information Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document establishes the test procedures to be used by tire manufacturers in a new consumer information program to generate comparative performance information to inform consumers about the effect of their choices among replacement passenger car tires on fuel efficiency, safety, and durability. When this program is fully established, this information will be provided to consumers at the point of sale and online. This information will encourage the purchase of better performing replacement tires.

In order to provide this agency with time needed to conduct additional consumer testing and resolve important issues raised by public comments on the agency's proposal regarding the program, this rule does not specify how the information will be explained and provided to consumers. After a public meeting regarding the agency's draft plan for additional testing, NHTSA will proceed with the testing and then develop and publish a new proposal for these aspects of the new program.

DATES: Today's final rule is effective June 1, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 1, 2010.

The various compliance dates for these regulations are set forth, as applicable, in § 575.106(e)(1)(iii).

Petitions for reconsideration must be received by May 14, 2010.

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION, CONTACT:

For policy and technical issues: Ms. Mary Versailles, Office of Rulemaking, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–0846.

For legal issues: Ms. Sarah Alves, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: (202) 366–2992.

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I. Executive Overview

A. Summary

This final rule is being issued pursuant to the Energy Independence

and Security Act of 2007 (EISA),[1] which was enacted in December 2007. EISA includes a requirement that NHTSA develop a national tire fuel efficiency consumer information program to educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability. Consumers currently have little, if any, convenient way of determining the effect of tire choices on fuel economy or the potential tradeoffs between tire fuel efficiency and tire safety and durability.

The collective effects of the choices consumers make when they buy tires are matters of public interest and concern. The 240 million passenger cars and light trucks in the United States consume about 135 billion gallons of motor fuel annually.[2] Finding ways to reduce this energy consumption is a national goal for reasons ranging from ensuring economic and national security to reducing greenhouse gas emissions and improving local air quality. Rolling resistance, or the force required to make the tires roll, differs from tire to tire and is a characteristic that indicates a tire's fuel efficiency. Consumers, if sufficiently informed and interested, could bring about a reduction in average rolling resistance of replacement tires by adjusting their tire purchases, and as a consequence, significantly reduce the amount of fuel consumed annually. While the handling, traction, and other operating characteristics of tires are of particular interest to people buying them to place on their own vehicles, they are also matters of even broader public interest as they may influence the safety performance of vehicles on the nation's highways.

Congress required NHTSA to establish a tire fuel efficiency consumer information program, including a replacement tire fuel efficiency rating system. To better inform consumers, EISA requires that NHTSA develop requirements for providing this information to consumers, and a national tire maintenance consumer education program. Consumers need to inflate and maintain their tires properly so that they can achieve their intended levels of efficiency, safety, wear, and operating performance. NHTSA has previously addressed the importance of proper tire inflation to safety and fuel efficiency in various public service campaigns. NHTSA has also mandated that tire pressure monitoring systems (TPMSs) be installed on new motor vehicles.[3] However, TPMSs are not a substitute for proper tire maintenance. Motorists must be reminded of the fact that even small losses in inflation pressure can reduce tire treadwear life, fuel efficiency, and operating performance.[4]

The tire fuel efficiency consumer information program will require tire manufacturers to rate their replacement tires for fuel efficiency, safety, and durability based on test procedures specified in this final rule. These test procedures address three aspects of tire performance: rolling resistance, wet traction and treadwear life. As noted above and described in further detail below, rolling resistance is a measurement of fuel efficiency. A measurement of wet traction is intended to indicate a tire's ability to stop on wet pavement. Thus, wet traction is a metric that measures an aspect of safety. A treadwear rating measures a tire's wear rate compared with that of control tires. Treadwear life, therefore, is a measure of durability.

Comparing the three different ratings for different replacement tires will enable consumers to see how different replacement tires can affect the fuel economy they are getting from their vehicles. This will also enable consumers to see the tradeoffs they may be facing between fuel efficiency, safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear life), and how the balance of these factors may differ from tire to tire. Providing information regarding all three types of performance will help to ensure that no single aspect is given disproportionate attention. NHTSA's research found that while changing tire construction to improve fuel efficiency need not sacrifice wet traction or treadwear, maintaining the same wet traction performance and treadwear while increasing the fuel efficiency of a given tire often entails higher costs.[5] Thus, if a manufacturer seeks to improve the fuel efficiency of a given replacement tire construction while keeping cost constant, there is a substantial chance that the construction will be changed in ways that sacrifice other factors.

In developing the rule, the agency conducted tire testing research to determine which test procedure would best standardize a fuel efficiency rating and provide accurate discrimination among replacement tires. The agency is specifying the test procedure by which NHTSA will evaluate the accuracy of the rolling resistance rating assigned by the tire manufacturer. For the safety and durability rating, this final rule specifies that the agency will use previously established test procedures for wet traction and treadwear to evaluate the accuracy of the safety and durability ratings assigned by the tire manufacturer, respectively.

NHTSA is not specifying the content or requirements of the consumer information and education portions of the program at this time. In light of the important objectives of this rulemaking, we are continuing to work to improve the content and format of the consumer information so that consumers will, in fact, be adequately informed. Specifically, NHTSA will be conducting additional consumer testing to explore how consumers will best comprehend information in each of the three categories discussed above. After additional consumer testing, NHTSA will publish a new proposal for the consumer information and consumer education portions of this new program.

Prompting NHTSA to pursue a deeper examination of consumers' comprehension of comparative tire information, several comments on the notice of proposed rulemaking (NPRM) suggested the agency consider additional indicators for the proposed label that would provide some understanding of what the ratings meant in terms of the choices available to a consumer. These suggestions included the use of an icon or mark on the labels to help consumers at a glance identify the most fuel efficient tire—an idea NHTSA had sought comment on in the NPRM—and suggestions that the ratings show high and low demarcations reflecting the range of ratings within the same size so that consumers and retailers would not become disenchanted with the system if they could not purchase or provide any top-rated tires in the size for the consumer's vehicle. Another commenter expressed concern with the idea of a mark for the best performers in the fuel efficiency rating category, as it could imply government endorsement and the commenter stated such endorsement should not be given unless it was to the safest tire.

[1] Public Law 110–140, 121 Stat. 1492 (Dec. 18, 2007).

[2] Transportation Energy Data Book, Edition 27, Tables 4–1 and 4–2, available at *http://cta.ornl.gov/data/index.shtml* (last accessed Mar. 5, 2009).

[3] *See* Final Rule, Federal Motor Vehicle Safety Standards, Tire Pressure Monitoring Systems, Controls and Displays, 70 FR 18136 (April 8, 2005).

[4] Transportation Research Board Special Report 286, Tires and Passenger Vehicle Fuel Economy, National Research Council of the National Academies, 5 (2006) (hereinafter "2006 NAS Report").

[5] *See* National Highway Traffic Safety Administration, NHTSA Tire Rolling Resistance Rating System Test Development Project: Phase 2—Effects of Tire Rolling Resistance Levels on Traction, Treadwear, and Vehicle Fuel Economy (February 2009). Docket No. NHTSA–2009–0121–0035.

These comments, as well as comments from other Federal agencies, have led NHTSA to recognize that a revised consumer research methodology could provide advanced understanding of how the presentation of relative rating information affects consumers' perceptions of the relevance of the information, and what motivates consumers to act in accordance with the information they have learned. Through additional consumer research, and a continued open dialog with interested stakeholders, NHTSA will consider how to best promote consumer understanding of the real-world benefits and possible tradeoffs involved in selecting tires at various points along relevant scales.

To further the development of the consumer information and consumer education portions of the tire fuel efficiency consumer information program, NHTSA recently announced that it will hold a public meeting on a new draft consumer research plan on Friday March 26, 2010 at the U.S. Department of Transportation Headquarters building.[6] The agency has opened a new docket for the public meeting, Docket No. NHTSA–2010–0018, and on that docket interested members of the public can access the draft research plan, early agency consumer research, and any written comments submitted at the meeting or in response to the meeting notice. NHTSA will consider the public comments received in developing a research plan to aid in the development of consumer information requirements and NHTSA's consumer education plan regarding tire fuel efficiency. NHTSA will also continue to consider comments received on the NPRM relating to the consumer information and education portions of the tire fuel efficiency consumer information program. A continued open dialog will allow interested stakeholders to further explicate their ideas of what they believe should be included in a successful tire fuel efficiency consumer information program, and how this information can best be communicated. The new consumer research will further inform these concepts by indicating in what form consumers are most likely to understand information, and act in accordance with what they have learned.

In developing this final rule, the agency consulted with the U.S. Department of Energy (DOE) and the U.S. Environmental Protection Agency (EPA) on many issues. Since the NPRM, the agency has received nearly 600 pages of comments, which have been carefully reviewed and considered. When developing the supplemental NPRM for the consumer information requirements, NHTSA will continue to consider and evaluate comments received on the NPRM. NHTSA will also continue to consult with EPA, DOE, and other Federal agencies experienced with energy efficiency consumer information programs on the development of the tire fuel efficiency consumer information program.

NHTSA has also prepared a companion Final Regulatory Impact Analysis (FRIA) that provides an analysis on the potential economic impacts of this consumer information program, which is available in the docket for this final rule.

B. Energy Independence and Security Act of 2007

The provision of EISA that mandates the consumer tire information program built on a legislative proposal originally introduced in 2006 after a National Academy of Sciences (NAS) report was issued suggesting that a tire fuel efficiency consumer information program could increase vehicle fuel economy by an average of 1 to 2 percent.[7] Many factors affect a vehicle's fuel economy, including its tires' rolling resistance, *i.e.,* the force needed to make the tires roll. The 2006 NAS report estimated that 4 percent (urban) to 7 percent (highway) of the energy created by a vehicle's fuel usage is used to overcome the rolling resistance of the tires. Therefore, reducing rolling resistance can reduce a vehicle's fuel consumption. As one of many strategies to meet the Federal corporate average fuel economy (CAFE) standards for new passenger cars and light trucks, automobile manufacturers often equip vehicles with low rolling resistance tires. However, consumers often unknowingly purchase higher rolling resistance tires when replacing their vehicle tires because information on the comparative rolling resistance of replacement tires and its impact on vehicle fuel economy is not readily available.

One of the most significant of the EISA mandates is the setting of separate maximum feasible standards for passenger cars and for light trucks at levels sufficient to ensure that the average fuel economy of the combined fleet of all passenger cars and light trucks sold by all manufacturers in the U.S. in model year (MY) 2020 equals or exceeds 35 miles per gallon. Per the President's May 19, 2009 announcement, on September 28, 2009, NHTSA and the Environmental Protection Agency (EPA) issued a joint NPRM, with NHTSA proposing CAFE standards under the Energy Policy and Conservation Act (EPCA), as amended by EISA, and EPA proposing greenhouse gas emissions standards under the Clean Air Act.[8] This joint proposal reflects a carefully coordinated and harmonized approach to implementing these two statutes. The new standards propose a significant increase in fuel economy by 2016. This consumer tire information program is one of the actions that will contribute towards the larger goals of energy independence and security. In comparison to CAFE standards, which apply to new vehicle fuel economy, this rule has goals of improving fuel economy for the existing fleet of vehicles, as replacement tires are purchased and installed.

Section 111 of EISA added section 32304A to Chapter 323 of title 49, United States Code. This chapter codifies consumer information requirements initially established by the Motor Vehicle Information and Cost Savings Act of 1972 (Pub. L. 92–513). The new section 32304A is titled "Consumer tire information" and specifies as follows:

- Within 24 months of the enactment of EISA, NHTSA is to promulgate rules establishing a national tire fuel efficiency consumer information program for replacement tires to educate consumers about the effect of tires on fuel efficiency, safety, and durability.
- The program must include a national tire fuel efficiency rating system for replacement tires to assist consumers in making more educated tire purchasing decisions.
- NHTSA must specify requirements for providing information to consumers, including information at the point of sale and other potential dissemination methods, including the Internet.
- NHTSA must also specify the test methods that manufacturers are to use in assessing and rating tires to avoid

[6] Notice of Public Meeting; Tire Fuel Efficiency, 75 FR 11806 (March 12, 2010), Docket No. NHTSA–2010–0018–0001.

[7] Previous attempts to establish a national tire fuel efficiency program can be found in proposed amendments to various energy bills in prior years. *See e.g.,* S. Amdt. 3083, 108th Cong., 150 Cong. Rec. S4710 (2004) (proposing to amend S. 150); S. Amdt. 1470, 108th Cong., 149 Cong. Rep. S10707 (2003) (proposing to amend S. 14). These amendments proposed regulating the fuel efficiency of tires in addition to a tire fuel efficiency grading system and consumer information program, and were not adopted.

[8] Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 74 FR 49454 (Sept. 28, 2009).

variation among test equipment and manufacturers.

• As a part of the consumer information program, NHTSA must develop a national tire maintenance consumer education program, which must include information on tire inflation pressure, alignment, rotation, and treadwear to maximize fuel efficiency, safety and durability of replacement tires.

C. Summary of NPRM

1. Proposed Test Procedures

The NPRM proposed to require tire manufacturers to rate the fuel efficiency of their tires using a measurement obtained with a test procedure recently finalized by the International Organization for Standardization (ISO), ISO 28580:2009(E), *Passenger car, truck and bus tyres—Methods of measuring rolling resistance—Single point test and correlation of measurement results* (hereinafter referred to as ISO 28580).[9] The choice of which test procedure to specify for measuring rolling resistance is important because measuring rolling resistance requires precise instrumentation, calibration, test conditions, and equipment alignment for repeatable results. As explained in detail in the NPRM, agency research shows that all of the available test procedures could meet these requirements. However, the ISO 28580 test method is unique in that it specifies a procedure to correlate results between laboratories and test equipment, which our research shows is a significant source of variation. Because other established test methods lack such a procedure, NHTSA would have to develop a new procedure to address this variation before any of those test methods could be considered. Further, the ISO 28580 test procedure is the specified test method in the proposed European Union Directive, allowing manufacturers to do one test to determine ratings for both proposed regulations.

As for the safety and durability ratings, due to the statutory timeline within which this rulemaking must be completed, NHTSA proposed to use traction and treadwear test procedures that are already specified under another tire rating system, the uniform tire quality grading standards (UTQGS).[10]

2. Proposed Rolling Resistance Rating Metric

The NPRM proposed to base a tire's fuel efficiency rating on rolling resistance force (RRF) as measured by the ISO 28580 test procedure. This is in contrast to basing a fuel efficiency rating on rolling resistance coefficient (RRC), or RRF divided by test load. The proposed European tire fuel efficiency rating system specifies tire ratings based on RRC. NHTSA proposed to base the rolling resistance rating on the RRF metric because such a rating translates more directly to the fuel required to move a tire, and based on the goals of EISA, appears to be a more appropriate metric.

3. Proposed Label

To convey information to consumers, the NPRM proposed a label that contains an individual tire's ratings for fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear), and which was similar to a ratings label that tested well in consumer research conducted by NHTSA. Prior to the NPRM, NHTSA conducted focus group studies in which it presented several labels using different graphics and scales to relay the ratings. The proposed label showed all the ratings on a scale of 0 to 100, with 100 being the best rating. Consumers expressed an understanding of this 0 to 100 scale, and reacted positively to red and green shading, with red indicating lower/worse ratings and green indicating higher/better ratings. Other graphics presented in NHTSA's consumer research were discussed in the NPRM.

4. Proposed Information Dissemination and Reporting Requirements for Tire Manufacturers and Tire Retailers

For tire manufacturers, NHTSA proposed that manufacturers be required to report various data to the agency. This is necessary both for enforcement of the rating system, and for development of NHTSA's tire fuel efficiency Web site, which will contain a database of tire information with a fuel savings estimator tool that allows easy comparison of fuel savings between various replacement tires. Regarding labeling, we proposed to require tire manufacturers to print the tire fuel efficiency graphic in color along with any other information manufacturers include on an existing paper label on the tire.[11]

As for requirements for tire retailers, we proposed a requirement that the paper label containing the new rating information must remain on the tire until the sale of the tire. The label refers consumers to the agency's Web site for further information about the ratings. We also proposed a requirement that tire retailers must display a poster that NHTSA would print and distribute that would explain the rating system and encourage consumers to compare ratings across tires. Finally, for tire manufacturers and retailers that maintain a Web site, the agency proposed to require those Web sites to link to the comprehensive tire Web site we will be developing as part of the national tire maintenance consumer education program. The agency also sought comments on any other information dissemination requirements that would ensure that easy-to-understand information is conveyed in a way that is most likely to impact consumers' decisions and, thus, affect their behavior and save them and our nation fuel and money.

5. Uniform Tire Quality Grading Standards

In the NPRM, the agency considered the need and appropriateness of continuing the current UTQGS requirements. NHTSA explained that if the agency maintained the current safety and treadwear UTQGS ratings, there would be concerns about consumer confusion as well as unnecessary duplication. For this and other reasons explained in the NPRM, the agency tentatively concluded that the current UTQGS requirements should either be removed, once tires meet the new EISA requirements, or amended to conform to the approach in today's rule.

6. Proposed Consumer Education Program

The NPRM identified and sought comment on various ways that NHTSA plans to implement a consumer education program to inform consumers about the effect of tire properties and tire maintenance on vehicle fuel efficiency, safety, and durability. Some of NHTSA's ideas for consumer education included informational posters or brochures that NHTSA would distribute at trade shows and other events, and which tire retailers could display at the point of sale and a centralized government Web site on tires containing a database of all tire rating information. NHTSA also

[9] *See* Notice of Proposed Rulemaking, Tire Fuel Efficiency Consumer Information Program, 74 FR 29542 (June 22, 2009); Docket No. NHTSA–2009–0121–0014 (hereinafter "Tire Fuel Efficiency NPRM").

[10] *See* 49 CFR 575.104 (2008).

[11] Manufacturers are required to print UTQGS information on a paper label pursuant to 49 CFR 575.104(d)(1)(B). Many manufacturers include other information on this paper label as well. Note that NHTSA uses the term "paper label" in the colloquial sense; many labels on tires are actually made of plastic.

announced that we are planning to develop a comparative fuel savings estimator that would show the amount of money a consumer would save annually or over the estimated lifetime of the tires of varying fuel efficiency ratings. Using the estimator, a consumer could select tires to compare, enter the fuel economy of their vehicle (miles per gallon or mpg) and the average number of miles they drive each year and even the dollar amount they are paying for fuel and get a calculation of differences in fuel usage and/or money saved for the tires under comparison.

Finally, the NPRM announced plans to develop and form new partnerships to distribute educational messages about tire fuel efficiency and tire maintenance. NHTSA explained that we will seek to partner with any interested tire retailers, and State or local governments, as well as manufacturers who share NHTSA's goal of promoting the importance of proper tire maintenance. The NPRM also stated that we will seek to partner with universities, colleges and high schools that may wish to educate students regarding tire fuel efficiency or proper tire maintenance. These various innovative tools and education measures will assist consumers in making better-informed tire purchasing and maintenance decisions.

7. Benefits and Costs

As explained in the NPRM, it is intended that the rule will have benefits in terms of fuel economy, safety, and durability. At the very least, the rule should enable consumers to make more informed decisions about these variables, thus increasing benefits of the factors that most matter to them. Because the agency could not foresee precisely how much the proposed consumer information program would affect consumer tire purchasing behavior and could not foresee the reduction in rolling resistance among improved tires, the Preliminary Regulatory Impact Analysis (PRIA) estimated benefits using a range of hypothetical assumptions regarding the extent to which the tire fuel efficiency consumer information program affects the replacement tire market. Specifically, the PRIA developed estimates assuming that between 2 percent and 10 percent of targeted tires are improved and that the average reduction in rolling resistance among improved tires is between 5 percent and 10 percent. Under these hypothetical assumptions, the PRIA estimated that the proposal would save 7.9 to 78 million gallons of fuel and prevent the emission of between 76,000 and 757,000 metric tons of carbon dioxide (CO_2) annually. The values of the fuel savings were between $22 and $220 million at a 3 percent discount rate and between $20 and $203 million at a 7 percent discount rate.

The PRIA estimated the annual cost of NHTSA's proposal to be between $18.9 and $52.8 million. This included testing costs of $22,500, reporting costs of around $113,000, labeling costs of around $9 million, costs to the Federal Government of $1.28 million, and costs of between $8.4 and $42 million to improve tires. In addition, NHTSA anticipated one-time costs of around $4 million, including initial testing costs of $3.7 million and reporting start-up costs of $280,000.

8. Lead Time

NHTSA proposed to require tire manufacturers to meet applicable requirements for all existing replacement tires within 12 months of the issuance of a final regulation. For new tires introduced after the effective date of this rule, NHTSA proposed to require reporting of information at least 30 days prior to introducing the tire for sale, as is currently required for UTQGS information.

Regarding the poster, in retailers that have a display room, the agency proposed to make this poster available within 12 months of the issuance of a final regulation. At that time NHTSA would publish a **Federal Register** notice announcing the availability of the poster. The agency proposed that a tire retailer must have the poster on display within 60 days of the issuance of the notice of availability in the **Federal Register**. We proposed that a tire retailer would be able to comply with the requirement of displaying the poster either by downloading and printing it, in color and with the specifications from NHTSA's Web site, or by contacting the agency and requesting that we send the retailer a copy of the poster. For tire retailers and tire manufacturers with an Internet presence, NHTSA proposed that those Web sites link to NHTSA's tire Web site within 12 months of the issuance of a final regulation.

D. Brief Summary of Public Comments on the NPRM

Scope of the program: Some consumer and safety groups suggested that NHTSA require that tire manufacturers include the new tire ratings in advertisements for tires. Further, these groups, a tire manufacturer, and ExxonMobil Chemical Company (ExxonMobil) urged NHTSA to contemplate a standard for tire fuel efficiency performance. ExxonMobil also suggested that NHTSA establish a minimum inflation pressure retention loss rate for tires to minimize the air loss characteristics of tires. Various commenters sought confirmation of which entities would be considered tire manufacturers and tire retailers under the tire fuel efficiency consumer information program, as well as confirmation of the different tires types of tires that were not required to be rated under the program. Multiple commenters also asked whether tires that were not required to be included under the program could be voluntarily rated under the program.

Rolling resistance test procedure: Various commenters urged us to adopt the full ISO 28580 test procedure. MTS Systems Corp. (MTS), a test equipment manufacturer, suggested a different test method using a flat surface test machine rather than a road wheel. Several commenters also noted the need for NHTSA to specify a reference test machine since the ISO test procedure needs one for the alignment of results between different measurement machines, but the ISO has not yet designated one.

Rolling resistance rating metric: Tire Rack (an online tire retailer), Consumers Union (non-profit publisher of Consumer Reports magazine), and ExxonMobil expressed support for using RRF as the metric on which the agency should base the fuel efficiency rating. The tire manufacturers, a tire test equipment manufacturer, the European Commission, Japan Automobile Tyre Manufacturers Association (JATMA), the Natural Resources Defense Council (NRDC, an environmental group), and General Motors (GM) commented that RRC would be a better metric for a fuel efficiency rating than RRF. These commenters argued that basing a fuel efficiency rating on RRC would spread out ratings for tires available to a single consumer so that the consumer would be able to get a top rated tire.

Safety: Advocates for Highway and Auto Safety (Advocates) supported the inclusion of tire safety information in the tire fuel efficiency consumer information program, and stated that the program should not promote cost savings at the expense of safety. JATMA supported the use of the current UTQGS traction grading test method as the basis for a safety rating for purposes of the tire fuel efficiency consumer information program. Tire Rack stated that NHTSA should base the safety rating on an average of the slide and peak coefficients of friction, the measurements of traction obtained via the traction test procedure. Consumers Union stated that the safety (wet

traction) rating scale should be revised to define a span that is most appropriate to the level of performance commonly found in current replacement tires while still leaving room for future improvement. The Rubber Manufacturers Association (RMA, a tire industry trade association) argued that EISA did not give NHTSA the authority to establish a new rating system for consumer information on tire safety. RMA contended that the derivation of the safety rating formula from the wet traction test measurements was not explained well in the NPRM and that they were unable to comment on it.

Durability: Michelin North America (Michelin, a tire manufacturer) commented that NHTSA should specify changes to the UTQGS treadwear procedure to yield more truly representative wear results. Michelin also commented that the durability (treadwear) rating scale should be adjusted because the ratings of some current replacement tires would far exceed the top rating on the scale. RMA argued that EISA did not give NHTSA the authority to establish a new rating system for consumer information on tire durability.

Overall rating: The tire manufacturers, MTS, Tire Rack, Advocates, and NRDC did not support an overall rating. Consumers Union, as well as other consumer and safety groups (Public Citizen *et al.*)[12] did support some form of an overall rating.

Label: NRDC, a private citizen, and Public Citizen *et al.* suggested the inclusion of a best-in-class (EnergyStar-type) endorsement for the most fuel efficient tires. Relatedly, to facilitate comparisons, Consumers Union and Tire Rack suggested the ratings show high and low demarcations reflecting the range of ratings for tires of the same size. Public Citizen *et al.* supported providing all the ratings on the same scale. Ford Motor Company (Ford) and Advocates suggested using the UTQGS scales for the traction and treadwear ratings, as opposed to the proposed 0–100 scale. Advocates expressed support for the green-red color coding, while Michelin stated that the transfer of information to consumers cannot be wholly dependent upon color. Tire manufacturers supported a five category tire efficiency rating system, as opposed to the proposed 0–100 rating scale. RMA argued that EISA does not give NHTSA authority to provide consumer information on a tire's greenhouse gas (GHG) emissions. Numerous commenters submitted suggestions about terminology on the label, the ordering of the rating scales, the required size of the tire label, additional disclaimers to place on the label, and alternate graphic icons for the rating scales. RMA and the European Commission opposed the inclusion of tire manufacture date on the tire label, an issue on which NHTSA sought comment in the NPRM, but did not propose regulatory language. Public Citizen *et al.* suggested that the tire identification number (TIN), which NHTSA's safety standards require be molded onto the tire, be included on the paper label. Public Citizen *et al.,* as well as the Tire Industry Association (TIA), expressed concern that the paper label may not provide consumers with information at a useful time in influencing purchasing decisions.

Information Dissemination and Reporting Requirements

- *Tire manufacturer requirements:* Tire manufacturers expressed support of the interpolation of test values for purposes of data reporting. Other commenters generally opposed the interpolation of test values. RMA opposed the proposed data reporting requirements. NRDC supported requiring manufacturers to report rolling resistance data. The International Council on Clean Transportation (ICCT) agreed with the proposal that manufacturers should be required to report which tires are exempted, and the basis for the exemption. Similarly, Michelin expressed support for requiring tire manufacturers to report which tires qualify for the low volume exemption and are not labeled.
- *Tire retailer requirements:* Consumers Union suggested that NHTSA provide further guidance on how best to ensure that consumers can see the educational poster at the point of sale. RMA suggested that instead of requiring the proposed ratings graphic appear on a tire label, NHTSA should require that the rating information be made available to consumers at the point of sale. TIA commented that NHTSA underestimates the importance of dialogue between sales associates and consumers at the point of sale, and suggested that sales associates should be trained to communicate the information provided in the new rating system. Similarly, Public Citizen *et al.,* Ford, the National Automobile Dealers Association (NADA) and ICCT encouraged the adoption of additional requirements beyond requiring the retailer keep the label on the tire until it is sold, reasoning that relatively few consumers see tires before they buy them as there are limited number of tires on display in tire retailers.

Uniform tire quality grading standards: Tire manufacturers, Tire Rack, and Consumers Union expressed support for the idea of replacing the UTQGS requirements with the requirements created under the tire fuel efficiency consumer information program. These commenters cite the facts that this new rating system will be on a different scale and will be based on different test measurements than the UTQGS grading system, which may cause consumer confusion. Public Citizen *et al.* supported NHTSA's continuing to provide the temperature resistance rating along with the other UTQGS ratings, and stated that the temperature resistance rating should be incorporated into the new tire fuel efficiency consumer information program rating system.

Consumer education program: Numerous commenters suggested various messages that NHTSA should be communicating to promote the success of the consumer education program. Many commenters stated that much of the effectiveness of this rating system will depend on the success and reach of the consumer education program, informing consumers of the meaning of the new rating system and of the importance of proper tire inflation and maintenance.

Benefits and costs: NRDC and ICCT commented that our benefits are underestimated due to NHTSA's underestimation of the impact of reduced rolling resistance on fuel economy. RMA predicted higher testing, labeling, and tire improvement costs than NHTSA. RMA also commented that NHTSA overestimates benefits.

Lead time: Tire manufacturers, the European Commission, and JATMA requested more lead time than the twelve months NHTSA proposed in the NPRM.

Enforcement: ICCT and MTS commented that NHTSA should tighten the compliance tolerance bands that it gave in the NPRM, and emphasized that compliance tolerances are important because consumers should have confidence that the tires they are buying are accurately labeled. RMA expressed support for requiring reported ratings must be less than or equal to the rating determined by the agency in compliance testing. RMA opposed the tolerance band concept for compliance. RMA also requested clarification of how NHTSA intends to apply the new civil penalties provision.

[12] Public Citizen, Center for Auto Safety, Consumer Federation of America, and Safe Climate Campaign submitted joint comments to the NPRM. *See* Docket No. NHTSA–2008–0121–0043.1. Throughout this notice, we will refer to these as Public Citizen *et al.* comments.

E. Final Rule

The final rule adopts the test procedure provisions of the NPRM summarized above in section I.C, with the changes discussed below made in response to the public comments on the NPRM. This final rule also clarifies the scope of the tire fuel efficiency consumer information program, and responds to numerous comments on related issues.

As explained above, NHTSA is not specifying the content or requirements of the consumer information and education portions of the program at this time, but will be issuing a new proposal on these portions of the program after engaging in additional consumer research. NHTSA is also not finalizing information dissemination requirements for tire manufacturers or tire retailers in this final rule, as further consumer research may indicate how consumers best comprehend ratings and other consumer information. However, as discussed further below, this final rule does specify that NHTSA will require tire manufacturers to report ratings, but not test data, to the agency as part of the data reporting requirements of the tire fuel efficiency consumer information program.

1. Test Procedures

EISA mandates that this rulemaking include "specifications for test methods for manufacturers to use in assessing and rating tires to avoid variation among test equipment and manufacturers." [13] As proposed in the NPRM, this final rule requires tire manufacturers to rate the fuel efficiency of their tires. To test for compliance with this requirement, NHTSA will use a measurement obtained using the recently approved test procedure ISO 28580:2009(E), *Passenger car, truck and bus tyres—Methods of measuring rolling resistance—Single point test and correlation of measurement results.*[14]

As explained in detail in the NPRM, the ISO 28580 test method is unique in that it specifies a procedure to correlate results between different test equipment (*i.e.,* different rolling resistance test machines). This is important because our research shows that machine-to-machine differences are a significant source of variation. As discussed below, the ISO has not yet completed all aspects of this procedure. NHTSA is nonetheless specifying the ISO 28580 test procedure in this final rule because EISA specifically directs the agency to avoid the type of significant variation that the ISO 28580 lab alignment procedure takes into account, but other established test methods do not. Further, the ISO 28580 test procedure is the specified test method in the European Union Directive and in the staff recommendations for a California regulation, allowing manufacturers to do one test to determine ratings for multiple regulations.

As commenters pointed out, under ISO 28580, use of the lab alignment procedure depends on the specification of a reference test machine against which all other labs will align their measurement results. Because the ISO has not yet specified a reference lab for the ISO 28580 test procedure, NHTSA must specify this laboratory for the purposes of implementing this rule so that tire manufacturers know the identity of the machine against which they may correlate their test results. In the near future, NHTSA will announce one or more private laboratories to operate the reference test machine(s) for the tire fuel efficiency consumer information program.[15]

Under the ISO 28580 lab alignment procedure, machine alignment is conducted using batches of alignment tires of two models with defined differences in rolling resistance that are certified on the reference test machine. ISO 28580 specifies requirements for these alignment tires ("Lab Alignment Tires" or LATs), but specific sizes or models of LATs are not specifically identified in ISO 28580. Therefore, NHTSA must also specify which LATs tire manufacturers should use to align other rolling resistance machines to the reference lab. Since specifications and source of supply for these LATs has not yet been finalized, NHTSA will postpone the specification of LATs to a later date. NHTSA will address available LAT options in the forthcoming supplemental NPRM relating to the consumer information requirements and consumer education portions of the program.

Because bias ply tires are included in the scope of the tire fuel efficiency consumer information program, NHTSA is also specifying a break-in procedure for bias ply tires, in order to warm up these types of tires up before ISO 28580 testing.[16] This roadwheel break-in procedure that will be used for bias ply tires is adopted from already established Federal motor vehicle safety standards.

As for the safety and durability ratings, NHTSA is specifying the use of the test procedures that are already specified under the UTQGS. For the traction test, because we are requiring the collection of slightly different data than under the UTQGS traction test method, a one-time modification in the software used in the test equipment may be necessary. The agency will continue to examine other metrics to see if they could prove more effective in providing consumer information about safety and durability.

2. Rolling Resistance Rating Metric

Based on the large number of comments received on this issue, and to retain flexibility to use what the agency learns about consumer comprehension from the future consumer research, NHTSA will defer a decision on which rolling resistance metric should be used for the fuel efficiency rating and consider that matter further in the future supplemental NPRM and final rule that will finalize the consumer information and education portions of the program.

3. Consumer Information Program Requirements

NHTSA is not specifying the content or requirements of the consumer information program at this time. In light of the important objectives of this rulemaking, we are continuing to work to improve the content and format of the consumer information so that consumers will, in fact, be adequately informed. After additional consumer testing, NHTSA will publish a new proposal for the consumer information portion of this new program in a supplemental NPRM.

4. Information Dissemination and Reporting Requirements for Tire Manufacturers and Tire Retailers

NHTSA is requiring that tire manufacturers report the three ratings for each tire to the agency. Unlike the proposed data reporting requirements, NHTSA is not requiring manufacturers to report test measurements. This is due to concerns that this information being public could cause competitive harm to tire manufacturers. Requiring the

[13] 49 U.S.C. 32304A(a)(2)(C).

[14] *See http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=44770* (last accessed Sept. 24, 2009).

[15] It is not the intent of NHTSA to unilaterally establish the reference machine for ISO or other global regions. Rather, the agency must define a "regional" reference machine for the tire fuel efficiency consumer information program that is independent of entities we regulate and is accessible to the agency by standard contractual mechanisms. This will allow reporting under the program and agency compliance testing that meet the requirements of EISA. It is our understanding that the output of a given "candidate" machine can be corrected using the appropriate correlation equations and, therefore, different entities/rating systems could also designate their own reference machines.

[16] Bias ply tire design is an older internal construction tire design. Radial ply construction of tires has been the industry standard for the past 20 years, and the vast majority of passenger car tires on the market today are of radial construction.

submission of such data would make public each manufacturer's statistical approach to risk in terms of how each manufacturer is rating tires to prevent the possibility of non-compliance.[17] NHTSA will also require tire manufacturers to report which tire models and sizes are excluded from the scope of this program, and thus not rated, because this information would be useful to consumers who wish to understand which tires are not rated and why. NHTSA will make this information available on its tire Web site. For manufacturers that are otherwise required to report ratings data, this information should be included with those data submissions. For manufacturers that only produce limited production tires, or other tires that are excluded from the applicability of today's program, these manufacturers must provide a one-time list of each one of its tire models/sizes, and a statement that every one of its tire models/sizes is excluded from the applicability of this regulation and, thus, is not rated. NHTSA will make this information on which tires are excluded from the new rating system available on its tire Web site.

Regarding labeling, as noted above, NHTSA is not specifying the content or requirements of the consumer information program at this time. In light of the important objectives of this rulemaking, we are continuing to work to improve the content and format of the label so that consumers will, in fact, be adequately informed. After additional consumer testing, NHTSA will publish a new proposal for the consumer information portion of this new program in a supplemental NPRM.

As for requirements for tire retailers, for similar reasons discussed above, in order to have the full benefit of any new understanding of how consumers best comprehend information gained from the agency's new consumer research, NHTSA will re-propose requirements for tire retailers in the supplemental NPRM on the consumer information and education portion of the tire fuel efficiency consumer information program.

5. Uniform Tire Quality Grading Standards

NHTSA is retaining the UTQGS requirements at this time, including the UTQGS treadwear, traction, and temperature resistance ratings. However, if a future final rule finalizes that ratings under the tire fuel efficiency consumer information program must be printed on a paper label on each passenger car replacement tire, NHTSA will consider removing the UTQGS requirement of molding UTQGS ratings onto tires, and the UTQGS requirement of printing UTQGS information on the paper tire label when a tire is labeled in accordance with the tire fuel efficiency consumer information program requirements. The requirements to report UTQGS grading information to NHTSA would remain. As such, the UTQGS ratings would still be available to interested consumers, vehicle manufacturers, and tire retailers, but a consumer looking at a tire would not be confronted with different and confusing rating scales. NHTSA wants to study further the likely consequences of discontinuing the temperature resistance rating before making a decision about the future UTQGS requirements. NHTSA is making no changes to UTQGS requirements in this final rule.

6. Consumer Education Program

For similar reasons discussed above, in order to have the full benefit of any new understanding of how consumers best comprehend information gained from the agency's new consumer research, NHTSA will re-propose its ideas for the consumer education portion of the program in the supplemental NPRM on the consumer information and education portions of the tire fuel efficiency consumer information program. The supplemental NPRM will newly propose and seek comment on numerous ways that NHTSA could implement a consumer education program to inform consumers about the effect of tire properties and tire maintenance on vehicle fuel efficiency, safety, and durability. The supplemental NPRM will also discuss some of the messages that NHTSA believes will be key to a successful tire fuel efficiency consumer information program.

Within the next year, NHTSA will begin developing a new government Web site on tires, which will be linked directly from *http://www.safercar.gov/*. It will contain all the information on NHTSA's current tire Web site (also located within *http://www.safercar.gov*), as well as links to other useful Web sites that contain educational information about tire maintenance.[18] In furtherance of the objectives of consumer education program, the supplemental NPRM will seek comment on the structure and content of the tire Web site. NHTSA's tire Web site will eventually contain a database of all tire rating information.

7. Benefits and Costs

It is hoped that the final rule will have benefits in terms of fuel economy, safety, and durability. At the very least, the final rule should enable consumers to make more informed decisions about these variables, thus increasing benefits in ways that most matter to them. It is possible that the rule will help promote innovation that will provide benefits to consumers in all three areas of tire performance. Because the agency cannot foresee precisely how much today's consumer information program will affect consumer tire purchasing behavior and cannot foresee the reduction in rolling resistance among improved tires (we estimate the potential range of rolling resistance improvement to be between 5 and 10 percent), the FRIA estimates benefits using a range of hypothetical assumptions regarding the extent to which the tire fuel efficiency consumer information program affects the replacement tire market. For example, if we assume that 1 percent of targeted tires (1.4 million tires) are improved and that the average reduction in rolling resistance is 5 percent, then under these hypothetical assumptions, the proposal is estimated to save 3 million gallons of fuel and prevent the emission of 29,000 metric tons of CO_2 annually. The value of these savings is $11.6 million at a 3 percent discount rate.

If 1 percent of targeted tires are improved at an average cost of $3 per tire, the annual cost of NHTSA's final rule is estimated to be $9.4 million. This includes annual testing costs of $3.8 million, annual reporting costs of around $113,000, annual costs to the Federal Government of $1.3 million, and annual costs of $4.23 million to improve tires. This does not include annual costs for labeling. Since this final rule does not require a label, NHTSA will account for costs of a label when the requirement is re-proposed in the supplementary NPRM addressing consumer information requirements. In the first year, NHTSA anticipates one-time costs of $34.8 million, including the same costs noted above except changes in initial testing costs of $33.1 million, no one-time costs to improve

[17] Although NHTSA neither proposed to publish such data submitted to the agency, nor to post such data on the comprehensive tire Web site, such information in the possession of the agency would be subject to Freedom of Information Act requests and the agency does not believe it could deny such a request.

[18] NHTSA's current online tire information can be found at *http://www.nhtsa.gov/portal/site/nhtsa/menuitem.c6b5d461a04337a1ba7d9d1046108a0c/* and *http://www.safercar.gov/portal/site/safercar/menuitem.13dd5c887c7e1358fefe0a2f35a67789/?vgnextoid=0e0aaa8c16e35110VgnVCM1000002fd17898RCRD* (last accessed Sept. 24, 2009).

tires (NHTSA only assumes this as a subsequent annual cost, not an initial cost), and reporting start-up costs of almost $400,000.

Table 1 shows cost and benefit estimates developed to date, which may change based on further study on the design of the consumer information requirements. The assumptions are that silica technology is used at a cost of $3 per tire, that this technology improves rolling resistance and has no or slightly favorable impacts on wet traction and treadwear. The estimates below assume that 1 percent of targeted tires are sold with improved rolling resistance.

TABLE 1—TOTAL BENEFITS AND COSTS ESTIMATES

[In millions of dollars]

	3 Percent discount rate		7 Percent discount rate	
Fuel Efficiency Improvement	5%	10%	5%	10%
Costs (first year)	$34.8	$34.8	$34.8	$34.8
Costs (annual)	$9.4	$9.4	$9.4	$9.4
Benefits [a]	$11.6	$23.2	$10.6	$21.2
Annual Net Benefits (Costs) [b]	$2.2	$13.8	$1.2	$11.8

[a] Average annual benefit through 2050.
[b] Counting only annual costs in the future; assuming 1% of replacement tires are sold with improved fuel efficiency.

8. Lead Time

Lead time will be determined based on the timing of the final rules that will specify the requirements and content of the consumer information and the specification of a reference laboratory or laboratories. If the later of the final rules is the one in which NHTSA announces the selection of a reference laboratory or laboratories with the capability to test LATs, NHTSA will require tire manufacturers to meet applicable requirements for replacement tires they manufacture in stages, by tire size. In that case, tire manufacturers must meet applicable requirements for 15 and 16-inch tires, the most popular rim sizes,[19] first; tire manufacturers must meet applicable requirements for other passenger car tire sizes at a later date. That phase in would be tied to the publication of a final rule specifying the availability of certified LATs from the reference laboratory or laboratories. As noted above, in the near future NHTSA will announce one or more private laboratories to operate the reference test machine(s). The agency is working expeditiously to establish and implement procedures for the selection of a reference laboratory or laboratories. Soon after, NHTSA will publish a **Federal Register** notice of the readiness of the reference laboratory or laboratories to provide LATs under ISO 28580.

If the final rule specifying the requirements and content of the consumer information portion of the program occurs after the final rule specifying the reference laboratory or laboratories, NHTSA may establish a lead time different from the phase in described above since tire manufacturers will have had since the final rule specifying the reference laboratory or laboratories to begin testing to the test procedures specified in this final rule.

In that case, NHTSA would also announce in the final rule specifying the requirements and content of the consumer information and consumer education portion of the program the first date by which tire manufacturers must submit required data to NHTSA on replacement tires, and the compliance dates for any other tire manufacturer or tire retailer requirements established in that rulemaking. For new tires introduced after those compliance dates, NHTSA is requiring reporting of information at least 30 days prior to introducing the tire for sale, as is currently required for UTQGS information.

The lead time is longer than the 12 months proposed in the NPRM for several reasons. First, as commenters correctly pointed out, tire manufacturers will need some additional time to validate correlation equations between ISO 28580 and other rolling resistance test methods many manufacturers presently use if they are using laboratories other than Smithers Scientific Services, Inc. (Smithers) and Standards Testing Laboratories (STL).

Second, because the safety rating test requires recording of the peak coefficients of friction, it is unlikely that manufacturers have established much (if any) correlation of their peak traction measurements to the peak values at NHTSA's San Angelo test facility. Therefore, it will likely take tire manufacturers more than a year to test enough tires to establish a correlation for all of their tire sizes to include estimated values in the reporting formula.

Finally, manufacturers cannot start rating for fuel efficiency until they can obtain certified reference tires from a reference lab so that they can use the ISO 28580 lab alignment procedure. NHTSA has determined that upon the availability of certified LATs, manufacturers will be able to accurately rate all tires within 24 months. However, recognizing that the deadlines imposed by EISA indicate a desire to have information available to consumers as quickly as possible, NHTSA would phase in the availability of this consumer information. Because tires with 15 and 16 inch rim sizes make up more than 22 percent of sales in the replacement passenger car tire market, NHTSA believes there will be a significant benefit for requiring these most popular tire sizes to be rated as soon as possible. Recognizing the uncertainty of the rulemaking timeline for finalizing the requirements and content of the consumer information and consumer education portions of the tire fuel efficiency program, NHTSA will tie all compliance dates to the latter of the consumer information and education final rule, or the final rule announcing the availability of the reference laboratory or laboratories to test LATs under ISO 28580.

[19] The *RMA Preliminary 2010 Factbook* estimated that 15 and16-inch passenger replacement tires constituted about 22% of the replacement passenger tire sales in the U.S. in 2009. *See* Rubber Manufacturers Association, Tire Industry Factbook, available at *http://www.rma.org/rma_resources/market_information/tire_industry/* (last accessed March 11, 2010).

II. Background [20]

A. Contribution of Tire Maintenance and Tire Fuel Efficiency To Addressing Energy Independence and Security

1. Tire Fuel Efficiency and Rolling Resistance

Without the continual addition of energy, a vehicle will slow down. This effect is due to many forces, including aerodynamic drag, driveline losses, brake drag, and tire rolling resistance. The first three of these are vehicle properties; they will not be discussed further. The fourth, rolling resistance, is the effort required to keep a given tire rolling. That is, rolling resistance is the energy loss during the continuation of rotational movement of the tire. As such, it always opposes the vehicle's longitudinal, or forward/backward, movement. Since this rolling resistance force (RRF) opposes the direction of travel of the rotating tire, it directly reduces the efficiency of a vehicle in converting the chemical energy in the fuel to motion of the vehicle. Therefore, tire rolling resistance is the most effective metric for rating the "fuel efficiency" of a tire.

In general, vehicle efficiency affects the conversion of chemical energy in motor fuel into mechanical energy and the transmission of energy to the axles to drive the wheels. Figure 1 illustrates the energy uses and losses for a midsize passenger car. Part of the energy supplied to the wheels of the vehicle is lost due to energy converted to heat within the structure of the tire as well as friction between the tire and the road, which creates resistance, decreasing fuel efficiency.

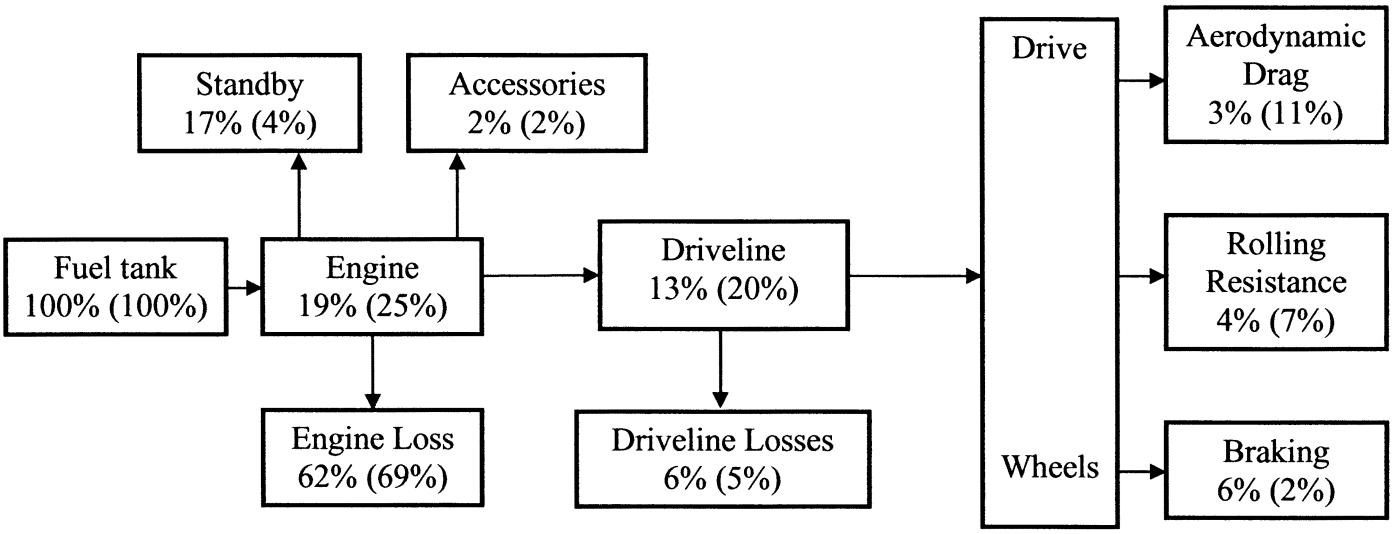

Figure 1. Uses and Losses of Fuel Energy in a Vehicle – Estimates of City and Highway Usage (Highway Figures Appear in Parentheses)[21]

As noted above, a tire's rolling resistance is the energy consumed by a rolling tire, or the mechanical energy converted into heat by a tire, moving a unit distance on the roadway.[22] The magnitude of rolling resistance depends on the tire used, the nature of the surface on which it rolls, and the operating conditions—inflation pressure, load, and speed.[23]

2. Relationship between tire maintenance and tire fuel efficiency and vehicle fuel economy

Tires with reduced inflation pressure exhibit more sidewall bending and tread shearing. This increased deformation causes increased energy loss by the flexing of the rubber. Further, tires with less than optimal inflation pressure have a larger footprint of the tire on the road, creating more contact between the tire and the road, also increasing rolling resistance. Therefore, properly inflated tires have less rolling resistance and higher fuel efficiency than under-inflated tires. Moreover, all tires need proper inflation and proper maintenance to achieve their intended levels of efficiency, safety, wear, and operating performance. Thus, a strong message urging vigilant maintenance of inflation must be a central part of communicating information on the fuel efficiency performance of tires to motorists.[24]

In addition to proper tire inflation pressure, combinations of differences in tire dimensions, design, materials, and construction features will cause tires to differ in rolling resistance as well as in many other attributes such as traction, handling, noise, wear resistance, and appearance.[25] Thus, when choosing among replacement tires, consumers choose among tires varying in price, style, and many aspects of performance, including rolling resistance, treadwear life, and traction. Every year Americans spend approximately $20 billion replacing about 200 million passenger

[20] This discussion is substantially the same as the Background discussion in the NPRM, but is repeated here to provide context for this new regulatory program and for the convenience of the reader. Comments on EISA section 111's preemption provision are discussed in this section. Discussions of the European Union's efforts towards increasing on-road fuel economy by reducing average rolling resistance is also updated. *See* Tire Fuel Efficiency NPRM, *supra* note 9, at 29547–29552.

[21] *See http://www.fueleconomy.gov/feg/atv.shtml* (last accessed Sept. 24, 2009); 2006 NAS Report, *supra* note 4, at 29.

[22] Rolling resistance is, thus, defined as energy per unit distance, which is the same units as force (Joules/meter = Newtons). However, unlike force, rolling resistance is a scalar quantity with no direction associated with it. National Highway Traffic Safety Administration, The Pneumatic Tire, DOT HS 810 561, at 477 (February 2006).

[23] *Id.*

[24] 2006 NAS Report, *supra* note 4, at 5, 97.

[25] *Id.* at 1.

car tires.[26] Thus, the tires consumers purchase will not only affect the handling, traction, ride comfort, and appearance of their cars, but also the fuel economy.[27]

Fuel economy improvements are a large part of ensuring a more secure energy future.[28] EISA will help reduce America's dependence on oil by reducing U.S. demand for oil by requiring the light duty vehicle industry to achieve a national average fuel economy of at least 35 miles per gallon by 2020 for passenger cars and light trucks combined. Achieving this will entail increasing fuel economy standards by 40 percent and resulting in saving billions of gallons of fuel. In accordance with the President's May 19, 2009 announcement, on September 28, 2009, NHTSA and EPA issued a joint NPRM, with NHTSA proposing CAFE standards under EPCA, as amended by EISA, and EPA proposing greenhouse gas emissions standards under the Clean Air Act.[29] This proposal would require a fleet-wide fuel economy of 34.1 miles per gallon (mpg) by 2016, thus nearly reaching the EISA target four years earlier than the EISA deadline. Today's rule complements that proposal by establishing a tire fuel efficiency rating system and consumer education program that will contribute to increases in actual on-road fuel economy achieved, even for vehicles currently in service.

Further, improving fuel economy reduces the amount of tailpipe emissions of CO_2. CO_2 emissions are directly linked to fuel consumption because CO_2 is an ultimate end product of burning gasoline. The more fuel a vehicle burns, the more CO_2 it emits. Since the CO_2 emissions are essentially constant per gallon of fuel combusted, the amount of fuel consumption per mile is directly related to the amount of CO_2 emissions per mile. Thus, improvements in fuel economy necessarily reduce tailpipe emissions of CO_2.[30] The need to take action to reduce greenhouse gas emissions, *e.g.,* motor vehicle tailpipe emissions of CO_2, in order to forestall and even mitigate climate change is well recognized.[31]

3. 2006 National Academy of Sciences report

In the Consolidated Appropriations Act of 2004,[32] Congress provided funding through the USDOT/NHTSA to the National Academy of Sciences (NAS) to develop and perform a national tire fuel efficiency study and literature review.[33] The NAS was to assess the feasibility of reducing rolling resistance in replacement tires and the effects of doing so on vehicle fuel consumption, tire wear life and scrap tire generation, and tire operating performance as it relates to motor vehicle safety. Congress asked that the assessment include estimates of the effects of reductions in rolling resistance on consumer spending on fuel and tire replacement.

In April 2006, the Transportation Research Board and the Board on Energy and Environmental Systems, part of the National Academies' Division on Engineering and Physical Sciences, released Special Report 286, Tires and Passenger Vehicle Fuel Economy: Informing Consumers and Improving Performance (2006 NAS Report).[34] The 2006 NAS Report concluded that reduction of average rolling resistance of replacement tires by 10 percent was technically and economically feasible, and that such a reduction would increase the fuel economy of passenger vehicles by 1 to 2 percent, saving about 1 to 2 billion gallons of fuel per year nationwide.[35]

A reduction in the average rolling resistance of replacement tires in the vehicle fleet can occur through various means. Consumers could purchase more tires that are now available with lower rolling resistance, tire designs could be modified, and new tire technologies that offer reduced rolling resistance could be introduced. More vigilant maintenance of tire inflation pressure may further this outcome as well.[36] The 2006 NAS Report concluded that consumers, if sufficiently informed and interested, could bring about a reduction in average rolling resistance by adjusting their tire purchases and by taking proper care of their tires once in service, especially by maintaining recommended inflation pressure.[37]

The 2006 NAS Report observed that consumers currently have little, if any, practical way of assessing how tire choices can affect vehicle fuel economy. Recognizing this market failure, the Report recommended that Congress authorize and make sufficient resources available for NHTSA to prompt and work with the tire industry in gathering and reporting information on the influence of passenger tires on vehicle fuel consumption.[38] The 2006 NAS Report recognized the challenge of changing consumer preference and behavior, but recommended Congressional action nonetheless because of the potential societal benefits associated with increasing effective on-road fuel economy by even 1 to 2 percent.[39] This ambitious undertaking must begin with information concerning the tire's influence on fuel efficiency being made widely and readily available to tire buyers and sellers. The consumer tire information program mandated by EISA and promulgated in today's notice begins this undertaking.

B. Efforts by Other Governments To Establish Consumer Information Programs To Address These Issues

Other countries have also begun working towards increasing on-road fuel economy by reducing average rolling resistance. These countries include those of the European Union and Japan. In addition, the State of California has also initiated a program to increase vehicle fuel economy using tire efficiency ratings.

1. California

In 2001, California Senate Bill 1170 authorized the California Energy Commission (CEC) to conduct a study to investigate opportunities for increasing usage of low rolling resistance tires in California.[40] The study concluded that there was a potential for substantial vehicle fuel savings from an increase in the use of properly inflated, low rolling resistance tires. As a result of this study,

[26] H.R. Rep. No. 109–537, at 3 (June 28, 2006); 2006 NAS Report, *supra* note 4, at 1.

[27] Most passenger tires are replaced every 3 to 5 years because of wear. *Id.*

[28] *See* Proposed Rulemaking to Establish Light-Duty Vehicle Greenhouse Gas Emissions Standards and Corporate Average Fuel Economy Standards, 74 FR 49454, 49631 (Sept. 28, 2009).

[29] *Id.*

[30] *Id.* at 24356.

[31] IPCC (2007): *Climate Change 2007: Mitigation of Climate Change. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* [B. Metz, O. Davidson, P. Bosch, R. Dave, and L. Meyer (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA.

[32] H.R. Rep. No. 108–401, at 971 (Nov. 25, 2003) (Conf. Rep.).

[33] Ultimately the task was given to the Committee for the National Tire Efficiency Study of the Transportation Research Board, a division of the National Research Council that is jointly administered by the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine.

[34] Transportation Research Board Special Report 286, Tires and Passenger Vehicle Fuel Economy, National Research Council of the National Academies (2006). Docket No. NHTSA–2008–0121–0008.

[35] *Id.* at 2–3.

[36] *Id.* at 3.

[37] *Id.*

[38] *Id.* at 2, 4.

[39] *Id.*

[40] *See* Cal. Pub. Res. Code §§ 25000.5, 25722–25723 (2009); 2001 Cal. Legis. Serv. Ch. 912 (S.B. 1170) (West).

in October 2003, the California state legislature adopted Assembly Bill No. 844 (AB 844),[41] which required the CEC to develop a comprehensive fuel efficient tire program.[42]

The program would consist of three phases. In the first phase, the CEC will develop a database with information on the fuel efficiency of replacement tires sold in California, develop a rating system for the energy efficiency of replacement tires, and develop a manufacturer reporting requirement for the energy efficiency of replacement tires.[43] In the second phase, the CEC will consider whether to adopt standards for replacement tires to ensure that replacement tires sold in the State are at least as energy efficient, on average, as original equipment tires.[44] In deciding whether to adopt standards, the CEC must ensure that a standard:

- Is technically feasible and cost effective;
- Does not adversely affect tire safety;
- Does not adversely affect the average life of replacement tires; and
- Does not adversely affect the State effort to manage scrap tires.[45]

If standards are adopted, the CEC will also develop consumer information requirements for replacement tires for which standards apply. In the third phase, the CEC must review and revise the program at least every three years.[46]

On June 10, 2009, the Transportation Policy Committee of the CEC conducted a workshop regarding the Energy Commission Fuel Efficient Tire Program. As part of that workshop, the CEC staff draft regulation was made public.[47] The draft regulation would specify testing and reporting requirements for manufacturers, and describes the database the CEC will maintain. The draft regulation would define a "fuel efficient tire" as a tire with "a declared fuel efficiency rating value no higher than 1.15 times the lowest declared fuel efficiency rating value for all tires in its combined tire size designation and load index."[48]

2. European Union

Europe is approaching the issue of tire fuel efficiency from two directions. On July 13, 2009, Regulation (EC) No 661/2009 of the European Parliament and of the Council of the European Union concerning new type-approval requirements for the general safety of motor vehicles was adopted.[49] One of the new requirements in this regulation will gradually prohibit original equipment and replacement tires with a rolling resistance coefficient (RRC) above certain levels beginning November 1, 2012.

On April 22, 2009, the European Parliament adopted another Commission proposal, "Fuel Efficiency: Labeling of Tyres." The new regulation will require original equipment and replacement tires to be rated for rolling resistance, wet grip and noise.[50] The rolling resistance rating is determined using the same test procedure as in ISO 28580:2009(E), *Passenger car, truck and bus tyres—Methods of measuring rolling resistance—Single point test and correlation of measurement results.* The ratings must be provided to consumers in a label on the tire, or at the point of sale (*e.g.,* in cases where the tire itself is not visible at the point of sale), and also in technical promotional literature, including Web sites. The label design is the same A to G scale as that used to rate the energy efficiency of household appliances in Europe.[51] It will apply to tires fitted to passenger cars as well as light and heavy duty vehicles. Tire manufacturers are required to have a link on their Web site to the European Commission Web page covering the new Regulation. The new regulation will go into effect on November 1, 2012, but tire manufacturers are encouraged to comply earlier.

3. Japan

In late 2008 the Ministry of Economy, Trade and Industry (METI) and the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) announced a decision to establish a fuel efficient tire program.[52] The stated objectives are to include standards for measuring rolling resistance, providing information to consumers, and consideration of ways to ensure proper tire pressure management (either through tire pressure monitoring systems or consumer education).[53] Japan has been participating in the development of ISO 28580.

C. Energy Independence and Security Act of 2007 Mandated Consumer Tire Information Program

The legislation that eventually became section 111 of EISA mandating the tire fuel efficiency consumer education program was originally introduced by itself in the U.S. House of Representatives as H.R. 5632[54] following the recommendations in the 2006 NAS Report.[55] The bill was introduced on June 16, 2006, and on June 28, 2006, the House Committee on Energy and Commerce reported on a slightly amended version of the bill.[56] It was never acted upon by the 109th Congress, but it was inserted into a comprehensive energy bill as the 110th Congress began to develop it in May 2007.

The Motor Vehicle Information and Cost Savings Act, which was enacted in 1972, mandated a Federal program to provide consumers with accurate information about the comparative safety and damageability of passenger cars. These requirements were codified in Chapter 323 of Title 49 of the United

[41] *See* Cal. Pub Res. Code §§ 25770–25773; 2003 Cal. Legis. Serv. Ch. 645 (A.B. 844) (West).

[42] Specifically, AB 844 required the State Energy Resources Conservation Board "to adopt, on or before July 1, 2007, and implement, no later than July 1, 2008, a replacement tire fuel efficiency program of Statewide applicability for replacement tires for passenger cars and light-duty trucks, that is designed to ensure that replacement tires sold in the State are at least as energy efficient, on average, as the tires sold in the State as original equipment on those vehicles." Cal. Pub. Res. Code § 25772.

[43] *See id.* at § 25771.

[44] *See id.* at § 25772. By contrast, EISA does not provide NHTSA with the authority to directly regulate the fuel efficiency of tires. EISA's mandates to NHTSA regarding replacement tire fuel efficiency relate only to developing ratings and disseminating information to consumers.

[45] *See id.* at § 25773.

[46] *Id.*

[47] *See http://www.energy.ca.gov/transportation/tire_efficiency/documents/index.html#061009* (last accessed Sept. 24, 2009).

[48] Publication # CEC–600–2009–010–SD (posted May 29, 2009), *available at http://www.energy.ca.gov/2009publications/CEC-600-2009-010/CEC-600-2009-010-SD.PDF* (last accessed Nov. 12, 2009).

[49] Commission Regulation 661/2009, 2009 O.J. (L 200) 1, available at *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:200:0001:0024:EN:PDF* (last accessed Nov. 12, 2009).

[50] *See http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=COD/2008/0221* (last accessed Nov. 12, 2009). Mandatory requirements are also proposed to begin in October 2010 for wet grip and external rolling noise.

[51] *See* Council Directive 1992/75/EEC, 1992 O.J. (L 297) 16–19 (on the indication by labeling and standard product information of the consumption of energy and other resources by household appliances).

[52] *See http://www.meti.go.jp/english/press/data/20081226_01.html* (last accessed Nov. 12, 2009).

[53] Tire manufacturers in Japan have recently proposed a voluntary rating system that includes rolling resistance and wet grip. Rolling resistance is divided into five categories labeled AAA, AA, A, B, and C. Wet grip is divided into four categories labeled a, b, c, and d. For additional information, *see http://translate.google.com/translate?u=http%3A%2F%2Fwww.tftc.gr.jp%2Ftirepark%2Fperformance%2Flabel%2Flabel.html&sl=ja&tl=en&hl=&ie=UTF-8* (last accessed March 11, 2010).

[54] H.R. 5632, 109th Cong. (2d Sess. 2006).

[55] Previous attempts to establish a national tire fuel efficiency program can be found in proposed amendments to various energy bills in prior years. *See e.g.,* S. Amdt. 3083, 108th Cong., 150 Cong. Rec. S4710 (2004) (proposing to amend S. 150); S. Amdt. 1470, 108th Cong., 149 Cong. Rep. S10707 (2003) (proposing to amend S. 14). These amendments proposed regulating the fuel efficiency of tires in addition to a tire fuel efficiency grading system and consumer information program, and were not adopted.

[56] *See* H.R. Rep. No. 109–537 (2006).

States Code (U.S.C.). EISA added section 32304A to Title 49 U.S.C., Chapter 323 which gives authority to the Department of Transportation (DOT) to establish a new consumer tire information program to educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability. The DOT has delegated authority to NHTSA at 49 CFR 1.50. We have summarized below the requirements of title 49 U.S.C. 32304A, the consumer tire information program provision enacted by EISA.

1. Tires Subject To the Consumer Information Program

The national tire fuel efficiency consumer information program mandated by EISA and established in this notice is applicable "only to replacement tires covered under section 575.104(c) of title 49, Code of Federal Regulations" (CFR), as that regulation existed on the date of EISA's enactment.[57] Section 575.104 of title 49 CFR is the Federal regulation that requires motor vehicle and tire manufacturers and tire brand name owners to provide information indicating the relative performance of passenger car tires in the areas of treadwear, traction, and temperature resistance. This section of NHTSA's regulations specifies the test procedures to determine uniform tire quality grading standards (UTQGS), and mandates that these standards be molded onto tire sidewalls.

Section 575.104 applies only to "new pneumatic tires for use on passenger cars * * * [but] * * * does not apply to deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or to limited production tires as defined in [49 CFR 575.104(c)(2)]."[58] Accordingly, the tire fuel efficiency consumer information program described in today's notice applies only to replacement passenger car tires with the same exclusions as the UTQGS regulation.

2. Mandate to Create a National Tire Fuel Efficiency Rating System

EISA requires NHTSA to "promulgate rules establishing a national tire fuel efficiency consumer information program for replacement tires designed for use on motor vehicles to educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability."[59] EISA specifies that the regulations establishing the program are to be issued not later than December 19, 2009.[60]

Section 111 of EISA specifically mandates "a national tire fuel efficiency rating system for motor vehicle replacement tires to assist consumers in making more educated tire purchasing decisions."[61] However, NHTSA may "not require permanent labeling of any kind on a tire for the purpose of tire fuel efficiency information."[62]

The only Committee Report commenting on the legislation that eventually became section 111 of EISA explained that the need for this program was established by the 2006 NAS Report, which concluded that if consumers were sufficiently informed and interested, they could bring about a reduction in average rolling resistance (and thus an increase in average on-road fuel economy) by adjusting their tire purchases and by taking proper care of their tires once in service.[63] Thus, NHTSA reviewed conclusions and recommendations in the 2006 NAS Report regarding how best to inform consumers using a tire fuel efficiency rating system.

Specifically, the 2006 NAS Report concluded that rolling resistance measurement of new tires can be informative to consumers, especially if they are accompanied by reliable information on other tire characteristics such as treadwear and traction.[64] The 2006 NAS Report further stated that consumers benefit from the ready availability of easy-to-understand information on all major attributes of their purchases, and that tires are no exception. A tire's influence on vehicle fuel economy is an attribute that is likely to be of interest to many tire buyers.[65] NHTSA has attempted to keep these key observations in mind in the development of this final rule.

3. Communicating Information to Consumers

EISA specifies that this rulemaking to establish a national tire fuel efficiency consumer information program must include "requirements for providing information to consumers, including information at the point of sale and other potential information dissemination methods, including the Internet."[66] While there is little to no legislative history of EISA itself, the legislation that eventually became section 111 of EISA was originally introduced in June 2006 with this identical requirement.[67]

As noted above, on June 28, 2006, the House Committee on Energy and Commerce reported on a slightly amended version of the bill and noted that "[t]he bill * * * would require tire retailers to provide consumers with information on the tire fuel efficiency rating of motor vehicle tires at the point of sale."[68] Thus, NHTSA believes that the suggestion of point of sale requirements indicates that Congress intended NHTSA's authority to establish information dissemination requirements to be broad enough to include requirements for both tire manufacturers, which by statute includes importers,[69] and tire dealers/retailers and distributors.

4. Specification of Test Methods

Section 111 of EISA also mandates that this rulemaking include "specifications for test methods for manufacturers to use in assessing and rating tires to avoid variation among test equipment and manufacturers."[70] *See* section IV of this notice for a discussion of NHTSA's specification of the ISO 28580 test procedure to measure rolling resistance.

We note that the 2006 NAS Report, the recommendations from which formed the basis for the legislation that became section 111 of EISA, indicated

[57] 49 U.S.C. 32304A(a)(3).

[58] 49 CFR 575.104(c)(1).

[59] 49 U.S.C. 32304A(a)(1).

[60] EISA was signed into law on December 19, 2007. EISA specifies that "[n]ot later than 24 months after the date of enactment * * * [NHTSA] shall, after notice and opportunity for comment, promulgate rules establishing a national tire fuel efficiency consumer information program for replacement tires designed for use on motor vehicles to educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability." 49 U.S.C. 32304A(a)(1).

[61] 49 U.S.C. 32304A(a)(2)(A).

[62] *Id.* at § 32304A(d).

[63] H.R. Rep. No. 109–537, at 3 (2006).

[64] 2006 NAS Report, *supra* note 4, at 4. The 2006 NAS Report specifically noted that "[i]deally, consumers would have access to information that reflects a tire's effect on fuel economy averaged over its anticipated lifetime of use, as opposed to a measurement taken during a single point in the tire's lifetime, usually when it is new." *Id.* However, "[n]o standard measure of lifetime tire energy consumption is currently available, and the development of one deserves consideration. Until such a practical measure is developed, rolling resistance measurements of new tires can be informative to consumers * * *" *Id.*

[65] 2006 NAS Report, *supra* note 4, at 4.

[66] 49 U.S.C.32304A(a)(2)(B).

[67] *See* H.R. 5632, 109th Cong. (2d Sess. 2006).

[68] *See* H.R. Rep. No. 109–537, at 5 (2006).

[69] *See* 49 U.S.C. 32101(5) (defining manufacturer as "a person (A) manufacturing or assembling passenger motor vehicles or passenger motor vehicle equipment; or (B) importing motor vehicles or motor vehicle equipment for resale."). For purposes of the statute, the importer of any tire is a manufacturer. An importer is responsible for every tire it imports and is subject to civil penalties in the event of any violations. The U.S. Customs and Border Protection may deny entry at the port to items that do not conform to applicable requirements.

[70] 49 U.S.C. 32304A(a)(2)(C).

that "[a]dvice on specific procedures for measuring and rating the influence of individual passenger tires on fuel economy and methods of conveying this information to consumers [was] outside the scope of this study."[71] Accordingly, after publication of the 2006 NAS Report and in anticipation of Congressional legislation based off its recommendations, NHTSA embarked on a large-scale research project in July 2006 to evaluate existing tire rolling resistance test methods.[72]

5. Creating a National Consumer Education Program on Tire Maintenance

Section 111 of EISA further directs NHTSA to establish in this rulemaking "a national tire maintenance consumer education program including, information on tire inflation pressure, alignment, rotation, and treadwear to maximize fuel efficiency, safety, and durability."[73] NHTSA already has some information regarding tire maintenance on its safercar.gov Web site.[74]

The 2006 NAS Report, the recommendations from which formed the basis for the legislation that became section 111 of EISA, noted that consumers benefit from the ready availability of easy-to-understand information on all major attributes of their purchases, and that replacement tires' influence on vehicle fuel economy is an attribute that is likely to be of interest to many tire buyers.[75] NHTSA has focused on these principles in determining the best way to make the information in this program both of interest to consumers and easy to understand. The 2006 NAS Report further noted that "industry cooperation is essential in gathering and conveying tire performance information that consumers can use in making tire purchases."[76] NHTSA agrees that cooperation with the tire manufacturer and tire retailer industries, as well as other interested parties will be vital to the success of this program. The agency has held initial consultations with various groups of industry and the environmental community, as well at other Government agencies, to seek their views.

6. Consultation in Setting Standards

Section 111 of EISA provides that NHTSA is to consult with the Department of Energy (DOE) and Environmental Protection Agency (EPA) "on the means of conveying tire fuel efficiency consumer information."[77] One of the recommendations of the 2006 NAS Report, which formed the basis for the legislation that became section 111 of EISA, stated that NHTSA should consult with the EPA "on means of conveying the information and ensure that the information is made widely available in a timely manner and is easily understood by both buyers and sellers."[78] NHTSA has fulfilled the statutory consultation requirement in a way that best serves the goals of EISA.

NHTSA consulted with representatives of DOE, EPA, and the Federal Trade Commission (FTC)[79] who work in energy efficiency consumer information and rating programs. These agencies provided feedback on NHTSA's draft final rule which included valuable comments and insight based on their experiences communicating information on the energy efficiency of consumer products.

7. Application With State and Local Laws and Regulations

Section 111 of EISA contains both an express preemption provision and a savings provision that address the relationship of the national tire fuel efficiency consumer information program to be established under that section with State and local tire fuel efficiency consumer information programs. Section 111 provides:

> Nothing in this section prohibits a State or political subdivision thereof from enforcing a law or regulation on tire fuel efficiency consumer information that was in effect on January 1, 2006. After a requirement promulgated under this section is in effect, a State or political subdivision thereof may adopt or enforce a law or regulation on tire fuel efficiency consumer information enacted or promulgated after January 1, 2006, if the requirements of that law or regulation are identical to the requirement promulgated under this section. Nothing in this section shall be construed to preempt a State or political subdivision thereof from regulating the fuel efficiency of tires (including establishing testing methods for determining compliance with such standards) not otherwise preempted under this chapter.[80]

In the NPRM, NHTSA sought public comment on the scope of Section 111 generally, and in particular on whether, and to what extent, Section 111 would or would not preempt tire fuel consumer information regulations that the administrative agencies of the State of California may promulgate in the future pursuant to California's Assembly Bill 844 (AB 844).[81] We discuss these comments in section XIV.D below.

8. Compliance and Enforcement

Section 111 of EISA added a new sub-provision to 49 U.S.C. 32308 (General prohibitions, civil penalty, and enforcement) which reads as follows:

> Any person who fails to comply with the national tire fuel efficiency information program under section 32304A is liable to the United States Government for a civil penalty of not more than $50,000 for each violation.

The RMA recommended that NHTSA clarify how it intends to enforce this provision and subject its interpretation to comment. *See* section XI for more detail on RMA's comments on this provision and NHTSA's response.

9. Reporting to Congress

EISA also requires that NHTSA conduct periodic assessments of the rules promulgated under this program "to determine the utility of such rules to consumers, the level of cooperation by industry, and the contribution to national goals pertaining to energy consumption."[82] NHTSA must "transmit periodic reports detailing the findings of such assessments to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce."[83]

III. Scope of the Tire Fuel Efficiency Consumer Information Program

A. Which tires must be rated?

As explained above in section II.C.1 of this notice, EISA specifies that the tire

[71] 2006 NAS Report, *supra* note 4, at 4.

[72] *See* NHTSA Tire Rolling Resistance Rating System Test Development Project: Phase 1—Evaluation of Laboratory Test Protocols (October 2008). Docket No. NHTSA–2008–0121–0019.

[73] 49 U.S.C. 32304A(a)(2)(D).

[74] *See generally http://www.safercar.gov/portal/site/safercar/menuitem.13dd5c887c7e1358fefe0a2f35a67789/?vgnextoid=0e0aaa8c16e35110VgnVCM1000002fd17898RCRD* (last accessed Sept. 24, 2009).

[75] 2006 NAS Report, *supra* note 4, at 96.

[76] *Id.*

[77] 49 U.S.C. 32304A(b). In addition, Executive Order No. 13432 provides that a Federal agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gasses from motor vehicles, shall act jointly and consistently with other agencies to the extent possible and to consider the views of other agencies regarding such action.

[78] 2006 NAS Report, *supra* note 4, at 4.

[79] The Federal Trade Commission (FTC) developed the EnergyGuide label to enable consumers to compare the energy use of different models as consumers shop for an appliance. *See http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea14.shtm* (last accessed Sept. 24, 2009). Section 321(b) of EISA directs the FTC to consider the effectiveness of current lamp disclosures and to consider whether alternative labeling disclosures would be more effective in helping consumers make purchasing decisions.

[80] 49 U.S.C. 32304A(e).

[81] Cal. Pub Res. Code §§ 25770–25773; 2003 Cal. Legis. Serv. Ch. 645 (A.B. 844) (West). This California legislation mandated that the California Energy Commission (CEC) develop and implement both a tire efficiency program and a corresponding consumer information program, and was passed on October 1, 2003.

[82] 49 U.S.C. 32304A(c).

[83] *Id.*

fuel efficiency requirements are to "apply only to replacement tires covered under [49 CFR] section 575.104(c)" (NHTSA's UTQGS regulation).[84] Title 49 CFR, section 575.104 applies only to "new pneumatic tires[85] for use on passenger cars" with some exclusions of particular types of tires.[86] All terms in 49 CFR Part 575 are as defined by the Safety Act or in 49 CFR Part 571, *Federal Motor Vehicle Safety Standards* (FMVSSs).[87] Some commenters had questions about whether or not certain tires were excluded from the program. Others asked about the voluntary rating of tires not covered under the program. These comments are addressed in the sections below.

1. Passenger Car Tires

Section 571.139 of title 49 CFR (or FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles*) defines "passenger car tire" as "a tire intended for use on passenger cars, multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less." Accordingly, as stated in the NPRM, the tire fuel efficiency consumer information program applies only to replacement passenger car tires, which are tires intended for use on passenger cars, multipurpose passenger vehicles, and trucks, that have a GVWR of 10,000 pounds or less.[88]

These tires often have a tire size designation beginning with a "P," indicating that they are for use on passenger cars. However, they may be designated without the P, sometimes referred to as "hard metric" sizes. Many smaller sport utility vehicles (SUVs), pickup trucks, and vans are equipped with passenger car tires, even though these vehicles are classified as light trucks by NHTSA.[89] Ordinarily, the kinds of light- and medium-duty trucks used in commercial service, including full-size pickups and vans, have a GVWR of more than 6,000 pounds. These vehicles are usually equipped with tires having the letters "LT" molded into the sidewall.[90] EISA excludes replacement LT tires from the tire fuel efficiency consumer information program.[91] JATMA asked for confirmation of their understanding that LT tires are not included in the scope of the tire fuel efficiency consumer information program.[92] As explained in this section, that understanding is correct.

Providing information on LT tires: ICCT asked that NHTSA, since EISA does not appear to contain any restriction on NHTSA providing information to consumers, investigate whether our data combined with California and European Union tire testing data would provide enough data for NHTSA to provide consumers with information on LT tires on the agency's online Web site.[93] ICCT commented that this is especially important given the high rolling resistances that NHTSA reported for LT tires.[94]

Agency response: NHTSA agrees that educating consumers about the general qualities and trends of rolling resistance for tires excluded under the program, including LT tires, is worthwhile because consumers currently do not have any information about the relative fuel efficiency between different types of tires. While section 111 of EISA is limited to "only * * * replacement tires covered under [NHTSA's UTQGS regulation]," [95] nothing in EISA appears to restrict NHTSA from educating the public about motor vehicles and motor vehicle equipment using information generated by the agency, as it already does for many different tire characteristics. As noted in the NPRM, the agency expects test data to be available for many LT tires, as these tires are covered by the Europe and California programs, in addition to some LT tires having been included in NHTSA's Phase 1 research for this rulemaking.[96] NHTSA tested some LT tires in its Phase 1 research because that research was initiated in July 2006, subsequent to the release and based on the recommendations in the 2006 NAS Report, before the passage of EISA. Moreover, by educating consumers about what type of comparative fuel efficiency they can expect between replacement passenger car tires and original equipment (OE) tires or LT tires, the agency would not be mandating anything of tire manufacturers or tire retailers, but merely using information that has already been generated by NHTSA and other government regulatory bodies, and is available under the Freedom of Information Act.

Passenger car tires used on trailers: The National Association of Trailer Manufacturers (NATM) commented it did not believe Congress intended to include replacement tires sold for use on trailers to be within the scope of the tire fuel efficiency consumer information program.[97] NATM explained that some of its trailer manufacturer, trailer dealer, and trailer-parts distribution members sell "P" tires to consumers for replacement use on light-duty trailers, particularly small utility trailers. NATM believes that NHTSA's proposed definition of passenger car tire could be read to include those replacement "P" tires sold by NATM members for use on light-duty trailers. Specifically, NATM stated that the "intended for use" language in the passenger car tire definition could be interpreted to bring under the jurisdiction of this program "P" tires that may have been designed and manufactured primarily for use on passenger cars but that ultimately are sold for use on trailers. NATM suggests that NHTSA modify the definition of passenger car tire to read: "*Passenger car tire* means a tire *sold for use* on passenger cars, multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less."

Agency response: NHTSA disagrees with NATM's suggested definition for passenger car tires. The statute provides that the tire fuel efficiency consumer information program is "for replacement tires designed for use on motor vehicles." [98] The statute's applicability section states that this section shall apply "only to replacement tires covered under [49 CFR] section 575.104(c)" as of December 19, 2007, when the Ten-in-

[84] 49 U.S.C. 32304A(a)(3).

[85] The term pneumatic tires is a broad one that essentially means air-filled tires. Section 571.139 of title 49 CFR (or FMVSS No. 109, *New Pneumatic Radial Tires for Light Vehicles*) defines pneumatic tire broadly as "a mechanical device made of rubber, chemicals, fabric and steel or other materials, which, when mounted on an automotive wheel, provides the traction and contains the gas or fluid that sustains the load." By contrast, a non-pneumatic tire is a "mechanical device which transmits * * * the vertical load and tractive forces from the roadway to the vehicle, generates the tractive forces that provide the directional control of the vehicle and does not rely on the containment of any gas or fluid for providing those functions." 49 CFR 571.129, *New Non-pneumatic Tires for Passenger Cars.*

[86] 49 CFR 575.104(c)(1).

[87] 49 CFR 575.2, *Definitions.*

[88] This FMVSS No. 139 definition of "passenger car tires" is consistent with past agency interpretations of the scope of 49 CFR 575.104. *See* April 24, 1980 Letter to Mr. Robert A. Eddy (McCreary Tire & Rubber Company) (explaining that tires "which are manufactured solely for use on a traction test trailer would not fall within the application of the UTQG Standards"); October 27, 1978 Letter to Mr. Ken Yoneyama (Bridgestone) (explaining that "UTQGS applies to a tire type whose predominant contemplated use is on passenger cars, even if the manufacturer knows the tire type is also used as original equipment on multi-purpose passenger vehicles").

[89] 2006 NAS Report, *supra* note 4, at 14.

[90] *Id.*

[91] 49 U.S.C. 32304A(a)(3).

[92] Docket No. NHTSA–2008–0121–0031.1 at 1.

[93] Docket No. NHTSA–2008–0121–0042.1 at 2.

[94] *See* Tire Fuel Efficiency NPRM, *supra* note 9, at 29553.

[95] 49 U.S.C. 32304A(a)(3).

[96] *See* Tire Fuel Efficiency NPRM, *supra* note 9, at 29552–29553.

[97] Docket No. NHTSA–2008–0029.1.

[98] 49 U.S.C. 32304A(a)(1).

Ten Fuel Economy Act [99] became law.[100] For this reason, NHTSA believes Congress intended the agency look to the UTQGS regulation for appropriate definitions of different types of tires. Section 575.104(c) provides that section 575.104, *Uniform tire quality grading standards,* apply "to new pneumatic tires for use on passenger cars," subject to some exclusions, such as for winter-type snow tires, space-saver or temporary use spare tires, and tires with nominal rim diameters of 12 inches or less.

The definitions governing 49 CFR Part 575 are contained in 49 CFR 575.2. This section states that all terms in 49 CFR Part 575 are as defined by the Safety Act or in the Federal Motor Vehicle Safety Standards, 49 CFR Part 571. Neither "passenger car tires" nor "tires for passenger cars" is defined in the Safety Act.[101] Therefore, NHTSA looked to the FMVSSs for definitions. As of December 2007, NHTSA had regulations on passenger car tires.[102] Those regulations define passenger car tire as follows: "Passenger car tire means a tire intended for use on passenger cars, multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating of (GVWR) of 10,000 pounds or less." [103] In view of the applicability statement in EISA referring to the UTQGS regulations (§ 575.104), the UTQGS definitional reference to the Federal Motor Vehicle Safety Standards (§ 575.2), and the fact that passenger car tire is defined in a FMVSS, NHTSA interprets the consumer tire information program in EISA as applying to passenger car tires as defined in 49 CFR 571.139. For these reasons, NHTSA's definition of passenger car tires is taken from FMVSS No. 139. This FMVSS No. 139 definition of "passenger car tires" is consistent with past agency interpretations of the scope of the UTQGS regulations.[104]

However, based on EISA's applicability only to replacement passenger car tires (with some limited exclusions), NHTSA does agree with NATM that EISA did not contemplate that the tire fuel efficiency consumer information program would include information to educate consumers about tires they are purchasing for trailers.[105] Accordingly, tire retailers that sell only replacement passenger car tires for use on trailers, and not for use on any other motor vehicles, would not be considered tire retailers for the purposes of today's final rule. *See* section III.B.2 below.

2. Replacement Tires

In this final rule, NHTSA is retaining the proposed definition of replacement passenger car tire as "any passenger car tire other than a passenger car tire sold as original equipment on a new vehicle." [106] As explained in the NPRM, while most UTQGS requirements apply to all passenger car tires, whether sold as original equipment with a new automobile (OE tires) or as a replacement tire, some apply only to replacement tires. For example, the requirement for a paper label on the tire tread excludes tires "sold as original equipment on a new vehicle." [107] NHTSA is using this language as the basis of a definition of replacement tires for the purposes of the tire fuel efficiency consumer information program because EISA specifies that the tire fuel efficiency consumer information program "shall only apply to replacement tires covered under [the UTQGS regulations]." [108] For this reason, NHTSA believes Congress intended the agency look to the UTQGS regulation for appropriate definitions of different types of tires.

The agency believes the definition of what a replacement tire is (as distinguished from an OE tire) needs to be in terms of the actual sale of the tire, not the intention when manufactured.[109] NHTSA understands that some tires that are manufactured for the OE tire market could be sold as replacement tires, either because the vehicle manufacturer does not purchase all that are manufactured for that purpose, or because the vehicle manufacturer sells excess stock.

Original equipment tires: Michelin commented that it supported the application of this rulemaking to OE tires. Michelin stated that it is in the best interest of consumers to have the tire performance grading information available for OE tires and clearly displayed on a new vehicle because it will be meaningful for the consumer to have such tire performance information on the vehicle at the point of sale.[110] Public Citizen *et al.* similarly stated that it supports molding [111] the ratings on all tires, both OE and replacement tires.[112]

Agency response: NHTSA proposed a definition of replacement passenger car tire to be "any passenger car tire other than a passenger car tire sold as original equipment on a new vehicle." As indicated above, NHTSA interprets EISA's repeated use of the word "replacement tires"—including in the statute's applicability provision—to indicate that EISA does not give NHTSA authority to mandate a rating system for any tires other than replacement tires; that is, tires sold for use on a new vehicle (OE tires). Therefore, as NHTSA interprets the statute, the agency does not have the authority under EISA section 111 to require vehicle manufacturers to display tire performance information for OE tires. Likewise, EISA expressly forbids NHTSA from requiring any permanent labeling of this information on tires, so the Public Citizen *et al.* comment is not adopted.[113]

However, if tire manufacturers submit rating information on OE tires to NHTSA, the agency will post that information on its tire Web site for consumers to look up by vehicle make and model, or by size designation. NHTSA notes that if OE tires are not rated, consumers will not be able to compare replacement tires with the tires that were originally on their vehicle. Therefore, the agency encourages tire manufacturers to voluntarily report OE tire rating information to NHTSA so that consumers are able to compare the performance of their OE tires with what they can expect from potential replacement tires.

[99] The "Ten-in-Ten Fuel Economy Act" is the short title of EISA Title I, *Energy Security Through Improved Vehicle Fuel Economy.* Public Law 110–140, § 101.

[100] 49 U.S.C. 32304A(a)(3).

[101] *See* 49 U.S.C. 30102.

[102] *See* FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles,* 49 CFR 571.139.

[103] 49 CFR 571.139 S3.

[104] *See* April 24, 1980 Letter to Mr. Robert A. Eddy (McCreary Tire & Rubber Company) (explaining that tires "which are manufactured solely for use on a traction test trailer would not fall within the application of the UTQG Standards"); October 27, 1978 Letter to Mr. Ken Yoneyama (Bridgestone) (explaining that "UTQGS applies to a tire type whose predominant contemplated use is on passenger cars, even if the manufacturer knows the tire type is also used as original equipment on multi-purpose passenger vehicles").

[105] *See* 49 U.S.C. 32304A(a)(3).

[106] Tire Fuel Efficiency NPRM, *supra* note 9, at 29553, 29584.

[107] 49 CFR 575.104(d)(1)(i)(B).

[108] 49 U.S.C. 32304A(a)(3).

[109] NATM inappropriately cited this statement from the NPRM in its rationale for its request that NHTSA change the definition of passenger care tire addressed above in section III.A.1. The agency used this rationale as a way to ensure that a manufacturer could not state that it intended a passenger car tire to be original equipment, but then it just ended up being sold as a replacement car tire, allowing it to fall outside of the scope of "replacement passenger car tire." The concern NATM attempted to analogize would be a manufacturer manufacturing a tire *intending* its use only on trailers, but then eventually the tire gets sold for use on a passenger car. NHTSA does not believe that this is a likely situation that outweighs the inefficiencies that would be created using the "sold for use" language in the passenger car tire definition described above.

[110] Docket No. NHTSA–2008–0121–0048.1 at 13.

[111] Section 111 of EISA explicitly prohibits NHTSA from requiring the molding of anything for the purposes of tire fuel efficiency information onto tire sidewalls. 49 U.S.C. 32204A(d).

[112] Docket No. NHTSA–2008–0121–0043.1 at 4.

[113] 49 U.S.C. 32304A(d).

Original equipment tires sold as replacement tires: Tire Rack commented that it is an independent tire dealer selling OE and replacement tires and that it believes that the fuel efficiency rating of all OE tires under the scope of the program should be made public to provide consumers with a basis of comparison from which they can begin their search and selection.[114]

Agency response: NHTSA notes that for purposes of the tire fuel efficiency consumer information program, "OE" passenger car tires sold to consumers at a tire retailer are considered replacement tires under the definition above because they are not being *sold as original equipment on a new vehicle.* These tires were sold from tire manufacturers to Tire Rack for resale. Hence, the manufacturers must provide all of this consumer information for those tires and consumers will be able to look up ratings for those tires on the agency's tire Web site. Although NHTSA is not requiring consumers be provided with the tire ratings mandated today when they purchase a new passenger car, retailers like Tire Rack could choose to tell consumers what fuel efficiency rating they are currently operating under by finding a replacement passenger car tire that is identical to the specifications of the original tires on their vehicle. Additionally, consumers could look up ratings for these tires on the tire Web site.

3. Tires Excluded

NHTSA's UTQGS regulation excludes "deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with a nominal rim diameter of 12 inches or less, [and] limited production tires."[115] 49 CFR 575.104(c)(1). Since EISA specifies that the tire fuel efficiency requirements are to "apply only to replacement tires covered under [NHTSA's UTQGS regulation]," these exclusions were included in the NPRM and are included in the new regulations for the tire fuel efficiency consumer information program established in today's final rule.[116]

Public Citizen *et al.* commented that it supported requiring deep tread, winter-type snow tires, and space-saver or temporary use spare tires to be rated under the tire fuel efficiency consumer information program.[117] Public Citizen *et al.* explained that deep tread tires are sometimes not intended for sustained highway use, and may create handling problems when used in normal driving, and that NHTSA has not addressed whether improper operation on these specialized tire types is more dangerous. Public Citizen *et al.* stated that consumers may be interested in performance characteristics of these specialized tire types.

Agency response: As indicated above, because the applicability provision of EISA section 111 specifically limits this program to replacement tires covered under NHTSA's UTQGS regulation, and the UTQGS regulations specifically exclude requiring deep tread, winter-type snow tires, and space-saver or temporary use spare tires,[118] as NHTSA interprets EISA and its UTQGS regulation, NHTSA does not have the authority under EISA to require vehicle manufacturers to display tire performance information for these specialty tires. To the extent the agency has the information, NHTSA will include information on deep tread, winter-type snow tires, and space-saver or temporary use spare tires on the tire Web site.

Regarding the use of tires not intended for sustained highway use in normal driving, NHTSA has historically recognized that improper operation of any tire can be dangerous. For instance, the recent "What's your PSI" campaign and the brochure *Tire Safety: Everything's Riding on It,* available on *http://www.safercar.gov* stress the importance of proper tire selection and maintenance.

4. Voluntary Rating of Tires Not Subject to the Program

As noted above in section III.A.1 and III.A.2, EISA excludes LT tires and OE tires from the tire fuel efficiency consumer information program.[119] Some commenters noted concerns with the exclusion of OE tires and LT tires from the EISA mandated tire fuel efficiency consumer information program.[120] For instance, Tire Rack commented that "[w]hile not required by the rulemaking, it is hoped there would be a future opportunity for tire manufacturers producing LT-sized tires to voluntarily provide rolling resistance information."[121]

Agency response: NHTSA's research included testing of LT tires even though we are not authorized to regulate them through this tire fuel efficiency consumer information program because NHTSA's Phase 1 research was initiated in July 2006, subsequent to the release of the 2006 NAS Report and prior to the passage of EISA.[122] LT tires represented approximately 16.7 percent of the U.S. replacement tire market in 2007.[123] NHTSA notes that it expects test data to be available for many LT tires, as these tires are covered by the Europe and California programs. Nothing in this regulation would prohibit manufacturers from voluntarily rating or reporting data for LT or other excluded tires, as required for covered tires. The same would be true for other tires excluded from the tire fuel efficiency consumer information program including original equipment tires, or any other excluded tires. That is, while these tires are not required to be rated under today's final rule, NHTSA has no objection to voluntary rating by manufacturers or importers, and would include any tires voluntarily reported in its database.

5. Each Different Stock Keeping Unit Must Be Rated

As the agency proposed in the NPRM, this final rule is requiring each different stock keeping unit (SKU), or each size within each model within each brand, to be rated separately for fuel efficiency (using a rolling resistance value), safety (using a wet traction test value), and durability (using a treadwear test value).

[114] Docket No. NHTSA–2008–0121–0026.1 at 2–3.

[115] For UTQGS, a limited production tire is defined as "a tire meeting all of the following criteria, as applicable:

(i) The annual domestic production or importation into the United States by the tire's manufacturer of tires of the same design and size as the tire does not exceed 15,000 tires;

(ii) In the case of a tire marketed under a brand name, the annual domestic purchase or importation into the United States by a brand name owner of tires of the same design and size as the tire does not exceed 15,000 tires;

(iii) The tire's size was not listed as a vehicle manufacturer's recommended tire size designation for a new motor vehicle produced in or imported into the United States in quantities greater than 10,000 during the calendar year preceding the year of the tire's manufacture; and

(iv) The total annual domestic production or importation into the United States by the tire's manufacturer, and in the case of a tire marketed under a brand name, the total annual domestic purchase or purchase for importation into the United States by the tire's brand name owner, of tires meeting the criteria of paragraphs (c)(2)(i), (ii), and (iii) of this section, does not exceed 35,000 tires." 49 CFR 575.104(c)(2).

[116] 49 U.S.C. 32304A(a)(3).

[117] Docket No. NHTSA–2008–0121–0043.1 at 11.

[118] 49 CFR 575.104(c)(1).

[119] 49 U.S.C. 32304A(a)(3).

[120] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 2–3; ICCT Comments, Docket No. NHTSA–2008–0121–0042.1 at 2; Public Citizen *et al.* Comments, Docket No. NHTSA–2008–0121–0043.1 at 4.

[121] Docket No. NHTSA–2008–0121–0026.1 at 2–3.

[122] Specifically, of the 25 different models of tires tested in NHTSA's Phase 1 research, 16 tire models were passenger, 9 were light truck tire models; one of the passenger car tires was the ASTM F 2493–06 P225/60R16 97S Standard Reference Test Tire (SRTT).

[123] Rubber Manufacturers Association, Preliminary 2008 Factbook, *see https://www.rma.org/publications/market_information/index.cfm?CFID=23483353&CFTOKEN=70640000* (last accessed Sept. 26, 2009).

As explained in the NPRM, tire manufacturers may have different brands, and within each brand different tire models (or tire lines),[124] and tire models are often available in different sizes. For example, Michelin is the manufacturer for the Michelin, BFGoodrich and Uniroyal brands. A popular Michelin brand model is the Pilot, but other models include the Energy or the HydroEdge. Each of these brands is available in different tire sizes, for example a 185/65R14 or a 215/70R15. *See* Figure 2.[125] The model of tire (Pilot) then may be available in several performance levels. Figure 2 illustrates there are three different speed ratings for the Pilot model. Performance ratings may also include All-Season, Competition, Touring, Grand Touring, etc. Each of these tires may also have different treadwear, traction, temperature and warranty ratings. These models are then available in different tire sizes, for example an Exalto A/S is available in sizes 185/60R14 to 235/40R17. Similarly, a Pilot Sport A/S Plus is available in sizes 205/55R16 to 245/45R20, and the Pilot Sport PS2 is available in sizes 225/55R16 to 295/25R22.

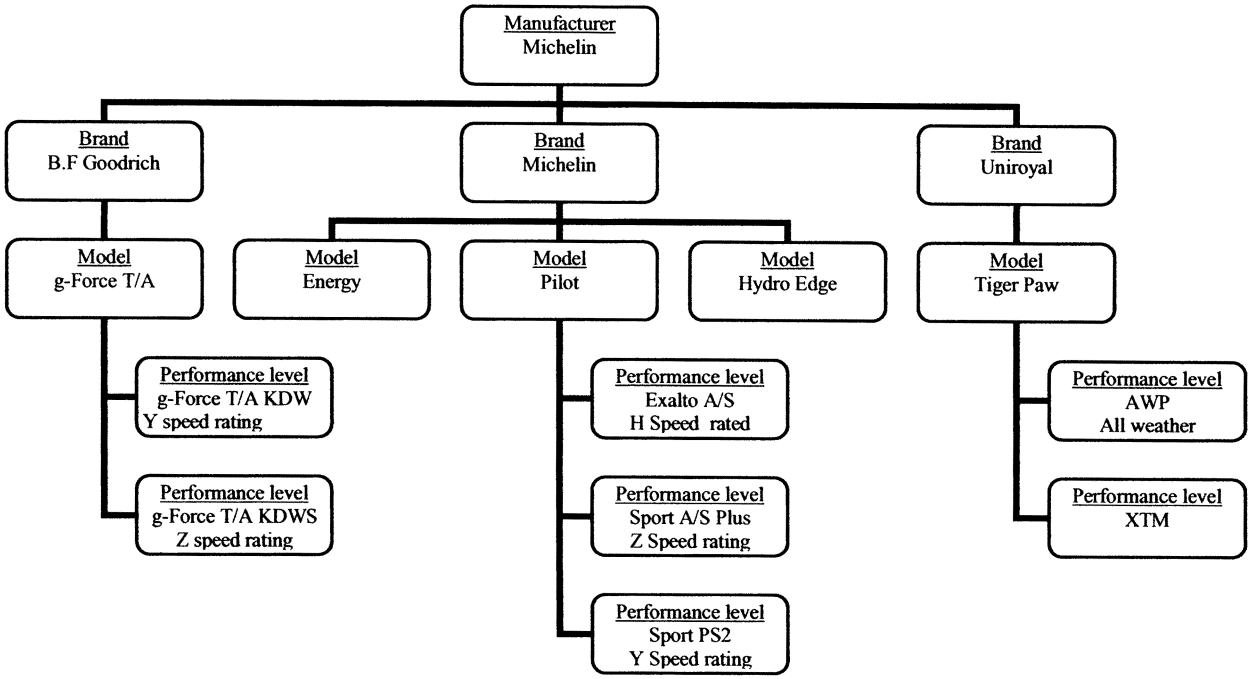

Figure 2. Example of Tire Terminology

The NPRM also explained that in passenger car tire sizes (*e.g.,* 185/65R14), the first three numbers indicate the nominal width of the tire, *i.e.,* the width in millimeters from sidewall edge to sidewall edge (185). In general, the larger the nominal width, the wider the tire. The second two numbers in the size designation indicate the ratio of tire height to tire width, or the aspect ratio (65). For aspect ratio, numbers of 70 or lower indicate a short sidewall for improved steering response and better overall handling on dry pavement. The "R" indicates that this particular tire is a radial tire, as opposed to bias ply construction, which is indicated by a "D" in the size specification, or bias-belted construction, which is indicated by a "B" in the size specification. Radial ply construction of tires has been the industry standard for the past 20 years. The last two numbers in the size designation indicate the rim diameter code (14), or the wheel or rim diameter in inches. A change in any of these three numbers indicates a different size specification for a replacement tire.

Rolling resistance varies among tires of the same size. In NHTSA's testing, tires of a size 225/60R16, but manufactured by different companies, and having various performance ratings (*e.g.,* speed rating, all-season specification) had rolling resistance values ranging from 9.8 to 15.2 pounds.[126] Rolling resistance can also vary widely across different sized tires in a brand. In data reported by the California Energy Commission (CEC), passenger car tires of the same brand and model with different sizes ranged in rolling resistance from 7.5 to 22.8 pounds.[127] For these reasons, NHTSA is requiring each SKU, or each size within each model of each brand, to be rated separately for fuel efficiency (using a rolling resistance test value), safety (using a wet traction test value), and durability (using a UTQGS treadwear test value). Consumers researching tires should be able to compare tire models and sizes with some reliability.

Research done for the CEC to evaluate test facility capacity to conduct rolling resistance testing indicated that there are well over 20,000 different brand/

[124] For purposes of the tire fuel efficiency consumer information program, the phrase "tire line" and "tire model" can be used interchangeably. The agency will generally use the word "model" to refer to a particular line of tires.

[125] Although this figure was in the NPRM, this discussion is repeated here because the agency believes a proper understanding of the replacement tire market is key to the understanding of certain requirements of the tire fuel efficiency consumer information program.

[126] *See* NHTSA Rolling Resistance Rating System Test Development Project: Phase 1—Evaluation of Laboratory Test Protocols (October 2008). Docket No. NHTSA–2008–0121–0019.

[127] To examine California's rolling resistance test data, please contact Ray Tuvell of the California Energy Commission. *See http://www.energy.ca.gov/transportation/tire_efficiency/index.html* (last accessed Feb. 13, 2009).

model/size combinations (or SKUs)[128] of replacement passenger car tires sold in the United States.[129] The CEC research also indicated that it could take up to 2.7 years to test one tire of each SKU once.[130] Additionally, a tire manufacturer has the ability to estimate with relative accuracy the rolling resistance test value of a tire with a given size specification if it knows the rolling resistance test value of a tire in the same model line (*i.e.,* the ability to estimate values by interpolating or extrapolating test values for certain SKUs from knowing the actual test values of other SKUs). Tire manufacturers have this same ability to estimate UTQGS traction test values and UTQGS treadwear test values by having actual traction and treadwear test values of other, similar tires of different SKUs. For these reasons, NHTSA concludes, as the agency did in the NPRM, that it is not reasonable or necessary to require a physically-tested value of rolling resistance, traction, or treadwear test value for every combination of tire model, construction, and size (SKU). NHTSA is not requiring tire manufacturers to report a test procedure value for rolling resistance, traction, and treadwear for each different SKU, as proposed in the NPRM. NHTSA explained that a tire manufacturer would be free to reasonably estimate the test values it would report, and the agency sought comment on this approach.

Interpolation versus required testing: RMA commented that it supports the ability for tire manufacturers to provide predicted (interpolated) tire ratings.[131] RMA stated that tire manufacturers routinely develop and utilize accurate computer models to predict tire performance of tires not physically tested, using proprietary information about tire chemistry, design, construction, and test data available for similar tires. RMA commented that permitting interpolation-based ratings would allow a tire manufacturer to efficiently rate affected tires while minimizing costs. RMA recommended that NHTSA modify the regulatory text to make clear that interpolation is acceptable as a basis for tire ratings.

NRDC, Ford, and Alan Meier each expressed concern with NHTSA's proposal to allow manufacturers to report a tire's ratings without running a test. NRDC commented that requiring tire manufacturers to submit actual test values would ensure that reported data is accurate and not requiring actual testing threatens to undermine the rating system credibility and the program's effectiveness.[132] Further, NRDC stated that not specifying a limit on the number of SKUs that can be reported with estimated, non-tested values would overburden NHTSA's compliance testing obligation, which they call NHTSA's only accurate validation mechanism. Ford stated that it did not support interpolating test values from one tire to another because of potential significant differences in tire construction from one tire to another, even within a tire line.[133] Alan Meier of the University of California, Davis argued that requiring a direct measurement of each tire is a vital element of the program because a measurement for each tire model is essential for the credibility of any information system.[134] Mr. Meier also stated that only if NHTSA could substantiate and verify the idea that test values can be accurately interpolated should a simulation model be allowed. Similarly, Consumers Union commented that NHTSA should require a standard statistical process and corresponding sample size for verifying that the assigned test value is determined with sufficient significance that no production tire will exceed the maximum test value assigned.[135]

Agency response: As an initial point, as discussed in section VII.B.2 below, NHTSA is not requiring tire manufacturers to report test values to the agency, but merely the actual ratings it is assigning to each tire SKU. The agency will continue to not require any amount of actual testing in the regulations for this rating program. First, EISA does not require particular tests. Second, as noted above, a tire manufacturer has the ability to estimate with relative accuracy the test values of a tire with a given size specification if it knows the test value of a tire in the same model line. NHTSA agrees with RMA's understanding of the industry that tire manufacturers routinely develop and utilize accurate computer models to predict tire performance of tires not physically tested, using information available for similar tires. Additionally, the CEC research discussed above indicates that requiring testing of all tire SKUs would cause a significant delay in the implementation of this program and would increase the cost burden of this regulatory program on tire manufacturers unnecessarily.

Finally, not specifically requiring testing is consistent with the enforcement mechanism known as "self certification," which was established by statute for Federal motor vehicle safety standards,[136] and is the process NHTSA follows to ensure compliance with its other programs and regulations as well. Under self certification, the burden for ensuring that all new vehicles and equipment (*e.g.,* tires) comply with Federal regulations is borne by the manufacturer. NHTSA does not perform any pre-sale testing, approval, or certification of vehicles or equipment, whether of foreign or domestic manufacture, before introduction into the U.S. retail market. To ensure compliance with agency regulations, NHTSA randomly tests certified vehicles or equipment (in accordance with the test procedures laid out in the regulations) to determine whether the vehicles or equipment fails to comply with applicable standards. For such enforcement checks, NHTSA purchases vehicles and equipment and tests according to the procedures specified in the standards. If the vehicle or equipment passes the test, no further action is taken. If the vehicle or equipment fails, NHTSA has the authority to request additional information from the manufacturer on the basis for certification and to assess

[128] A SKU, or stock keeping unit, is a specific market brand and tire design and size combination. A different SKU can also be indicated by a different specified load rating or speed rating for a particular tire. Specifically, NHTSA will define stock keeping unit as "the alpha-numeric designation assigned by a manufacturer to uniquely identify a tire product. This term is sometimes referred to as a product code, a product ID, or a part number." *See* the Regulatory Text section at the end of this notice.

[129] The CEC research estimated 20,708 different replacement passenger car tire SKUs and 3,296 replacement LT tire SKUs. This research was done by Smithers Scientific Services, Inc. (Smithers) and was presented at a CEC staff workshop on February 5, 2009. This presentation is available through the CEC's Web site and was also posted to the NPRM docket. *See http://www.energy.ca.gov/transportation/tire_efficiency/documents/index.html* (last accessed Sept. 28, 2009); Docket No. NHTSA–2008–0121–0007.

[130] The Smithers' research conducted for CEC was estimating various scenarios for testing three of each different replacement passenger *and* LT tire SKU (because California's tire fuel efficiency program covers passenger car and LT replacement tires). The eight different scenarios varied workdays per year, percent capacity available, and hours per day of test operation. Based on estimates of test capacities, the CEC research estimated average test years required to test three tires of each SKU to be between 0.7 and 8.2 years. Thus, for the purposes of testing one of each different replacement passenger car tire SKU, we estimate this would take a maximum of 8⅔ years, or 2.7 years.

[131] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 12.

[132] NRDC Comments, Docket No. NHTSA–2008–0121–0040.1 at 2, 4.

[133] Ford Comments, Docket No. NHTSA–2008–0121–0038.1 at 3.

[134] Alan Meier Comments, Docket No. NHTSA–2008–0121–0037.1 at 1–2.

[135] Consumers Union Comments, Docket No. NHTSA–2008–0121–0034 at 2.

[136] 49 U.S.C. 30115.

civil penalties for any confirmed violation.[137]

Neither EISA (nor other statutes NHTSA administers) nor NHTSA standards and regulations require that a manufacturer base its certifications (or ratings) on any particular tests, any number of specified tests or, for that matter, any tests at all. A manufacturer is required to exercise due care in certifying its tires. It is the responsibility of the tire manufacturer to determine initially what test results, computer simulations, engineering analyses, or other information it needs to enable it to certify that its tires comply with applicable Federal safety standards. The enforcement of the UTQGS rating system follows the same concept, and the rating system established under the tire fuel efficiency consumer information program will do the same.

For instance, the UTQGS do not require that manufacturers test their tires at NHTSA's test track at San Angelo, Texas. Manufacturers may test their tires where they choose, and may even choose not to test their products at all. However, the specification in the UTQGS regulations that testing is done at San Angelo means that NHTSA must use that track in any compliance testing of tires. In order to protect themselves against the possibility that the agency will find a noncompliance based on testing at San Angelo and initiate an enforcement action, it would be prudent for tire manufacturers to base their assigned grades on their own testing at San Angelo or on some substitute means whose results demonstrably correlate with the results of testing at San Angelo.

Mr. Meier commented that there is considerable evidence that identical models and SKUs manufactured in different facilities (or at different times) will have significantly different rolling resistances. For this reason, Mr. Meier stated a clear and unambiguous audit trail is needed to link a manufacturer's claimed values to tires that actually exist. This is not necessary. Since NHTSA conducts annual compliance testing and could buy and test a tire at any time to compare to the ratings a manufacturer has reported to the agency, tire manufacturers are responsible for monitoring the consistency and accuracy of its ratings throughout the production run. It is in the best interest of manufacturers, thus, to establish a comprehensive quality control program to periodically test tires randomly selected to ensure the accuracy of the rating through the entire production cycle.

Therefore, consistent with self certification and in the spirit of other NHTSA standards, tire manufacturers may use their judgment to determine how many and which tires they must test to be able to accurately report rolling resistance ratings. Because this is the agency's general practice, NHTSA does not think it is necessary to make this clear in the regulatory text, as suggested by RMA. A tire manufacturer will be responsible for the accuracy of the ratings they report to NHTSA and otherwise communicate to consumers. That is, for compliance purposes, NHTSA will test any rated tire according to the test procedures specified in the regulation (regardless of whether or not the tire manufacturer has tested this tire), and if the rolling resistance, traction, or treadwear test value falls outside of NHTSA's specified tolerance range, the agency will consider that rating a noncompliance.

Manufacturers currently rate treadwear by tire line: RMA commented that since many manufacturers currently rate tires for UTQGS treadwear by tire line, it is difficult to assess how tires would be rated for UTQGS treadwear under the proposed SKU-based rating system.[138]

Agency response: Tire manufacturers will be able to use their judgment to determine how many and which tires they must test to enable them to accurately assign ratings. The manufacturer ultimately bears the responsibility for establishing ratings considering the variability of its tire line and the variability of the testing process for that category.

Notice: Lastly, RMA commented that it was unable to understand the tire selection for rating protocol due to an inconsistency between the preamble and the proposed regulatory text. RMA claimed it was unclear as to whether NHTSA is proposing that each SKU be rated, or whether each tire of a different size is to be rated. RMA stated that this inconsistency obstructed its ability to comment on which tires are to be rated for rolling resistance, and that this—along with other alleged concerns—caused RMA to be uncertain about what was being proposed or NHTSA's intent. Therefore RMA stated that it was unable to meaningfully comment on the NPRM and requested that NHTSA issue a supplemental NPRM.

Agency response: As noted by RMA in its comments, the Administrative Procedure Act (APA) rulemaking provisions require that general notice of a proposed rule must be published in the **Federal Register** and must include "either the terms or substance of the proposed rule or a description of the subjects and issues involved."[139] NHTSA satisfied this APA requirement in the NPRM.

The U.S. Court of Appeals for the District of Columbia Circuit has explained that the APA's notice requirements "are designed (1) to ensure that agency regulations are tested via exposure to diverse public comment, (2) to ensure fairness to affected parties, and (3) to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review."[140] Thus, adequate notice and opportunity for comment exists "if it affords interested parties a reasonable opportunity to participate in the rulemaking process, and if the parties have not been deprived of the opportunity to present relevant information by lack of notice that the issue was there."[141] An agency NPRM "must provide sufficient detail and rationale for the rule to permit interested parties to comment meaningfully."[142]

RMA commented that the inconsistencies between the preamble and the proposed regulatory text deny RMA and other interested parties a meaningful opportunity to comment because it was difficult to understand exactly what was being proposed. NHTSA's notice of proposed rulemaking consisted of a lengthy preamble discussion and proposed regulatory text. Courts have found sufficient APA notice where the NPRM was not entirely clear on what was being proposed, but where the NPRM at least discussed an issue such that interested parties had reason to comment on it.[143] This is the case here. RMA was on notice of the subject and issues involved. It knew the possible outcomes under discussions in the preamble to the NPRM and under the proposed regulation. It also knew

[137] *See, e.g.,* 49 U.S.C. 30165, 30166 (safety standards); 49 U.S.C. 32308, 32309 (consumer information); 49 U.S.C. 32507 (bumper standards); 49 U.S.C. 32706, 32709 (odometer fraud).

[138] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 11.

[139] 5 U.S.C. 553(b)(3).

[140] *Environmental Integrity Project* v. *EPA,* 425 F.3d 992, 996 (DC Cir. 2005) (quoting *Int'l Union, United Mine Workers of Am.* v. *Mine Safety & Health Admin.,* 407 F.3d 1250, 1259 (DC Cir. 2005)).

[141] *American Radio Relay League* v. *Federal Communications Commission,* 524 F.3d 227, 236 (DC Cir. 2008) (citing *WJG Tel. Co., Inc.* v. *Federal Communications Commission,* 675 F.2d 386, 389 (DC Cir. 1982)).

[142] *Fertilizer Institute* v. *EPA,* 935 F.2d 1303, 1311 (DC Cir. 1991) (quoting *Florida Power & Light Co.* v. *United States,* 846 F.2d 765, 771 (DC Cir. 1988)).

[143] *See Nat'l Small Shipments Traffic Conference, Inc.* v. *Civil Aeronautics Board,* 618 F.2d 819, 833 (DC Cir. 1980) (finding sufficient notice where a NPRM was not "a paragon of clarity" but the preamble implied the prohibition that was ultimately adopted in the final rule).

that a logical outgrowth of either was possible.

RMA commented that contradictions between the preamble and regulatory text means that the final rule runs a risk of not being a "logical outgrowth" of the proposed rule. "A rule is deemed a logical outgrowth if interested parties 'should have anticipated' that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period." [144] NHTSA disagrees with RMA that NHTSA's requirement that each SKU must be rated separately is not a "logical outgrowth" of the NPRM merely because the proposed regulatory text stated something different, *i.e.,* that "every size designation must be rated separately." [145] The preamble discussed at length why NHTSA was considering it important to require each tire SKU to be rated separately.[146] Further, as indicated above, many commenters had something to say about this aspect of the NPRM, which serves as evidence that the rest of the interested public was sufficiently aware of the possibility that the agency may adopt such a requirement. In fact, RMA commented on this aspect of the proposal, even though it asserted it was confused about what NHTSA was actually proposing.[147]

Elsewhere, RMA commented that it was unable to meaningfully comment on all aspects of the proposed rule because the proposed regulations were inconsistent with the rulemaking's preamble and are, thus, not a logical outgrowth of the preamble. With this argument RMA misapplies the "logical outgrowth" principle. As noted above, courts have established the principle that to satisfy the notice requirement under the APA, a final rule must be a "logical outgrowth" of the agency proposal. The proposal is not limited to a particular part of the NPRM. As a general matter, where RMA professes confusion as to whether, for example, option A or option B was proposed in the NPRM, NHTSA has fully satisfied the APA notice requirements because even if the NPRM was ambiguous, both options were presented for comment, thus sufficiently apprising the public of the possibility that the agency was considering each option.[148]

B. Entities Subject to Requirements of the Program

1. Tire Manufacturers

Ford commented that tire importers and private label manufacturers were not considered tire manufacturers under the proposed requirements in the NPRM but that they should be held to the same requirements.[149]

Agency response: As noted in the NPRM, which entities are considered tire manufacturers for purposes of the tire fuel efficiency consumer information program is determined by statute. EISA codified section 111 by adding section 32304A to Chapter 323 (Consumer Information) of Part C (Information, Standards, and Requirements) of Subtitle VI (Motor Vehicle and Driver Programs) of Title 49 of the United States Code (U.S.C.). Section 32101 of Title 49 of the U.S.C. contains the definitions that are to apply to the Part C noted above. Section 32101(5) defines manufacturer as "a person (A) manufacturing or assembling passenger motor vehicles or passenger motor vehicle equipment; or (B) importing motor vehicles or motor vehicle equipment for resale." Thus, for all sections under Part C, including section 32304A, the importer of any tire is a tire manufacturer. An importer is responsible for every tire it imports and is subject to civil penalties in the event of any violations. The U.S. Customs and Border Protection may deny entry at the port to items that do not conform to applicable requirements.

As to private label manufacturers, NHTSA assumes that Ford is referring to when tire manufacturers produce tires under contract with private companies such as Sears, Pep Boys, Discount Tire, etc. These private entities then sell those tires under its house-brand trade names, *e.g.,* Sears brand tires, Pep Boys brand tires, etc. NHTSA intended this regulation to treat a tire brand name owner as a manufacturer in the case of tires marketed under a brand name different from the manufacturer name. This is clear in the regulation which requires tire manufacturers and tire brand name owners to rate all replacement passenger car tires for fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear), and submit those ratings to NHTSA. In the final regulatory text, NHTSA has added a definition of brand name owner for clarity.

2. Tire Retailers

When confronted with the need to replace the tires on their vehicles, consumers may choose from national Internet and mail order companies, tire dealers, manufacturer outlets, or retail department stores. Typically, the tires bought in the replacement market are balanced and mounted by the tire dealer or retailer.[150] NHTSA proposed a definition of tire retailer to be "a person or business with whom a replacement passenger car tire manufacturer or brand name owner has a contractual, proprietary, or other legal relationship, or a person or business who has such a relationship with a distributor of the replacement passenger car tire manufacturer or brand name owner concerning the tire in question." [151] The agency used this language because this is how Part 575 of Title 49 of the Code of Federal Regulations (CFR) refers to the locations where tires are offered for sale.[152]

The National Automobile Dealers Association (NADA) commented that this proposed definition is inconsistent with references to tire retailer requirements in 49 CFR Part 574, *Tire Identification and Recordkeeping,* and suggested that NHTSA reconcile the terms and definitions used to address tire dealers in Part 574 and the new regulatory text.

Agency response: Although the agency believes that the proposed definition of tire retailer would encompass franchised automobile and truck dealers that sell tires, NHTSA agrees with NADA's suggestion. Part 574 requires tire retailers to distribute and report information, just as this regulation will. Accordingly, NHTSA

[144] *Miami-Dade County* v. *EPA,* 529 F.3d 1049, 1059 (11th Cir. 2008) (quoting *Northeast Md. Waste Disposal Auth.* v. *EPA,* 358 F.3d 936, 952 (DC Cir. 2004)) (quotation and citation omitted); *see also First Am. Discount Corp.* v. *Commodity Futures Trading Comm'n,* 222 F.3d 1008, 1015 (DC Cir. 2000) (explaining that notice must be "sufficient to advise interested parties that comments directed to the controverted aspect of the Final Rule should have been made.") (quotation and citation omitted).

[145] Tire Fuel Efficiency NPRM, *supra* note 9, at 29585.

[146] *Id.* at 29553–29554.

[147] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 11 (commenting that since many manufacturers currently rate tires for UTQGS treadwear by tire line, it is difficult to assess how tires would be rated for UTQGS treadwear under the proposed SKU-based rating system).

[148] In addition to the SKU/size designation confusion, RMA alleged other inconsistencies between the NPRM preamble and the proposed regulatory text including the following: inconsistent figures regarding fuel savings; NPRM is unclear about what compliance approach is proposed in the NPRM versus where comments are sought on potential alternative approaches; confusion as to whether NHTSA intends to allow tire manufacturers to estimate values or whether NHTSA intends to require the testing of all tires; using the term fuel efficiency rating and RRF rating interchangeably; and inconsistent and inadequate use of terms (*i.e.,* citing typos). RMA Comments Appendix 3, Docket No. NHTSA–2008–0121–0036.4 at 46–50. This response is intended to respond to all of those allegations of being unable to meaningfully comment on the proposal.

[149] Ford Comments, Docket No. NHTSA–2008–0121–0038.1 at 2.

[150] 2006 NAS Report, *supra* note 4, at 21.

[151] Tire Fuel Efficiency NPRM, *supra* note 9, at 29585.

[152] *See* 49 CFR 575.6(c).

believes that the definition of "tire retailer" in the new regulations promulgated today should be consistent with that of Part 574. Thus, consistent with Part 574, this final rule defines tire retailer to mean a dealer or distributor of new tires and adds the following definitions of dealer and distributor:

Dealer means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

Distributor means a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale.

As mentioned above, NATM commented they did not believe Congress intended to include replacement tires sold for use on trailers to be within the scope of the tire fuel efficiency consumer information program.[153] NATM explained that some of its trailer manufacturer, trailer dealer, and trailer-parts distribution members sell "P" tires to consumers for replacement use on light-duty trailers, particularly small utility trailers. NATM believes that NHTSA's proposed definition of passenger car tire could be read to include those replacement "P" tires sold by NATM members for use on light-duty trailers. NATM stated that the proposed tire retailer definition may be read to encompass trailer retailers who offer a tire for sale and have a legal relationship with businesses defined in the rule as replacement car tire manufacturers, but that EISA does not contemplate subjecting these trailer retailers to the rule's requirements.

Agency response: As explained above, NHTSA concludes that all passenger car tires, even those sold for use on other vehicles, must have the information provided by the tire manufacturer. However, we agree that dealers that sell passenger car tires only for use on trailers should not be considered tire retailers for this program, since EISA did not mandate a tire fuel efficiency consumer information program to educate consumers about replacement tires for trailers. Accordingly, NHTSA is modifying the definition of tire retailer as suggested by NATM to be in terms of the purpose of the sale of the tire. Today's final rule defines tire retailer to mean "a dealer or distributor of new replacement passenger car tires sold for use on passenger cars, multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less." A retailer that sells tires only for use on trailers would not be within this definition.

C. EISA Does Not Give NHTSA Authority To Establish a Rolling Resistance Performance Standard for Replacement Passenger Car Tires

A few commenters urged NHTSA to consider establishing a maximum rolling resistance standard that would prohibit sale of the worst rolling resistance tires.[154] The European Union has adopted a maximum rolling resistance standard and California's fuel efficient tire program requires that the CEC consider whether to adopt standards for replacement tires to ensure that replacement tires are at least as energy efficient as original equipment tires.[155] As estimated by ExxonMobil, the reduction in the average rolling resistance of replacement tires that would result from such a maximum rolling resistance standard would increase on-road fuel economy obtained in motor vehicles and, thus, result in fuel savings (and GHG reductions).[156]

Agency response: Such a standard is not within the scope of the new authority granted to NHTSA under EISA. EISA mandates NHTSA must "promulgate rules establishing a national tire fuel efficiency consumer information program for replacement tires * * * to educate consumers about the effect of tires on automobile fuel efficiency, safety, and durability."[157] NHTSA cannot interpret the mandate to establish a consumer information program as providing it with the authority to regulate the fuel efficiency of replacement tires.

IV. Rolling Resistance Test Procedure

A. Test Procedure

As in the NPRM, today's final rule specifies that tire manufacturers must rate the fuel efficiency of their tires. To test for compliance with this requirement, NHTSA will use rolling resistance force measurements that would be achieved using the recently finalized test procedure ISO 28580:2009(E), *Passenger car, truck and bus tyres—Methods of measuring rolling resistance—Single point test and correlation of measurement results.*[158] Today's final regulations further specify that NHTSA will conduct the ISO 28580 test procedure using certain methodology and equipment options available in the test procedure as further discussed below.

As explained above, rolling resistance is simply the manifestation of all of the energy losses associated with the rolling of a tire under load.[159] Accordingly, in a laboratory, rolling resistance is measured by running a tire under load on a test wheel (referred to as "roadwheel"). At constant speed, the energy consumed by the rolling tire is directly proportional to the reaction forces in the form of torque on the roadwheel, or force on the axle. These forces are then used to calculate the forces at the tire-roadwheel interface. The less force, the less energy converted to heat and, thus, the more fuel efficient the tire.

As discussed in the NPRM, NHTSA examined five test methods to measure rolling resistance of light vehicle tires (Phase 1 Research).[160] The choice of which test procedure to specify for measuring rolling resistance is important because measuring rolling resistance requires precise instrumentation, calibration, speed control and equipment alignment for repeatable results. As explained in detail in the NPRM, agency research shows that all of the available test procedures could meet these requirements. Among these, the ISO 28580 test procedure is one of the preferred test procedures because, unlike some others, it evaluates a tire's rolling resistance at a single combination of load, pressure, and speed (*i.e.,* a single-point test method). A single-point test method is sufficient for rating tires against each other yet is less costly to conduct than a multi-point test method. For additional detail on NHTSA's Phase 1 Research and background on the test equipment and methodologies used to measure rolling resistance, *see* the NPRM.[161]

The ISO 28580 test procedure is also unique because it specifies a procedure

[153] Docket No. NHTSA–2008–0029.1.

[154] Public Citizen *et al.* Comments, Docket No. NHTSA–2008–0121–0043.1 at 11; ExxonMobil Chemical Company Comments, Docket No. NHTSA–2008–0121–0044.1 at 10; Michelin North America Comments, Docket No. NHTSA–2008–0121–0043.1 at 6.

[155] Cal. Pub. Res. Code § 25772.

[156] Docket No. NHTSA–2008–0121–0044.1 at 10.

[157] 49 U.S.C. 32304A(a)(1). EISA states what that rulemaking must include: (1) A tire fuel efficiency rating system for replacement tires; (2) requirements for providing information to consumers; (3) specifications for test methods for manufacturers to use in assessing and rating tires; and (4) a tire maintenance consumer education program. *Id.* at 32304A(a)(2).

[158] *See http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=44770* (last accessed Sept. 24, 2009).

[159] National Highway Traffic Safety Administration, The Pneumatic Tire, DOT HS 810 561, at 483 (February 2006).

[160] *See* NHTSA Rolling Resistance Rating System Test Development Project: Phase 1—Evaluation of Laboratory Test Protocols (October 2008). Docket No. NHTSA–2008–0121–0019.

[161] Tire Fuel Efficiency NPRM, *supra* note 9, at 29555–29559.

to correlate results between different test equipment (*i.e.,* different rolling resistance test machines), which our research shows is a significant source of variation. Because other established test methods lack such a procedure, NHTSA would need to develop a new procedure to address this variation before any of those test methods could be required.[162] As mentioned above, EISA mandates that this rulemaking include "specifications for test methods for manufacturers to use in assessing and rating tires to avoid variation among test equipment and manufacturers."[163] Further, the ISO 28580 test procedure is the specified test method in the proposed European Union Directive and the California draft staff regulation, allowing manufacturers to do one test to determine ratings for both proposed regulations.

NHTSA's proposed regulations included the specification of only two of four energy loss measurement methods, as well as the use of a 1.7-meter indoor roadwheel with a grit surface, as opposed to a bare steel roadwheel. All four force measurement methods are permitted under ISO 28580, as is testing on roadwheels with diameters greater than 1.7 meters using either roadwheel surface.

Many commenters misinterpreted the specification of two particular methods by NHTSA, the roadwheel diameter, and the specification of the grit surface as indication that we were proposing to prohibit the other options allowed under ISO 28580. These commenters stated that they support "full adoption" of the ISO 28580 test procedure.[164] This indicates a misunderstanding of the purpose of NHTSA's regulations and of NHTSA's enforcement mechanism generally. The procedures specified in NHTSA's standards and regulations specify the precise procedures NHTSA will follow when conducting enforcement checks. As explained above in section III.A.5, this enforcement approach does not require that a manufacturer base its certifications (or ratings) on any particular tests, any number of specified tests or, for that matter, any tests at all. A manufacturer is only required to exercise due care in certifying its tires. It is the responsibility of the tire manufacturer to determine initially what test results, computer simulations, engineering analyses, or other information it needs to enable it to certify that its tires comply with applicable Federal standards.

NHTSA has selected specific sections of ISO 28580 to allow compliance testing in the United States on existing independent laboratory equipment. Also, specifying the equipment and variant of testing NHTSA will use for compliance testing provides users of other equipment or variants of testing with a better known target for comparison of their testing. Therefore adopting only part of the specification does not hinder companies from using "in-house" equipment of another design that meets the ISO 28580 specification. ISO 28580 has more provisions available for testing based on worldwide equipment availability and therefore has set specifications and procedures to permit using all the different types of equipment and test variants. NHTSA, therefore, agrees with commenters who call for full adoption of ISO 28580 as a global test procedure. Equipment and test variants once aligned using the provisions in ISO 28580 can be compared. Therefore correlations can be established by the users of the other types of equipment to the type of equipment and test variants used by NHTSA.

For example, NHTSA agrees with the comment that both the bare steel roadwheel and 80 grit surface are scientifically equivalent.[165] As alignment and correlation procedures are available in ISO 28580 testing on bare versus the grit, force measurements can be corrected to report the same. NHTSA suggested grit as the surface for compliance testing so that companies would know exactly what they need to compare their result against. Companies testing on a bare roadwheel can develop correlations to adjust the numbers they report. The agency is specifying the use of an 80-grit surface on the roadwheel used in its compliance testing, instead of a bare steel roadwheel. The grit surface is the most common surface used in the laboratories available to NHTSA. NHTSA in its research found that the use of the 80-grit surface produced a slightly higher test measurement than using the bare steel surface. However, there was some evidence of potential problems for smooth steel-surfaced roadwheels in NHTSA Phase 1 testing.[166] In that testing, the rolling resistance of deep-lug tires exhibited a relatively linear behavior on grit surfaces over a range of test loads but dropped off consistently at high loads on smooth steel roadwheels. Since the discrepancy in results between a smooth and steel roadwheel could lead to rating compliance disputes, today's final rule specifies the use of the grit surface since it was found to be more repeatable and is the most common surface in the laboratories available to NHTSA.

Similarly, test equipment available in the United States at this time for compliance testing is limited to 1.7-meter rolling resistance test machines that use the force or torque measurement method. ISO 28580 has configured the alignment and correlation processes to take into account differences in roadwheel size and measurement methods. As alignment and correlation procedures are available, testing on a 2.0-meter roadwheel, or with the power or deceleration measurement methods, can be corrected to report the same values as measured using the force or torque methods on a 1.7-meter roadwheel. NHTSA suggested force or torque for compliance testing so that companies would know exactly what they need to compare and correlate the result against. With the machine tolerance, calibration, and alignment procedures specified in ISO 28580, NHTSA has confidence that correlations can be made with the power and deceleration methods.

Commenters generally supported adoption of the ISO 28580 test procedure.[167] However, MTS, a tire test equipment manufacturer, questioned a single-point test (as opposed to a multi-point test)[168] and the use of a curved

[162] Since there was development and validation of the ISO 28580 lab alignment procedure, NHTSA believes that using ISO 28580 with its lab alignment procedure is preferable to developing a new lab alignment process from scratch. *See* Transcript of Staff Workshop Before the California Energy Resources Conservation and Development Commission, at 104 (April 2009), available at *http://energy.ca.gov/transportation/tire_efficiency/documents/2009-04-08_workshop/2009-04-08_TRANSCRIPT.PDF* (last accessed Nov. 11, 2009).

[163] 49 U.S.C. 32304A(a)(2)(C).

[164] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 1; European Commission Comments, Docket No. NHTSA–2008–0121–0028.1 at 2; JATMA Comments, Docket No. NHTSA–2008–0121–0031.1 at 2–3; Consumers Union Comments, Docket No. NHTSA–2008–0121–0034 at 2; RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 8–9; Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 2–3.

[165] However, ISO 28580 indicates that the skim test reading accuracy can be improved by use of a "textured" (*i.e.,* grit) roadwheel surface. *See* ISO 28580:2009(E), *Passenger car, truck and bus tyres—Methods of measuring rolling resistance—Single point test and correlation of measurement results,* section 5.1.2, *Surface.*

[166] We note that these wheels did not have the micro-texture required by ISO 28580 for steel-surfaced roadwheels.

[167] *See id.*

[168] The term "multi-point" refers to a method that uses more than one set of conditions to test a tire, usually varying speed, pressure, and/or load. Passenger car and light truck tires generally have different test conditions and can have even a different number of test points in the set of conditions. The goal of multi-point testing is to allow the use of statistical techniques to reduce rolling resistance force measurement variability and to allow prediction of the effect of changes in inflation pressure, tire load and speed on rolling resistance force. The term "single-point" refers to a method that uses a single set of test conditions.

test surface. As for ISO 28580 being a single point test, MTS commented that a single reading for one tire is a small sample size and there is no corroborating data to provide assurance the test value is truly representative of the tire.[169] As RMA pointed out and as NHTSA explained in the NPRM, research conducted by both NHTSA and the CEC show that both single point and multi point tests can accurately produce tire rolling resistance data and that tires tested using either type of test procedure rank order the same for those conditions. Equations were derived to accurately convert data from any one test to the expected data from any other test at a single load and pressure. NHTSA's research has shown that both types of tests essentially produce the same rating if results are normalized as a percentage of RRF measured at each lab for the 16-inch Standard Reference Test Tire (SRTT), the ASTM F 2493.[170] Single-point tests are less expensive and shorter than multi-point test methods. Additionally, with single-point tests, data from any method can be correlated to data from any other method. Accordingly, NHTSA still believes that a single-point, rather than a multi-point, test will better serve the purposes of this program.[171]

As for the use of a curved test surface, MTS questions the use of 1.7 and 2.0-meter test wheel machines for the ISO 28580, as opposed to their flat surface test machine because of curvature effects that result from using a curved surface to measure rolling resistance. MTS states that rolling resistance measurements made on flat surface test equipment would be more accurate measurements because flat surface test equipment more closely resembles actual usage conditions.[172] NHTSA agrees that a more accurate measurement of rolling resistance force could be made using flat surface test equipment. NHTSA could not evaluate flat surface rolling resistance equipment during the research and testing as none were available in independent laboratories. Thus, NHTSA believes that the industry as a whole does not have the capacity to rate tires on a flat laboratory machine at this point in time. ISO 28580 was developed by industry experts and does have provisions for conversion from flat to the 2.0-meter curved reference surface.[173] However MTS itself questions these conversion equations. Therefore NHTSA suggested 1.7-meter as the surface for compliance testing so that companies would know exactly what they need to compare their result against.

MTS also questioned the use and meaning of capped inflation pressure. As explained in the NPRM, NHTSA Phase 1 Research examined differences resulting from the method of inflation maintenance, specifically whether inflation pressure was capped[174] or regulated.[175] The Phase 1 Research showed that the pressure rise in the tire during testing using a capped inflation procedure reduced the rolling resistance compared to maintaining the pressure at a constant pressure during the test. Therefore, the choice of a test that uses capped inflation pressure for some or all of the test points should provide a more accurate representation of in-service behavior. The use and definition of "capped air" is defined in ISO 28580 as follows: "The test consists of a measurement of rolling resistance in which the tire is inflated and the inflation pressure allowed to build up (*i.e.,* "capped air")." The purpose is to evaluate the tire and its reaction to flexing and running in the same environment as other tires as if they are on the highway.

One change that NHTSA is adding to its test procedure specified in the regulation, is that the agency must specify a break-in procedure for bias ply tires, since these tires are included within the scope of the tire fuel efficiency consumer information program.[176] Older tire rolling resistance standards contain an option for an addition break-in for tires that "undergo significant permanent change in their dimensions or material properties with first dynamometer test operation," (SAE J1269/SAE J2452) which the agency interprets to apply to bias-ply or belted-bias tires. Modern radial tire designs, which constitute over 99 percent of the current replacement passenger tire market, have sufficient dimensionally stability to not require the optional break-in.[177] The greater dimensional stability of radial tires is a result of their construction with inextensible belts. Similarly, bias-belted tires are dimensionally stable due to their construction with inextensible belts. The body ply materials have been improved to enhance the overall dimensional stability of tires. Therefore, the dimensional stability of bias-construction tires depends upon the body-ply fabric used in their construction. Nonetheless, the agency must establish provisions for bias-construction tires that may use less dimensionally stable fabric technologies since bias ply tires are covered under the scope of the tire fuel efficiency consumer information program.

The break-in procedure we are specifying for bias ply tires is one that is found in FMVSS No. 109, *New Pneumatic and Certain Specialty Tires,* and FMVSS No. 139, *New Pneumatic Tires for Light Vehicles.*[178] However, we are specifying that the roadwheel break-in need only be for one hour, as opposed to two hours as in FMVSS Nos. 109 and 139, because one hour is found to be generally sufficient to achieve initial break-in and achieve thermal stabilization.[179] We do not believe that ISO 28580 was developed with bias ply tires in mind. Radial ply construction of tires has been the industry standard for the past 20 years. However, bias ply tires do still exist and are included within the statutorily defined scope of the tire fuel efficiency consumer information program. Therefore, the agency's test procedure must specify how we would test bias ply tires.

B. Lab Alignment Procedure

As discussed in the NPRM, some of the technical challenges involved in selection of a test procedure to measure rolling resistance include specifying a test method that avoids variation among laboratories/machines. NHTSA's Phase 1 Research evaluation indicated that all

These conditions are designed to be near the average conditions that a tire would see in its intended service.

[169] MTS Comments, Docket No. NHTSA–2008–0121–0027.1 at 2.

[170] *See* NHTSA Rolling Resistance Rating System Test Development Project: Phase 1—Evaluation of Laboratory Test Protocols (October 2008). Docket No. NHTSA–2008–0121–0019.

[171] Tire Fuel Efficiency NPRM, *supra* note 9, at 29558.

[172] MTS Comments, Docket No. NHTSA–2008–0121–0027.1 at 6–9.

[173] The Clark equation to correct for the effect of diameter is an accepted approximation. Deviations from total accuracy for correction to a flat surface are introduced by differences in tire construction such as aspect ratio and stiffness of the tire construction, especially sidewalls.

[174] Capped inflation is achieved by inflating the tire to the required pressure prior to testing, while the tire is at ambient temperature of the test area, and then sealing the air in the tire during testing with a valve, cap or some other seal.

[175] Regulated inflation pressure is achieved by inflating the tire to the required pressure independent of its temperature, and maintaining this inflation pressure during testing. This is usually performed by using a regulated air (gas) supply external to the spindle, or axle, and connected with a low friction rotary union.

[176] In tire size terminology, bias ply construction is indicated by a "D" in the size specification, as opposed to an "R" in a tire size specification, which indicates that a particular tire is a radial tire. Radial ply construction of tires has been the industry standard for the past 20 years.

[177] *See* National Highway Traffic Safety Administration, The Pneumatic Tire, DOT HS 810 561, at 80 (February 2006).

[178] *See* 49 CFR 571.109, S5.5.1, S5.5.2, S5.5.3; 49 CFR 571.139, S6.2.1.2.

[179] *See* National Highway Traffic Safety Administration, The Pneumatic Tire, DOT HS 810 561, at 500 (February 2006).

five of the rolling resistance test methods had very low variability and could be cross-correlated to provide the same information about individual tire types.[180] There was a significant and consistent difference in the data generated by the two laboratories/machines used in NHTSA's Phase 1 Research. Therefore, development of a method to account for lab-to-lab variability is required.

One significant difference between ISO 28580 and the other test methods is that ISO 28580 includes a procedure which uses two reference tires to correlate any laboratory/machine to a reference rolling resistance test machine ("Reference Machine"). NHTSA's research showed a significant difference between the two laboratories' machines used, and therefore addressing this variation is a significant advantage for the ISO standard. Use of any other rolling resistance test procedure would have required NHTSA to develop its own procedure to address lab-to-lab variation, which would also necessitate the specification of a reference rolling resistance test machine.

Reference machine: As commenters points out, under ISO 28580, use of the lab alignment procedure requires the specification of a "Reference Machine" against which other machines will align their measurement results.

Because the ISO has not yet specified a Reference Machine for the ISO 28580 test procedure, NHTSA must specify this machine so that tire manufacturers know which test machine they must correlate their test results against. In the near future NHTSA will announce one or more private laboratories to operate the Reference Machine.[181] The selected reference laboratory or laboratories will meet the conditions for a reference machine specified in ISO 28580, and may be required to meet other conditions specified by NHTSA.[182] The agency is working expeditiously to establish and implement procedures for the selection of a reference laboratory or laboratories to operate the Reference Machine(s).[183]

In order for other test machines to align with the reference laboratory or laboratories, the reference laboratory will test two alignment tires in accordance with ISO 28580 test procedures, and convey the tires to the testing laboratory with the data produced during the testing of those tires. The specification of specific alignment tires is discussed immediately below.

Alignment tires: Under the ISO 28580 lab alignment procedure, laboratories seeking to correlate its machines' results with the Reference Machine would use sets of two alignment tire models, for which ISO 28580 also specifies requirements, as discussed below.[184] These alignment tires ("Lab Alignment Tires," or LATs) are used to align other "candidate" machines with the Reference Machine by comparing the measured rolling resistance results for those tires measured on the candidate machine to their stated values measured on the Reference Machine. An alignment formula is then established and is used to translate the results obtained on a candidate machine into results aligned with the Reference Machine. Since the requirements for LATs are specified in ISO 28580, but specific sizes or models of LATs are not specifically identified, NHTSA must specify which LATs tire manufacturers should use to align other rolling resistance machines to the Reference Machine.

The agency has been aware that ISO has been working to certify two passenger car alignment tire models, and when completed, the identity and a source for procurement by interested rolling resistance laboratories would be promulgated in a technical report to ISO 28580. In its NPRM comments, RMA noted that tires that qualify as LATs under ISO 28580 would be available by the end of 2009. However, in January 2010, the ISO Technical Committee 31 Working Group 6 Convenor notified NHTSA and other interested parties by memo of the identity and source for the tires that it intends to certify as LATs under ISO 28580, but that its official promulgation by technical report has been delayed until June 2010.[185]

Since specifications and source of supply for these LATs has not yet been officially promulgated by ISO, NHTSA will postpone the specification of LATs to a later date. NHTSA will address available LAT options in the forthcoming supplemental NPRM relating to the consumer information requirements and consumer education portions of the program.

During the development of this final rule, NHTSA did consider the option of specifying existing reference tires as LATs for purposes of NHTSA's tire fuel efficiency consumer information program. However, the agency determined that specifying existing reference tires as LATs was not the optimal approach. NHTSA examined three established and widely available ASTM reference tires, as shown in Table 2.[186] These reference tires are widely used for monitoring a wide variety of tire performance measurements, but the agency has no knowledge of them having been used as a standard or reference tire for tire rolling resistance testing.

As noted above, ISO 28580 specifies requirements for LATs in section 10.4, *Alignment tyre requirements.* These specifications are as follows:

(1) RRC values of the two LATs must have a minimum range of 3 Newtons per Kilonewton (N/kN).

(2) The LAT section width[187] should be less than or equal to 245 millimeters (mm).

(3) The LAT outer diameter should be between 510 mm and 800 mm.

(4) Load index values of the two LATs should adequately cover the range for the tires to be tested, ensuring that the

[180] For this program, each manufacturer will "self-certify" the ratings for its tires. The test procedure specified in this proposal is what NHTSA will use for compliance testing. Even if rolling resistance test data were gathered using other test methods, NHTSA's research shows that equations can translate the data to the test procedure specified in this rule.

[181] It is not the intent of NHTSA to unilaterally establish the reference machine for ISO or other global regions. Rather, the agency must define a "regional" reference machine for the tire fuel efficiency consumer information program that is independent of entities we regulate and is accessible to the agency by standard contractual mechanisms. This will allow reporting under the program and agency compliance testing that meet the requirements of EISA. It is our understanding that the output of a given "candidate" machine can be corrected using different correlation equations and therefore different entities/rating systems could also designate their own reference machines.

[182] *See* ISO 28580:2009(E), *Passenger car, truck and bus tyres—Methods of measuring rolling resistance—Single point test and correlation of measurement results,* section 10.2, *Conditions for reference machine.*

[183] If NHTSA selects more than one private laboratory to operate the "Reference Machine," the agency would work with those laboratories to implement a program that would establish initial correlations between the machines, and that would continuously monitor the variability in the correlation between the two machines.

[184] *See* ISO 28580:2009(E), *Passenger car, truck and bus tyres—Methods of measuring rolling resistance—Single point test and correlation of measurement results,* section 10.4, *Alignment tyre requirements.* In the ISO 28580 test procedure, rolling resistance test machines other than the Reference Lab machine are referred to as "candidate machines."

[185] This memo will be placed in the final rule docket.

[186] Reference tires are specially designed and built to American Society for Testing and Materials (ASTM) standards to have particularly narrow limits of variability. For instance, the designation "F 2493" refers to the standard specification of materials and construction practices codified by ASTM as suitable for control tires for scientific experimentation.

[187] A tire's section width (the measurement in millimeters from the widest point of a tire's outer sidewall to the widest point of its inner sidewall) is indicated by the first three numbers of a tire's size designation.

RRF values of the LATs also cover the range for the tires to be tested.

TABLE 2—ASTM REFERENCE TIRES

Tire	ASTM E 501	ASTM E 1136	ASTM F 2493
Tire description	G78 15 Bias/belted grooved tire used for traction monitoring	P195/75R14 for monitoring performance including treadwear, and snow traction	P225/60R16 "modern" radial tire proposed for performance monitoring
Section width	212 mm	196 mm	228 mm.
Outer diameter	648 mm	648 mm	676 mm.
Load Index	Unknown[188]	92	97.
RRF, lbf	19	11	12.
RRC, N/kN	14.8	9.8	9.3.

All three ASTM reference tires satisfy the above ISO 28580 LAT specifications for section width and outer diameter. As for the first and fourth specifications above, the RRF values of the ASTM E 501 and ASTM E 1136 tires cover the middle portion of the range of RRF values of the tires to be rated under this program, and their load index values are similar, both of which seem to run contrary to the intent of the fourth ISO 28580 alignment tire criterion listed above.

Additionally, the properties that are specified and reportedly tightly controlled in the three ASTM reference tires are meant to provide repeatable results in traction, treadwear, and like tests. This does not necessarily assure that the tires will have good repeatability for rolling resistance, which is not explicitly controlled for in their specifications and is a product of many different facets of a tire's design and construction. Therefore, the agency is investigating how tightly specified and controlled the rolling resistance properties are in the proposed ISO Alignment Rolling Resistance Reference Tire (ARRRT) models (LATs), which the agency will confirm with independent testing. For these reasons, in the agency's expert judgment, it is preferable to postpone the specification of LATs under the tire fuel efficiency consumer information program, in the hopes that ISO finalizes the specification of rolling resistance alignment tires in the anticipated timeframe, rather than specifying a pair of existing reference tires that were not developed specifically to be rolling resistance LATs.

As indicated above, reference tires specifically designed for use as rolling resistance LATs are expected to be widely available in the near future. The agency believes this will occur on a timeline that will allow NHTSA to address available LAT options in the forthcoming supplemental NPRM relating to the consumer information requirements and consumer education portions of the program, and the agency will do so at that time.

V. Rolling Resistance Rating Metric

The output of the rolling resistance test machines is used to calculate the rolling resistance force (RRF) in pounds of force (lbf) or Newtons (N) at the interface of the tire and drum, or the force at the axle in the direction of travel required to make a loaded tire roll. Rolling resistance is often expressed and reported in terms of Rolling Resistance Coefficient (RRC) (N/kN, kg/tonne, lbf/kip), which is the rolling resistance force divided by the test load on the tire.[189] Since rolling resistance changes with the load on the tire, this makes direct comparisons between the tires tested at different loads difficult. The pending European rating system uses RRC as the metric for a rolling resistance rating/score. In the NPRM, NHTSA proposed to base the tire fuel efficiency rating on the RRF metric. NHTSA had tentatively concluded that a rating based on RRF is more descriptive and would provide more information to consumers, than a rating based on RRC.

Tire Rack and ExxonMobil commented that RRF is the appropriate metric since it directly relates to the tire's contribution to vehicle fuel consumption.[190] Tire Rack commented that RRF is the most intuitive value available to educate consumers about the influence tires have on vehicle fuel consumption because tire RRF is directly related to the energy required to maintain a vehicle in motion and offers a scale that can be applied to all tires within the rulemaking's scope. Michelin, although it expressed support for RRC, stated that NHTSA was correct that RRF is more directly related to fuel consumption.[191] Consumers Union expressed support for using RRF as the fuel efficiency rating metric and commented that RRF is appropriate for comparing tires of the same size, load index, and speed rating designation.[192] Consumers Union also pointed out that it is the metric that is consistent with California's proposed regulations. ExxonMobil explained that because RRC is RRF divided by the test load (generally 80 percent of the maximum load rating for the tire), RRCs can only be compared within a single load rating/tire size. ExxonMobil further noted that since larger tires generate more rolling resistance and have greater test loads, the resulting RRCs for those tires can sometimes be lower than those of smaller tires (*i.e.,* they would get a higher fuel efficiency rating than the small tire in a rating system based on RRC).[193]

MTS, the European Commission, JATMA, RMA, NRDC, GM, and Michelin supported basing the fuel efficiency rating on RRC. RMA, Michelin, and GM commented that they support basing a rolling resistance rating on RRC because using RRF will cause the ratings for tires available to a consumer (*i.e.,* those of the same size) to be clustered. They state that because RRF is an absolute rating, ratings for small tires will be clustered around high ratings, ratings for large tires will be

[188] This tire is not rated by Load Index, however the maximum sidewall load of 1620 pounds is similar to a 97 Load Index.

[189] Most test procedures specify test load as a percentage of the maximum load rating of the tire being tested. For example, the ISO 28580 test procedure specifies a load of 80% of the maximum sidewall load.

[190] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 1; ExxonMobil Chemical Company Comments, Docket No. NHTSA–2008–0121–0044.1 at 2, 9.

[191] Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 4.

[192] Consumers Union Comments, Docket No. NHTSA–2008–0121–0034 at 2.

[193] ExxonMobil Chemical Company Comments, Docket No. NHTSA–2008–0121–0044.1 at 2, 9.

clustered around low ratings.[194] These commenters stated that consumers may be discouraged to find no highly-rated tires for large vehicles. They contend that RRC would spread out all ratings for tires available to a single consumer so that they would be able to get a top rated tire.

MTS and Michelin commented that a fuel efficiency rating system based on RRF yields an artificial advantage for the lower load index tire.[195] These commenters noted that RRF will tend to rank tires with less load capacity higher than tires with high load capacity and that a RRC-based rating would rank tires by the relative technology applied to the tire to reduce rolling resistance. These commenters stated that this is because RRF is dependent on the load capacity of the tire, and RRC is independent from tire load carrying capacity or the size of the tire.[196]

Commenters in support of RRC additionally noted that RRC is the metric that the European system bases its tire fuel efficiency rating system on,[197] and Michelin and GM stated that RRC is the industry standard for measurement of rolling resistance. The European Commission and JATMA supported RRC because they stated RRC is more appropriate to compare tires of different size and load indexes.[198] NRDC commented that the fact that larger tires will have lower ratings may discourage consumers from seeking fuel efficient tires for those vehicles.[199] Some commenters also stated that a rating based on RRF will encourage people to undersize, or purchase tires with too low of a load index.[200]

Agency response: Based on the large number of comments received on this issue, and to retain flexibility to use what the agency learns about consumer comprehension from the future consumer research, NHTSA will defer a decision on which rolling resistance metric should be used for the fuel efficiency rating and consider that matter further in the future supplemental NPRM and final rule that will finalize the consumer information and education portions of the program. However, to aid in guiding further discussion, in the FRIA we have analyzed some of the issues addressed by commenters relating to basing a fuel efficiency rating on RRF versus RRC.[201]

VI. Rating System

A. What Information Will the Rating System Convey to Consumers?

1. Fuel Efficiency

As explained above in section II.A, the national tire fuel efficiency rating system will communicate tire fuel efficiency information in the form of a rolling resistance rating, because rolling resistance corresponds to the amount of fuel used in the form of mechanical energy dissipated to move the tire. No commenter challenged these statements in the NPRM and no commenter suggested an alternate method by which to directly compare the fuel efficiency of replacement tires. Therefore, NHTSA still plans on basing the fuel efficiency rating of a given replacement passenger car tire on the rolling resistance force test value measured using the ISO 28580 test procedure. The form of the rating and how it will be communicated to consumers will be determined in the near future in the rulemaking to finalize the content of the required tire fuel efficiency consumer information program label.

2. Safety

i. Potential Safety Consequences

As noted in the NPRM, there is still a limited understanding of how tire traction, wear resistance, and rolling resistance relate to the practical outcomes of vehicle fuel consumption, crash incidence, and tire service life. One of the past concerns about rolling resistance is that traction and/or treadwear could be negatively impacted by changes made to improve rolling resistance.

As part of the research in support of this rulemaking, NHTSA performed and analyzed additional testing with the tires that were used to evaluate the rolling resistance test methods. This testing included UTQGS traction and treadwear testing, additional wet and dry traction testing on an outdoor track, indoor dry traction and treadwear testing, and EPA dynamometer fuel economy testing.[202] This research, with one exception discussed below, did not show that this tradeoff is a given and must occur. However, it may cost more to maintain traction or treadwear with an improvement in rolling resistance. Commenters to the NPRM confirmed that a tradeoff in traction or treadwear need not occur to achieve higher fuel efficiency for a given tire.[203]

By providing information on all three parameters, a consumer could factor any possible tradeoffs between rolling resistance, traction, and treadwear, and/or cost differences between tires. That is, with all three ratings, a consumer could see whether they were opting for a decrease in traction and treadwear to gain improved fuel efficiency. Advocates agreed that because tire design and manufacture involve an interdependent relationship between fuel efficiency and durability on the one hand, and tire safety, adhesion to the roadway or traction, on the other, it is vitally important that safety information also be communicated to the public as part of any tire consumer information program.[204]

Technical literature extensively indicates that the tradeoff between fuel economy and safety performance can be significantly reduced with advanced compounding technologies, which are usually more expensive and proprietary. However, many aspects of the tire's construction and manufacture affect how much tradeoff remains, and the results of implementing new technologies, such as silica treads, will vary between manufacturers (which ranges from manufacturers who have decades of experience with the technology to manufacturers who have none). It is hoped that increased consumer awareness may help to spur technological innovation to promote simultaneous improvements along several dimensions.

Therefore, NHTSA is concerned about the potential negative safety consequences that may occur if

[194] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 3; GM Comments, Docket No. NHTSA–2008–0121–0046.1 at 3–4; Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 3–4.

[195] MTS Comments, Docket No. NHTSA–2008–0121–0027.1 at 2–3; Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 5–6.

[196] *See id.;* GM Comments, Docket No. NHTSA–2008–0121–0046.1 at 3–4.

[197] MTS Comments, Docket No. NHTSA–2008–0121–0027.1 at 2–3.

[198] European Commission Comments, Docket No. NHTSA–2008–0121–0028.1 at 3; JATMA Comments, Docket No. NHTSA–2008–0121–0031.1 at 1.

[199] NRDC Comments, Docket No. NHTSA–2008–0121–0040.1 at 6–10.

[200] MTS Comments, Docket No. NHTSA–2008–0121–0027.1 at 2–3; RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 4; RMA Comments, Appendix 6, Docket No. NHTSA–2008–0121–0036.7 at 24–25; GM Comments, Docket No. NHTSA–2008–0121–0046.1 at 3; Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 5.

[201] *See* FRIA, section IV. The companion Final Regulatory Impact Analysis (FRIA) to this final rule provides an analysis on the potential economic impacts of this consumer information program and is available in the docket for this final rule.

[202] *See* NHTSA Tire Rolling Resistance Rating System Test Development Project: Phase 2—Effects of Tire Rolling Resistance Levels on Traction, Treadwear, and Vehicle Fuel Economy (February 2009). Docket No. NHTSA–2008–0121–0035.

[203] Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 8, NRDC Comments, Docket No. NHTSA–2008–0121–0040.1 at 7; *see also* California Energy Commission, California State Fuel-Efficient Tire Report: Volume II, 1 (2003), Docket No. NHTSA–2008–0121–0010.

[204] Advocates Comments, Docket No. NHTSA–2008–0121–0049.1 at 1–2.

consumers, motivated by potential fuel savings, begin to purchase tires with better rolling resistance ratings but are unwilling to spend additional money to also maintain wet traction levels. Despite having the wet traction rating on the same sticker, some manufacturers may defer the use of the more expensive silica tread technologies and instead optimize tires to lower rolling resistance and treadwear (another important purchase motivator) at the expense of wet traction in order to gain a price advantage.

Also, as was detailed in the 2006 NAS Report, manufacturers can generate an improvement in a conventional tire tread by reducing initial tread depth.[205] However, the committee determined that due to the economics, "reductions in tread depth and other measures to reduce rolling resistance that have significant impacts on tire wear life could be unwise and may be unacceptable."[206] Regarding safety implications, the committee ultimately concluded: "Discerning the safety implications of small changes in tire traction characteristics associated with tread modifications to reduce rolling resistance may not be practical or even possible. The committee could not find safety studies or vehicle crash data that provide insight into the safety impacts associated with large changes in traction capability, much less the smaller changes that may occur from modifying the tread to reduce rolling resistance."[207] "As tread depth is reduced due to tire wear, reductions in driving and braking forces occur in wet, snow and muddy conditions compared to dry road performance. The critical speed for the onset of hydroplaning on rain covered highways is similarly lowered with increasing tire wear due to the reduced drainage capacity of the grooves, sipes (kerfs), and slots in the tread design."[208] Results from a 2006 survey by the RMA of more than 14,000 scrap tires showed that, excluding the first year of service, 59 percent of tires were replaced due to wear out (had tread at or below wear indicators).[209] Therefore, the study suggests that a large percentage of consumers use tread wear indicators to signal the need for tire replacement. However, the agency is aware that some consumers may have expectations of achieving a certain number of miles or years of use for a given set of tires, and starting with less initial tread depth could result in some increase in the operation of tires at or below recommended removal depths. In those cases, consumers may fail to perceive that the reductions in the treadwear grade from reducing initial tread depth can result in less safety. Therefore, the new FMVSS No. 139 continues to require treadwear indicators to be molded into the tread of a light vehicle tire to allow a person visually inspecting the tire to determine that it has worn to 1/16″ (2/32″).

A survey of the current marketplace was undertaken to estimate what information consumers currently have for choices in wet traction, price, and, where available, rolling resistance performance of tires. From the NHTSA ratings in safercar.gov and tires available at TireRack.com, approximately 20 percent of tires currently have traction ratings of AA, 70 percent have ratings of A, and 10 percent have ratings of B. There were no C-rated tires for on-road passenger vehicle use. From the NHTSA data and the data from the California Energy Commission and the Consumer Reports magazine, it appears that tire makers design most tires with AA wet traction rating for flag-brand and high-performance tires with correspondingly high average selling prices. Data for rolling resistance, wet traction, and list price performance indicate that tires with both A-traction rating and low rolling resistance performance are available at all list price levels.

NHTSA's recent consumer research indicates that consumers care more about the durability and safety characteristics than the fuel efficiency of a replacement tire.[210] Specifically, more than two-thirds of survey respondents are willing to pay more for tires with above average performance ratings for traction (70 percent of survey respondents), treadwear (70 percent of survey respondents), and fuel efficiency (67 percent of survey respondents). When asked "when you think about tire performance, what attributes or performance measures are most important to you personally," 47 percent of survey respondents stated some form of durability (*e.g.,* tread life, reliability) and 37 percent of survey respondents answered that traction/handling were important to them (*e.g.,* all season usage, wet road handling). Fourteen percent of survey respondents specifically responded with the words safety or security. All other responses got much less significant results, including performance, which includes the words mileage and general performance, accounting for 17 percent of those surveyed. Additionally, when asked how important are each of the following tire performance metrics to you personally, 93 percent of respondents stated that tire traction was either extremely important or very important to them, 91 percent of respondents stated that tire treadwear was either extremely important or very important to them, while 80 percent of respondents stated that fuel efficiency was either extremely important or very important to them. These survey results mitigate the concerns about potential negative safety consequences resulting from consumers sacrificing traction to maximize the fuel efficiency of replacement tires.

Advocates expressed concern that due to the fact that only the most expensive tires may be able to maintain a high traction rating while improving fuel efficiency, consumers may be misled into choosing tires with good fuel efficiency and durability but poor or inadequate safety. Thus, Advocates commented that NHTSA must carefully conceive and format a tire label to ensure that it does not promote cost savings at the expense of safety.

Agency response: NHTSA agrees with Advocates on the need to not emphasize the fuel efficiency rating above the traction rating and will consider this when finalizing the consumer information and consumer education portions of the program. However, the concerns expressed by Advocates and NHTSA in the NPRM about the possibility that consumers might sacrifice safety for improved fuel efficiency are certainly mitigated by the results of recent NHTSA consumer research.

ii. Test Procedure

Although rolling resistance is a standard measurement for characterizing and comparing tire energy performance, less comprehensive data exist in the public domain for accurate characterizations of tire traction. There are different methods of evaluating traction. For example, the UTQGS rating or the European wet grip rating use different test procedures that do not evaluate the same elements.

[205] 2006 NAS Report, *supra* note 4, at 74.

[206] *Id.* at 93.

[207] *Id.* at 3.

[208] National Highway Traffic Safety Administration, The Pneumatic Tire, DOT HS 810 561, at 657 (February 2006).

[209] *See* Rubber Manufacturers Association News Release, Tire Industry Study: Chronological Age Alone Does Not Determine When Tires Are Removed From Service (May 23, 2006), available at *http://www.betiresmart.org/newsroom/release.cfm?ID=185* (last accessed March 11, 2010).

[210] NHTSA conducted additional consumer research after the notice of proposed rulemaking (NPRM) was issued to improve understanding of the typical tire purchaser and the tire purchasing process for the average consumer. *See* NHTSA Rolling Resistance Survey (Aug. 19, 2009). This and other reports relied on in the final rule will be placed into the docket.

In the NPRM, NHTSA proposed to use the traction test procedure specified in the agency's UTQGS regulation to rate tires for safety,[211] reasoning that this test procedure for measuring wet traction is the only metric for which consistent data are widely available for a range of tires.[212] NHTSA explained that the wet traction test procedure measures a tire's coefficient of friction during braking. In the context of tires on a passenger vehicle, the amount of force available to the braking system to decelerate the vehicle is determined by the tire, the road surface, and the conditions of their interaction. This value is measured by the coefficient of friction, μ (mu), which is the ratio of the longitudinal force divided by the vertical load on the tire. The higher the coefficient of friction is for a given tire, the more friction available to decelerate the vehicle. The choice of tire can affect the amount of reduction in friction on wet surfaces.[213] Thus, different tires' measurements of the coefficients of friction during a braking test provide objective comparative information on tire's traction performance.

The UTQGS traction test procedure measures a tire's coefficient of friction when it is tested on wet asphalt and concrete surfaces. The test tire is installed on an instrumented axle of a traction trailer, which is towed by a truck at 40 miles per hour (mph) over wet asphalt and concrete surfaces. The tow truck is equipped with an on-board water supply system that sprays water in front of the test tire. The brakes, from the test tire only, are momentarily locked, and sensors on the axle measure the longitudinal and vertical forces as it slides in a straight line. The coefficient of friction for the pair, test tire and surface, is then determined as the ratio of the longitudinal and vertical forces.

Which test procedure: Michelin suggested an alternate test method for measuring traction because it stated the measurement of a tire's wet traction capability with a traction trailer is an attempt to quantify the tire's role in the vehicle stopping distance, which is the actual tire performance experienced by the consumer.[214] Michelin commented that the poor reproducibility of the UTQGS traction test can result in misrepresentation of tire traction. Michelin stated that this poor repeatability has a lot to do with the fact that the ASTM E 501 ribbed bias ply tire is used as a reference to ensure that the grip of the test lane is within tolerance and to correct test data for evolution of test conditions. Michelin commented that because the evolution of the E 501 tire between two test days is significantly different than the change in test tire performance, this causes poor repeatability.

Accordingly, Michelin suggested an ISO test method that it argued better measures the tire's role in vehicle stopping distance: ISO 23671, *Passenger car tyres—Method for measuring relative wet grip performance—Loaded new tyres.* Michelin argued that this ISO 23671 test method is better than the UTQGS test method for several reasons including: (1) The standard provides for flexibility of test location (allowing manufacturers the possibility of self-certification); (2) either traction trailer or on-vehicle braking can be used for measurement, allowing for greater flexibility; and (3) the design and materials of the control tire (14-inch Standard Reference Test Tire (SRTT), ASTM E 1136) more closely resemble modern passenger car tires (than the tire used in the UTQGS test method). Michelin urges NHTSA to consider a vehicle braking method for measuring traction based on its greater imitation of in-service conditions and on its superior repeatability and reproducibility.

Agency response: NHTSA declines to use a test procedure other than a modified version of what is already specified for UTQGS. Based on the tight statutory deadline for this program, NHTSA cannot perform the research necessary to validate and establish a test procedure other than the wet traction trailer test that is already specified in another NHTSA regulation. Since our equipment and procedure is well known throughout the tire industry, we propose using the existing procedure, as the primary traction method, but modifying current equipment to collect peak coefficient of friction data to rate tires for this program, as discussed immediately below.

The agency did not adopt Michelin's recommendation to use the 14-inch SRTT (ASTM E 1136) or 16-inch SRTT (ASTM F 2493) as the traction test control tire instead of the current ASTM E 501 Standard Rib tire. This decision was based on a number of factors. First, Michelin provided no data demonstrating that the test results would be more accurate or less variable when using a SRTT as the traction control tire instead of the E 501 Standard Rib tire. The agency understands that the RMA traction data provided in comments was also collected using the E 501 tire as the control tire. Therefore, no additional data was available for the agency for evaluation. Due to the tight statutory deadline for this program, NHTSA does not have the time necessary to conduct its own test program to evaluate the performance of either of the SRTT tires against the current E 501 tire. Second, the agency has not evaluated the durability of the all-season tread pattern of the 14- or 16-inch SRTT radial tires as compared to the smooth-ribbed tread design of the E 501 tire during prolonged locked-slide traction testing. Less durable tires could increase the annual costs of testing. Third, the UTQGS traction test includes by reference test procedures and apparatus from ASTM E 274–79, "Standard Method for Skid Resistance of Paved Surfaces Using a Full-Scale Tire," which itself references the E 501 tire as a standard tire (but not E 1136 or F 2493). Therefore, the agency recommends that Michelin initially work with ASTM to evaluate the suitability of upgrading the E 274 test procedure to reference the ASTM E 1136 or F 2493 tires as control tires.

Regarding the ISO 23671 test procedure recommended by Michelin, this ISO procedure offers the option of using a trailer or vehicle as the test equipment for means of collecting data to measure peak traction. This approach may be practiced elsewhere, but we do not have data to base a wet traction rating using this method. Further, this ISO test method specifies a high coefficient of friction surface, which is currently unavailable for use by the agency. Currently, NHTSA only has data for concrete and asphalt surfaces used in the UTQGS testing method, which uses a traction trailer.

Traction testing is preferred over vehicle testing (stopping distance) because one traction trailer may be used for various tire sizes. Depending on the vertical load applied on the test tire, the brake rate application may vary from tire to tire, but it may be adjusted when using a traction trailer. Thus, one traction trailer may be used to evaluate various tire sizes, while test conditions for various tire sizes may be maintained during testing using a trailer. Using a vehicle for testing would better imitate real world conditions, but would

[211] *See* 49 CFR 575.104(f).

[212] Tire Fuel Efficiency NPRM, *supra* note 9, at 29560–29561.

[213] The instantaneous level of friction that can be developed by a tire-road surface pair is dependent on parameters such as the amount of lubrication (water, ice, snow, *etc.*) between the surfaces, speed, temperature, and many other factors. The effects of these parameters can be significant. For instance, in the case of the wet friction coefficients measured in the agency's tire traction safety rating, the water on the road surface substantially reduces the intermolecular adhesion of the tire rubber to the road surface aggregate, yielding a 20 to 30 percent reduction in available friction compared to dry conditions.

[214] Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 7–8.

introduce vehicle dependent effects (due to the design of the vehicle's brakes and suspensions). Also, several vehicles would be needed to evaluate different size tires, which may be cost prohibitive.

Measurements taken: The UTQGS traction rating procedure specifies that the traction coefficients for asphalt and for concrete are to be calculated using the locked-wheel traction coefficient on the tire, or sliding coefficient of friction. More specifically, upon application of the brakes, the tire is subjected to shear between the wheel and the road surface, and deforms towards the rear of the vehicle. This generates a traction force to oppose the motion of the vehicle. As braking torque increases, the tire deforms more and tread elements near the rear of the contact patch with the road begin to slip rather than grip. The coefficient of friction rapidly reaches a maximum value at about 10–20 percent slip, and then declines as the longitudinal slip values increase to 100 percent, which represents a fully-locked tire. The maximum coefficient of friction in the 0–100 percent slip range is termed "peak" coefficient of friction, and the lower coefficient value for the fully-locked tire is termed "slide" coefficient of friction.

When UTQGS was designed in the 1960s, the fully-locked slide coefficient of friction represented the tire-road friction available to conventional braking systems that frequently locked their tires during hard braking. However, modern anti-lock braking and stability control systems use wheel speed sensors and complex computer algorithms to modulate the brake pressure in order to operate near the peak coefficient of friction instead of locking the tire (slide), thus utilizing more available friction from the tire-road surface pair.

Because it uses the sliding coefficient of friction, the UTQGS traction test procedure indicates the traction or wet pavement behavior for a vehicle that is not equipped with anti-lock brakes (ABS) or electronic stability control (ESC). A vehicle equipped with ABS or ESC reacts to braking and sliding in a more sophisticated way. ABS prevents wheel lock-up by pumping the vehicle's brakes repeatedly during braking events. ESC may automatically perform activation of the brakes on individual wheels in an attempt to slow down a vehicle and point it in a different direction if the system senses a directional loss of control. NHTSA's tire testing research showed that vehicles equipped with ABS or ESC will exhibit safer behavior on wet pavement (*i.e.,* better traction) than the sliding coefficient of friction traction measurement would indicate in the UTQGS traction test procedure.

The peak coefficient of friction is a metric that would better indicate traction performance for vehicles equipped with these advanced braking and handling systems. This is because as soon as ABS causes the vehicle to reapply the brakes (and also during many ESC system activations), the tires are constantly operating at or near peak coefficient of friction. Thus, since most new cars offer ABS as either standard or optional equipment, and ESC is being mandated on new light vehicles via a phase-in, NHTSA proposed to base the traction rating for purposes of the tire fuel efficiency consumer information program on the peak coefficients of friction as measured on the asphalt and concrete surfaces specified in the UTQGS traction test procedure.[215] The machinery that conducts this test already measures peak coefficient of friction, so the NPRM proposed specification of the UTQGS traction test method, but using the peak coefficients of friction measured, rather than the slide.

However, recognizing that the median age for the U.S. passenger car fleet is 9.4 years,[216] NHTSA requested comments on whether it was premature to suggest moving to an ABS–ESC focused rating based on new vehicles. The NPRM explained that the agency was considering a safety rating taken from the average of the four friction numbers (peak & slide on asphalt & concrete), all of which can be collected during the same test. The NPRM requested comments on whether it should instead consider a composite test, and if the four friction numbers should be weighted equally or differently.

NHTSA sought comment on an empirically developed traction rating formula that included both peak and slide coefficients of friction as an example of how the agency might do this.[217] RMA commented that the agency's proposal for an alternate traction rating formula is ad-hoc and not science based.[218] RMA commented that it is no doubt possible to devise any number of formulas to provide a 0 to 100 rating for wet traction, but in RMA's opinion, unless there is some underlying scientific principle to support them, it is not a productive exercise. Michelin, in contrast, commented that the alternate traction formula more closely follows accepted industry practices for quantifying tire performance.[219] Michelin agreed with the NPRM that peak traction values correspond more directly to advanced braking system performance and expressed support for this move toward a characterization more in line with consumer's needs. JATMA supported adopting the current UTQGS traction grading test method, and not using peak coefficient of friction.[220] Tire Rack supported basing the traction rating on a combination of peak and slide coefficients of friction.[221] Tire Rack stated that adding the coefficients of friction measured on wet asphalt and concrete surfaces better reflects the tire performance available through advanced braking technologies.

Agency response: Based on the fact that vehicles not equipped with advanced braking technologies will be on the road for many years, NHTSA has determined that the safety rating should be based on a combination of slide and peak coefficients of friction on asphalt and concrete. However, since the agency will be finalizing the form of the ratings and the consumer information requirements in a future rulemaking, we will not discuss the comments on the proposed formula for a safety rating in this final rule.

Basing a safety rating on a composite index using both peak and slide coefficients of friction measurements creates a safety rating that considers the safety performance for both old vehicles without advanced braking technologies (wet traction performance correlates to slide), and new vehicle types with advanced braking technologies (wet traction performance correlates to peak). A safety rating based only on slide or only on peak coefficient of friction would be essentially meaningless to either vehicles with advanced braking technologies or to vehicles with conventional brake technology, respectively. NHTSA considered weighing the slide and peak coefficients of friction in the rating formula to create an index that reflected the percentage of the types of vehicles on the road. The

[215] The phase-in electronic stability control (ESC) requires 100 percent of the fleet to be equipped with ESC by model year 2011, *i.e.,* by September 2010. 72 FR 17236, 17291. Since an anti-lock braking system (ABS) provides many of the components necessary for ESC, NHTSA believes that most manufacturers will likely equip vehicles with ABS as they equip them with ESC. *See id.* at 17256, n. 49.

[216] *See http://usa.polk.com/News/LatestNews/News_20080215_scrappage.htm* (last accessed Sept. 27, 2009).

[217] Tire Fuel Efficiency NPRM, *supra* note 9, at 29580.

[218] RMA Comments Appendix 7, Docket No. NHTSA–2008–0121–0036.8 at 8.

[219] Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 7–8.

[220] JATMA Comments, Docket No. NHTSA–2008–0121–0031.1 at 1.

[221] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 3.

agency realizes that the ratio of new braking technology vehicles on the road to conventional braking vehicles on the road will persistently increase for decades until all conventional brake technology vehicles are essentially phased out, at which point peak coefficient of friction will be the only measure of traction that is relevant to the way that all vehicles brake. NHTSA will continuously monitor the fleet turnover, and will likely transfer the safety rating to an index based mostly on peak. Until that point, the agency believes it is best to have a rating based on a combination of indices that indicate something useful and comparative to everyone, as opposed to a rating based only on peak or slide, which would mean nothing to some. Continuously changing the formula to reflect these shifting percentages would likely cause some changes in ratings of existing tires, and NHTSA believes there is a benefit to keeping the ratings stable for a period of time, both in terms of reducing costs to NHTSA and manufacturers, and reducing potential confusion for consumers.

Additionally, and as will be discussed in the forthcoming supplemental NPRM on the consumer information and consumer education portions of this program, a combination of peak and slide coefficients of friction also reduces the variability of the ratings. A safety rating based only on peak coefficient of friction results in ratings with high variability.

RMA suggested that wet traction be weighted for the percentage of asphalt and concrete road surfaces in the U.S., since concrete now accounts for less than 4 percent of roads. The agency analyzed the number of fatal crashes in the Fatality Analysis Reporting System (FARS). For the years 2002 to 2008, approximately 8.2 percent of fatal crashes occurred on wet concrete road surfaces.[222] After consideration of comments, NHTSA has determined that a safety rating should be based on both wet concrete and asphalt road surfaces. While wet concrete is likely not a condition that occurs often for any particular motorist, it potentially is the most dangerous because coefficients of friction can be lower/worse on concrete than on asphalt. Thus, wet concrete represents the "worse case scenario" in terms of the type of roadways on which a motorist might find him/herself driving. Arguably, if manufacturers will design tires with the goal of achieving a higher safety (wet traction) rating, NHTSA should include concrete coefficients of friction in the rating index so that manufacturers take all likely driving wet surfaces into account when designing tires. NHTSA, therefore, believes that concrete coefficients of friction should be included in the safety rating as they likely represent a "worse case scenario."

In response to the comments on the alternate traction formula NHTSA sought comment on in the NPRM,[223] since publication of the NPRM the agency has realized that the formula it sought comment on is weighted by taking the test tire's friction coefficient and divided by a weighted sequence of two control tires. Mathematically, it is still a fraction number, which is typical for a friction coefficient, but unfortunately it no longer means it still represents a "friction." Physically, it would just be a ratio or factor. Therefore, the agency does not think this is a correct approach. NHTSA believes that an empirically developed wet traction index is an appropriate metric for a wet traction rating, as NHTSA will discuss in the forthcoming supplemental NPRM on the content of the consumer information and consumer education portions of the tire fuel efficiency consumer information program.

Authority to establish safety and durability ratings: NHTSA's proposal provided that alongside a fuel efficiency rating, tire manufacturers would provide safety and durability ratings. RMA and Ford argued that EISA does not give NHTSA authority to establish a new rating system for consumer information on safety or durability. According to RMA and Ford, because EISA only directs NHTSA to establish a national tire fuel efficiency rating system, NHTSA is not authorized by EISA to create new ratings or consumer information requirements for the safety and durability of replacement tires.[224]

Agency response: Section 111 of EISA directs NHTSA to promulgate rules establishing a "national tire fuel efficiency consumer information program for motor vehicle replacement tires * * * to educate consumers about the effect of tires on automobile fuel efficiency, safety and durability."[225] RMA recognizes that NHTSA has the authority under EISA to require replacement tire fuel efficiency rating information. And RMA concedes that EISA gives NHTSA the authority to include traction and treadwear ratings in the label.[226] But RMA states that because EISA directs NHTSA to promulgate regulations that include "a national tire fuel efficiency rating system," EISA provides limited authority regarding new "safety" and "durability" ratings. More particularly, RMA contends that EISA does not give NHTSA authority to create new "safety" or "durability" consumer rating systems or mandate new consumer information on these attributes at the point of sale. RMA instead suggests that as to these concerns, NHTSA is limited to the UTQGS ratings: "[t]he fact that the UTQGS system already exists enables NHTSA to use the existing wet traction and treadwear to satisfy the requirements."[227]

NHTSA interprets EISA to provide NHTSA authority to establish new "safety" and "durability" rating systems and to require consumer information on these attributes of tires. The Congress spoke clearly. NHTSA is required to establish a national tire fuel efficiency consumer information program for replacement tires. Congress specified that this program is to educate consumers about the effect of tires on automobile fuel efficiency, safety and durability.[228] Congress further stated what the consumer information program is to include. Among others, it is to include a national tire fuel efficiency rating system to assist consumers in making more educated tire purchasing decisions.[229] It also is to include requirements for providing information at the point of sale.[230] Thus, the scope of the national tire fuel efficiency consumer information program is set forth in subsection (a)(1). It covers consumer information on automobile fuel efficiency, safety, and durability for replacement tires. For each of these attributes, under subsection (a)(2), the national tire fuel efficiency consumer information program is to include, among others, a national tire fuel efficiency rating system and consumer information. This is a new program, because the rule was to "establish" a program.[231] EISA does not use the terms modify or amend with reference to an existing program. For this new program, the rating system under subsection (a)(2)

[222] This analysis excluded the "Water (standing or moving)" roadway surface condition category, which was added in 2007 and not indicative of the water depths used in UTQGS wet traction testing. This analysis also excluded blank, other or unknown roadway surface conditions and roadway surface types.

[223] Tire Fuel Efficiency NPRM, *supra* note 9, at 29580.

[224] RMA Comments, Appendix 3, Docket No. NHTSA–2008–0121–0036.4 at 2–3; Ford Comments, Docket No. NHTSA–2008–0121–0038.1 at 2–3.

[225] 49 U.S.C. 32304A(a)(1).

[226] RMA Comments, Appendix 3, Docket No. NHTSA–2008–0121–0036.4 at 3.

[227] *Id.* at 3.

[228] 49 U.S.C. 32304A(a)(1).

[229] 49 U.S.C. 32304A(a)(2)(A).

[230] 49 U.S.C. 32304A(a)(2)(B).

[231] 49 U.S.C. 32304A(a)(1).

of Section 32304A is not limited to "automobile fuel efficiency" of tires because both subsection (a)(1) and subsection (a)(2)(A) refer to the rule establishing a "national tire fuel efficiency" consumer information program, and automobile fuel efficiency is only one attribute of the information program. The others are safety and durability.[232] Moreover, subsection (a)(2)(A) does not differentiate the agency's authority on that aspect of the consumer information program providing a rating on "automobile fuel efficiency" and those aspects of the program providing ratings on "safety" and "durability."[233] Accordingly, EISA requires NHTSA to establish a new program with ratings on safety and durability.

To the extent that the Congress did not speak directly to the question whether it intended that NHTSA promulgate rules creating new "safety" or "durability" consumer rating systems or mandate new consumer information on these attributes at the point of sale, NHTSA interprets EISA to provide that authority. As noted above, Section 111 of EISA requires NHTSA to establish a "national tire fuel efficiency consumer information program for motor vehicle replacement tires * * * to educate consumers about the effect of tires on automobile fuel efficiency, safety and durability."[234] The statute provides broad authority for a consumer information program rule to cover automobile fuel efficiency, safety and durability. It does not prescribe the contours of the rule covering automobile fuel efficiency, safety and durability consumer information. It sets only minimum requirements on what the rulemaking shall "include."[235] Nothing in EISA limits NHTSA, in promulgating the national tire fuel efficiency consumer information program, to adopting existing ratings from the UTQGS program. In fact, the UTQGS ratings are not mentioned in 49 U.S.C. 32304A. Moreover, as reflected in EISA, tires have a number of attributes in which consumers would be interested. In addition to fuel economy, these include safety and durability. Congress left it to NHTSA how to rate safety and durability. The effectiveness of the consumer education program depends in part on having effective and consistent methods of rating fuel efficiency, safety, and durability, and by including all ratings at the point of sale. In view of the Congressional direction that NHTSA establish "a national tire fuel efficiency consumer information program" that includes a "rating system * * * to assist consumers in making more educated tire purchasing decisions," NHTSA interprets EISA to give the agency authority to establish a rating system that would educate consumers on tire characteristics that may offer tradeoffs among the important tire characteristics of fuel efficiency, safety, and durability. Under the statute, this may or may not be based upon measurements from established UTQGS test procedures.

3. Durability

The rolling resistance, traction, and wear characteristics of tires are not independent of one another. The tread has a major influence on rolling resistance because it contains much of the rubber in the tire that causes energy loss. The same tread deformation contributes to the tire's traction capabilities. A loss in wet traction capability because of treadwear is the main reason for tire replacement.[236]

For purposes of this program, NHTSA believes that the durability of a tire refers to how long a tire is going to last. That is, how long it is going to maintain sufficient tread depth for the safe operation and to maintain the strength the tire had when it was initially purchased. A treadwear rating measures a tire's wear rate compared with that of control tires. Treadwear life, therefore, corresponds to treadwear durability of a tire. In the NPRM, NHTSA sought comments on other potential ways to communicate durability, but no commenter suggested anything other than tread life as a measure for durability. Tire Rack commented that it believed that treadwear life has been the most important rating to consumers under the UTQGS program and is the most frequently researched tire rating.[237]

NHTSA stated in the NPRM that the UTQGS rating system for treadwear is the only metric for which consistent data are widely available for a range of passenger car tires. Accordingly, NHTSA proposed to specify the UTQGS treadwear procedure to rate tires for durability on the same scale and label as fuel efficiency via rolling resistance rating.[238] Consumers Union commented that it disagreed with incorporating the UTQGS treadwear rating system into another rating system because in its experience, consumers do not understand the current UTQGS treadwear rating.[239] Consumers Union stated that because ratings are assigned by the tire manufacturers, tire manufacturers do not always disclose the full potential of a tire's treadwear performance. Michelin commented that to have the current UTQGS treadwear test method yield truly representative wear results, changes to the test procedure are necessary.[240] Michelin conceded that changes of this nature are likely beyond the scope of this rulemaking.

Agency response: As noted in Michelin's comments, the NPRM acknowledged the limits of the existing UTQGS system.[241] However, given the statutory deadline for NHTSA to establish this program, NHTSA believes that using already established test procedures specified in the UTQGS regulations is the only viable option at this time to fulfill the statutory requirement that this consumer information program educate consumers about tires' relationships to fuel efficiency, safety, and durability. The UTQGS test method for measuring tread life is the only metric for which consistent data are widely available for a range of passenger car tires. NHTSA will continue, however, to explore other test methods that could be used to establish a metric for a durability rating. NHTSA will consider future revisions of the treadwear test procedure if information suggests those revisions would enhance the program.

B. How Will the Rating System Information Be Conveyed to Consumers?

As noted above, NHTSA is not specifying the content or requirements of the consumer information and education portions of the program. In light of the important objectives of this rulemaking, we are continuing to work to improve the content and format of the consumer information so that consumers will, in fact, be adequately informed. Specifically, NHTSA will be conducting additional consumer testing to explore how consumers will best comprehend information in each of the three categories discussed above. After additional consumer testing, NHTSA will publish a new proposal for the consumer information and education portion of this new program.

NHTSA will be conducting additional consumer research to identify candidate

[232] *See* 49 U.S.C. 32304A(a)(1).

[233] *See id.*

[234] *Id.*

[235] 49 U.S.C. 32304A(a)(2).

[236] 2006 NAS Report, *supra* note 4, at 58.

[237] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 3.

[238] *See* 49 CFR 575.104(e).

[239] Consumers Union Comments, Docket No. NHTSA–2008–0121–0034 at 5.

[240] Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 9.

[241] Tire Fuel Efficiency NPRM, *supra* note 9, at 29561, 29573–29575. The UTQGS is discussed in more detail later in this notice.

label designs (and variations), examine consumer comprehension of such concepts, and examine consumer preferences for information transmission formats. NHTSA has been reviewing recommendations on regulatory reform in a recent White House report to Congress and is taking those ideas into consideration in developing the new research plan.[242] NHTSA has also been consulting with other government agencies, including EPA, DOE, the Food and Drug Administration, and the Federal Trade Commission, to help identify best practices for research for consumer education programs. NHTSA is also taking into consideration its own previous research before and after the NPRM was published.

NHTSA received numerous comments in response to the consumer information proposals in the NPRM. These included comments for and against a combined or overall rating, comments on NHTSA's proposed 0–100 rating scale, suggestions for alternatives to this scale, and comments on providing additional context for the ratings. However, in most instances, these comments reflected little other than the commenter's opinion on what would constitute an effective consumer information program. NHTSA wishes to gather more concrete information to guide its decision-making process on these requirements. However, NHTSA will take these comments into consideration when developing the research plan and also in the future proposal for these requirements.

To further the development of the consumer information and consumer education portions of the tire fuel efficiency consumer information program, NHTSA recently announced that it will hold a public meeting on a new draft consumer research plan on Friday, March 26, 2010 at the U.S. Department of Transportation Headquarters building.[243] The agency has opened a new docket for the public meeting, Docket No. NHTSA–2008–0018, and on that docket interested members of the public can access the draft research plan, early agency consumer research, and any written comments submitted at the meeting or in response to the meeting notice.

NHTSA will consider the public comments received in developing a research plan to aid in the development of consumer information requirements and NHTSA's consumer education plan regarding tire fuel efficiency. Depending on the results of that meeting, NHTSA may conduct some focus groups to help it refine the concepts that will be tested.

The primary focus of the research will be a comprehension survey, the final design of which will depend on the final number of concepts and variations identified in the public meeting and focus groups (if conducted). The research design may include both within and between-subjects factors. In particular, the draft research plans specifies that subjects will be randomly assigned to a given label, however, variations of the same label may be presented within subjects. The main factors will be counterbalanced and the presentation order randomized as needed to provide internal validity. Performance measures will include percent of correct response (response rate) and purchase intention. The survey and experimental designs will also consider the potential for subject fatigue by keeping the number of questions and survey duration as short as possible.

There is a need to collect quantitative information about consumer comprehension of label concepts describing tire attributes, given the availability of new information about tires' fuel efficiency. The information on consumer comprehension will ensure that the selected label will provide accurate, consistent and valuable information to consumers purchasing replacement tires. Some of the key questions include:

- What information would be provided to consumers of replacement tires?
- What is the best format (metric(s), format(s)) to provide the information?
- How does the difference in the scale/rating system affect consumer comprehension of the information provided?
- Do consumers understand the information provided when generalized statements (*i.e.,* caveats) are provided?

The draft consumer research plan identifies three objectives for new consumer research:

- Develop label concepts displaying information on tire fuel efficiency, safety, and durability.
- Collect data on consumer comprehension of the information provided by various label concepts and data on purchase intention.
- Rank order concept labels based on quantitative data on consumer comprehension.

As discussed above, after additional consumer testing, NHTSA will re-propose the consumer information component of this new program. These requirements may include labels and retailer requirements such as originally proposed, or alternative and/or additional requirements based upon the results of the research.

VII. Information Dissemination and Reporting Requirements for Tire Manufacturers and Tire Retailers

A. Requirements for Tire Retailers

1. NHTSA Will Re-Propose Information Dissemination Requirements for Tire Retailers

Based on NHTSA's pre-NPRM understanding of the average tire purchaser and on the tire purchasing process generally, NHTSA proposed to require that tire retailers who have a display room, *i.e.,* those that present sample tires offered for sale to consumers, display a tire fuel efficiency consumer information program poster that NHTSA would print and provide to retailers. The NPRM explained that the agency believed that this requirement would be the most successful method of encouraging consumers to consider the new ratings at the point of sale. As for poster content, the NPRM stated that this poster would make consumers aware that there are comparative government tire ratings available, and would communicate the importance of comparing replacement tire ratings as well as the importance of proper tire maintenance.

NHTSA sought comment on the following principles it proposed be conveyed in the poster:

- Your choice of tires you buy to put on your vehicles affects:
  - The gas mileage your vehicle will get,
  - The traction and other safety characteristics your vehicle can achieve, and
  - How long you can reasonably expect it will be before you'll need to buy another new set of tires.
- There is a new government program that requires new tires for cars, vans, and SUVs to have a paper label on the tire tread to show you the tire's rating for fuel efficiency, safety, and durability.
- Ask your dealer for the ratings for the tires you are considering for your vehicle.
- More information about this ratings program and a complete listing of the ratings for all these tires is available at *http://www.nhtsa.gov.*
- Whatever tire you choose, you need to keep it properly inflated to get the

[242] Office of Management and Budget, 2009 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities (Jan. 27, 2010), available at *http://www.whitehouse.gov/omb/assets/legislative_reports/2009_final_BC_Report_01272010.pdf* (last accessed March 10, 2010).

[243] Notice of Public Meeting; Tire Fuel Efficiency, 75 FR 11806 (March 12, 2010), Docket No. NHTSA–2010–0018–0001.

best fuel efficiency, safety, and tire life that the tire can deliver.

RMA commented that NHTSA should require tire retailers to display the proposed poster and make the rating information available to consumers in the tire retailer showrooms or waiting areas. RMA recommended that NHTSA give tire retailers options for making this information available and require that each retailer choose one or more options that suits their business model and needs.[244] RMA suggested these retailer requirements should be in lieu of requiring the ratings on a tire label, for reasons discussed below in section VII.B.1. RMA and Consumers Union both suggested that NHTSA produce and distribute to tire retailers nationwide a tire fuel efficiency program booklet, as NHTSA produces for the UTQGS program.[245]

TIA stated that the proposed tire label and poster requirement are passive communication tools and only a starting point for consumer education.[246] TIA commented that it believes NHTSA is underestimating the importance of the dialog between the sales associate and the consumer at the point of sale. TIA stated that results from NHTSA's focus group research and the UC Davis Workshop point out the importance of the seller in the process of educating the consumer. Accordingly, TIA recommended a training program for tire retailer sales associates, which TIA would run "with proper funding." TIA stated that it is in the best position to run an education and incentive program for tire retailer sales associates.

Consumers Union commented that NHTSA should provide better guidance on how to best ensure that consumers can see the proposed educational poster at the point of sale.[247] Regarding the content of the proposed informational poster, Consumers Union recommended that point of sale information and posters emphasize the benefits of proper car and tire care, including maintaining proper tire inflation pressure, checking wheel alignment, and rotating tires to optimize tire fuel efficiency, traction, and tread wear.[248] Public Citizen *et al.* supported NHTSA's proposed "principles" as laid out above of what information should be included on the poster.[249] Additionally, Public Citizen *et al.* commented that the proposed informational poster should include at a minimum explanations of what each of the ratings categories means, as well as direction to NHTSA's Web site and a statement about the importance of proper tire inflation.

Agency response: In order to have the full benefit of any new understanding of how consumers best comprehend information gained from the agency's new consumer research, NHTSA will re-propose requirements for tire retailers in the supplemental NPRM on the consumer information and education portion of the tire fuel efficiency consumer information program.

2. NHTSA Will Re-Propose Requirements Regarding the Label

The NPRM proposed to require that tire retailers leave the paper label which displays the tire fuel efficiency rating graphic on the tire until the tire is sold.[250]

Ford recommended that NHTSA add a requirement to the proposed regulation that explicitly states that tire retailers are required to maintain labels on tires through the point of sale similar to prohibitions from removing Monroney window labels on vehicles.[251] Ford suggested that an exception to such requirement be made where the tires have been installed onto a customer's vehicle, but that NHTSA should still require that the tire retailer convey the information on the label to the consumer. Ford reasoned that if the regulations do not require that the information be explained or even received by the consumer the potential benefits of the program will be substantially reduced.

Similarly, ICCT suggested that NHTSA require tire retailers who mount tires provide tire efficiency information to consumers before the tire is purchased and mounted.[252] ICCT stated that providing this information at the point of purchase through a label that is in many cases visible to the consumer only after installation would undermine the effectiveness of the program.

Agency response: As noted above, in order to have the full benefit of any new understanding of how consumers best comprehend information gained from the agency's new consumer research, NHTSA will re-propose requirements for tire retailers in the supplemental NPRM on the consumer information and education portion of the tire fuel efficiency consumer information program.

B. Requirements for Tire Manufacturers

1. NHTSA Will Re-Propose Requirements Regarding Communication of Ratings

In the NPRM, NHTSA proposed two alternatives for tire manufacturers to present the required rating information on a paper label affixed to each subject replacement tire. A tire manufacturer could fulfill the requirement by placing the required rating graphic somewhere on the paper labels already required to be affixed to each individual tire by UTQGS requirements.[253] Alternatively, a tire manufacture could fulfill the tire fuel efficiency labeling requirements by affixing a separate paper label with just the tire fuel efficiency label graphic on it.

RMA opposed the requirement of a tire label as a means of providing point of sale information to consumers.[254] RMA commented that the proposed label would be extremely costly to produce, especially in color, and would lead to little, if any, benefit, since consumers would be unlikely to see the label.[255] RMA suggested that instead of requiring tire manufacturers to put ratings on a tire label, NHTSA should require tire retailers to make the ratings information available to consumers.

Consumers Union also expressed concerns that a consumer might not see a label on the tire they purchase if the tire retailer is installing the tires. Consumers Union commented that a paper label affixed to a tire may be insufficient because if the tire is purchased online, consumers may not have the ability to comparatively view the label and compare to labels on other tires.[256]

TIA similarly commented that a requirement to place rating information on the paper tire label would not help

[244] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 7.

[245] Consumers Union Comments, Docket No. NHTSA–2008–0121–0034 at 3; RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 7.

[246] TIA Comments, Docket No. NHTSA–2008–0121–0039.1 at 1–10.

[247] Consumers Union Comments, Docket No. NHTSA–2008–0121–0034 at 6.

[248] Consumers Union recommended this language instead of the proposed poster language that emphasized tire inflation "to get the best fuel efficiency, safety, and tire life."

[249] Public Citizen *et al.* Comments, Docket No. NHTSA–2008–0121–0043.1 at 6.

[250] Note that NHTSA uses the term "paper label" in the colloquial sense; many labels on tires are actually made of plastic.

[251] Ford Comments, Docket No. NHTSA–2008–0121–0038.1 at 3. A Monroney label is the price sticker label required on new automobiles that contains the safety rating information developed by NHTSA in its New Car Assessment Program (NCAP). *See* 49 CFR 575.301.

[252] ICCT Comments, Docket No. NHTSA–2008–0121–0042.1 at 1–2.

[253] *See* 49 CFR 575.104(d)(i)(B).

[254] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 7.

[255] For a full discussion of RMA's comments on NHTSA's cost estimates of the label, *see* section IX below and the Final Regulatory Impact Analysis, which will be placed in this docket and will be available on NHTSA's Web site, *http://www.nhtsa.gov.*

[256] Consumers Union Comments, Docket No. NHTSA–2008–0121–0034 at 3.

consumers make a tire choice for their vehicle.[257] NADA commented that rather than requiring the ratings on the tire label, consumers would be better served by the comparative tire rating information Web site that could be referenced by point of sale posters.[258]

Many commenters expressed support for NHTSA's proposed paper label requirement. Public Citizen *et al.* supported ratings appearing on individual tires, and stated a preference for requiring molding the information on tire sidewalls.[259] Tire Rack commented that tire labels will positively confirm the rating of specific tires.[260] AAA commented that the tire labeling will provide enhanced benefits for consumers, but also requires considerable consumer education to achieve the full potential of the proposed labeling recommendations.[261] ICCT commented that physically attaching a paper label to each tire is an important step forward.[262] Ford supported the label requirement by stating that in addition NHTSA should add the requirement that explicitly states that tire retailers must maintain labels on tires through the point of sale.[263] NRDC stated in several places that rating and labeling was an important first step towards a comprehensive program.[264]

Several commenters also implicitly supported requiring tire manufacturers to print the ratings information on the tire label by calling the ratings "the label" and by commenting on various proposed requirements associated with the content of the label. For instance, the European Commission did not oppose the label requirement and commented that tires that are already stamped with the week of production should not need to print that information on the label. Ford, GM, Advocates, and NRDC called the ratings graphic "the label" on multiple occasions.

Agency response: As noted above, NHTSA is not specifying the content or requirements of the consumer information program at this time. In light of the important objectives of this rulemaking, we are continuing to work to improve the content and format of the label so that consumers will, in fact, be adequately informed. After additional consumer testing, NHTSA will publish a new proposal for the consumer information portion of this new program.

In the NPRM, we proposed to specify a minimum size for the tire fuel efficiency rating system graphic (4.5 inches high and 5.5 inches wide). The minimum size specification was proposed to ensure that the rating graphic will be legible on the label. Tire Rack commented that even if the label was oriented differently, the proposed 4.5 inch requirement would be too wide for many tire sizes.[265] NHTSA agrees with Tire Rack that the proposed size requirement may pose a problem for some tires and will explore alternative options in the forthcoming supplemental NPRM to re-propose the required label.

2. Data Reporting

The NPRM proposed to require tire manufacturers to report to NHTSA for each tire SKU that is individually rated under this tire fuel efficiency consumer information program the following data:

- Rolling resistance force (RRF), as computed from the ISO 28580 test (in Newtons) and followed in parenthesis by the equivalent pounds-force, *e.g.,* 5 Newtons (1.12 lbf).
- Test load, as specified in the ISO 28580 test procedure (in Newtons) and followed in parenthesis by the equivalent pounds-force, *e.g.,* 5 Newtons (1.12 lbf).
- Rolling resistance rating.
- Wet traction rating.
- Average peak coefficient of friction for asphalt, as measured during the UTQGS traction test procedure (49 CFR 575.104(f)).
- Average peak coefficient of friction for concrete, as measured during the UTQGS traction test procedure (49 CFR 575.104(f)).
- Adjusted peak coefficient of friction for asphalt (μ_{APA}).
- Adjusted peak coefficient of friction for concrete (μ_{APC}).
- Treadwear rating.
- Wear rate of tested tire, as measured during the UTQGS treadwear procedure (49 CFR 575.104(e)).

NHTSA gave several reasons for proposing that the tire manufacturer submit these various measurements to the agency, which included (1) it would help with enforcement of the ratings; and (2) it would contribute to NHTSA's online tires database.

Submission of test values: RMA opposed the requirement of reporting any measured or calculated test values because they state that submission of data are not necessary for either enforcement of a self-certified rating system or as a method of estimating potential fuel savings.[266] RMA commented that requiring tire test data or calculated values to be submitted to NHTSA to assure compliance is overly broad, costly, and unnecessary to meet the requirements of the EISA or ensure compliance. Further, RMA stated that reporting this type of information would cause tire manufacturers to suffer competitive harm because a company's approach to risk would be accessible by competitors.

From a legal standpoint, the RMA had concerns that direct submission of test data values circumvents NHTSA procedures to determine whether such information qualifies for confidential treatment as is done in safety investigations, is overly burdensome, and conflicts with the Paperwork Reduction Act. The RMA contended that competitors would not be able to determine RRF rolling resistance values, which they consider proprietary, from the fuel efficiency rating on the sticker and the published formulas. Therefore, a government database would give competitors access to tire characteristics without the expense of testing and calculations, thus causing competitive harm. RMA expressed worries that competitors could send misconstrued data to another producer's dealers, which would strain the producer-dealer relationship. RMA also commented that making data publicly available is likely to confuse the public and result in unintended misuse and misunderstandings of the data, and may be used in contexts that prejudice RMA members.

JATMA did not support the requirement to report average and adjusted peak coefficients of friction for asphalt and concrete.[267]

NRDC supported requiring manufacturers to report rolling resistance data for all replacement tire models offered for sale.[268] NRDC commented that to correct the lack of consumer information market failure effectively, the rating system must be based on credible information. NRDC

[257] TIA Comments, Docket No. NHTSA–2008–0121–0039.1 at 1.

[258] NADA Comments, Docket No. NHTSA–2008–0121–0041.1 at 1.

[259] Public Citizen *et al.* Comments, Docket No. NHTSA–2008–0121–0043.1 at 3.

[260] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 1.

[261] AAA Comments, Docket No. NHTSA–2008–0121–0047.1 at 2.

[262] ICCT Comments, Docket No. NHTSA–2008–0121–0042.1 at 1.

[263] Ford Comments, Docket No. NHTSA–2008–0121–0038.1 at 3.

[264] NRDC Comments, Docket No. NHTSA–2008–0121–0040.1.

[265] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 6.

[266] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 11–12; RMA Comments Appendix 3, Docket No. NHTSA–2008–0121–0036.4 at 8–17.

[267] JATMA Comments, Docket No. NHTSA–2008–0121–0031.1 at 1.

[268] NRDC Comments, Docket No. NHTSA–2008–0121–0040.1 at 2–4.

further argued that by requiring data reporting, NHTSA can use independent testing to verify manufacturer rating claims. Additionally, NRDC stated that fully disclosed rolling resistance data will make it suitable for widely-recognized endorsement labels like Energy Star or SmartWay.

Ford recommended that tire's test load information be provided to consumers since the test is performed at a fixed percentage of a tire's maximum load.[269] Therefore, the consumer and retailer might be confused when they observe significantly different rolling resistance rating for different sizes within a tire line.

Agency response: Based on comments, the agency is significantly decreasing the scope of data manufacturers are required to submit under this program from ten items to only the three ratings, eliminating any proposed requirements for detailed test data. In specific, the agency will require manufacturers to report for each tire rated under this program the following data:

- Rolling Resistance rating, based on the rating formula established in a future notice finalizing the consumer information component of the program.
- Wet Traction rating, based on the rating formula established in a future notice finalizing the consumer information component of the program.
- Treadwear rating, based on the rating formula established in a future notice finalizing the consumer information component of the program.
- Which tire models and sizes it manufactures which the manufacturer are claiming are excluded under the applicability of this rule and, thus, are not rated.

The agency agrees with the RMA's comments that data submission is not specifically required by statute. However, the agency is requiring the three ratings for each tire in the system in order to provide consumers with a database that allows cross-comparisons of tire brands, and for the functioning of the online fuel economy calculator. Requiring data submission is not contrary to NHTSA practice, as the agency requires data submission in other programs, such as the Early Warning Reporting (EWR) data submission requirements for tire manufacturers.

Citing the lack of mandatory data submission for tire safety standards as a basis for not requiring data submission for consumer information overlooks the purpose of the two types of regulations. The purpose of the tire safety standards is to establish minimum safety performance requirements for new tires sold in the United States. Self-certification under the safety standards generates the consumer information on performance, as all tires sold in this market must achieve a "Pass" in a "Pass/Fail" test. In contrast, consumer information standards additionally contain relative levels of performance that must be communicated to consumers.

In terms of past practice, when UTQGS was designed in the 1960s, online databases did not exist. Information for that consumer information program was molded on the tire by the manufacturer in hopes that consumers would be able to weigh relative choices at the point of sale. Today, it is common for consumers to conduct online research in advance of purchases, or even purchase tires online. Requiring tire manufacturers to submit their ratings for each tire SKU rated will allow NHTSA to give consumers one central database for tire ratings. With all tire ratings on NHTSA's Web site cross-comparisons of tire performance characteristics will be far more effective than if consumers had to visit the Web sites of multiple manufacturers and vendors. Compliance audits of manufacturers may be sufficient to assure that the reported ratings are accurate, but it does not make information for all rated tires available to consumers. It is significantly more cost-effective to require tire manufacturers to submit the ratings to the agency than NHTSA creating the database itself due to the time and labor the government would need to expend to collect all the ratings for 20,000 tire SKUs.

In terms of data submission being costly, mandatory submission of data does not require any manufacturer to conduct any additional tests on top of what they would need to do to self-certify the ratings given to the tires.[270] The only direct costs borne by a manufacturer due to a data reporting requirement are those of the actual collection and submission of the data. However, each tire manufacturer already collects information on each SKU to submit for EWR data submission requirements.[271] Therefore, adding a few more columns onto that submission, as discussed immediately below, will not be a significant additive cost.

The agency has agreed to not require submission of the base test values from which tire manufacturers calculate the ratings based on comments that it would make public each manufacturer's statistical approach to risk in terms of how each manufacturer is rating tires to prevent the possibility of non-compliance. Should a non-compliance of a tire arise, the agency has sufficient regulatory processes to obtain the base test values from the manufacturers used to generate the ratings.

NHTSA finds technical merit in Ford's request that the actual test load of the tire be provided to consumers to provide context on why rolling resistance may vary by vehicle application. However, this information is far too complex and confusing for the average consumer to understand and would add unnecessary cost. The agency's tire Web site will note that the tire fuel efficiency rating is derived from a measure of a tire's rolling resistance at a fixed percentage of a tire's maximum load, and that rolling resistance can vary based on a tire's load.

Excluded tires: In the NPRM, NHTSA requested comments on whether it should mandate in the manufacturer reporting requirements that each manufacturer include with its reports a list of all tire models and sizes that it is claiming are excluded from today's proposed requirements. The NPRM explained that the limited production exclusion is not obvious just by examining the tire, and requiring manufacturers to report this information would allow NHTSA to quickly verify whether or not the lack of a label was an enforcement concern.

The Specialty Equipment Market Association (SEMA) opposed the requirement that tire manufacturers report which limited production tires they manufacture which are excluded from the label requirements of this rule.[272] SEMA commented that the exclusion of certain tires recognizes that the limited production tire manufacturers are small businesses and that it would be cost-prohibitive to apply the consumer information requirements, in any form, to these companies. Further, SEMA commented

[269] Ford Comments, Docket No. NHTSA–2008–0121–0038.1 at 3.

[270] *See* section III.A.5 of this notice for a discussion of self certification.

[271] Responding to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requirements in 2002, NHTSA issued rules requiring that motor vehicle and equipment manufacturers provide communications regarding defective equipment, information on foreign safety recalls and certain early warning data. 49 CFR Part 579; *see* Final Rule, Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects, 67 FR 45822 (July 10, 2002); Final Rule, Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects, 67 FR 63295 (Oct. 11, 2002).

[272] SEMA Comments, Docket No. NHTSA–2008–0121–0045.1 at 2.

that consumers purchasing specialized tires that fall under the exemption will not be seeking comparative fuel efficiency ratings for these tires, because consumers purchase these specialized tires based on factors and requirements other than fuel efficiency (*e.g.,* style, performance, specialized shape and size). Accordingly, SEMA stated that there would not be any consumer confusion in the marketplace on why these specialized tires do not have fuel efficiency ratings. SEMA stated that if NHTSA believes it must require the reporting of excluded tires, however, that it should be in the form of a one-time statement from tire manufacturers that are claiming the exemption, rather than requiring them to submit this information in the EWR data submission.

Michelin expressed support for requiring the reporting of tires that qualify for the low volume exemption and are not rated or have performance grades substituted.[273] Michelin commented that making public this data will provide better quality information for consumers in that it will prevent uncertainties as to why consumers cannot find information on a particular tire.

ICCT agreed that manufacturers should be required to report which tires are exempted, and the basis for the exemption.[274] ICCT further commented that the exemption data should be included in the NHTSA database to inform consumers that those tires have been excluded.

Agency response: The agency has decided to require the submission of information on excluded tires in the reporting requirements. For manufacturers that are otherwise required to report ratings data, this information should be included with those data submissions. For manufacturers that only produce limited production tires, or other tires that are excluded from the applicability of today's program, these manufacturers must provide a one-time list of each one of its tire models/sizes, and a statement that every one of its tire models/sizes are excluded from the applicability of this regulation and, thus, are not rated. When such a manufacturer introduces a new tire model or size that it also believes is excluded under the rule, it must send a statement declaring as such to NHTSA 30 days before it is first offered for sale.

NHTSA agrees with Michelin and ICCT that this information would be useful to consumers who wish to understand which tires are not rated and why. Thus, NHTSA will make this information available on its tire Web site.

Requiring the submission of which tires are not rated because they are excluded under the statute will not be an additional burden for manufacturers that are already required to submit periodic production data under EWR requirements.[275] Allowing a one-time statement from manufacturers who only produce tires that are excluded from applicability of this final rule will impose a minimal burden on those manufacturers.

Format of the data submission: The NPRM requested comment on what format to require tire manufacturers to submit data. NHTSA proposed that the agency will design a Microsoft Excel template for data submission and will make this template available for download from the agency Web site. The NPRM explained that NHTSA was also looking into using an online data submission system and the possibility of creating one centralized location where tire manufacturers will submit all required data submissions. The agency sought comment on the feasibility of using both a spreadsheet template and an online data reporting system for having tire manufacturers submit data for the fuel efficiency consumer information program ratings. No commenter submitted suggestions regarding methods for data submission.

NHTSA will require that the rating information for each SKU to be submitted as new columns in the EWR submission. Tire manufacturers are currently required to report quarterly production information separately with respect to each tire line, size, SKU, plant where manufactured, and model year of tire manufactured during the reporting period and the four calendar years prior to the reporting period, including tire lines no longer in production.[276] The required production information includes whether the tire is approved for use as original equipment on a motor vehicle, if so, the make, model, and model year of each vehicle for which it is approved, the production year, the cumulative warranty production, and the cumulative total production through the end of the reporting period. As such, submitting the ratings with the EWR submissions is simply a matter of adding on three columns of data for each tire SKU.

Since the three ratings for the tires will be submitted as new columns in the EWR submission, the identifying information for each tire will follow the current format specified in EWR. It would also mean that this information would be submitted quarterly. The exact format of the new reporting requirements (namely the additional reporting columns for the three ratings and exemption designation) will be issued in a subsequent update to the EWR reporting compendium, which is currently available at: *http://www-odi.nhtsa.dot.gov/ewr/ewr.cfm.* NHTSA will take the ratings information from the EWR submissions and create a database with all ratings that can be used on NHTSA's comprehensive tire Web site to view comparative tire information and so that the fuel efficiency rating can be used to estimate fuel savings for consumers on the Web site. Accordingly, this submitted data would be considered public information. The agency recognizes that some information submitted via EWR data submission requirements is non-public and this new submission would not change the status of those categories of data.

In summary, the data reporting requirements for the final regulation are to be reported as extra columns in the EWR submissions that each tire manufacturer already submits to the agency. The data reported must include the rolling resistance, wet traction, and treadwear ratings, which will be based on rating formulas established in a future notice finalizing the consumer information and education portions of the tire fuel efficiency consumer information program. In addition, any tire manufacturer that manufactures tire models and sizes it is claiming are excluded under the applicability of this rule must report at least once to the agency which tire models and sizes it is claiming are excluded. If a manufacturer that is reporting its ratings using its periodic EWR submission manufactures tires that are excluded from the applicability of this rule, then it may report those tire models and sizes as extra rows in its EWR submission. Any manufacturer that introduces a new tire brand, model, size, or construction that it believes is excluded under this rule, must report to the agency at least 30 days before the tire is first offered for sale to consumers.

C. Uniform Tire Quality Grading Standards

As mentioned above and discussed in the NPRM, NHTSA has a tire rating

[273] Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 13.

[274] ICCT Comments, Docket No. NHTSA–2008–0121–0042.1 at 2.

[275] 49 CFR 579.26.

[276] 49 CFR 579.26.

system that has been in place since 1975, the uniform tire quality grading standards (UTQGS).[277] NHTSA established the UTQGS to fulfill a statutory requirement established by Title II, Tire Safety, of the National Traffic and Motor Vehicle Safety Act of 1966.[278] This statutory requirement has been codified and amended to read as follows:

> The Secretary shall prescribe through standards a uniform quality grading system for motor vehicle tires to help consumers make an informed choice when purchasing tires. The Secretary also shall cooperate with industry and the Federal Trade Commission to the greatest extent practicable to eliminate deceptive and confusing tire nomenclature and marketing practices. A tire standard or regulation prescribed under this chapter supersedes an order or administrative interpretation of the Commission.[279]

The UTQGS, applicable to passenger car tires, require motor vehicle and tire manufacturers to provide consumers with information about their tires' relative performance regarding treadwear, traction, and temperature resistance. Manufacturers are required to rate their tires based on performance in specified test procedures,[280] to report those ratings to NHTSA,[281] to permanently mold those ratings onto sidewalls,[282] to attach a label containing those ratings on replacement tires,[283] and to provide information about the UTQGS with tires and new motor vehicles.[284] As explained in the NPRM, the treadwear, traction, and temperature resistance characteristics were chosen by NHTSA for rating under the UTQGS because when the UTQGS regulations were promulgated the agency believed they provided the best balance of tire properties for meaningful evaluation by consumers.

As NHTSA is basing the safety and durability ratings on the test procedures for UTQGS traction and treadwear test procedures, these characteristics were discussed above. As explained in the NPRM, the UTQGS temperature rating indicates the tire's resistance to the generation of heat and its ability to dissipate heat. Sustained high temperature can cause the material of the tire to degrade and reduce tire life, and excessive temperature can lead to sudden tire failure. Tires are tested under controlled conditions on a high-speed laboratory test wheel. Tires are graded A, B, or C, with A indicating an ability to dissipate heat at higher speeds. While grade C originally corresponded to a level of performance required for passenger car tires by FMVSS No. 109, new requirements in FMVSS No. 139 mean that few, if any, new tires perform below the level of grade B.[285]

In 1995, NHTSA proposed amendments to the UTQGS.[286] At that time, NHTSA proposed, based on comments from the public,[287] to remove the temperature resistance rating and to add a fuel efficiency rating. It was believed that the temperature resistance rating was not as well understood by consumers as the treadwear and traction ratings.[288] The rulemaking was terminated [289] because Congress placed a condition in NHTSA's 1996 Appropriations Act that stated "none of the funds appropriated by this Act may be obligated or expended to plan, finalize, or implement any rulemaking to add to [the UTQGS] any requirement pertaining to a grading standard that is different from the three grading standards (treadwear, traction, and temperature resistance) already in effect." [290] This language has been included in every DOT Appropriations Act since 1996.

In developing NHTSA's proposal, we considered the need and appropriateness of continuing the current UTQGS requirements. The NPRM explained that NHTSA tentatively concluded that the current UTQGS requirements should either be removed, once tires meet the new EISA requirements, or amended to conform to the approach in today's EISA proposal.

RMA, Michelin, Tire Rack, and Consumers Union supported removing the UTQGS requirements citing potential confusion with two different rating systems.

RMA supported replacing the existing UTQGS traction and treadwear ratings with the ratings imposed under the tire fuel efficiency consumer information program and removing the UTQGS temperature grading.[291] RMA agreed with NHTSA's interpretation of the current DOT Appropriations Act language that NHTSA has the authority to make the changes to the UTQGS regulation contemplated by the NPRM's second UTQGS alternative: that the UTQGS requirements could be amended to conform with today's requirements. RMA and Michelin both noted that since the new safety rating system would be based on different test criteria, some products rated highly in the current UTQGS system could rate lower under a proposed peak coefficient of friction-based safety rating, which may lead to consumer confusion.[292]

Consumers Union recommended that the new label replace the present UTQGS ratings requirements.[293] Consumers Union commented that consumer confusion would result from presenting treadwear in two different rating formats. Further, Consumers Union stated that UTQGS traction grading and the proposed wet traction rating were different and could be misinterpreted by consumers. Consumers Union also commented that the current UTQGS grading of temperature is basically a two rating system ("As" and "Bs") because virtually no tires are awarded a "C" rating. Consumers Union, thus, suggested that NHTSA remove the UTQGS sidewall molding requirement and replace those sidewall ratings with the ratings established today molded onto the tire. Consumers Union recognized that legally NHTSA may not be able to pursue that approach at this time, but it urged the agency to monitor consumer understanding of the labeling system and perhaps seek the authority for such a change, if necessary.

Tire Rack suggested that the UTQGS branding and labeling requirements be eliminated.[294] Tire Rack stated that it believes maintaining existing UTQGS ratings and tire molding would prove confusing to consumers. Further, Tire Rack commented that the proposed rating systems for durability (treadwear) and safety (wet traction) serve the same purpose as the corresponding existing UTQGS ratings.

ExxonMobil commented that since no statistical correlation is found between the measured RRF or calculated RRC

[277] *See* 49 CFR 575.104 (2008).

[278] *See* National Traffic and Motor Vehicle Safety Act of 1966, Public Law 89–563, § 203, 80 Stat. 718 (1966) (recodified as amended at 49 U.S.C. 30123(b)).

[279] 49 U.S.C. 30123(b).

[280] 49 CFR 575.104(d)(1)(i).

[281] 49 CFR 575.6(d)(2).

[282] 49 CFR 575.104(d)(1)(i)(A).

[283] 49 CFR 575.104(d)(1)(i)(B).

[284] 49 CFR 575.104(d)(1)(ii)–(iv).

[285] UTQGS requires tires to be rated a C if they perform at the lowest level in the UTQGS test. If a tire performs at a higher level the manufacturer *may* rate the tire a B. Therefore, while there may still be grade C tires on the market, NHTSA expects that the tires could be rated a B, based on the requirements of FMVSS No. 139. *See* 49 CFR 571.139.

[286] 60 FR 27472 (May 24, 1995).

[287] *See* Request for Comments, 59 FR 19686 (Apr. 25, 1994).

[288] *Id.* at 19689.

[289] *See* 61 FR 47437 (Sept. 9, 1996).

[290] Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1996, Public Law 104–50, 109 Stat. 436 (1995).

[291] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 13.

[292] *Id.* at 11; Michelin Comments, Docket No. NHSTA–2008–0121–0048.1 at 8–9.

[293] Consumers Union Comments, Docket No. NHTSA–2008–0121–0034 at 3–4.

[294] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 6.

values and the UTQGS ratings, the current UTQGS system cannot be easily extended to include a tire fuel efficiency rating.[295] ExxonMobil stated that the new system proposed by NHTSA is more advantageous as an educational tool than the UTQGS rating system since it provides actual numbers for consumers to judge potential tire quality at the time of purchase.

Public Citizen *et al.* supported NHTSA continuing to provide the temperature resistance rating along with other UTQGS ratings, and recommended that temperature resistance should be incorporated into the new tire labels.[296] Public Citizen *et al.* commented that NHTSA has been blocked from making the proposed changes to the UTQGS by the condition contained in the DOT Appropriations Act each year since 1996. Further, Public Citizen *et al.* argued that this appropriations rider has forestalled more detailed study into the consequences of discontinuing the temperature resistance rating. In addition, Public Citizen *et al.* pointed out that Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic and Certain Specialty Tires,* was upgraded in 2003 and that the new standard raised the test speeds, which reduces concern that discontinuing the temperature rating diminishes information about tire performance at higher speeds.[297] However, Public Citizen *et al.* stated that the temperature rating provides information about tire safety and durability that is substantially different from the rolling resistance and treadwear ratings. Therefore, Public Citizen *et al.* commented that the UTQGS temperature resistance grading will continue to provide the information in a format that is useful to consumers. Public Citizen *et al.* expressed skepticism at the perceived implication in the NPRM that temperature ratings are not useful because consumers are not familiar with them.

Agency response: The agency agrees with commenters that suggested that having tires labeled with two different rating scales for safety and durability potentially could be confusing to some consumers. NHTSA also recognizes, as some commenters pointed out, the potential confusion that might be caused if the safety rating established under this program is different than the UTQGS safety rating. On the other hand, NHTSA also agrees with Public Citizen *et al.* that NHTSA has not recently studied in detailed the consequences of discontinuing the temperature resistance rating.

For these reasons, NHTSA is retaining the UTQGS requirements at this time, including the UTQGS treadwear, traction, and temperature resistance ratings. However, if a future final rule finalizes that ratings under the tire fuel efficiency consumer information must be printed on a paper label on each passenger car replacement tire, NHTSA will consider removing the UTQGS requirement of molding UTQGS ratings onto tires, and the UTQGS requirement printing UTQGS information on the paper tire label when a tire is labeled in accordance with the tire fuel efficiency consumer information program requirements. The requirements to report UTQGS grading information to NHTSA would remain. As such, the UTQGS ratings would still be available to interested consumers, vehicle manufacturers, and tire retailers, but a consumer looking at a tire would not be confronted with different and confusing rating scales. NHTSA wants to study further the likely consequences of discontinuing the temperature resistance rating before making a decision about the future UTQGS requirements. NHTSA is making no changes to UTQGS requirements in this final rule.

Ideally the agency would combine the two programs since both the UTQGS statutory authority and the EISA authority call for regulatory programs intended to educate consumers about tires. That is, under the first alternative discussed in the NPRM (removing the UTQGS ratings), NHTSA contemplated announcing that the ratings established under this new program satisfied both the EISA statutory directive and the statutory authority under which the UTQGS ratings were created. However, NHTSA has concerns that the appropriations rider would be triggered by the inclusion of the fuel efficiency rating in today's rating system.

As for the second alternative contemplated in the NPRM (amending the UTQGS requirements to conform to the new ratings), NHTSA agrees with Public Citizen *et al.* that NHTSA does not have current research to show that temperature resistance is not a useful additional piece of information for consumers. In a 1995 NPRM, the agency concluded that most consumers are not aware of and/or do not understand the significance of the temperature resistance rating.[298] However, the agency has not explored the issue of consumer understanding of the temperature resistance rating since that time. Further, a 1994 Request for Comments on the issue of substituting a rolling resistance rating for temperature resistance drew comments from manufacturers who insisted that rolling resistance and temperature resistance are separate properties.[299] They asserted that rolling resistance measures the energy consumed by the tire, while temperature resistance relates to the ability of the tire structure and materials to withstand the temperatures generated by the flexing of the rubber and its reinforced materials.[300] The agency decided to propose elimination of the temperature resistance grading at that time mainly based on consumer research which showed that the temperature resistance rating was less understood and less useful to consumers that other tire performance ratings when making a decision.[301] The agency is not comfortable deleting a tire grading previously determined by the agency to be useful without both recent consumer research testing consumer understanding of the rating, and researching the continued need given the upgraded tire endurance requirements of FMVSS No. 139.[302]

VIII. NHTSA's Consumer Education Program

As noted elsewhere in the notice, section 111 of EISA requires that the tire fuel efficiency consumer information program for replacement tires include "a national tire maintenance consumer education program including, information on tire inflation pressure, alignment, rotation, and treadwear to maximize fuel efficiency, safety, and durability of replacement tires." 49 U.S.C. 32304A(a)(2)(D). NHTSA believes, and many commenters noted, that the consumer education portion of this tire fuel efficiency consumer education program will be an important factor in the success of the rating system. The consumer education program must be implemented in such a way as to get consumers to understand the importance of tire choice and tire maintenance, and that tires impact vehicle safety, fuel efficiency, and general operation. The new rating system will only be effective and useful, if the consumer education program is able to cultivate this interest and understanding with consumers.

[295] ExxonMobil Comments, Docket No. NHTSA–2008–0121–0044.1 at 10.

[296] Public Citizen *et al.* Comments, Docket No. NHTSA–2008–0121–0043.1 at 3–4.

[297] 68 FR 38117 (June 26, 2003).

[298] *See* 60 FR 27472, 27478–27481.

[299] *See* 59 FR 19686.

[300] 60 FR at 27478.

[301] *Id.* at 27279.

[302] *See* 49 CFR 571.139.

For similar reasons discussed above, in order to have the full benefit of any new understanding of how consumers best comprehend information gained from the agency's new consumer research, NHTSA will re-propose its ideas for the consumer education portion of the program in the supplemental NPRM on the consumer information and education portions of the tire fuel efficiency consumer information program. The supplemental NPRM will newly propose and seek comment on numerous ways that NHTSA could implement a consumer education program to inform consumers about the effect of tire properties and tire maintenance on vehicle fuel efficiency, safety, and durability. The supplemental NPRM will also discuss some of the messages that NHTSA believes will be key to a successful tire fuel efficiency consumer information program.

Within the next year NHTSA will begin developing a new government Web site on tires, which will be linked directly from *http://www.safercar.gov/*. It will contain all the information on NHTSA's current tire Web site (also located within *www.safercar.gov*), as well as links to other useful Web sites that contain educational information about tire maintenance.[303] In furtherance of the objectives of consumer education program, the supplemental NPRM will seek comment on the structure and content of the tire Web site. NHTSA's tire Web site will eventually contain a database of all tire rating information.

NHTSA is using consumer testing research to help maximize consumer understanding of the program and to develop communication materials to assist consumers in making more educated tire purchasing decisions. In the NPRM, NHTSA requested comments on the most effective way to establish and implement a consumer education program to fulfill the statutory requirements and purposes behind the tire fuel efficiency consumer information program. NHTSA received extensive comments about the messages the agency should convey and the strategic methods of communication NHTSA should employ when embarking on the consumer education portion of the tire fuel efficiency consumer information program. NHTSA will continue to consider all these comments moving forward with the supplemental NPRM discussed above.

IX. Benefits and Costs

The agency's response to the specific comments about benefits and costs calculations are discussed below and in greater detail in the agency's Final Regulatory Impact Analysis (FRIA). ICCT and NRDC commented that NHTSA underestimated benefits that would result from the proposal.[304] RMA commented that NHTSA overestimated benefits of the proposal and underestimated costs.[305]

A. Benefits

In the NPRM, the agency identified three categories of *potential* benefits (or disbenefits) from this rule: fuel economy, safety and durability.[306] For each of these categories a significant unknown is likely consumer behavior in response to this program, and as a result of that, likely manufacturer reaction. For example, if consumers value fuel efficiency, but are unwilling to increase the price they pay for tires, tires with improved fuel efficiency, but decreased safety and/or durability may enter the market. If consumers care most about safety, and if tire manufacturers make a tradeoff between fuel economy and safety, one effect of this rule may be to increase safety while decreasing fuel economy. NHTSA would like to be able to quantify the value of all three categories of benefits/disbenefits under such a scenario and construct a range of likely scenarios to calculate the combined potential benefits of this rule. Other scenarios can also be imagined. NHTSA requested comments on how it might reduce the uncertainty regarding the anticipated outcomes of this proposal.

The NPRM further explained that in addition to the unknown reactions of consumers and manufacturers, calculating benefits is complicated by several additional factors. We explain these additional complications for each of the three rating systems in the remainder of this section.

For fuel efficiency, NHTSA would like the fuel efficiency rating to provide meaningful information relevant to their replacement purchase, *e.g.,* with a statement such as "for every 10,000 miles driven, a difference of A on the fuel efficiency rating scale equates to B gallons of fuel saved when 4 tires are purchased, so a difference of C on the fuel efficiency rating scale means a savings of D gallons over 10,000 miles driven for the average vehicle." Given such a statement, to calculate benefits for an individual tire purchase, if the driver knows the baseline fuel economy of the vehicle the tires will be mounted on, the fuel efficiency rating of two different replacement tires a consumer is considering purchasing, and the number of miles driven annually, the driver can calculate the reduction (or increase) in the number of gallons of fuel the driver will need, for one replacement tire versus another, to operate the vehicle for 10,000 miles. By using fuel price forecasts, a consumer could estimate the cost of that fuel, and make an economic decision about whether or not to buy those replacement tires.

To calculate fuel savings benefits for this rule, we would need to know how many consumers are likely to purchase lower (or higher) fuel efficiency rated tires as a result of the information in this program and the average reduction (or increase) in rolling resistance of the tires they purchase. Because the agency cannot foresee precisely how much today's consumer information program will affect consumer tire purchasing behavior and cannot foresee the reduction in rolling resistance among improved tires (we estimate the potential range of rolling resistance improvement to be between 5 and 10 percent), the FRIA estimates benefits using a range of hypothetical assumptions regarding the extent to which the tire fuel efficiency consumer information program affects the replacement tire market. For example, if we assume that 1 percent of targeted tires (1.4 million tires) are improved and that the average reduction in rolling resistance is 5 percent, then under these hypothetical assumptions, the proposal is estimated to save 3.0 million gallons of fuel and prevent the emission of 29,000 metric tons of CO_2 annually. The value of these savings through 2050 is $11.6 million at a 3 percent discount rate.

Benefit estimates for the safety rating are more difficult to quantify. As noted, definitive information is lacking about likely consumer responses to these ratings. Even if such information were available, it is not as straight forward as it is for a fuel efficiency rating to develop a rule of thumb for the safety rating scale such as "each difference of X on the safety rating scale equates to

[303] NHTSA's current online tire information can be found at *http://www.nhtsa.gov/portal/site/nhtsa/menuitem.c6b5d461a04337a1ba7d9d1046108a0c/* and *http://www.safercar.gov/portal/site/safercar/menuitem.13dd5c887c7e1358fefe0a2f35a67789/?vgnextoid=0e0aaa8c16e35110VgnVCM1000002fd17898RCRD* (last accessed Sept. 24, 2009).

[304] NRDC Comments, Docket No. NHTSA–2008–0121–0040.1 at 7–8; ICCT Comments, Docket No. NHTSA–2008–0121–0042.1 at 1–2.

[305] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 14–15; RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 11–14.

[306] As noted in the preamble, there are also benefits in terms of reductions in emissions of CO_2. Reductions in fuel consumption necessarily and directly result in reductions in those emissions.

Y percent fewer crashes and Z dollars less in resultant economic damages."

For durability, the UTQGS treadwear test procedure results in a relative measurement of tread wear rate as compared to a control tire, which would be rated 100 on the UTQGS treadwear scale. A tire with a UTQGS treadwear rating of 200 should last twice as long as a tire rated a 100, and so forth. Several assumptions would need to be made to develop a rule of thumb for a durability rating scale of the form "each difference of X on the durability rating scale equates to a reduction of $Y in tire purchases over the lifetime of the vehicle." Tire lifetimes are complicated by factors such as: the vehicle the tire is mounted on, driving habits, tire maintenance, weather/environment/temperature, *etc.*

Fuel savings estimates: NRDC and ICCT commented that NHTSA may have underestimated the fuel economy benefits of the proposed rule.[307] ICCT commented that benefits may be understated by as much as 40 percent due to a flaw in the agency's estimate of the impact of reduced rolling resistance on fuel economy. ICCT noted that NHTSA's testing used a two-wheeled dynamometer to calculate the impact of tire rolling resistance on fuel economy at 1 percent and 1.1 percent for city and highway driving, respectively. ICCT stated that the 2008 Impala used for the testing has 61 percent of its total weight on the drive wheels. According to ICCT, that means that the testing would only capture the effect of 61 percent of the on-road tire rolling resistance. The other 39 percent from the rear wheels is incorporated into the dynamometer load curve. ICCT stated that when the tires were changed to measure the fuel economy impact of tire rolling resistance, its understanding was that the 39 percent contribution from the rear wheels contained in the dynamometer load curve was not changed to reflect the benefits of improved rolling resistance from the rear wheels. ICCT commented that if this occurred, the benefits may be under-predicted by about 40 percent for similar front-wheel drive vehicles and perhaps more for rear-wheel drive. ICCT recommended that NHSTA re-assess this test method to make sure that the benefits of this important proposed program are properly understood.

NRDC similarly commented that NHTSA's fuel savings estimates from reduced rolling resistance could potentially be underestimated in dynamometer tests if the results computations account for tire changes on only two (instead of all four) of the wheels. NRDC requested that NHTSA clarify how it conducted the dynamometer testing and if the testing properly accounted for rolling resistance changes to all four tires.

Agency response: Based on data analysis conducted in response to these comments, NHTSA agrees with commenters that the effect of tire rolling resistance on vehicle fuel economy used in the NPRM and PRIA were underestimated. In response to the ICCT comments, we examined vehicle coastdown data and analyzed the effects on the fuel economy dynamometer coefficients versus changes in tire rolling resistance. We integrated these effects over the whole fuel economy cycle. From these data, we estimate that total fuel consumption vis-a-vis rolling resistance was underestimated by approximately 20 percent for all non-OE tires—not the 40 percent claimed by ICCT. Thus, we now believe that a 10 percent reduction in rolling resistance increases fuel economy by 1.3 percent, as compared to the 1.1 percent we estimated in the PRIA, and have revised the benefits in the FRIA accordingly.

Since issuance of the NPRM, the Tire Rack has published a study of on-road vehicle fuel economy for a 2009 Toyota Prius using seven different tire models.[308] Using the fuel economy results from the Prius, and the available tire rolling resistance data from other sources [309] for five of the seven tire models, there was an approximate 1.38 percent improvement in fuel economy for a 10 percent decrease in RRF. This is only slightly higher than the agency's revised estimate of 1.30 percent.

Benefits not addressed: NRDC and ICCT commented that NHTSA should include the impacts on greenhouse gas (GHG) emissions (from both vehicle emissions and upstream refining/production emissions), other pollutants, and energy security in quantifying benefits.[310] These commenters stated that these benefits are important and are quantified under NHTSA's corporate average fuel economy (CAFE) regulatory impact analyses.

In a somewhat related comment, RMA stated that NHTSA should estimate and monetize GHG emissions impacts.[311] RMA stated that because manufacturers will need to do additional tire treadwear testing, GHG emissions may increase.

Agency response: The FRIA contains additional computations of GHG impact—both the GHG emissions emitted by manufacturer testing and the GHG emission reductions as consumers buy more fuel efficient tires. In addition, CO_2 is emitted from refineries and other sources to produce fuel and deliver it to gas stations, and so less fuel used by vehicles also translates to reduced CO_2 emissions from these sources (*i.e.,* reduced upstream emissions).[312]

Projected consumer response: RMA commented that NHTSA has no basis for assuming that between 2 and 10 percent of consumers will purchase tires with improved rolling resistance.[313] RMA stated that it believes the percent may well be less, since most consumers will not see the label until after they have purchased the tire, and the informational posters displayed at tire retailers will not contain information on the tires the consumer is considering purchasing. Thus, RMA contended that the PRIA overestimated benefits.

Agency response: The PRIA developed hypothetical estimates assuming that between 2 percent and 10 percent of targeted tires are improved and that the average reduction in rolling resistance among improved tires is between 5 percent and 10 percent. We acknowledge that many consumers may not see the ratings before they purchase their tires. However, we presume that based on consumer information requirements implemented in a forthcoming final rule, some will see the ratings when purchasing replacement tires, perhaps as a label on display tires, or on posters or on dealer advertisements for tires on sales or on other promoted tires, or on manufacturer or dealer Web sites for consumers who conduct Internet research prior to visiting a dealer. In addition, salespersons at tire dealers may discuss the ratings or show ratings to consumers to display the favorable properties of tire models they wish to promote. In addition, some consumers may see the ratings through other facets of NHTSA's consumer education program.

Based on general economic principles, we expect these sources of

[307] NRDC Comments, Docket No. NHTSA–2008–0121–0040.1 at 7–8; ICCT Comments, Docket No. NHTSA–2008–0121–0042.1 at 1–2.

[308] *See http://www.tirerack.com/tires/tests/testDisplay.jsp?ttid=121* (last accessed Oct. 12, 2009).

[309] RMA & ExxonMobil comments to the tire rolling resistance docket.

[310] NRDC Comments, Docket No. NHTSA–2008–0121–0040.1 at 2, 7–8; ICCT Comments, Docket No. NHTSA–2008–0121–0042.1 at 2.

[311] RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 20–21.

[312] As in the agency's most recent rulemaking on Corporate Average Fuel Economy, we only considered upstream emissions that would occur in the U.S. ("domestic upstream emissions").

[313] RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 2, 17, 20–21.

information about the new rating system to increase demand for tires that have some degree of improvement in all three areas of tire performance (wet traction, fuel efficiency, and treadwear). However, at this point the agency can't predict how the market will react to the program. In addition, NHTSA's consumer research results on the amount of money consumers would pay for a tire with a higher rating in one of the three scales indicate that consumers who see the ratings (through one of the sources in the previous paragraph) are likely to buy tires with some degree of improvement in all three areas.

The agency's expert assessment is that the rolling resistance of tires can be reduced while sacrificing neither traction nor treadwear at a cost of about $3 per tire. NHTSA's recent consumer research indicates that buyers would pay between $4 and $5 more per tire for improved fuel efficiency. Therefore, we believe that, while there will be consumers who, when presented with tire ratings, would choose to sacrifice fuel efficiency for traction or treadwear, in general consumers will drive a market for tires that have improved fuel efficiency with little or no reduction in traction and treadwear.

For analytical purposes, NHTSA examined a hypothetical example assuming that 1 percent of eligible replacement tires would have 5 percent improved rolling resistance. Other estimates of more tires or better reduction in rolling resistance can be determined by simply multiplying the results of the example calculations by factors. NHTSA's expert assessment continues to be (as in the PRIA) that the average rolling resistance of improved tires can be reduced by between 5 percent and 10 percent.

B. Costs [314]

For this final rule, there are three sets of costs involved for tire manufacturers: Costs to test tires to obtain rating information, costs of reporting ratings to NHTSA, and, assuming the program induces consumers to demand and manufacturers to produce improved tires, costs to improve tires. If consumers use the ratings information to purchase tires and demand different tires, or if manufacturers believe the information will have such an effect, there will be costs that manufacturers will spend to improve tires.

The NPRM and the PRIA explained that these costs are difficult to estimate. There are many different ways that a manufacturer might chose to improve the rolling resistance rating of their tires. The PRIA estimated that the increased cost at the consumer level of such improvements is $2.00 to $4.00 per tire for tires subject to this regulation if all other tire properties were held constant.[315] However, total costs for this category are dependent on market demand for different tires as a result of this program. The PRIA assumed that between 2 and 10 percent of the targeted tire population will be improved as a result of the proposal. Under this assumption and using a cost of $3 to improve the rolling resistance of one tire, the agency estimated the costs to improve tires to be between $8.5 and $42 million. The agency requested comments on this cost estimate.

Based on a report from Smithers Scientific Services, Inc. (Smithers) presented at the February 5, 2009 Staff Workshop for the California Energy Commission's Fuel Efficient Tire Program, there are 20,708 tires that would need to be tested initially to provide information for each SKU. If each one of these were tested once for tire rolling resistance, the initial costs to the industry would be $3,727,000. Based upon the average number of reports the agency receives under the UTQGS program, the agency estimated that 125 new/redesigned tires would need to be tested annually, for ongoing testing costs of $22,500. Since the UTQGS already requires testing for treadwear and traction, the PRIA explained that those costs are already in the baseline and were not incremental costs of the agency's proposal.

The PRIA explained that information program costs include manufacturer costs to report information to NHTSA and to label tires. Since NHTSA is not requiring tire manufacturers label tires at this time, the manufacturer costs to label tires is not a consideration in the FRIA accompanying this final rule. NHTSA will account for costs of a label when the requirement is re-proposed in the supplementary NPRM addressing consumer information requirements.

Tire manufacturers are required to provide information to NHTSA on the rating system. NHTSA proposed to require manufacturers to report to NHTSA for each tire that is individually rated under the tire fuel efficiency consumer information program data on each of the three ratings: Fuel efficiency, traction, and treadwear. There are 20 tire manufacturers that report to the agency under NHTSA's Early Warning Reporting (EWR) data submission requirements. The PRIA and NPRM explained that each manufacturer would need to set up the software in a computer program to combine the testing information, organize it for NHTSA's use, etc. We estimated this cost to be a one-time cost of about $10,000 per company. In the analysis of the EWR data submission requirements, we estimated the annual cost per report per tire manufacturer to be $287.[316] There are also computer maintenance costs of keeping the data up to date, etc. as tests are conducted throughout the year. In the EWR analysis, we estimated costs of $3,755 per year per company. Thus, the PRIA and NPRM estimated the total annual cost is to be $4,042 per company, and $280,000 + $113,176 = $393,176 for the first year and $113,176 as an annual cost for all 28 tire manufacturers.

For tire retailers, the agency estimated that the proposal would have no cost. The only proposed requirements for retailers were to leave the label on the tire until it is sold and to display a poster. Since manufacturers would supply the label, and the NPRM proposed that NHTSA would supply the poster, the PRIA estimated there would be no cost to retailers. As noted above, because NHTSA is planning to re-propose the consumer information component of the program, tire retailer costs are not a consideration in the FRIA accompanying this final rule.

The PRIA explained that there are three sets of costs to the government: Enforcement costs, costs for maintaining the Web site, and costs to provide the poster to retailers. As explained above, NHTSA will re-propose the consumer information requirements. Thus, NHTSA will not be providing posters to tire retailers at this time. NHTSA said it anticipated spending $730,000 annually to do compliance testing for this program. Based on costs for the existing areas of the NHTSA Web site, NHTSA estimated that it would cost approximately $550,000 per year to set up and update the part of the Web site to include information on 20,000 tires.

Testing costs: RMA commented that the PRIA underestimated costs of additional testing manufacturers would need to conduct under the proposed

[314] All costs discussed below are presented in 2008 economics.

[315] This is the cost to reduce rolling resistance by 10 percent from today's average replacement tire rolling resistance, holding other tire properties constant. Using silica is a well known method. There are a variety of ways to improve rolling resistance and not hold other properties constant, with different cost implications. That is one reason that the agency believes it is important to have rolling resistance, traction, and treadwear on the same label.

[316] Preliminary Regulatory Evaluation, Tread Act Amendments to Early Warning Reporting Regulation Part 579 and Defect and Noncompliance Part 573, August 2008 (Docket No. 2008–0169–0007.1).

rule.[317] RMA estimates that the costs to its eight member companies alone would be $14.7 to $51.1 million in the first year and $10.2 to $27.2 million in subsequent years. RMA stated that manufacturers would need to do more treadwear and wet traction testing than estimated because under "worst case" final rule scenario (*i.e.,* if manufacturers had to report the specific data values supporting a tire's rating and noncompliance was determined using a tolerance band approach), tire companies would make upper end assumptions regarding equipment and labor needs and more SKUs would need to be tested, rather than modeled, and some might even be tested more than once in order to narrow the confidence bounds and avoid violating the tolerance bands when reporting values. RMA commented that cost increases would involve both additional initial costs (testing equipment and costs to test existing SKUs) as well as ongoing annual costs (continuing testing costs to report values for each SKU). RMA commented that small increases in costs would result also from the need to report peak instead of slide values for the safety (wet traction) rating.

Agency response: First of all, as explained above in section VII.B.2, NHTSA is requiring only that tire manufacturers report to NHTSA the rating, and is not requiring the reporting of the underlying test values the rating is based on. We continue to believe that only one test per tire SKU will be necessary and that additional testing would be at the tire manufacturers' option, and will discuss this further in the discussion of enforcement approach in the supplemental NPRM on the consumer information component of this program.

Our concerns with RMA's testing cost estimates are discussed in the FRIA. Nonetheless, we acknowledge RMA's points that the PRIA neglected to include capital costs to purchase testing equipment, and that the agency likely underestimated the number of new SKUs produced annually, while overestimating the number of SKUs for sale each year. We used the industry estimates of SKU quantities that RMA provided for predicting the costs of the final rule. RMA's "best case" capital cost estimate of a one-time charge of $10.7 million appears reasonable, as a combined cost to the industry. Our final testing cost estimates assume one test per SKU for rolling resistance, traction, and treadwear, however, it is possible that manufacturers could test far fewer tires. We believe that RMA's estimates of the cost to test a SKU for traction and treadwear are overstated.

The FRIA contains a full discussion of the agency's cost estimates, but in summary, NHTSA believes that we underestimated testing costs in the PRIA and are revising them. The FRIA estimates that capital costs will increase by $10.7 million in the first year, tire testing costs will increase by $22.4 million in the first year and by $3.8 million in subsequent years, resulting in total testing costs of $33.1 million in the first year and $3.8 million in subsequent years.

Label costs: RMA commented that NHTSA underestimated label costs to manufacturers.[318] RMA stated that tire manufacturers would have initial start-up costs of $22 million to cover design set-up and printing equipment, and annual printing costs of $11.5 million.

Agency response: NHTSA estimated a label cost of $0.05 per tire resulting in a net label cost of $9 million in the PRIA which is quite comparable with RMA's annual print cost of $11.5 million. Since a final label has not been designed, NHTSA will not include label costs in the FRIA associated with this final rule. However, NHTSA notes that RMA incorrectly thought they would need to spend $11 million labeling their existing inventory. The NPRM did not propose a requirement to label existing inventory.

Costs of improving tires: RMA's survey of members generally confirms NHTSA's estimates regarding the cost per tire to improve rolling resistance without sacrificing traction or treadwear.[319] NHTSA estimated the cost to improve the rolling resistance of tires to be between $2 and $4, depending upon the tire size, averaging $3 per tire. RMA estimated the cost to improve the rolling resistance of tires to be between $2 and $6, depending upon the size, and averaging $3 per tire.

Agency response: NHTSA has changed its range to between $2 and $6. This is reasonable because the bigger the tire, the more cost to add silica to get the desired effect. There are larger tires in the market than we considered with our general cost range, and if you look at the extreme, the cost per tire might be up to $6. Regardless of the minimum and maximum cost to improve the rolling resistance of tires, everyone agrees that the average price to upgrade the average tire is $3 per tire.

Other costs: RMA commented that NHTSA has not estimated the costs of the decreased tire safety and durability that may result from the rule.[320] RMA stated that NHTSA needs to do this, and when it does, the benefits of the rule will not justify the cost (even using NHTSA's values for the other cost estimates). RMA commented that improving rolling resistance will decrease traction and treadwear. RMA stated that NHTSA acknowledged in the Phase II Research Report (p. 47) that improving rolling resistance will worsen wet traction performance. Further, RMA pointed to NHTSA's data (p. 43 of Phase II Report) which shows that dry traction is also likely to worsen. RMA stated that NHTSA acknowledged that its labeling program may effectively exacerbate the traction problem by spurring consumers to sacrifice traction to save money. Regarding treadwear, RMA commented that NHTSA's PRIA stated that tread life may be lessened and a CEC report says tread life will lessen. Therefore, RMA commented that NHTSA needs to analyze the impact of the rule on fatalities, injuries, property damage, increased consumer spending on tires due to decreased tread life, and societal costs of producing additional tires.

RMA also commented that the PRIA does not treat first-year costs correctly.[321] RMA stated that NHTSA estimates first-year costs at $4 million, but doesn't include them in the net benefits estimates. RMA suggested that NHTSA should include them by amortizing or annualizing the costs, or by estimating the net present value of the entire program. RMA makes specific suggestions on how to do this.

Agency response: Regarding RMA's comment that NHTSA does not treat first-year costs correctly, all first-year costs are included in NHTSA's $3 per tire cost estimate.

Regarding RMA's request that NHTSA estimate the costs of the decreased tire safety and durability that may result from the rule, we do not have enough information at the moment to estimate these impacts. Michelin provided data[322] that this tradeoff is not necessary, but we do not know with certainty. The NPRM and PRIA noted that this scenario would be particularly problematic if consumers are unwilling to spend additional money and/or tire manufacturers are unwilling to increase the cost of the tire to maintain high levels of wet traction and treadwear. We

[317] RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 11–14.

[318] RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 12–14.

[319] RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 14–15.

[320] RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 17–20.

[321] RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 21.

[322] Michelin Comments, Docket No. NHTSA–2008–021–0048 at 8.

recognize there are opportunity costs to reducing rolling resistance that impact safety and durability, but we don't have enough data to estimate impacts. Thus, we assume the cost of maintaining these parameters is already included in the $3 of increased cost per tire. However, more information in terms of consumer reaction to the program will be developed in the future and will be used in the next analysis.

Overall, RMA commented that because NHTSA effectively projects possible negative net benefits, the rule is not justified.[323] RMA stated that NHTSA needs to rework the rule to cut costs or not propose the rule. RMA suggested discarding the labeling idea in favor of training programs, educational materials provided to dealers, and better Web tools for consumers.

Agency response: As noted above, this final rule does not include labeling costs because NHTSA is not requiring tire manufacturers to label tires at this time. However, NHTSA is likely to re-propose the label requirement, and even considering those additional annual labeling costs, NHTSA believes that this consumer information program is likely to be cost effective, and provide an overall benefit to society. NHTSA will, however, consider these RMA comments as it develops the next regulatory impact analysis for the supplementary NPRM on the consumer information and consumer education portions of the program.

X. Lead Time

Lead time will be determined based on the timing of the final rules that will specify the requirements and content of the consumer information and the specification of a reference laboratory or laboratories. If the later of the final rules is the one in which NHTSA announces the selection of a reference laboratory or laboratories with the capability to test LATs, based on comments, and the time NHTSA needs to select a reference laboratory or laboratories with the capability to test lab alignment tires (LATs) for rolling resistance testing, NHTSA will require tire manufacturers to meet applicable requirements for replacement tires they manufacture in stages, by tire size. In that case, tire manufacturers must meet applicable requirements for 15 and 16-inch tires, the most popular rim sizes,[324] first; tire manufacturers must meet applicable requirements for other passenger car tire sizes at a later date. This phase in would be tied to the publication of a final rule specifying the availability of certified LATs from the reference laboratory or laboratories. As noted above, in the near future NHTSA will announce one or more private laboratories to operate the reference test machine(s). The agency is working expeditiously to establish and implement procedures for the selection of a reference laboratory. Soon after, NHTSA will publish a **Federal Register** notice of the readiness of the reference laboratory or laboratories to provide LATs under ISO 28580.

If the final rule specifying the requirements and content of the consumer information portion of the program occurs after the final rule specifying the reference laboratory or laboratories, NHTSA may establish a lead time different from the phase in described above since tire manufacturers will have had since the final rule specifying the reference laboratory or laboratories to begin testing to the test procedures specified in this final rule. Recognizing the uncertainty of the rulemaking timeline for finalizing the requirements and content of the consumer information and consumer education portions of the tire fuel efficiency program, NHTSA will tie all compliance dates to the latter of the consumer information and education final rule, or the final rule announcing the availability of the reference laboratory or laboratories to test LATs under ISO 28580.

The NPRM explained that while manufacturers currently calculate the rolling resistance of at least some tires for vehicle manufacturers to use when selecting which tires to equip new vehicles with, NHTSA believes that lead time is necessary for tire manufacturers to conduct additional testing and to prepare rating information for all affected tires. In addition, time will be necessary for NHTSA to collect all reported rating information into a database and to prepare consumer information materials.

Tire manufacturers: NHTSA proposed to require manufacturers to report on all existing tires within 12 months of the issuance of a final regulation. For new tires introduced after the effective date of the rule, NHTSA proposed to require reporting of information at least 30 days prior to introducing the tire for sale, as is required for UTQGS information.

As explained in the NPRM, a Smithers Scientific Services, Inc. (Smithers) report presented at a February 2009 CEC staff workshop on CEC's Fuel Efficient Tire Program suggested that manufacturers need 0.2 to 2.4 years to test one replacement passenger car tire of each different tire SKU. However, NHTSA explained that we believe this number may be an over-estimate of the time needed to test and rate all tires affected by the proposed program. Based on our research, NHTSA estimated it is possible that less than 25 percent of the affected tires will need to be tested in accordance with the ISO 28580 procedures in order to rate them for this program. The NPRM explained that it is likely that manufacturers will be able to develop equations to calculate the effect of differences in tread pattern, etc., and use those equations to compute the test results from ISO 28580 from other tires that have been tested. Tire manufacturers will be able to extrapolate estimates of the test procedure values from knowing the test procedure values of similar sized tires. In addition, NHTSA explained that manufacturers already have rolling resistance information on many, if not all tires, as this information is used by vehicle manufacturers when choosing which tires to install as original equipment. The NPRM explained that even if these data were gathered using other test methods, NHTSA's research shows that equations can translate the data to results that would be obtained from the ISO 28580 test procedure.

In comments to the NPRM, the European Commission requested more lead time without providing a rationale or a suggestion for an effective date.[325] JATMA requested 2 years of lead time.[326] JATMA commented that manufacturers will wait to test until the final rule is issued and that JATMA manufacturers will not want to contract out rolling resistance testing.

Michelin requested that if the new rating is implemented the requirements for UTQGS be modified and that adequate implementation times or some other considerations must be allowed to prevent large costs for mold replacement.[327]

RMA requested lead time of 24 months after the specification of a reference laboratory and availability of certified LATs to correlate rolling resistance testing.[328] RMA commented

[323] RMA Comments Appendix 8, Docket No. NHTSA–2008–0121–0036.9 at 2–3, 16–17, 22–24.

[324] The *RMA Preliminary 2010 Factbook* estimated that 15- and 16-inch passenger replacement tires constituted about 22% of the replacement passenger tire sales in the U.S. in 2009. *See* Rubber Manufacturers Association, Tire Industry Factbook, available at *http://www.rma.org/rma_resources/market_information/tire_industry/* (last accessed March 11, 2010).

[325] European Commission Comments, Docket No. NHTSA–2008–0121–0028.1 at 3.

[326] JATMA Comments, Docket No. NHTSA–2008–0121–0031.1 at 2.

[327] Michelin Comments, Docket No. NHTSA–2008–0121–0048.1 at 9.

[328] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 9, 13–14.

that logistical considerations regarding LATs and the reference laboratory indicate that it would be difficult if not impossible to meet the compliance date set forth in the proposal. Further, RMA stated that restrictive application of ISO 28580 would require significant capital investment to acquire sufficient test capacity to test applicable tires to the two specified measurement methods using an 80-grit surface. RMA additionally commented that basing the wet traction rating on peak coefficient of friction, rather than the current slide coefficient of friction-based wet traction rating under UTQGS will require additional testing of existing tires, since tire manufacturers do not have peak data available on sufficient existing tires to interpolate wet traction rating. RMA estimated that a minimum of 24 months is required to obtain reference tires, correlate to a reference laboratory, conduct sufficient testing, rate existing tires, and report ratings to NHTSA. RMA requested that the compliance date for the rule be tied to the availability of LATs.

RMA also asked for 6 months after the introduction of a new tire to report ratings to NHTSA and retailers "consistent with current UTQGS regulations."

Agency response: Regarding the requests for additional lead time, NHTSA agrees with RMA that the lead time should be after the specification of a reference laboratory. As discussed above in section IV.B, the ISO 28580 test method specifies lab alignment procedures to account for lab-to-lab variability between different rolling resistance test machines. ISO 28580 specifies that the test method requires the specification of a reference laboratory ("Alignment Lab"), which will test LATs against which all other laboratories can align their measurements. NHTSA will select one or more private laboratories to be the Alignment Lab, but section IV.B explains that the agency will need some time to develop and implement the procedures for the selection of the Alignment Lab(s). For this reason, tire manufacturers cannot begin rating their tires for fuel efficiency until the reference lab is able to test and certify LATs. NHTSA will publish a **Federal Register** notice of the reference lab or labs' readiness to test LATs under ISO 28580 soon after the agency selects an Alignment Lab or Labs.

Recognizing the uncertainty of the rulemaking timeline for finalizing the requirements and content of the consumer information and consumer education portions of the tire fuel efficiency program, NHTSA will tie all compliance dates to the latter of the consumer information and education final rule, or the final rule announcing the availability of the reference laboratory or laboratories to test LATs under ISO 28580. NHTSA intends to also announce in the latter of the two final rules noted above the first date by which tire manufacturers must submit required data to NHTSA on replacement tires, and replacement tires sold by the manufacturer or transferred to tire retailers must be labeled or include yet-to-be-determined consumer information material. If the later of the final rules is the one in which NHTSA announces the selection of a reference laboratory or laboratories with the capability to test LATs, for tires with 15 and 16-inch rim sizes, the compliance date would be approximately 12 months after the notice, and would correspond to the closest Early Warning Reporting (EWR) data submission requirement date,[329] as manufacturers will be able to include the required data for this regulation with the EWR reports.[330] For all other passenger car tire rim sizes, this date would be approximately 24 months after the notice, and would correspond to the closest EWR data submission requirement date.

If the final rule specifying the requirements and content of the consumer information portion of the program occurs after the final rule specifying the reference laboratory or laboratories, NHTSA may establish a lead time different from the phase in described above since tire manufacturers will have had since the final rule specifying the reference laboratory or laboratories to begin testing to the test procedures specified in this final rule.

NHTSA has determined that upon the availability of LATs, manufacturers will be able to accurately rate all tires within 24 months. However, recognizing that the deadlines imposed by EISA indicate a desire to have information available to consumers as quickly as possible, NHTSA would phase in the availability of this consumer information. Because tires with 15 and 16 inch rim sizes make up more than 22 percent of sales in the replacement passenger car tire market, NHTSA believes there will be a significant benefit for requiring these most popular tire sizes to be rated as soon as possible.[331] In 2008, tires with 15 and 16 inch rim sizes represented approximately 33 percent of the tire sizes available in the market.[332] Therefore, NHTSA believes that tire manufacturers will be able to rate those tires within 12 months after the availability of LAT testing at the Alignment Lab or Labs.

To accurately rate all replacement passenger car tires, tire manufacturers need more than the 12 months proposed in the NPRM for two reasons. First, NHTSA acknowledges that the correlations between other rolling resistance tests and ISO 28580 have only been validated for the Smithers Scientific Services, Inc. (Smithers) and Standards Testing Laboratories (STL) labs, therefore, more time may be needed for correlating between other labs and the ISO test. While some manufacturers may have already begun testing using ISO 28580, given how recent the final ISO procedure was adopted, many probably have not.[333] To have confidence that any prediction of an ISO 28580 test score using the other rolling resistance test procedures would be within some reasonably specified compliance tolerance band, manufacturers will likely need time to validate correlation equations if they are using other machines/labs. The equations NHSTA provided in the Phase 2 research report to correlate the other SAE and ISO rolling resistance test methods have only been validated on the machines at Smithers and STL.

Second, NHTSA also agrees that manufacturers may need to correlate peak traction coefficients on the test surfaces at the NHTSA San Angelo Test Facility (SATF). Whenever tire manufacturers have provided the agency with tire traction data, these data have included peak and slide coefficients of friction. However, tire manufacturers or the laboratories that they hire often do not run test procedures at the same speed, water level, surface texture, etc.

[329] Responding to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act requirements in 2002, NHTSA issued rules requiring that motor vehicle and equipment manufacturers provide communications regarding defective equipment, information on foreign safety recalls and certain early warning data. 49 CFR Part 579; *see* Final Rule, Reporting of Information and Documents About Potential Defects Retention of Records That Could Indicate Defects, 67 FR 45822 (July 10, 2002); Final Rule, Reporting of Information About Foreign Safety Recalls and Campaigns Related to Potential Defects, 67 FR 63295 (Oct. 11, 2002).

[330] NHTSA will expand the production reporting template to include the information required for this regulation. Those reports are due within 30 days of the end of each calendar quarter.

[331] Nine out of the ten most popular tire size designations (by sales volume) are tires with 15 inch or 16 inch rim sizes. These nine tire size designations represent 23.2% of replacement passenger car tire sales. *See* RMA 2009 Tire Industry Factbook, available at *https://www.rma.org/publications/market_information/index.cfm?PublicationID=11500* (last accessed Nov. 18, 2009).

[332] *Id.*

[333] The ISO 28580 final test procedure was published on July 31, 2009.

as NHTSA uses at the SATF. As with correlating different rolling resistance test data to another test, manufacturers are likely familiar enough with this testing to know they can replicate or predict the wet slide numbers from the SATF, even if their test procedure is different. However, tire manufacturers likely currently have little or no correlation to peak friction coefficient values at the SATF, since that information would not previously have been used for tire ratings. Therefore, it likely will take tire manufacturers more than a year to test enough tires to establish a correlation to include estimated values in the reporting formula.

As for the reporting of ratings for a new tire SKU that is introduced after the effective date of this regulation, RMA points to section 104(d)(A) of Part 575 of Title 49 Code of Federal Regulations (CFR) to support its contention that current UTQGS requirements allow a tire manufacturer 6 months to report tire ratings to NHTSA and tire retailers. We assume RMA is referring to section 104(d)(1)(i)(A), which states that "[e]xcept for a tire of a new tire line, manufactured within the first six months of production of the tire line, each tire shall be graded with the words, letters, symbols, and figures specified in [the UTQGS regulation], permanently molded into or onto the tire sidewall * * *." Thus, this requirement gives tire manufacturers six (6) months from the introduction of a new tire in a tire line to mold the ratings onto the sidewall of the tire. However, 49 CFR 575.6(d)(2)(i) specifies that "[i]n the case of § 575.104, each brand name owner of tires, and each manufacturer of tires for which there is no brand name owner shall submit to the Administrator 2 copies of the information specified in [the UTQGS regulations] that is applicable to the tires offered for sale, at least 30 days before it is first provided for examination by prospective purchasers pursuant to paragraph (c) of this section." In turn, section 575.6(c) states that "each brand name owner of tires * * * shall provide for examination by prospective purchasers, at each location where its * * * tires are offered for sale by a person with whom the * * * brand name owner has a contractual, proprietary, or other legal relationship, or by a person who has such relationship with a distributor of the * * * brand name owner concerning the * * * tire in question, the information specified in [the UTQGS regulation] that is applicable to each of the * * * tires offered for sale at that location." This is the language that the proposed regulatory text was based on and NHTSA continues to believe that the 30 days prior to sale requirement is appropriate for new tires.

Tire retailers: NHTSA intends to announce in the final rule specifying the requirements and content of the consumer information and consumer education portion of the program the compliance dates for any tire retailer requirements established in that rulemaking.

Because NHTSA intends to conduct further testing and consultation before making decisions regarding consumer information materials, we cannot definitively announce at this point when any consumer information materials will be available.

XI. Enforcement

The NPRM explained that the proposed test procedures are the ones NHTSA would use for compliance testing. The NPRM also explained that while NHTSA was proposing to only consider finding a rating noncompliance if agency testing provided data that would give the tire in question a rating that was lower than that printed on the tire label (minimum requirement or "one-way zero tolerance"), the NPRM also discussed two-way tolerances for RRF, traction, and treadwear. Such a system would find a rating noncompliance if agency test results were outside of a specified tolerance band on either side of the rating.[334] The two-way tolerances discussed in the NPRM were developed after the agency had considered the repeatability of a tire tested as well as the variability of machine-to-machine tests, lab-to-lab tests, rounding errors, and the potential for different results due to different manufacturing dates.

The NPRM explained that for UTQGS, NHTSA specifies a test procedure for each rating. For traction and temperature resistance, the regulation then sets a performance level at which the tire must be rated a C, and higher levels at which the manufacturer may rate it a B, A, or in the case of traction AA. The regulation was written this way as an acknowledgement of some level of necessary variability in the manufacture of tires. For tires that perform at a performance level that is near the border of two grades, the regulation allows the manufacturer to "underrate" to allow for the possibility that NHTSA might select a tire for compliance testing that would perform at the lower level. However, because the regulation does not limit manufacturers to "underrating" by only a single grade, UTQGS is often criticized for not providing consumers with "accurate" information.[335]

Despite such criticisms, NHTSA proposed to require the ratings assigned by a manufacturer under the proposed rule to be less than or equal to the rating determined by the agency using the specified procedures. In part this decision was based on concerns that the program would not result in a situation where NHTSA would be taking enforcement action against a manufacturer for the safety and durability ratings under the new rating program, when enforcement action would not be warranted for UTQGS ratings based on the same test procedures. NHTSA will discuss comments received on the NPRM enforcement approach in the supplemental NPRM re-proposing the consumer information and consumer education components of the program, which will include new proposed ratings formulas.

In addition to requiring rulemaking establishing a national tire fuel efficiency rating system and related requirements (49 U.S.C. 32304A), Section 111 of EISA amends 49 U.S.C. 32308 (General prohibitions, civil penalty, and enforcement) to provide that a person who fails to comply with the national tire fuel efficiency information program under section 32304A is liable to the Government for a civil penalty of not more than $50,000 for each violation.[336] RMA recommended that NHTSA define "each violation" to mean when a tire rating is improperly reported to NHTSA for a tire SKU. RMA asked NHTSA to clarify its intent and provide opportunity to comment. NHTSA declines RMA's

[334] Tire Fuel Efficiency NPRM, *supra* note 9, at 29580.

[335] For example, in the September 1996 final rule that amended the UTQGS by revising the treadwear testing procedures to eliminate treadwear grade inflation and other related issues, some commenters believed that the treadwear grade should be removed from the UTQGS because manufacturers treadwear warranties continued to improve and the treadwear label under the UTQGS become less significant for tire consumers. 61 FR 47437 (Sept. 9, 1996). However, NHTSA disagreed with the commenter because as one manufacturer acknowledged that the manufacturers warranties are not always based on test results and not all tires carry manufacturers' warranties. *See also* Tire Rack, Tire Tech Information/General Tire Information (2009), available at *http://www.tirerack.com/tires/tiretech/techpage.jsp?techid=48* (last accessed Nov. 4, 2009) ("The problem with UTQG Treadwear Grades is that they are open to some interpretation on the part of the tire manufacturer because they are assigned after the tire has only experienced a little treadwear as it runs the 7,200 miles. This means that the tire manufacturers need to extrapolate their raw wear data when they are assigning Treadwear Grades, and that their grades can to some extent reflect how conservative or optimistic their marketing department is.")

[336] 49 U.S.C. 32308(c).

invitation. To begin, rulemaking on the meaning and scope of the EISA penalty provision is not within the directive of EISA's provision on what the rulemaking shall include.[337] Second, the NPRM did not propose rulemaking on the meaning and scope of the penalty provision. In the absence of notice in the NPRM, it would be inappropriate to adopt a final rule on the meaning and scope of the penalty provision. RMA implicitly recognizes this, as it recommends that NHTSA provide an opportunity for comment. But, in general, the proper vehicle for such a request is a petition for rulemaking, not a comment on a NPRM. In the context of enforcement, we believe that it is appropriate to address the meaning of the EISA penalty provisions in the concrete context of a civil action under 49 U.S.C. 32308 before a U.S. District Court. Courts have long determined the meaning and application of the terms of civil penalty statutes in the course of adjudicating civil penalty cases.[338] In any event, NHTSA takes the position that the Government may seek a penalty of not more than $50,000 for any violation of the rule that under the law a Court may find to be a separate violation.

XII. Regulatory Alternatives

Throughout this final rule, in sections specific to various portions of the tire fuel efficiency consumer information program for replacement tires, NHTSA has discussed other options considered by the agency.

XIII. Conforming Amendments to Part 575

Because this final rule adds a new section to 49 CFR Part 575, the agency must modify the table of contents of Part 575. Additionally, we have modified the scope and definitions sections at the beginning of Part 575, 49 CFR 575.1, 575.2, to be sufficiently broad to apply to all regulations contained in Part 575. Since the NPRM, the agency realized that the scope and definitions sections appeared to have not been modified since Part 575 was first promulgated in the 1970s. Since then NHTSA has added additional consumer information regulations to Part 575, including the agency's new car assessment program (NCAP) regulations, 49 CFR 575.301. Thus, the agency believes that the generalized scope and definitions sections that apply to all of Part 575 should be expanded and modified as detailed in the regulatory text below. These changes do not substantively affect the regulations in Part 575, but merely clarify that Subpart A sections apply to all of Part 575, and that definitions in the NCAP regulations should refer to statutory definitions from NCAP's authorizing statute, the Automobile Information Disclosure Act, 15 U.S.C. Chapter 28, as opposed to the Safety Act.

Further, under 1 CFR part 51, *Incorporation by Reference,* the agency must declare that the Director of the Federal Register has approved incorporation by reference of a publication into a regulation. In this rule, the agency is amending the incorporation by reference provision at § 575.3, *Matter incorporated by reference,* to include a centralized index of all of the publications incorporated into Part 575. This is not intended to alter the substance any references, but merely to centralize all of the incorporation by references contained in Part 575. Also in this final rule we are updating the existing information in § 575.3 to include updated language in regard to incorporation of materials by reference, including new procedures for retrieving materials from the National Archives and Records Administration and a new format indicating the sections where incorporated materials are referenced.

Finally, this final rule also makes a number of changes to the regulatory text throughout the various sections of Parts 575. This is being done to standardize the reference to industry consensus standards incorporated by reference throughout Part 575, and to provide internal cross references back to the centralized incorporation by reference section, 49 CFR 575.3, so that readers understand where they can find all materials incorporated by reference in Part 575.

XIV. Regulatory Notices and Analyses

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. The annual effect on the economy of this rulemaking depends on consumer and manufacturer responses to the program. However, this rulemaking is significant due to public interest in the issues. Therefore, this document was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review."

This document would amend 49 CFR Part 575 by adding a new section for requirements pursuant to the National Tire Fuel Efficiency Consumer Information Program. The agency has prepared a Final Regulatory Impact Analysis (FRIA) and placed it in the docket and on the agency's Web site. If 1 percent of the targeted tire population (1.4 million) are improved at an average cost of $3 per tire, the annual cost of NHTSA's final rule is estimated to be $9.3 million. This includes annual testing costs of $3.7 million, annual reporting costs of around $113,000, annual costs to the Federal government of $1.3 million, and annual costs of $4.2 million to improve tires. In the first year, NHTSA anticipates one-time costs of $34.8 million, including the same costs noted above except changes in initial testing costs of $33.1 million, no one-time costs to improve tires (NHTSA only assumes this as a subsequent annual cost, not an initial cost), and reporting start-up costs of almost $400,000. For a further explanation of the estimated costs, *see* the FRIA provided in the docket for this proposal.

B. National Environmental Policy Act

We have reviewed this rule for the purposes of the National Environmental Policy Act and determined that it would

[337] *See* 49 U.S.C. 32304A(a).

[338] *United States* v. *ITT Continental Baking Co.,* 420 U.S. 223 (1975); *Borden Ranch Partnership* v. *U.S. Army Corps of Engineers,* 261 F.3d 810, 819 (9th Cir. 2001); *Public Interest Research Gp.* v. *Powell Duffryn Terminals, Inc.,* 913 F.2d 64, 77–80 (3d Cir. 1990); *Atlantic States Legal Foundation, Inc.* v. *Tyson Foods, Inc.,* 897 F.2d 1128, 1137 *et seq.* (11th Cir. 1990); *United States* v. *General Motors Corp.,* 565 F.2d 754, 761–62 (DC Cir.1977); *United States* v. *Phelps Dodge Indus., Inc.,* 589 F.Supp. 1340, 1362 (S.D. N.Y. 1984).

not have a significant impact on the quality of the human environment.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity "which operates primarily within the United States." 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

In compliance with the Regulatory Flexibility Act NHTSA has evaluated the effects of this final rule on small entities. The head of the agency has certified that this final rule would not have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). Tire manufacturers are not small entities. Out of the 60,000 entities that sell tires, there are a substantial number of tire dealers/retailers that are small entities. Since this final rule does not finalize any requirements pertaining to tire retailers, this final rule would not have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999). Executive Order 13132 requires agencies to determine the federalism implications of a proposed rule.

As noted in section II.C.7 above, Section 111 of EISA contains both an express preemption provision and a savings provision that address the relationship of the national tire fuel efficiency consumer information program to be established under that section with State and local tire fuel efficiency consumer information programs. Section 111 provides:

Nothing in this section prohibits a State or political subdivision thereof from enforcing a law or regulation on tire fuel efficiency consumer information that was in effect on January 1, 2006. After a requirement promulgated under this section is in effect, a State or political subdivision thereof may adopt or enforce a law or regulation on tire fuel efficiency consumer information enacted or promulgated after January 1, 2006, if the requirements of that law or regulation are identical to the requirement promulgated under this section. Nothing in this section shall be construed to preempt a State or political subdivision thereof from regulating the fuel efficiency of tires (including establishing testing methods for determining compliance with such standards) not otherwise preempted under this chapter.[339]

In the NPRM, NHTSA sought public comment on the scope of Section 111 generally, and in particular on whether, and to what extent, Section 111 would or would not preempt tire fuel consumer information regulations that the administrative agencies of the State of California may promulgate in the future pursuant to California's Assembly Bill 844 (AB 844).[340] Given the ambiguity of the statutory language regarding preemption, the agency sent a copy of the NPRM directly to the State of California, the National Governor's Association, the National Conference of State Legislatures, the Council of State Governments, and the National Association of Attorneys General. Of these organizations, only the California Energy Commission submitted comments on the NPRM. A summary of all comments the agency received on this issue is presented here.

Tire Rack commented that it believes NHTSA's proposed tire fuel efficiency consumer information program and the California's AB 844 are complementary regulations as currently proposed and can coexist.[341] Tire Rack stated that the NHTSA regulations will provide consumers with the ability to compare and contrast a tire's influence on vehicle fuel consumption in great detail (as well as information on safety and durability), where the State of California bill identifies tires that offer the lowest rolling resistance in their size, as well as assures meaningful data will be available to tire dealers and consumers. Tire Rack also pointed out that both proposed regulations specify ratings based on the same tire characteristic (RRF) and test procedure (ISO 28580). Additionally, Tire Rack noted that California's AB 844 includes LT-sized tires fitted to many Jeeps, pickup trucks and sport utility vehicles used for personal transportation in the State of California.

The California Energy Commission (CEC) commented that a review of general preemption principles and the legislative history of the preemption provision in EISA section 111 provide ample evidence that California is not preempted from implementing a tire fuel efficiency consumer information program.[342] CEC commented that California did have a law on tire fuel efficiency consumer information in effect on January 1, 2006. That law directs the Commission to develop a replacement tire efficiency program. Thus, CEC commented that the plain meaning of the express preemption clause is that California may develop and implement such a program without running afoul of Federal law. Further, CEC commented that California is the only State that had adopted a tire efficiency consumer information law by January 1, 2006. Thus, CEC stated that in order to give any practical effect to the savings clause, Congress must have intended California's program to be exempt from the preemption that was imposed on the other States. Additionally, CEC pointed to a House Committee on Energy and Commerce Report on the language which stated that "[t]his language would exempt from preemption the 2003 California law that requires the California Energy Commission to develop a comprehensive tire energy efficiency program."[343] CEC recognized that this House Report was prepared in response to language that was not enacted,[344] but commented that because the language the non-enacted bill contained is identical to that which was ultimately adopted in EISA one year later, the House Report is compelling evidence that Congress intended the savings clause to apply to California. Thus, CEC requested that NHTSA conclude that the savings clause in 49 U.S.C., § 32304A allows California to implement its statutory mandate to develop a replacement tire efficiency program.

In contrast, RMA commented that EISA, in combination with other Federal law, preempts California from promulgating tire fuel efficiency information regulations under AB 844.[345] RMA commented that CEC's Staff Draft Proposal, which made public CEC's proposed regulations under AB

[339] 49 U.S.C. 32304A(e).

[340] Cal. Pub. Res. Code §§ 25770–25773; 2003 Cal. Legis. Serv. Ch. 645 (A.B. 844) (West). This California legislation mandated that the California Energy Commission (CEC) develop and implement both a tire efficiency program and a corresponding consumer information program, and was passed on October 1, 2003.

[341] Tire Rack Comments, Docket No. NHTSA–2008–0121–0026.1 at 2.

[342] CEC Comments, Docket No. NHTSA–2008–0121–0033 at 2–4.

[343] H.R. Rep. No. 109–537, 2d Sess., p. 6 (2006).

[344] *See* H.R. 5632, 109th Cong., 2d Sess. (2006).

[345] RMA Comments, Docket No. NHTSA–2008–0121–0036.1 at 15; RMA Comments Appendix 3, Docket No. NHTSA–2008–0121–0036.4 at 19–40.

844, conflicts with NHTSA's NPRM, and would undermine the Federal program and lead to fewer environmental benefits derived from either program. RMA commented that California's AB 844 and NHTSA have the same goals relating to environmental policy and consumer education with regard to fuel economy, but use different means. RMA stated that compliance with both NHTSA's and California's proposed regulations is impractical, if not impossible and that NHTSA's regulations should, therefore, preempt California's regulations. RMA stated that because NHTSA proposed a graded rating system while California is proposing a binary ratings system,[346] NHTSA's and California's differing proposals would create two rating systems on tires sold in California with separate labels displaying ratings on different scales. RMA commented that two dissimilar ratings will only serve to confuse rather than educate consumers. Further, RMA commented that the California rule must be preempted because it would interfere with NHTSA's sole authority to regulate tire safety. Finally, RMA commented that by attempting to regulate fuel efficiency through tire labels, California's standards practically impose a fuel efficiency standard and impermissibly intrude in a field already occupied by the Federal government. For these and other reasons detailed in RMA's comments, RMA urged NHTSA to determine that the proposed rules preempt California State regulation under AB 844, other than regulations that are identical to the Federal regulations.

Given that California has not promulgated final regulations yet, NHTSA believes that it is premature to consider the applicability of the EISA section 111 preemption provision. Moreover, NHTSA notes that it is ultimately a court, not NHTSA, which would determine whether or not future regulations established by the State of California are preempted under Federal law.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, "Civil Justice Reform," [347] NHTSA has considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect.

F. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of a proposed or final rule that includes a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for 2008 results in $133 million (108.483/81.536 = 1.33).

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This final rule will not result in the expenditure by State, local, or Tribal governments, in the aggregate, of more than $133 million annually, and will not result in the expenditure of that magnitude by tire manufacturers and/or tire retailers.

G. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The final rule establishes a new consumer information program at 49 CFR Part 575.106, *Tire fuel efficiency consumer information program.* Tire manufacturers would provide data to NHTSA under a reporting requirement. For this new regulation, NHTSA is submitting to OMB a request for approval of the following collection of information.

In compliance with the PRA, this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to OMB for review and comment. The ICR describes the nature of the information collections and their expected burden. This is a request for an amendment of an existing collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR Part 575.106, Tire fuel efficiency consumer information program.

Type of Request: New collection.

OMB Clearance Number: Not assigned.

Form Number: The collection of this information will not use any standard forms.

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information

NHTSA is adding a new requirement in Part 575 which would require tire manufacturers and tire brand name owners to rate all replacement passenger car tires for fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear), and submit reports to NHTSA regarding the ratings. The ratings for safety and durability are based on test procedures specified under the UTQGS traction and treadwear ratings requirements. This information would be used by consumers of replacement passenger car tires to compare tire fuel efficiency across different tires and examine any tradeoffs between fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear) in making their purchase decisions.

Description of the Need for the Information and Use of the Information

NHTSA needs the information to provide consumers information to allow them to compare tire fuel efficiency across different tires and examine any tradeoffs between fuel efficiency (*i.e.,* rolling resistance), safety (*i.e.,* wet traction), and durability (*i.e.,* treadwear) in making their purchase decisions.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

There are approximately 28 manufacturers of replacement tires sold in the United States who would be required to report annually.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting From the Collection of Information

NHTSA estimates that there are 28 tire manufacturers that will be required to report. Each of these will need to set up the software in a computer program to combine the testing information, organize it for NHTSA's use, etc. We

[346] California is proposing to designate all tires with rolling resistance values within 15 percent of tires with the lowest rolling resistance as fuel efficient. RMA noted that this, in effect, creates a two rating system—fuel efficient tires and all other tires.

[347] 61 FR 4729 (Feb. 7, 1996).

estimate this cost to be a one-time charge of about $10,000 per company. Based on the costs used in the Early Warning Reporting Regulation analysis,[348] we estimate the annual cost per report per tire manufacturer to be $287. There are also computer maintenance costs of keeping the data up to date, etc. as tests come in throughout the year. In the EWR analysis, we estimated costs of $3,755 per year per company. Thus, the total annual cost is estimated to be $4,042 per company. Thus the total costs would be $280,000 + $113,176 = $393,176 for the first year and $113,176 as an annual cost for the 28 tire manufacturers.

The largest portion of the cost burden imposed by the tire fuel efficiency program arises from the testing necessary to determine the ratings that should be assigned to the tires. As detailed in of the FRIA, our revised per-SKU costs to test for rolling resistance, traction, and treadwear amount to $1,180 (*i.e.,* $180 + $500 + $500). This would result in testing costs of $22,420,000 in the first year (19,000 SKUs) and $3,801,960 in subsequent years (3,222 new SKUs annually).

The estimated annual cost to the Federal government is $1.28 million. This cost includes $730,000 for enforcement testing, and about $550,000 annually to set up and keep up to date a Web site that includes the information reported to NHTSA.

Comments are invited on:

- Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the information collection is accurate.
- 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.

A comment to OMB is most effective if OMB receives it within 30 days of publication. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attn: NHTSA Desk Officer. PRA comments are due within 30 days following publication of this document in the **Federal Register**.

The agency recognizes that the amendment to the existing collection of information contained in today's final rule may be subject to revision in response to public comments and the OMB review.

H. Executive Order 13045

Executive Order 13045 [349] applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule does not pose such a risk for children. The primary effects of this rule are to conserve energy by educating consumers to make better informed tire purchasing decisions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.,* the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specification and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

The rule establishes test procedures for a national tire fuel efficiency rating system for replacement passenger car tires to assist consumers in making more educated tire purchasing decisions. For purposes of the fuel efficiency rating determination, NHTSA will base the rating determination on a rolling resistance test method ISO 28580:2009(E), *Tyre Rolling Resistance measurement method—Single point test and measurement result correlation—Designed to facilitate international cooperation and, possibly, regulation building.* The ISO is a worldwide federation of national standards bodies that prepares standards through technical committees comprised of international organizations, governmental and non-governmental, in liaison with ISO.[350] Standards developed by ISO are voluntary consensus standards.

J. Executive Order 13211

Executive Order 13211[351] applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by NHTSA.

The rule establishes test procedures for a national tire fuel efficiency rating program for the purpose of educating consumers about the effect of tires on fuel efficiency, safety and durability, which if successful, will likely reduce the rolling resistance of replacement passenger car tires and, thus, reduce the consumption of petroleum. Therefore, this final rule will not have any adverse energy effects. Accordingly, this rulemaking action is not designated as a significant energy action.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

[348] Preliminary Regulatory Evaluation, Tread Act Amendments to Early Warning Reporting Regulation Part 579 and Defect and Noncompliance Part 573, August 2008 (Docket No. 2008–0169–0007.1).

[349] 62 FR 19885 (Apr. 23, 1997).

[350] ISO Central Secretariat, 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland, Telephone +41 22 749 01 11, Fax +41 22 733 34 30, *http://www.iso.org.*

[351] 66 FR 28355 (May 18, 2001).

L. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Comments from RMA indicated that it was confused about what was being proposed in certain respects due to preamble typos and alleged inconsistencies between the preamble and the proposed regulatory text. NHTSA has clarified the proposals in this preamble and has eliminated any inconsistencies between the preamble and the final regulatory text. NHTSA has attempted to use plain language in promulgating this final rule.

M. 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 organization, 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.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 575

Consumer protection, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR Part 575 as follows:

PART 575—CONSUMER INFORMATION

■ 1. Revise the authority citation of Part 575 to read as follows:

Authority: 49 U.S.C. 32302, 32304A, 30111, 30115, 30117, 30123, 30166, and 30168, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.50.

■ 2. Revise § 575.1 to read as follows:

Subpart A—General

§ 575.1 Scope.

This part contains National Highway Traffic Safety Administration regulations relating to consumer information.

■ 3. Revise § 575.2 (a) and (c) to read as follows:

§ 575.2 Definitions.

(a) *Statutory definitions.*—(1) All terms used in this part, subject to paragraph (a)(2) of this section, that are defined in 49 U.S.C. 30102, are used as defined therein.

(2) All terms used in Subpart D of this part that are defined in 15 U.S.C. 1231, are used as defined therein.

* * * * *

(c) *Definitions used in this part.*

Owners manual means the document which contains the manufacturers comprehensive vehicle operating and maintenance instructions, and which is intended to remain with the vehicle for the life of the vehicle.

Skid number means the frictional resistance measured in accordance with ASTM E 274 (incorporated by reference, *see* § 575.3) at 40 miles per hour, omitting water delivery as specified in paragraph 7.1 of ASTM E 274 (incorporated by reference, *see* § 575.3).

■ 4. Revise § 575.3 to read as follows:

§ 575.3 Matter incorporated by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the National Highway Traffic Safety Administration (NHTSA) must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the NHTSA Technical Information Services Reading Room (*http://www.nhtsa.dot.gov/cars/problems/trd/*), 1200 New Jersey Avenue, SE., Washington, DC 20590 (888–327–4236), and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* All approved material is also available from the sources listed below. If you experience difficulty obtaining the standards referenced below, contact NHTSA's Office of Rulemaking, 1200 New Jersey Avenue, SE., Washington, DC 20590, phone number: (202) 366–0846.

(b) *International Organization for Standardization (ISO),* 1, ch. de la Voie-Creuse, CP 56, CH–1211 Geneva 20, Switzerland, +41 22 749 01 11, *http://www.iso.org/iso/home.htm.* All ISO materials are also available from the U.S. ISO member, *American National Standards Institute (ANSI),* 25 West 43rd Street, Fourth Floor, New York, NY 10036–7417, 212–642–4900, *http://www.ansi.org/.*

(1) International Organization for Standardization (ISO), ISO 28580:2009(E) ("ISO 28580"), "Passenger car, truck and bus tyres—Methods of measuring rolling resistance—Single point test and correlation of measurement results," First edition (July 1, 2009), IBR approved for § 575.106.

(2) [Reserved]

(c) *American Society for Testing and Materials (ASTM),* 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959, 610–832–9500, *http://www.astm.org/.*

(1) ASTM E 1136–93 (Reapproved 2003) ("ASTM E 1136"), "Standard Specification for a Radial Standard Reference Test Tire" (July 1993), IBR approved for § 575.104.

(2) ASTM E 1337–90 (Reapproved 2002) ("ASTM E 1337"), "Standard Test Method for Determining Longitudinal Peak Braking Coefficient of Paved Surfaces Using a Standard Reference Test Tire" (April 1990), IBR approved for § 575.106.

(d) The following standards are not available from the original publisher or a standards reseller. As indicated in paragraph (a) of this section, the standards are available for inspection at the NHTSA Technical Information Services Reading Room (*http://www.nhtsa.dot.gov/cars/problems/trd/*), 1200 New Jersey Avenue, SE., Washington, DC 20590 (888–327–4236), and at NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* If you experience difficulty obtaining the standards referenced below, contact NHTSA's Office of Rulemaking, 1200 New Jersey Avenue, SE., Washington, DC 20590, phone number (202) 366–0846.

(1) ASTM E 274–79 ("ASTM E 274"), "Standard Test Method for Skid Resistance of Paved Surfaces Using a Full-Scale Tire" (February 1980), IBR approved for § 575.104.

(2) ASTM F 377–74 ("ASTM F 377"), "Standard Method for Calibration of Braking Force for Testing of Pneumatic Tires" (March 1974), IBR approved for § 575.104.

■ 5. Amend § 575.104 by revising paragraphs (e)(2)(ix)(C), (f)(1)(ii), (f)(1)(iii), (f)(1)(iv), (f)(1)(v), and (f)(1)(vii), to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

(e) * * *

(2) * * *

(ix) * * *

(C) Determine the course severity adjustment factor by dividing the base course wear rate for the course monitoring tires (*see Note* to this paragraph) by the average wear rate for the four course monitoring tires.

Note to paragraph (e)(2)(ix)(C): The base wear rate for the course monitoring

tires will be obtained by the government by running the tire specified in ASTM E 1136 (incorporated by reference, *see* § 575.3) course monitoring tires for 6,400 miles over the San Angelo, Texas, UTQGS test route 4 times per year, then using the average wear rate from the last 4 quarterly CMT tests for the base course wear rate calculation. Each new base course wear rate will be published in the **Federal Register.** The course monitoring tires used in a test convoy must be no more than one year old at the commencement of the test and must be used within two months after removal from storage.

* * * * *

(f) * * *

(1) * * *

(ii) The standard tire is the tire specified in ASTM E 501 (incorporated by reference, *see* § 575.3).

(iii) The pavement surface is wetted in accordance with paragraph 4.7, "Pavement Wetting System," of ASTM E 274 (incorporated by reference, *see* § 575.3).

(iv) The test apparatus is a test trailer built in conformity with the specifications in paragraph 4, "Apparatus," of ASTM E 274 (incorporated by reference, *see* § 575.3). The test apparatus is instrumented in accordance with paragraph 4.5 of that method, except that the "wheel load" in paragraph 4.3 and tire and rim specifications in paragraph 4.4 of that method are as specified in the procedures in paragraph (f)(2) of this section for standard and candidate tires.

(v) The test apparatus is calibrated in accordance with ASTM F 377 (incorporated by reference, *see* § 575.3), with the trailer's tires inflated to 24 psi and loaded to 1,085 pounds.

* * * * *

(vii) A standard tire is discarded in accordance with ASTM E 501 (incorporated by reference, *see* § 575.3).

* * * * *

■ 6. Add § 575.106 to subpart B to read as follows:

§ 575.106 Tire fuel efficiency consumer information program.

(a) *Scope.* This section requires tire manufacturers, tire brand name owners, and tire retailers to provide information indicating the relative performance of replacement passenger car tires in the areas of fuel efficiency, safety, and durability.

(b) *Purpose.* The purpose of this section is to aid consumers in making better educated choices in the purchase of passenger car tires.

(c) *Application.* This section applies to replacement passenger car tires. However, this section does not apply to light truck tires, deep tread, winter-type snow tires, space-saver or temporary use spare tires, tires with nominal rim diameters of 12 inches or less, or to limited production tires as defined in § 575.104(c)(2). Tire manufacturers may comply with the requirements in this § 575.106 as an alternative to complying with the requirements in § 575.104(d)(1)(i)(A) and (B).

(d) *Definitions.*—(1) All terms used in this section that are defined in Section 32101 of Title 49, United States Code, are used as defined therein.

(2) As used in this section:

Brand name owner means a person, other than a tire manufacturer, who owns or has the right to control the brand name of a tire or a person who licenses another to purchase tires from a tire manufacturer bearing the licensor's brand name.

CT means a pneumatic tire with an inverted flange tire and rim system in which the rim is designed with rim flanges pointed radially inward and the tire is designed to fit on the underside of the rim in a manner that encloses the rim flanges inside the air cavity of the tire.

Dealer means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicle or equipment other than for resale.

Distributor means a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale.

Lab alignment tires or *LATs* means the reference tires which the reference lab will test to be used to align other rolling resistance machines with the reference lab in accordance with the machine alignment procedure in ISO 28580 (incorporated by reference, *see* § 575.3), section 10.

Light truck (LT) tire means a tire designated by its manufacturer as primarily intended for use on lightweight trucks or multipurpose passenger vehicles.

Passenger car tire means a tire intended for use on passenger cars, multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

Reference lab means the laboratory or laboratories that the National Highway Traffic Safety Administration designates and which maintains and operates a rolling resistance test machine to test LATs for rolling resistance so that other testing laboratories may correlate the results from its rolling resistance test machine in accordance with the machine alignment procedure in ISO 28580 (incorporated by reference, *see* § 575.3), section 10.

Replacement passenger car tire means any passenger car tire other than a passenger car tire sold as original equipment on a new vehicle.

Size designation means the alpha-numeric designation assigned by a manufacturer that identifies a tire's size. This can include identifications of tire class, nominal width, aspect ratio, tire construction, and wheel diameter.

Stock keeping unit or *SKU* means the alpha-numeric designation assigned by a manufacturer to uniquely identify a tire product. This term is sometimes referred to as a product code, a product identifier, or a part number.

Tire line or *tire model* means the entire name used by a tire manufacturer to designate a tire product, including all prefixes and suffixes as they appear on the sidewall of a tire.

Tire retailer means a dealer or distributor of new replacement passenger car tires sold for use on passenger cars, multipurpose passenger vehicles, and trucks, that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less.

(e) *Requirements.*—(1) *Information.* (i) *Requirements for tire manufacturers.* Subject to paragraph (e)(1)(iii) of this section, each manufacturer of tires, or in the case of tires marketed under a brand name, each brand name owner shall provide rating information for each tire of which it is the manufacturer or brand name owner in the manner set forth in paragraphs (e)(1)(i)(A) through (C) of this section. The ratings for each tire shall be only those specified in paragraph (e)(2) of this section. For the purposes of this section, each tire of a different SKU is to be rated separately. Each tire shall be able to achieve the level of performance represented by each rating.

(A) *Ratings.* Each tire shall be rated with the words, letters, symbols, and figures specified in paragraph (e)(2) of this section.

(B) *Tire label.* [Reserved.]

(C) *Reporting requirements.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and are awaiting an assigned OMB Control Number.

(*1*) Subject to paragraph (e)(1)(iii) of this section, manufacturers of tires or, in the case of tires marketed under a brand name, brand name owners of tires subject to this section shall submit to NHTSA electronically, either directly or through an agent, the following data for

each rated replacement passenger car tire:

(*i*) Rolling resistance rating, as determined in paragraph (e)(2)(i) of this section.

(*ii*) Wet traction rating, as determined in paragraph (e)(2)(ii) of this section.

(*iii*) Treadwear rating, as determined in paragraph (e)(2)(iii) of this section.

(*2*) *Format of data submitted.* The information required under paragraph (e)(1)(i)(C)(*1*) of this section shall be submitted to NHTSA as extra columns in the electronic data submission required under section 26 of Part 579.

(*3*) *Exempted tires.* Manufacturers of tires or, in the case of tires marketed under a brand name, brand name owners of tires subject to this section shall submit to NHTSA all tire lines, size designations, and stock keeping units it manufactures which are exempted from this section (§ 575.106) as determined under paragraph (c) of this section. Where a manufacturer is required to report ratings under this section, the information required in this paragraph may be submitted with the ratings information reported in accordance with paragraph (e)(1)(i)(C)(*1*) of this section. Where a manufacturer of tires, or in the case of tires marketed under a brand name, brand name owners of tires only manufactures tires that are exempt from this section under paragraph (c) of this section, that manufacturer shall submit a one-time statement listing the tire lines, size designations, and stock keeping units it manufactures, and certifying that none of the tires it manufactures are required to be rated under this section.

(*4*) *New ratings information.* Whenever the tire manufacturer, or in the case of tires marketed under a brand name, the brand name owner receives information that would determine new or different information required under paragraph (e)(1)(i)(C)(*1*) of this section for a tire, the tire manufacturer or brand name owner shall submit the new ratings information to NHTSA on or before the date 30 calendar days after receipt by the manufacturer or brand name owner of the new information, whichever comes first.

(*5*) *Voluntary submission of data.* Manufacturers of tires or, in the case of tires marketed under a brand name, brand name owners of tires not subject to this section may submit to NHTSA data meeting the requirements of paragraphs (e)(1) and (2) of this section for any tire they wish to have included in the database of information available to consumers on NHTSA's Web site.

(ii) *Requirements for tire retailers.* Subject to paragraph (e)(1)(iii) of this section, each tire retailer shall provide rating information for each passenger car tire offered for sale in the manner set forth in this section.

(iii) *Date for compliance.* The requirements of paragraphs (e)(1)(i) and (e)(1)(ii) of this section will be implemented as indicated in a forthcoming final rule. These dates will be announced in the **Federal Register**.

(2) *Performance.*—(i) *Fuel efficiency.* [Reserved.]

(ii) *Traction.* [Reserved.]

(iii) *Treadwear.* [Reserved.]

(f) *Fuel efficiency rating conditions and procedures.*—(1) *Conditions.* (i) Measurement of rolling resistance force under the test procedure specified in paragraph (f)(2) of this section shall be made using either the force or the torque method.

(ii) The test procedure specified in paragraph (f)(2) of this section shall be carried out on an 80-grit roadwheel surface.

(iii) The machine alignment procedure specified in section 10 of the test procedure specified in paragraph (f)(2) of this section shall be conducted using pairs of the LATs specified in paragraph (f)(1)(iv) of this section, and tested by the reference lab.

(iv) *Lab alignment tires.* The LATs to be used in the machine alignment procedure in section 10 of the test procedure specified in paragraph (f)(2) of this section will be specified in this section in a forthcoming final rule.

(v) *Break-in procedure for bias ply tires.* Before starting the rolling resistance testing under the test procedure specified in paragraph (f)(2) of this section on a bias ply replacement passenger car tire, the tire shall be broken in by running it for one (1) hour with the speed, loading, and inflation pressure as specified in paragraphs (f)(1)(v)(A), (f)(1)(v)(B), and (f)(1)(v)(C) of this section. After the one hour break-in, allow the tire to cool for two (2) hours and re-adjust to the required ISO 28580 (incorporated by reference, *see* § 575.3) test inflation pressure, and verify 10 minutes after the adjustment is made. After break-in, the bias ply tire should follow the 30 minute warm-up procedure of ISO 28580 (incorporated by reference, *see* § 575.3).

(A) *Speed.* The speed shall be 80 kilometer per hour (kph).

(B) *Loading.* The tire loading shall be 80 percent of the maximum tire load capacity.

(C) *Inflation pressure.* The inflation pressure shall be 210 kilopascals (kPa) for standard load tires, or 250 kPA for reinforced or extra load tires.

(2) *Procedure.* The test procedure shall be as specified in ISO 28580 (incorporated by reference, *see* § 575.3), except that the conditions specified in paragraph (f)(1) of this section shall be used.

(g) *Traction rating conditions and procedures.* (1) *Conditions.* Test conditions are as specified in § 575.104(f)(1), subject to the changes in paragraphs (g)(1)(i) through (g)(1)(iii) of this section to additionally measure the peak coefficient of friction.

(i) The sampling rate of the data acquisition is to be no less than 100 Hertz in accordance with Section 6.6.1.8 of ASTM E 1337 (incorporated by reference, *see* § 575.3).

(ii) The rate of brake application shall be sufficient to control the time interval between initial brake application and peak longitudinal force to be between 0.3 and 0.5 seconds, and shall be determined in accordance with Section 6.3.2 of ASTM E 1337 (incorporated by reference, *see* § 575.3).

(iii) The peak coefficient of friction (or peak braking coefficient) shall be determined in accordance with Section 12 of ASTM E 1337 (incorporated by reference, *see* § 575.3) for each dataset.

(iv) The slide coefficient of friction will be determined in accordance with § 575.104(f)(2)(iii).

(2) *Procedure.* (i) Prepare two standard tires as specified in § 575.104(f)(2)(i).

(ii) Mount the tires on the test apparatus described in § 575.104(f)(1)(iv) and load each tire to 1,085 pounds.

(iii) Tow the trailer on the asphalt test surface specified in § 575.104(f)(1)(i) at a speed of 40 mph, lock one trailer wheel, and record the slide and peak coefficient of friction on the tire associated with that wheel.

(iv) Repeat the test on the concrete surface, locking the same wheel.

(v) Repeat the tests specified in paragraphs (g)(2)(iii) and (iv) of this section for a total of 10 measurements on each test surface.

(vi) Repeat the procedures specified in paragraphs (g)(2)(iii) through (v) of this section, locking the wheel associated with the other standard tire.

(vii) Average the 20 measurements taken on the asphalt surface to find the standard tire average peak coefficient of friction for the asphalt surface. Average the 20 measurements taken on the concrete surface to find the standard tire average peak coefficient of friction for the concrete surface. The standard tire average peak coefficient of friction so determined may be used in the computation of adjusted peak coefficients of friction for more than one candidate tire.

(viii) Average the 20 measurements taken on the asphalt surface to find the

standard tire average slide coefficient of friction for the asphalt surface. Average the 20 measurements taken on the concrete surface to find the standard tire average slide coefficient of friction for the concrete surface. The standard tire average slide coefficient of friction so determined may be used in the computation of adjusted slide coefficients of friction for more than one candidate tire.

(ix) Prepare two candidate tires of the same SKU in accordance with paragraph (g)(2)(i) of this section, mount them on the test apparatus, and test one of them according to the procedures of paragraphs (g)(2)(ii) through (v) of this section, except load each tire to 85 percent of the test load specified in § 575.104(h). For CT tires, the test inflation of candidate tires shall be 230 kPa. Candidate tire measurements may be taken either before or after the standard tire measurements used to compute the standard tire traction coefficient. Take all standard tire and candidate tire measurements used in computation of a candidate tire's adjusted peak coefficient and adjusted slide coefficient of friction within a single three-hour period. Average the 10 measurements taken on the asphalt surface to find the candidate tire average peak coefficient and average slide coefficient of friction for the asphalt surface. Average the 10 measurements taken on the concrete surface to find the candidate tire average peak coefficient of friction for the concrete surface. Average the 10 measurements taken on the concrete surface to find the candidate tire average slide coefficient of friction for the concrete surface.

(x) Repeat the procedures specified in paragraph (g)(2)(viii) of this section, using the second candidate tire as the tire being tested.

(h) *Treadwear rating conditions and procedures.*—(1) *Conditions.* Test conditions are as specified in § 575.104(e)(1).

(2) *Procedure.* Test procedure is as specified in § 575.104(e)(2).

David L. Strickland,

Administrator.

[FR Doc. 2010–6907 Filed 3–25–10; 11:15 am]

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March 30, 2010

Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 131 and 292

Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 131 and 292

[Docket No. RM09–23–000; Order No. 732]

Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility

Issued March 19, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations, which prior to this Final Rule provided the FERC Form No. 556 that is used in the certification of qualifying status for an existing or proposed small power production or cogeneration facility. The adopted revisions remove the contents of the Form No. 556 from the regulations, and, in their place, provide that an applicant seeking to certify qualifying facility (QF) status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing. We also revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies that will reduce both the filing burden for applicants and the processing burden for the Commission. We also adopt an exemption, for generating facilities with net power production capacities of 1 MW or less, from the requirement that a generating facility, to be a QF, file either a notice of self-certification or an application for Commission certification, and codify the Commission's authority to waive the QF certification requirement for good cause. Finally, we clarify, simplify or correct certain sections of the regulations relating to certifying QF status.

DATES: *Effective Date:* This rule will become effective June 1, 2010.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

I. Introduction

1. In this Final Rule, the Commission is removing from § 131.80 of its regulations [1] the contents and general instructions of the Form No. 556 used in the certification of qualifying status for an existing or proposed small power production or cogeneration facility, and, in their place, providing that an applicant seeking to certify qualifying facility (QF) status of a small power production or cogeneration facility must complete and file the Form No. 556 that is in effect at the time of filing (which will be made available for download from the Commission's QF Web site).[2] The Commission also is requiring that the Form No. 556 be submitted to the Commission electronically.

2. The Commission also is revising and reformatting the Form No. 556 to clarify the content of the form and to take advantage of newer technologies to reduce both the filing burden for applicants and the processing burden for the Commission.

3. Additionally, the Commission is revising the procedures, standards and criteria for QF status provided in Part 292 of its regulations to accomplish the following: (1) Exemption of generating facilities with net power production capacities of 1 MW or less from the requirement that a generating facility, to be a QF, must file either a notice of self-certification or an application for Commission certification; (2) codification of the Commission's authority to waive the QF certification requirement for good cause; (3) extension to all applicants for QF certification the requirement (currently applicable only to applicants for self-certification of QF status) to serve a copy of a filed Form No. 556 on the affected utilities and state regulatory authorities; (4) elimination of the requirement for applicants to provide a draft notice suitable for publication in the **Federal Register**; and (5) clarification, simplification or correction of certain sections of the regulations.[3]

4. Finally, the Commission is changing the exemption of QFs from the Federal Power Act,[4] and to the exemption of QFs from the Public Utility Holding Company Act of 2005 (PUHCA) and certain State laws and regulations [5] to make clear that certain small power production facilities that satisfy the criteria of section 3(17)(E) of the Federal Power Act qualify for those exemptions.

5. The Commission is adopting the revisions described above, as they will: (1) Make the Form No. 556 easier and less time consuming to complete and submit; (2) decrease opportunities for confusion and error in completing the form; (3) improve consistency and quality of the data collected by the form; (4) decrease Commission resources dedicated to managing errors and omissions in submitted forms; and (5) clarify and correct the regulations governing the requirements for obtaining and maintaining QF status.

6. The revisions to the Form No. 556 and the procedures for filing the Form No. 556 are informed by the Commission's experience both with administering the Form No. 556 and with new technologies for electronic data collection that have become available since the Form No. 556 was first established by Order No. 575 in 1995.[6] The changes will increase the effectiveness of the Commission's policies encouraging cogeneration and small power production, as required by section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[7]

II. Background

7. When the Commission first implemented section 201 of PURPA, it provided two paths to QF status: Self certification (which, as discussed below, required no filing with the Commission) and Commission certification.[8] The procedures for self-certification are contained in § 292.207(a) of the

[1] 18 CFR 131.80.

[2] *http://www.ferc.gov/QF*.

[3] 18 CFR Part 292.

[4] 18 CFR 292.601.

[5] 18 CFR 292.602.

[6] *Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978,* Order No. 575, 60 FR 4831 (Jan. 25, 1995), FERC Stats. & Regs. ¶ 31,014, *order on reh'g,* Order No. 575–A, 71 FERC ¶ 61,121 (1995).

[7] 16 U.S.C. 824a–3.

[8] There is no fee for self-certification; there is, however, a fee for Commission certification. 18 CFR 381.505. The Commission will not process an application for Commission certification without receipt of the applicable fee.

Commission's regulations.[9] When a small power production facility or cogeneration facility self-certifies (or self-recertifies),[10] it certifies that it satisfies the requirements for QF status. The Commission does not formally review the self-certification. Instead, the self-certification is assigned a docket number, and Commission staff looks at the filing to determine that the self-certifier has provided the information required by the regulations.

8. Self-certification was an essential part of the Commission's implementation of PURPA, and was intended, in part, to make the certification process quick and not unduly burdensome. Thus, when the Commission first implemented section 201 of PURPA in Order No. 70,[11] the Commission rejected a proposal to adopt a case-by-case Commission certification requirement for all QFs, but instead provided that facilities that met the requirements for QF status need only furnish notice to the Commission of QF status.[12] This notice (the self-certification) was purely for informational purposes and to help the Commission monitor the market penetration of QFs. QF status, however, was established by meeting the requirements for such status and did not depend on the filing. Indeed, the Commission noted that QFs and purchasing utilities could agree that a generating facility met the requirements for QF status, and the facility would qualify for the benefits of PURPA without making any filing with the Commission.

9. The Commission recognized, however, that the self-certification process would not always satisfy all those interested in a particular facility's status. Accordingly, the Commission also established, in § 292.207(b) of the regulations,[13] an "optional procedure" for QF status. Under this optional procedure, an entity may file an application for a determination by the Commission that a facility meets the requirements for QF status. Such an application requires a filing fee.[14] After receiving an application for Commission certification and the required fee, the Commission assigns the filing a docket number and notices the filing in the **Federal Register**, providing an opportunity for interventions and protests. The Commission's regulations provide that it will act on an application within 90 days of the filing (or of its supplement or amendment). The process gives those that need assurance of a facility's QF status (or lack of such status) a Commission order certifying (or denying) QF status. This optional procedure is commonly known as an application for Commission certification. In its original regulations, the Commission also provided that, once a facility was certified by the Commission, its qualifying status could be revoked by the Commission, upon the Commission's own motion, or upon the motion of any person.[15] This combination of encouraging self-certifications, while providing for both Commission-certification and an opportunity to seek revocation of QF status, would assure, the Commission believed, that only those generation facilities that meet the criteria for QF status would receive and retain that status.

10. As noted above, the Commission, when it first enacted its regulations, had hoped that self-certifications would be the primary means for obtaining QF status, but recognized that there would be instances in which a Commission ruling on QF status would be desirable. While the Commission later, in Order No. 575, required QFs to provide more detailed information about self-certifying QFs, through Form No. 556, the Commission continued to encourage self-certification, but also recognized that there would be reasons that a QF may want or need Commission certification (including the requirement of some lenders, electric utilities, or state regulators that a generator seeking QF status and the benefits of PURPA be Commission-certified). The Commission thus sought to make the self-certification process more informative about the nature of the self-certified QFs while keeping the process relatively simple.

11. Following the enactment of the Energy Policy Act of 2005 (EPAct 2005), which imposed new requirements for QF status for "new" cogeneration facilities,[16] the Commission issued Order No. 671,[17] which implemented those new requirements. As part of that implementation, for the first time, notices of self-certifications for new cogeneration facilities were required to be published in the **Federal Register**; self-certifications, other than for new cogeneration facilities, are not published in the **Federal Register.** In addition, as noted above, for the first time, the Commission required the filing of a notice of self-certification or an application for Commission certification as a requirement for QF status.[18]

III. Revisions to Regulations

A. General

NOPR Proposal

12. The Commission proposed in the NOPR[19] to revise its regulations and the Form No. 556 to improve and simplify the QF certification process. In particular, the Commission proposed to remove the contents of the Form No. 556 from the regulations, and, in their place, to provide that an applicant seeking to certify QF status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing. The Commission also proposed to revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies that will reduce both the filing burden for

[9] 18 CFR 292.207(a).

[10] Because recertification is a type of certification, policies applicable to self-certification and application for Commission certification also apply to self-recertification and application for Commission recertification.

[11] *Small Power Production and Cogeneration Facilities—Qualifying Status,* Order No. 70, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,134 (1980), *order on reh'g,* Order Nos. 69–A and 70–A, FERC Stats. & Regs., Regulations Preambles 1977–1981 ¶ 30,160 (1980), *aff'd in part and vacated in part, American Electric Power Service Corp.* v. *FERC,* 675 F.2d 1226 (D.C. Cir. 1982), *rev'd in part, American Paper Institute, Inc.* v. *American Electric Power Service Corp.,* 461 U.S. 402 (1983).

[12] Order No. 70, FERC Stats. & Regs. ¶ 30,134 at 30,954. As discussed below, the Commission, in 2005, added a requirement that a cogeneration facility or small power production facility either self-certify or receive Commission certification to have QF status. *See* 18 CFR 292.203(a)(3), (b)(2).

[13] 18 CFR 292.207(b).

[14] 18 CFR 381.505.

[15] *See* 18 CFR 292.207(d)(ii). A similar opportunity for the Commission to revoke the QF status of a self-certified facility on the Commission's own motion, or on the motion of another party, was not expressly provided in the regulations; the Commission, however, allowed others to seek the revocation of a self-certified QF by filing a petition for declaratory order. In Order No. 671, *infra* note 17, the right to file a motion seeking revocation of a self-certification was added to the Commission's regulations. A motion seeking revocation requires a filing fee as a declaratory order. *Chugach Electric Association, Inc.,* 121 FERC ¶ 61,287, at P 51–54 (2007). The filing fee for a declaratory order is provided in 18 CFR 381.302.

[16] A "new" cogeneration facility is defined as any cogeneration facility that was either not a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility prior to February 2, 2006. 16 U.S.C. 824a–3(n)(2)(B); 18 CFR 292.205(d).

[17] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order No. 671, 71 FR 7852 (Feb. 15, 2006), FERC Stats. & Regs. ¶ 31,203 (2006), *order on reh'g,* Order No. 671–A, 71 FR 30585 (May 30, 2006), FERC Stats. & Regs. ¶ 31,219 (2006).

[18] *See* 18 CFR 292.203(a)(3), (b)(2).

[19] *Revisions to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility,* Notice of Proposed Rulemaking (NOPR). 74 FR 54,503 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 32,648 (2009).

applicants and the processing burden for the Commission. The Commission also proposed to exempt generating facilities with net power production capacities of 1 MW or less from the QF certification requirement, and to codify the Commission's authority to waive the QF certification requirement for good cause. Finally, the Commission proposed to clarify, simplify or correct certain sections of the regulations.

Comments

13. Seven parties filed comments in response to the NOPR.[20] The following sections provide a detailed discussion of the parties' comments, however, commenters generally express support for the Commission's proposals regarding the Form No. 556 and to clarify, simplify or correct certain sections of the regulations. In particular, most of the commenters support the Commission's proposal to remove the contents of the Form No. 556 from the regulations and require applicants to electronically file the Form No. 556 that is in effect at the time of filing, with the exception of certain concerns expressed by Interstate Renewable and objections raised by Southern. Commenters also generally support the Commission's proposal to revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies.

14. The issue most-discussed in parties' comments is the proposed exemption of generating facilities with a net power production capacity of 1 MW or less from the requirement to file a Form No. 556 in order to be a QF. Most of the commenters agree in concept with the Commission's proposal to establish a threshold at or below which generating facilities would be exempt from the requirement to make a filing in order to be a QF. However, the parties differ on the appropriate size of such a threshold.

Commission Determination

15. The Commission adopts the NOPR proposals to: (1) Remove the contents of the Form No. 556 from the regulations, and, in their place, to provide that an applicant seeking to certify the QF status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing; (2) revise and reformat the Form No. 556 to clarify the content of the form and to take advantage of newer technologies; (3) exempt generating facilities with net power production capacities of 1 MW or less from the QF certification requirement; (4) codify the Commission's authority to waive the QF certification requirement for good cause; (5) extend to all applicants for QF certification the requirement (currently applicable only to applicants for self-certification of QF status) to serve a copy of a filed Form No. 556 on the affected utilities and state regulatory authorities; (6) eliminate the requirement for applicants to provide a draft notice suitable for publication in the **Federal Register**; (7) clarify, simplify or correct certain sections of the regulations; and (8) change to the exemption of QFs from the Federal Power Act,[21] and to the exemption of QFs from the Public Utility Holding Company Act of 2005 (PUHCA) and certain State laws and regulations [22] to make clear that certain small power production facilities that satisfy the criteria of section 3(17)(E) of the Federal Power Act qualify for those exemptions.

16. The revisions to the Form No. 556 and the procedures for filing the Form No. 556 are informed by the Commission's experience both with administering the Form No. 556 and with new technologies for electronic data collection that have become available since the Form No. 556 was first established by Order No. 575 in 1995.[23] The changes will increase the effectiveness of the Commission's policies encouraging cogeneration and small power production, as required by section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[24]

B. Revisions to 18 CFR 131.80

NOPR Proposal

17. Currently, § 131.80 of the Commission regulations contains the text of Form No. 556 as well as instructions on how to complete the form. In the NOPR, the Commission proposed that § 131.80 of the Commission's regulations will no longer contain Form No. 556. In place of the current language, we proposed to require in § 131.80(a) that any person seeking to certify a facility as a QF must complete and electronically file the Form No. 556 then in effect and in accordance with the instructions then incorporated in that form.

18. The Commission also proposed to require, through proposed § 131.80(c), that applicants submit their QF applications (whether initial certifications or recertifications, and whether self-certifications or applications for Commission certification) electronically via the Commission's eFiling Web site.

Comments

19. Most commenters support the Commission's proposal to remove the contents of the Form No. 556 from the regulations and to require applicants to electronically file the Form No. 556 that is in effect at the time of filing.

20. Interstate Renewable supports the proposal that future changes to the form not require a rulemaking, but would be reviewed by the Office of Management and Budget following a solicitation of comments from the public on any proposed changes, but requests assurance that the parties interested in commenting on future proposed changes to Form No. 556 would receive the same notice and opportunity to comment that they would have under a formal rulemaking. Southern requests the Commission not make future changes to Form No. 556 without a formal rulemaking proceeding, arguing that if Form No. 556 can be revised without a formal rulemaking it could harm QFs and applicants by creating confusion.

Commission Determination

21. The Commission adopts its proposal to remove the contents of the Form No. 556 from its regulations, and, in their place, to provide that an applicant seeking to certify QF status of a small power production or cogeneration facility must complete, and electronically file, the Form No. 556 that is in effect at the time of filing. Revising § 131.80, as proposed, will make it easier to clarify and correct the form, should such changes prove necessary or appropriate in the future. Future changes to the form would be reviewed by the Office of Management and Budget following a solicitation of comments from the public on proposed changes, but would not require a formal rulemaking. This treatment is consistent with how a number of other Commission information collections are managed, including FERC Form Nos. 1, 1–F, 3–Q, 60, 80, 714, and 715, as well

[20] Interstate Renewable Energy Council and SolarCity (Interstate Renewable); Sun Edison LLC (Sun Edison); The National Rural Electric Cooperative Association (NRECA); Edison Electric Institute (EEI); U.S. Clean Heat & Power Association (U.S. Clean Heat & Power); Southern Company, Inc. (Southern); and Tayrn Rucinski (an individual). Southern filed on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company.

[21] 18 CFR 292.601.

[22] 18 CFR 292.602.

[23] *Streamlining of Regulations Pertaining to Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act of 1978,* Order No. 575, 60 FR 4831 (Jan. 25, 1995), FERC Stats. & Regs. ¶ 31,014, *order on reh'g,* Order No. 575–A, 71 FERC ¶ 61,121 (1995).

[24] 16 U.S.C. 824a–3.

as the FERC Form No. 580 Interrogatory.[25]

22. An electronic filing process will be faster, easier, less costly and less resource-intensive than hardcopy filing. An applicant filing electronically will receive an acknowledgement that the Commission has received the application and a docket number for the submittal much more quickly than it would by filing in hardcopy format. Also, electronic filing will allow the Commission to electronically process QF applications, dramatically reducing required staff resources and human error, and allowing the Commission to identify patterns of reporting errors and noncompliance that would be difficult to detect through manual processing. Finally, electronic filing of QF applications will facilitate the compilation of QF data that could be made available to the public. Each year Commission staff fields a number of requests for QF certification data from private organizations, researchers and other government agencies. Requiring applicants to file in electronic format will make it possible to respond to many more such requests, and/or to publish compiled QF data on the Commission's Web site.

23. In response to Interstate Renewable's comments, we note that parties will have an opportunity in response to a solicitation for comments under the Paperwork Reduction Act to comment on any future proposed revisions to the Form No. 556. We note that this is similar to the comment procedures currently provided under the Commission's rulemaking process. For this reason, we also deny Southern's request to maintain the Form No. 556 in the regulations and to continue to require a Commission rulemaking for any changes to the form.

C. Revisions to 18 CFR 292.203

NOPR Proposal

24. Section 292.203 of our regulations[26] lists the general requirements for QF status. For a qualifying small power production facility, those requirements currently state that the facility must meet the maximum size criteria specified in § 292.204(a), meet the fuel use criteria specified in § 292.204(b), and must have filed a notice of self-certification or an application for Commission certification that has been granted. For a qualifying cogeneration facility, those requirements currently state that the facility must meet any applicable operating and efficiency standards provided in § 292.205(a) and (b), and that the facility must have filed a notice of self-certification or an application for Commission certification that has been granted.

25. In the NOPR, the Commission proposed to correct an inadvertent error in § 292.203(b)(1) of our regulations.[27] Order No. 671 implemented additional technical requirements for certain cogeneration facilities in § 292.205(d), but § 292.203(b)(1) was not updated to reflect that a facility must comply with these new requirements (if applicable) in order to be a qualifying cogeneration facility. The Commission proposed to add the reference to § 292.205(d) in § 292.203(b). Because the technical requirements of § 292.205(d) are not "operating and efficiency standards," the Commission proposed to amend § 292.203(b) to delete the phrase "operating and efficiency standards" and to replace it with the phrase "standards and criteria."

26. Finally, the Commission sought comments on whether to add a § 292.203(d) which would (1) exempt certain small facilities from the requirement to make a filing for qualifying status, and (2) would make explicit the Commission's authority to grant waiver of the filing requirement upon a showing of good cause.[28]

27. The Commission also proposed a Form No. 556 exemption with a 1 MW threshold. The Commission explained that, while electronic filing of QF certifications has many benefits, some of the parties submitting applications for certification of QF status are small entities that consider the cost of legal representation to be burdensome and/or that lack access to the computer facilities necessary to make an electronic filing. To address this concern, the Commission proposed to amend § 292.203 to exempt the applicants with a net power production capacity of 1 MW or less, from the requirement to make any filing with the Commission in order to be a QF.

Comments

28. No commenters oppose codifying the Commission's authority to waive the QF certification requirement for good cause.

29. Commenters generally agree in concept with the Commission's proposal to establish a net power production capacity threshold at or below which generating facilities would be exempt from a filing requirement in order to be a QF. However, they differ on what threshold the Commission should establish. NRECA agrees with the proposal to set a threshold of 1 MW for solar, wind, and hydropower facilities. However, NRECA requests the Commission establish a 50 kW threshold for facilities relying on other resources that are subject to significant requirements covering the type of fuel used as a primary energy source, fuel efficiency, and/or the fundamental use of the energy produced. Sun Edison and Interstate Renewables request a higher threshold of 2 MW to (among other things) conform with the Commission's Small Generator Interconnection Procedures (SGIP) "Fast Track" threshold, and, according to Sun Edison to cover all retail solar installations. Also, Interstate Renewables seeks clarification that the Commission will allow small power production facilities to file an application for Commission certification notwithstanding the proposed exemption.

30. EEI and Southern request the Commission to establish the threshold at 100 kW. EEI argues that the 1 MW threshold is too high and does not accurately reflect the typical production capacity of the small residential generation technologies the Commission appears to be targeting. EEI suggests on-site residential power generation technologies (such as solar panels) are typically on the order of 5 kW output. Southern argues that most residential generators (*e.g.,* solar panels on houses), for which this exemption may be appropriate, have a nameplate capacity of 10 kW or less and that an exemption up to 1 MW could allow many businesses which should have access to the legal representation and computer facilities needed to electronically file a Form No. 556 to avoid the QF certification process. Taryn Rucinski also requests that the Commission significantly decrease the proposed 1 MW threshold, if the Commission's intention is to exempt residential or truly small facilities.

31. Southern requests the following clarifications: (1) QFs that are exempt from filing a Form No. 556 may still be required to provide notice or attestation to the relevant electric utilities that the facility is in fact a QF; (2) a utility may rely upon such a notice or attestation; and (3) an exempt QF should be required to provide important information to the electric utility, including principal components of the facility (electric generators, transformers, switchyard equipment), fuel type, maximum gross and net output, expected installation and

[25] 18 CFR 366.23.

[26] 18 CFR 292.203.

[27] 18 CFR 292.203(b)(1).

[28] *Citing Ashland Windfarm, LLC,* 124 FERC ¶ 61,068 (2008) (Commission granted waiver of the filing requirement for QF status).

operation dates as required to determine the impact of the QF on the safety and reliability of the electric system.

32. EEI also requests clarification on a number of matters related to an exemption threshold. Specifically, EEI requests the Commission also provide the following: (1) Clarification that utilities and/or state commissions may require proof that a facility meets the requirements to become a QF and may still require the facility to provide "necessary technical design information" through "another form of attestation" that the facility meets the eligibility requirements to be a QF; (2) clarification that disputes regarding the QF eligibility of facilities that are not required to submit filings may be brought to the Commission for resolution; (3) clarification that a utility may terminate or otherwise abrogate the QF contract of a facility that is exempt from filing requirements if it finds that the facility in fact does not meet the criteria to be considered a QF, or the facility owner made fraudulent or false representations regarding its satisfaction of QF eligibility criteria; (4) that any increase in power production capacity requires a new Interconnection Request and that certain changes other than power production capacity increase also may trigger the Material Modification provisions of the Commission's Interconnection Procedures; (5) revision to § 292.310 of the Commission's regulations to require a utility that is seeking relief from PURPA mandatory purchase obligations to provide only the name and address of any QF that is exempt from filing with the Commission to obtain QF status.[29]

Commission Determination

33. The Commission adopts the NOPR proposal to update § 292.203(b) to reflect that a qualifying cogeneration facility must comply with any applicable requirements in § 292.205(d), and to make explicit the Commission's authority to grant waiver of the filing requirement upon a showing of good cause.

34. The Commission also adopts the NOPR proposal to add a § 292.203(d) to exempt facilities with a net power production capacity of 1 MW or less from the requirement to make a filing with the Commission in order to be a QF. The Commission notes that, until the effective date of Order No. 671, no filing, either of a self-certification or an application for Commission certification, was needed for a facility to claim QF status.[30] In instituting a filing requirement for QF status in Order No. 671, the Commission, among other things, explained that requiring a filing would help ensure that a "new" cogeneration facility would not be able to claim QF status without making a filing;[31] the Commission believed that the Congressional mandate to tighten the standards for cogeneration facilities required that a filing, either a self-certification or an application for Commission certification, be made by an entity claiming QF status.[32] However, for facilities that are comparatively small, such as solar generation facilities installed at residences or other relatively small electric consumers such as retail stores, hospitals, or schools (and, in fact, many of the filings received in recent years involve just such small solar and wind-powered facilities), there may not be as compelling a need for filings with the Commission for QF status.

35. The Commission adopts the originally-proposed 1 MW filing threshold for exemption from the requirement to make a filing for QF status. We find that a 1 MW threshold, consistent with PURPA's mandate,[33] encourages QFs—both cogeneration and small power production—by eliminating the burden of filing. And a 1 MW threshold appropriately balances the competing claims of those seeking a lower threshold and those seeking a higher threshold. A lower threshold, while perhaps exempting facilities installed at residences, would nevertheless continue to impose a requirement to file on facilities, such as facilities installed at retail stores, hospitals, or schools, that are among the small facilities that PURPA was equally intended to promote. Facilities larger than 1 MW, however, represent a significant departure from the smallest generation (residential, retail, hospitals, schools, *etc.*) and such larger facilities should not find the filing requirement for QF status to represent an undue burden. Facilities over 1 MW would typically require a significant capital outlay, on the order of hundreds of thousands or millions of dollars, and the additional burden, both financial and otherwise, of filing with the Commission will be comparatively minimal. Moreover, looking at QF filings for the last five years, we see that a substantial portion of such QF filings are from smaller facilities. QF certification filings from facilities 1 MW or smaller represented approximately 48 percent of all QF filings. The filings from these facilities, however, represented only a small percentage of the total capacity being certified as QFs; filings from facilities 1 MW or smaller represented only approximately one half of one percent of QF capacity certified. Given these figures, the need for filings from such facilities is equally small; such facilities, whether or not they are required to file a Form 556, would rarely, if ever, not be in compliance with the standards and criteria for QF status.

36. We see no significant benefit to NRECA's suggestion that we adopt a 1 MW threshold for facilities fueled by renewable resources but a separate, lower threshold for facilities fueled by other resources. In this regard we note that from 2006 to date there were 2,142 Form 556 filings made by facilities 1 MW and smaller. Of those, only three percent were made by cogeneration facilities, with the rest being small power production facilities, and 90 percent were made by solar-powered and wind-powered small power production facilities (the rest were made by other small power production facilities). Thus, the vast majority of the 1 MW and smaller QFs are the solar-powered and wind-powered facilities that NRECA agrees should have a 1 MW threshold. To the extent that NRECA and others believe that small facilities fueled by other resources should be subject to the higher level of scrutiny that a Form 556 filing enables, we discuss below means to monitor compliance with the criteria for QF status that are available to purchasing utilities.

37. In exempting smaller generating facilities from the requirement to file a Form 556 in order to obtain QF status, the Commission is simply reverting, for these 1 MW and below facilities only, back to the policy that existed prior to Order No. 671, where QF status did not depend on such a filing. At that time, a facility's QF status was dependent only on whether the facility met the technical criteria for QF status, and was not dependent upon the applicant having

[29] EEI notes that § 292.310 information collection is the subject of the Commission's current request for OMB renewal of FERC–912 in Docket IC09–912–000.

[30] While not required, a facility seeking to claim QF status had the option of filing a self-certification or an application for Commission certification, and many facilities chose to do so. Here, as we explain below, we are adopting an exemption from the requirement to file for facilities with a net power production capacity of 1 MW or less. As before, though, while not required, a facility with a net power production capacity of 1 MW or less seeking to claim QF status has the option of filing a self-certification or an application for Commission certification should it choose to do so.

[31] As noted below, over the last five years, the percentage of facilities that are cogeneration facilities 1 MW or smaller filing for QF status has proven to be comparatively small.

[32] Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 81.

[33] *See* 16 U.S.C. 824a–3(a).

made a certification filing with the Commission.

38. A transacting utility, of course, needs necessary technical information from a QF in order to safely and reliably interconnect and transact with the QF, and we would expect a QF to provide such information.[34] And a purchasing electric utility currently may contest a facility's QF status if it does not agree with the facility's claim to that status. Thus, utilities currently may file a petition for revocation of QF status for any facility that holds itself out as a QF but which the utility reasonably believes does not meet the requirements for QF status,[35] just as they could prior to Order No. 671. The Commission has not proposed to change these regulations in this proceeding.

39. Electric utilities, however, may not refuse to purchase electric energy from a QF that is exempt from the requirement that it file a Form 556, or unilaterally terminate or otherwise abrogate a legally enforceable obligation or a contract with a QF that is exempt from the requirement that it file a Form 556, absent a favorable finding by the Commission in response to a petition for revocation of QF status.

40. The Commission agrees with Interstate Renewables that facilities exempt from the QF filing requirement for QF status may (at their option) file a self-certification or an application for Commission certification notwithstanding the exemption.

41. The Commission declines to address, as beyond the scope of this proceeding, EEI's requests (1) to modify 18 CFR 292.310 to require a utility that is seeking relief from PURPA mandatory purchase obligations to provide only the name and address of any QF that is exempt from filing with the Commission to obtain QF status,[36] and (2) for the Commission to remind QFs that "any increase in MW requires a new Interconnection Request and that certain changes other than MW increase also may trigger the Material Modification provisions of the Commission's Interconnection Procedures."

D. Revisions to 18 CFR 292.204

NOPR Proposal

42. Section 3(17)(E) of the Federal Power Act provides that an "eligible solar, wind, waste or geothermal facility" is a facility which produces electric energy solely by the use, as a primary energy source, of solar energy, wind energy, waste resources or geothermal resources, but only if such facility meets certain criteria for dates of certification and construction. Section 3(17)(A) of the Federal Power Act provides that any eligible solar, wind, waste, or geothermal facility is a small power production facility, regardless of its size. The Commission implemented these sections of the Federal Power Act in § 292.204(a), including the statement that there are no size limitations for "eligible" solar, wind or waste facilities,[37] as defined by section 3(17)(E) of the Federal Power Act. The regulation then states that, for "a non-eligible facility," the size limitation for a qualifying small power production facility is 80 MW.

43. In the NOPR, the Commission explained that the wording of § 292.204(a) has created confusion for many applicants. Applicants not familiar with section 3(17)(A) or (E) of the Federal Power Act frequently confuse the statutory concept of "eligibility" with more general questions of whether a facility is eligible for QF status. They often assume that an "eligible facility" is any facility that is eligible for qualifying status. In an attempt to reduce such confusion, the Commission proposed to revise § 292.204(a) to be more clear (avoiding using the term "eligible") while achieving the same regulatory outcome as the current § 292.204(a).

Comments

44. No comments were received on the Commission's proposal to clarify the wording of § 292.204(a). However, EEI requests that the Commission revisit the "one-mile rule" used to determine whether two facilities are part of the same QF for purposes of § 292.204(a), and asks that the Commission adopt a rebuttable presumption that facilities on sites located more than one mile apart are independent for purposes of QF certification, but that utilities would be allowed to rebut this presumption upon a showing that the facilities, although located more than a mile apart, are "part of a common enterprise" and should thus be considered as a single entity, not entitled to more separate certifications of QF status.

Commission Determination

45. The Commission adopts the NOPR proposal to revise § 292.204(a) to be more clear (avoiding using the term "eligible") while achieving the same regulatory outcome. The Commission declines, as beyond the scope of this proceeding, the request by EEI to adopt a presumption that facilities on sites located more than one mile apart are independent for purposes of QF certification, and that such presumption be rebuttable based on considerations EEI enumerates.[38]

E. Revisions to 18 CFR 292.205

NOPR Proposal

46. In the NOPR, the Commission explained that the text of § 292.205(d) of the Commission's regulations [39] contains an error in the description of the new cogeneration facilities that are subject to the requirements of §§ 292.205(d)(1) and (2). Section 292.205(d) provides that the following facilities are subject to these requirements:

> any cogeneration facility that was either not *certified as* a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1.[40]

47. From this language, the criteria for QF status include whether or not a cogeneration facility was "certified as" a qualifying cogeneration facility by August 8, 2005.[41] However, the text of section 210(n)(2) of PURPA states that the Commission's prior cogeneration requirements shall continue to apply to any facility that "*was* a qualifying cogeneration facility on [August 8,

[34] Such information would include principal components of the facility (electric generators, transformers, switchyard equipment), fuel type, maximum gross and net output, expected installation and operation dates as required to determine the impact of the QF on the safety and reliability of the electric system. A purchasing utility may also ask a QF that has not filed a Form 556 to provide the utility an attestation that the QF meets the requirements for QF status.

[35] 18 CFR 292.207(d).

[36] We note, however, that the Commission does not expect a utility to provide, in a PURPA section 210(m) filing, a QF docket number for a potentially-affected QF that has not filed, or not yet filed, for QF status. Similarly, in a PURPA section 210(m) filing, where the potentially affected QF's plans are not sufficiently definite such that the QF does not, in fact, know the information required for the filing so that a filing utility does not have information required by section 292.310 of our regulations, the filing utility may state that it does not have the information and state why the information is not available.

[37] The Commission pointed out in the NOPR that "geothermal" was inadvertently omitted when the regulation was written. However, the Commission explained that the proposed changes obviate the need to correct this omission.

[38] We note that the one-mile rule has been part of the Commission's regulations since the initial implementation of PURPA.

[39] 18 CFR 292.205(d).

[40] *Id.* (emphasis added).

[41] The significance of August 8, 2005 is that it is the date on which the Energy Policy Act of 2005 was signed into law.

2005]."[42] Furthermore, at the time of enactment of EPAct 2005, the Commission's regulations did not require that a facility that complied with the requirements for QF status be self or Commission certified in order to be a QF.[43] As such, there were many facilities that were QFs on August 8, 2005, even though they were not self or Commission certified as QFs by that date. To correct this error, the Commission proposed to strike the words "certified as" from the first sentence of § 292.205(d).

48. Section 210(n)(2) of PURPA also states that the Commission's prior cogeneration requirements will continue to apply to any facility that "had filed with the Commission a notice of self-certification, self recertification or an application for Commission certification under 18 CFR 292.207 prior to [February 2, 2006]."[44] The Commission implemented this provision in § 292.205(d) by not applying the new cogeneration requirements to any cogeneration facility that had filed "a notice of self-certification, self-recertification or an application for Commission certification or Commission recertification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006." Because any facility that had recertified (either by self-recertification or application for Commission recertification) prior to February 2, 2006 must necessarily have made its original certification prior to February 2, 2006, the Commission proposed in the NOPR that the inclusion of "self-recertification" and "application for Commission recertification" in this provision is unnecessary. The Commission proposed to simplify § 292.205(d) to state that the new cogeneration requirements will not apply to any facility that had filed "a notice of self-certification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006."

Comments

49. No comments were filed on this proposal.

Commission Determination

50. The Commission adopts the NOPR proposals to strike the words "certified as" from the first sentence of § 292.205(d) and to simplify § 292.205(d) to state that the new cogeneration requirements will not apply to any facility that had filed "a notice of self-certification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006." The proposed revisions achieve the intended regulatory result of the existing regulatory text while decreasing the complexity of the regulatory text, and thus the opportunities for confusion.

F. Revisions to 18 CFR 292.207

1. Elimination of Pre-Authorized Commission Recertification

NOPR Proposal

51. In the NOPR, the Commission proposed to eliminate the procedure for pre-authorized Commission recertification contained in § 292.207(a)(2).[45] That procedure was established to give applicants for facilities that have been certified under the procedures for Commission certification in § 292.207(b) a list of insubstantial alterations and modifications that would not result in the revocation of QF status previously granted by the Commission. Section 292.207(a)(2)(ii) also requires those making the changes listed in § 292.207(a)(2)(i) to notify the Commission and each affected utility and State regulatory authority of each such change.

52. The Commission explained in the NOPR that the pre-authorized Commission recertification process did not require the use of Form No. 556, and that historically the very few applicants that filed pre-authorized Commission recertifications did so in the form of a letter describing the changes to their facilities. The Commission further explained that, in this rulemaking, we were implementing procedures to require that self-certifications or applications for Commission certification be made through the electronic submission of a Form No. 556, and that removing the pre-authorized recertification option ensures that all QF certification filings will be made electronically using a Form No. 556. The Commission explained that it could opt to revise the procedure for the pre-authorized Commission recertification to require such filings to be made electronically using a Form No. 556, but that such a revised procedure would be essentially identical to the procedure for self-certification. The Commission explained that having such a duplicative procedure appeared unjustified, particularly given the increase in complexity to the Form No. 556 and the Commission's regulations that would result from such a procedure.

53. The Commission further noted that the types of changes listed in § 292.207(a)(2)(i) were somewhat misleading, as a strict reading of that list implied that almost any change to a QF, no matter how small, would require notice to the Commission and to the affected utilities and State regulatory authorities. In reality, the Commission explained, changes falling below a certain level of importance were not significant enough to justify the burden on the applicant of the recertification requirement.

Comments

54. EEI and Southern support the proposal to eliminate the procedure for pre-approved Commission reauthorization.

55. Sun Edison, on the other hand, requests that the Commission retain a list of pre-approved QF changes that would not require QF recertification, and otherwise clarify the trigger threshold for recertification. In this regard, Sun Edison requests clarification of what the Commission meant in the NOPR by its statement that "changes falling below a certain level of importance are not significant enough to justify the burden on the applicant of the recertification requirement."[46] In particular, Sun Edison argues that changes in ownership should not trigger a re-filing requirement. Sun Edison suggests that, if the Commission does not eliminate the reporting requirement for ownership information as requested by Sun Edison and addressed below, the Commission consider requiring that the applicant only provide ownership information once in Form No. 556 and that no subsequent change in QF ownership require a refiling of Form No. 556, or that, for subsequent change in QF ownership, the applicant only provide the Commission with a list of affected QF dockets, rather than submit an entire new Form No. 556 for each QF in which it owns an interest. Finally, Sun Edison requests that for all or some small power QFs, especially those without fuel or size limitations, the Commission grant a "continued presumption" of QF status as long as such facilities continue to comply with the criteria for QF status (other than the

[42] 16 U.S.C. 824a–3(n)(2)(A) (emphasis added).

[43] *See* Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 81.

[44] 16 U.S.C. 824a–3(n)(2)(B).

[45] 18 CFR 292.207(a)(2).

[46] NOPR *Revision to Form, Procedures, and Criteria for Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility,* 74 FR 54503 (Oct. 22, 2009), FERC Stats. & Regs. ¶ 32,648 at P 28.

filing requirements) and do not change their essential nature.

Commission Determination

56. The Commission will adopt the proposal to eliminate pre-authorized Commission certification. The procedure was little used. Moreover, because pre-authorized recertifications were usually filed in letter format, and the Commission is in this rulemaking requiring that all self-certifications and Commission certifications be made through an electronic submission of a Form No. 556, removal of the pre-authorized recertification option ensures that all QF certification filings will be made electronically using a Form No. 556.

57. The Commission declines Sun Edison's request to include a list in the regulations of specific changes that would not require QF recertification. Section 292.207(d) of the Commission's regulations provides that "if a qualifying facility fails to conform with any material facts or representations presented by the cogenerator or small power producer in its submittals to the Commission, the [applicant's certification] may no longer be relied upon." This standard will continue to provide the basis for when recertification of facilities is necessary, *i.e.,* when facilities fail to conform with any material facts or representations presented in an applicant's previous certification.[47] This standard has been in place for decades and, in our experience, has provided the guidance needed to QFs to decide whether to make a recertification filing; in the absence of any evidence that the process requires modification, we decline to do so at this time.[48]

58. The Commission also denies Sun Edison's request that the Commission consider requiring that applicants need only provide ownership information in the initial certification filing, and that no subsequent changes in QF ownership need be reported. The Commission notes that the Commission determined in Order No. 671 that, despite the elimination in EPAct 2005 of the ownership restrictions, ownership information assists the Commission in monitoring potential discrimination in the provision of service to customers and assists the Commission in reviewing the extent to which various QFs should continue to be exempt from various provisions of the FPA and state laws.[49] Although the revised Form No. 556 adopted in this Final Rule relaxes, to some extent, when a QF is required to disclose its owners,[50] the Commission's finding in Order No. 671 about the usefulness of ownership information continues to be true today. Thus, we will continue the QF ownership reporting requirement, including the requirement that any change in material facts and representations triggers a recertification requirement. We clarify, however, that the Commission will not consider a change in ownership to be a change in material facts and representations made in the previous filing if no owner increases their equity interest by at least 10 percent from the equity interest previously reported.[51]

59. We also decline Sun Edison's request that applicants be allowed, in recertifications reporting ownership changes, to only provide the Commission with a list of affected QF dockets rather than submit a new Form No. 556 for each QF in which it owns a reportable interest. The Commission may, however, on a case-by-case basis, choose to waive requirement to file Form No. 556.

2. Elimination of Procedures for Referring to Information From Previous Certifications

NOPR Proposal

60. Section 292.207(a)(1)(iii) provides that subsequent notices of self-recertification for the same facility may reference prior self-certifications or prior Commission certifications, and need only refer to changes which have occurred with respect to the facility since the prior notice or the prior Commission certification. In the NOPR, the Commission proposed to delete this provision, and, as a result, to change the Commission's policy so that applicants are required to provide all of the information for their facility in each Form No. 556 they submit with a self-recertification or an application for Commission recertification.

Comments

61. EEI concurs with the Commission's proposal to delete § 292.207(a)(1)(iii) and suggests the Commission also require all currently-certified QFs to re-file their information electronically within two years after a final rule becomes effective.

62. On the other hand, U.S. Clean Heat & Power disagrees with the NOPR proposal, and requests that the Commission retain the ability to reference prior notices or prior Commission certifications and to refer only to changes which have occurred with respect to the facility since the prior notice or certification. U.S. Clean Heat & Power argues that, although the Commission characterizes the submission of all of the required information as a "small, one-time burden," for many applicants compiling such information would require a significant amount of time.

Commission Determination

63. The Commission adopts the NOPR proposal to require applicants to provide all of the information for their facility in each Form No. 556 they submit with a self-recertification or an application for Commission recertification. The Commission adopts the NOPR proposal to delete the provision in § 292.207(a)(1)(iii) that provides that subsequent notices of self-recertification for the same facility may reference prior self-certifications or prior Commission certifications, and need only refer to changes which have occurred with respect to the facility since the prior notice or the prior Commission certification.

64. This proposed change will result in greater transparency: During the processing of routine QF petitions and periodic compliance reviews of self-certifications, the Commission frequently finds that the original certification data for some facilities (particularly facilities originally certified in the 1980s) can be difficult to obtain. Notwithstanding U.S. Clean Heat & Power's claim, requiring the provision of full data in a recertification would be a small, one-time burden for applicants, because applicants may, after their first recertification subsequent to a Final Rule implementing this proposal, simply download their previous electronically-filed Form No. 556 from eLibrary and update the relevant responses to generate their new Form No. 556. Given the significant benefit and the small, one-time burden, deletion of § 292.207(a)(1)(iii) is appropriate.

[47] In response to Sun Edison's request, we clarify that this standard also establishes the "certain level of importance" (referred to in P 28 of the NOPR) of a change below which the burden on the applicant of the recertification requirement is not justified. NOPR at P 28.

[48] We note that Commission staff may be contacted by QFs for informal guidance whether a particular change to a QF may require a recertification.

[49] Order No. 671 at P 110.

[50] While the Commission found that utility owners should be disclosed, *see id.,* the Form No. 556 adopted in this Final Rule does not require disclosure of any owners with less than a 10 percent equity interest in the facility.

[51] To avoid any confusion, we note that the addition of an owner not previously reported and that holds an equity interest of 10 percent or more would be a material change that would require recertification.

65. We disagree with U.S. Clean Heat & Power's assessment of the time requirements associated with adopting this proposal, and find that, for most facilities that are properly monitoring their compliance with the relevant QF standards, the burden even of recreating the most complex cogeneration portions of the Form No. 556 is not unreasonable.[52] Qualifying cogeneration facilities are, after all, required to comply with operating and efficiency standards for both the 12-month period beginning with the date the facility first produces electric energy, and any calendar year subsequent to the year in which the facility first produces electric energy.[53] Applicants properly monitoring compliance with the QF requirements should have the data necessary to complete the Form No. 556 reasonably accessible. We clarify, to the extent necessary, that applicants which have archived their original filings need not necessarily undertake extensive searches for those original filings, or undertake extensive efforts to recreate the data in those original filings. Rather, current operating data can (and should) be used when recertifying a facility, particularly if any material changes have been made to the operation of the facility.

66. For small power production facilities the burden on applicants should be minimal, and we note that no parties representing the interests of small power production facilities have objected to this proposal.

67. We will not, however, impose the requirement, suggested by EEI, that existing QFs not seeking recertification nevertheless be required to file a new Form 556 within two years of the issuance of the Final Rule; where recertification is neither necessary nor sought, the burden of such a filing is unjustified.

3. Elimination of Requirement To Provide a Draft Notice Suitable for Publication in the Federal Register

NOPR Proposal

68. Section 292.207(a)(1)(iv) of our regulations[54] currently requires that notices of self-certifications and self-recertifications for new cogeneration facilities be published in the **Federal Register**. Similarly, § 292.207(b)(4) of our regulations[55] requires that notices of applications for Commission certification or recertification be published in the **Federal Register**. For these applications that require publication of notices in the **Federal Register,** §§ 292.207(a)(1)(iv) and (b)(4) require that applicants provide with their filing a draft notice suitable for publication in the **Federal Register** on electronic media.

69. In the NOPR, the Commission proposed to continue to publish notices of self-certification and self-recertification for new cogeneration facilities and applications for Commission certification and recertification in the **Federal Register,** and included that requirement in the proposed § 292.207(c). However, the Commission proposed to delete §§ 292.207(a)(1)(iv) and (b)(4) in order to eliminate the requirement that applicants for those types of filings provide a draft notice suitable for publication in the **Federal Register.**

Comments

70. No comments were received on this issue.

Commission Determination

71. The Commission adopts the NOPR proposal to delete §§ 292.207(a)(1)(iv) and (b)(4) in order to eliminate the requirement that applicants for those types of filings provide a draft notice suitable for publication in the **Federal Register.** The Commission will be able to automatically generate **Federal Register** notices directly from the electronic Form No. 556 data, without requiring a draft notice be submitted by the applicant.

4. Requirement To Serve a Copy of a Form No. 556 on Affected Utilities and State Commissions

NOPR Proposal

72. Currently applicants for self-certification are required to serve a copy of their QF self-certification filings on each electric utility with which they expect to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up and maintenance power from, and the State regulatory authority of each state where the facilities and each affected electric utility is located.[56] No such requirement currently exists for applications for Commission certification.

73. In the NOPR, the Commission proposed to amend the regulations to require that any applicant filing a self-certification, self-recertification, application for Commission certification or application for Commission recertification must serve a copy of its filing on each affected electric utility and State regulatory authority.

Comments

74. Interstate Renewables suggests exempting small QFs that will be exempt under proposed § 202.203(d)(1) from the requirement to file a Form 556 from the notice requirements contained in proposed § 292.207(c)(2).

75. Interstate Renewables also requests that proposed § 292.207(c)(2) be modified to provide that a utility is not required to purchase electric energy from a facility until 5 days (rather than 90 days) after the facility meets the notice requirements in section (c)(1) of this section.

Commission Determination

76. The Commission adopts the proposal to require that any applicant filing an application for Commission certification, or an application for Commission recertification, in addition to those filing for self-certification or self-recertification, must serve a copy of its filing on each affected electric utility and State regulatory authority. We see no justification for those filing an application for Commission certification or Commission certification to be exempt from this requirement.

77. The Commission denies Interstate Renewables's request to decrease the time provided in § 292.207(c)(2) for an electric utility to begin purchasing electric energy from 90 days to 5 days; 90 days has long been part of the Commission's regulations and we are not persuaded to change it. However, we instead adopt in § 292.207(c)(2) the regulatory text more closely aligned with that § 292.207(c), so that § 292.207(c)(2) will read as follows:

(2) *Facilities of 500 kW or more.* An electric utility is not required to purchase electric energy from a facility with a net power production capacity of 500 kW or more until 90 days after the facility notifies the utility that it is a qualifying facility, or 90 days after the facility meets the notice requirements in paragraph (c)(1) of this section.

As a result of adopting this language, § 292.207(c)(2) will maintain the current policy that the 90-day requirement can be satisfied with notification to the utility, instead of tying it to a filing with the Commission. In light of this change, we also decline Interstate Renewables' proposal to begin § 292.207(c)(2) with the phrase "Except for a facility exempt under § 202.203(d)(1)." Because, as explained above, a facility will be able to notify the electric utility without necessarily having to make a Form No. 556 filing with the Commission, we see

[52] U.S. Clean Heat & Power, representing the interests of combined heat and power facilities, is presumably concerned with the relatively complex operating and efficiency data that must be reported for qualifying cogeneration facilities.

[53] 18 CFR 292.205(a)(1), (a)(2) and (b); Order No. 671 at P 51.

[54] 18 CFR 292.207(a)(1)(iv).

[55] 18 CFR 292.207(b)(4).

[56] 18 CFR 292.207(a)(ii).

no reason to modify this 500 kW threshold.

5. Other Proposed Changes

NOPR Proposal

78. In the NOPR, the Commission proposed to remove reference to "pre-authorized Commission recertification" in the title of § 292.207(a) and in the text of § 292.207(d)(1)(i). The Commission also proposed to delete the current § 292.207(a)(1), and to replace it, in § 292.207(a), with a procedure for self-certification that incorporates clear reference to proposed § 131.80 and to the notice requirements in § 292.207(c).

Comments

79. No comments were received on this issue.[57]

Commission Determination

80. The Commission adopts the NOPR proposal to remove reference to "pre-authorized Commission recertification" in the title of § 292.207(a) and in the body text of § 292.207(d)(1)(i). The Commission also adopts the NOPR proposal to delete the current § 292.207(a)(1), and to replace it, in § 292.207(a), with a procedure for self-certification that incorporates clear reference to proposed § 131.80 and to the notice requirements in § 292.207(c).

G. Revisions to 18 CFR 292.601

NOPR Proposal

81. In the NOPR, the Commission proposed to amend § 292.601(a) of its regulations[58] to make clear the exemption from the specified Federal Power Act sections is applicable to any facility that meets the definition of an "eligible solar, wind, waste or geothermal facility" under section 3(17)(E) of the Federal Power Act. Section 4 of the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Incentives Act)[59] provides that "eligible facilities" shall not be subject to the size limitations contained in § 292.601(b) of the Commission's regulations, unless the Commission otherwise specifies. The Commission there explained that it had found that the size limitation for eligibility for the exemptions contained in §§ 292.601 and 292.602, otherwise applicable to other small power production facilities, does not apply to "eligible facilities."[60]

Comments

82. No comments were filed on this proposal.

Commission Determination

83. The Commission adopts the NOPR proposal to amend § 292.601(a) of its regulations to make clear the exemption from the specified Federal Power Act sections is applicable to any facility that meets the definition of an "eligible solar, wind, waste or geothermal facility" under section 3(17)(E) of the Federal Power Act.

84. We note that, because § 292.602(a) states that the exemption from the PUHCA and State laws and regulations provided by that section applies to any QF described in § 292.601(a), and because the QFs described by § 292.601(a) include all QFs other than those described by § 292.601(b), the Incentives Act's exemption of "eligible facilities" from the size limitation contained in § 292.601(b) also has the effect of making such facilities eligible for the exemptions from PUHCA and State laws and regulations.

H. Revisions to 18 CFR 292.602

NOPR Proposal

85. In the NOPR, the Commission proposed to amend § 292.602(c)(1) to clarify that it is only the QFs described in paragraph (a) of that section that may take advantage of the exemptions provided in § 292.602, and to correct a typographical error. Finally, the Commission proposed to correct a typographical error in the title of § 292.602.

Comments

86. No comments were filed on this proposal.

Commission Determination

87. The Commission adopts the NOPR proposal to amend § 292.602(c)(1) to clarify that it is only the QFs described in paragraph (a) of that section that may take advantage of the exemptions provided in § 292.602, and to correct a typographical error. The Commission also adopts the NOPR proposal to correct a typographical error in the title of § 292.602.

IV. Proposed Revisions to the Form No. 556

A. General

NOPR Proposal

88. In the NOPR, the Commission proposed to make a number of changes to the content and organization of the Form No. 556. The proposed revised Form No. 556 was made available for download from the Commission's QF Web site, and was published in the **Federal Register**.[61] As discussed above, the Commission did not propose to include the content of the Form No. 556 in the Commission's regulations. Rather, the Commission proposed that the changed Form No. 556, once approved, will become "the Form No. 556 then in effect" for purposes of proposed § 131.80. The Commission therefore gave notice of its proposed changes to Form No. 556, and explained that it intended to submit the revised Form No. 556 for OMB approval pursuant to the provisions of the Paperwork Reduction Act,[62] after receiving and considering comments on those changes.

89. In addition to the structure of the proposed Form No. 556, the Commission proposed to include in the Final Rule version of the form data controls, automatic calculations, error handling and other programmatic features to assist applicants and maintain data quality.

90. The Commission explained that most of the proposed changes to the Form No. 556 were intended to make use of new electronic data structuring. The Commission further explained that while, in most cases, it proposed to collect the same data that is currently collected in the Form No. 556, the new form would allow the Commission to more efficiently administer the QF program. The Commission explained that staff spends a significant amount of time working with applicants that either misunderstand the current form, pay insufficient attention to the informational requirements on the current form, or both. The Commission explained that, by making Form No. 556 easier to understand, it would make the submission of Form No. 556 less burdensome to applicants.

91. The Commission further explained that its experience had been that the open-ended nature of the current Form No. 556 data collection—where applicants are able to type any answer or no answer in response to an

[57] Sun Edison did file comments, summarized and discussed above, opposing the elimination of the pre-authorized Commission recertification procedure from the regulations; however, in the current section the Commission addresses only the editorial revisions to the regulations to accommodate the policy determinations made by the Commission above.

[58] 18 CFR 292.601(a).

[59] Pub. L. 101–575, 104 Stat. 2834 (1990), *as amended by* Pub. L. 102–46, 105 Stat. 249 (1991).

[60] *Cambria Cogen Co.*, 53 FERC ¶ 61,459, at 62,619 (1990).

[61] *http://www.ferc.gov/QF*. The revised Form No. 556, as adopted, will not be attached to the Microsoft Word version of this Final Rule, but will be published in the **Federal Register.**

[62] 44 U.S.C. 3507(d).

item—often resulted in applicants incorrectly answering or skipping items or portions of items that they mistakenly feel do not apply to them. The Commission proposed to implement improved instructions, use a greater number of questions which are individually narrower in scope, and use certain electronic data controls and validation options, such as checkboxes and data entry fields that only accept data formatted in the appropriate way to minimize these problems.

Comments

92. No comments were filed on this proposal.

Commission Determination

93. We will adopt the new revised Form No. 556, as proposed in the NOPR, with minor clarifications and corrections. As explained in the NOPR, we expect that the revised form both will be less burdensome to those filling out the form and will provide the Commission with information that is more accurate and readily accessible.

B. Name of Form

NOPR Proposal

94. In Order No. 575, the Commission adopted San Diego Gas and Electric Company's suggestion to title the Form No. 556 to make clear that it applies to proposed as well as to existing facilities.[63] In the NOPR, the Commission did not propose to change the applicability of the form to proposed and existing facilities; however, as part of its attempt to make the Form No. 556 as simple and clear as possible, the Commission proposed to shorten the name of the form to "Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility."

Comments

95. No comments were filed on this proposal.

Commission Determination

96. The Commission adopts the NOPR proposal to shorten the name of the Form No. 556 to "Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility."

C. Geographic Coordinates

NOPR Proposal

97. In the NOPR, the Commission explained that, over the years, it had received a number of inquiries from the public seeking certain information about QFs. Many of these inquiries were from academics, research organizations or other government entities performing studies of the effectiveness of PURPA and the Commission's regulations implementing PURPA. Often such inquiries have involved the locations of the QFs. The Commission explained that, currently, location information is collected only through the street address of the facility, even though some facilities in rural or wilderness areas do not have a street address.

98. The Commission explained that it may be useful to researchers (as well as the public in general, and affected electric utilities and State regulatory authorities in particular) to have specific locational data for QFs, even for facilities that do not have street addresses. The Commission explained that, in addition to having value for researchers, such specific locational data would also provide a transparent means of determining compliance with the size requirement for small power production facilities, which is based in part on the distance between adjacent generating facilities. As such, the Commission proposed to include a new line 3c that will require applicants for facilities without a street address to provide the geographic coordinates (latitude and longitude) of their facilities.

Comments

99. Southern supported this proposal. No other comments were filed on this proposal.

Commission Determination

100. The Commission adopts the NOPR proposal to include a new line 3c that will require applicants for facilities without a street address to provide the geographic coordinates (latitude and longitude) of their facilities. The text of line 3c directs applicants to the Geographic Coordinates section of the instructions on page 4 which discusses several different ways through which applicants might obtain the geographic coordinates of their facilities: Through certain free online map services (with links available through the Commission's QF Web site); a GPS device; Google Earth; a property survey; various engineering or construction drawings; a property deed; or a municipal or county map showing property lines. Applicants are directed in line 3c to provide their geographic coordinates to three decimal places, and are given a simple formula for how to convert degrees, minutes and seconds to decimal degrees.

D. Ownership

NOPR Proposal

101. In Order No. 671, the Commission eliminated the limitation on electric utility and electric utility holding company ownership of QFs, but maintained the requirement that applicants provide ownership information in the Form No. 556.[64]

102. In the NOPR, the Commission explained that the wording of item 1c of the current Form No. 556 has proven confusing with respect to the collection of ownership information. In particular, the Commission explained that item 1c did not specify the amount of equity interest in the facility above which the applicant is required to identify the owner. For facilities with many owners, this can prove burdensome, particularly if the ownership changes frequently.

103. The Commission also explained that experience had shown that the current wording of item 1c proves confusing to applicants with respect to which types of owners (direct or upstream) they are supposed to identify.

104. The Commission proposed to clarify both the level of ownership above which applicants are required to identify owners, and which information must be provided for direct and upstream owners. First, while maintaining the current requirement that applicants indicate the percentage of direct ownership held by any electric utility[65] or holding company,[66] the Commission proposed to clarify in line 5a of the proposed Form No. 556 that an applicant need only provide information for direct owners that hold at least 10 percent equity interest in the facility.[67] Second, the Commission proposed to require in line 5b that applicants identify all upstream owners that both (1) hold at least a 10 percent equity interest in the facility and (2) are electric utilities or holding companies.

Comments

105. EEI and Southern support the Commission's clarification of level of ownership. As discussed above, Sun Edison requests the Commission

[63] Order No. 575, 60 FR 4831 (Jan. 13, 1995), FERC Stats. & Regs. ¶ 31,014, at 31,282 and 31,285.

[64] Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 110.

[65] As defined in section 3(22) of the Federal Power Act. 16 U.S.C. 796(22).

[66] As defined in section 1262(8) of the Public Utility Holding Company Act of 2005. 42 U.S.C 16451(8).

[67] The Commission explained in the NOPR that the 10 percent ownership threshold was proposed to be consistent with the 10 percent ownership thresholds used in the definition of a "holding company" in section 1262(8) of the Public Utility Holding Company Act of 2005, 42 U.S.C. 16451(8), and in the definition of "affiliate" in 18 CFR 35.36(a)(9).

consider the legal basis for requiring that ownership be tracked by the Commission and asks that changes in ownership not trigger a re-filing requirement, or that the Commission consider requiring that the QF owner only provide ownership information once in the original Form No. 556 and that no subsequent change in QF ownership require a refiling of Form No. 556, or that, for a subsequent change in QF ownership, the QF owner only provide the Commission with a list of affected QF dockets, rather than submit an entire new Form No. 556 for each QF in which it owns an interest.

Commission Determination

106. The Commission adopts the NOPR proposal to clarify the level of ownership above which applicants are required to identify owners, and which information must be provided for direct and upstream owners. Specifically, the Commission, while maintaining the requirement that applicants indicate the percentage of direct ownership held by any electric utility [68] or holding company,[69] the Commission adopts the NOPR proposal to clarify in line 5a of Form No. 556 that an applicant need only provide information for direct owners that hold at least 10 percent equity interest in the facility. Also, the Commission adopts the NOPR proposal to require in line 5b that applicants identify all upstream owners that both (1) hold at least a 10 percent equity interest in the facility and (2) are electric utilities or holding companies.

107. We deny Sun Edison's requests that we either not collect this information, or collect it only in connection with the original Form No. 556, or otherwise narrow the collection of this information, for the reasons stated earlier in this Final Rule.

E. Fuel Use for Small Power Production Facilities

NOPR Proposal

108. Section 292.204(b) of the Commission's regulations [70] allows small power production facilities to use oil, natural gas or coal in amounts up to and including 25 percent of the total energy input to the facility as calculated during the 12-month period beginning with the date the facility first produces electric energy and any calendar year subsequent to the year in which the facility first produces electric energy. Such use of oil, natural gas or coal is limited to certain purposes specified in section 3(17)(B) of the Federal Power Act as implemented in § 292.204(b)(2) of the Commission's regulations.[71]

109. Item 7 of the current Form No. 556 requires applicants to describe "how fossil fuel use will not exceed 25 percent of the total annual energy input limit," and "how the use of fossil fuel will be limited to the following purposes to conform to Federal Power Act section 3(17)(B): Ignition, start-up, flame stabilization, control use, and minimal amounts of fuel required to alleviate or prevent unanticipated equipment outages and emergencies directly affecting the public." In the NOPR, the Commission explained that experience with this item had indicated two problems. First, because applicants have significant latitude in how they respond in the current Form No. 556, they often make statements which do not, on their face, commit themselves to fuel use that would meet the Commission's requirements for qualifying small power production facilities. While these responses are unlikely to represent an intentional attempt on the part of applicants to circumvent the Commission's regulations for fuel use, the statements could make enforcement of the Commission's regulations more difficult.

110. On the other hand, the Commission explained, applicants who were very specific in their response to item 7 may have felt that they have committed themselves to only engage in the particular uses they specified in their Form No. 556, despite the fact that the Commission's regulations may permit more flexibility in the use of fossil fuel.

111. The Commission thus proposed a simpler method of certifying compliance with the Commission's fuel use requirements for small power production facilities, one intended to avoid these problems. Rather than requiring applicants to describe how they will comply, the Commission proposed to simply state what the fuel use requirements are, and to require the applicant to certify, by checking a box next to each requirement, that they will comply. The Commission explained that this proposal will obligate the applicant to comply with the stated requirements, while not creating an impression that the applicant must limit its fuel use to some standard which is more stringent than that established in the Commission's regulations.

Comments

112. No comments were received on this issue.

Commission Determination

113. Rather than continuing to require applicants to describe how they will comply with the fuel use, the Commission adopts the NOPR proposal that Form No. 556 will simply state what the fuel use requirements are, and require the applicant to certify, by checking a box next to each requirement, that they will comply.

F. Mass and Heat Balance Diagrams for Cogeneration Facilities

NOPR Proposal

114. Item 10 of the current Form No. 556 requires applicants for qualifying cogeneration facility status to provide a mass and heat balance diagram depicting average annual hourly operating conditions. As part of item 10, applicants are required to provide the following on their mass and heat balance diagrams: All fuel flow inputs in Btu/hr. specified using lower heating value, separately indicating fuel inputs for supplementary firing; average net electric output in kW or MW; average net mechanical output in horsepower; number of hours of operation used to determine the average annual hourly facility inputs and outputs; and working fluid flow conditions at input and output of prime mover(s) and at delivery to and return from each useful thermal application. Working fluid flow conditions required to be provided include the following: Flow rates in lbs./hr.; temperature in °F; pressure in psia; and enthalpy in Btu/lb.

115. In the NOPR, the Commission explained that some applicants had complained that, for relatively simple cogeneration facilities, some of the information required is meaningless or not known. For example, small diesel generators utilizing jacket water cooling systems to capture waste heat were often certified as qualifying cogeneration facilities. Such systems typically have no steam at any point in the system, and instead use pressurized water or an antifreeze solution to recover the waste heat and transport it to the useful thermal application. For such systems, applicants had complained that specifying pressure has no significance, since the effect of pressure on enthalpy (a measure of thermal energy content) is negligible for liquids at standard conditions. Likewise, applicants had complained that, since pressure in all-liquid systems is not an important design variable, it

[68] As defined in section 3(22) of the Federal Power Act. 16 U.S.C. 796(22).

[69] As defined in section 1262(8) of the Public Utility Holding Company Act of 2005. 42 U.S.C 16451(8).

[70] 18 CFR 292.204(b).

[71] 18 CFR 292.204(b)(2).

was often not known to any degree of accuracy in such systems.

116. The Commission also explained that some applicants had pointed out that, in systems which were all liquid water, the extra effort required to determine and specify enthalpy was not necessary. Since enthalpy in liquid water is a nearly linear function of temperature (because the specific heat of water does not vary significantly under standard conditions), specification of temperature at each required location and a specification of the specific heat of the working fluid (usually water) is all that is necessary to describe the energy balance of the cogeneration facility.

117. Agreeing with these points, the Commission proposed in the NOPR to include language in new line 10b of the Form No. 556 indicating that, for systems where the working fluid is liquid only (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid is clearly indicated on the diagram or in the Miscellaneous section of the Form No. 556, only mass flow rate and temperature (not pressure and enthalpy) need be specified.

118. The Commission explained that its experience had shown that a relatively high level of deficiency and rejection letters for QF applications were a result of noncompliance with the requirements for the mass and heat balance diagram. The Commission stated that this was likely due to a combination of the fact the requirements for the mass and heat balance diagram were long, technical and not always clear, and the fact that some applicants did not put sufficient effort and attention into ensuring compliance. To improve reporting and to decrease future noncompliance, the Commission proposed to require applicants for qualifying cogeneration facility status to certify compliance with each of the requirements for the mass and heat balance diagram by checking a box next to each written requirement. The Commission expected that, by requiring applicants to proceed box by box through the individual requirements, which would be stated more clearly than in the current Form No. 556, reporting would improve and noncompliance would drop dramatically.

Comments

119. No comments were filed on this proposal.

Commission Determination

120. The Commission adopts the NOPR proposal to include language in new line 10b of the Form No. 556 indicating that, for systems where the working fluid is liquid only (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid is clearly indicated on the diagram or in the Miscellaneous section of the Form No. 556, only mass flow rate and temperature (not pressure and enthalpy) need be specified.

121. The Commission also adopts the NOPR proposal to require applicants for qualifying cogeneration facility status to certify compliance with each of the requirements for the mass and heat balance diagram by checking a box next to each written requirement. This should improve reporting and decrease noncompliance.

G. EPAct 2005 Cogeneration Facilities

NOPR Proposal

122. In response to EPAct 2005, the Commission implemented in Order No. 671 additional requirements for new cogeneration facilities selling power pursuant to section 210 of PURPA.[72] The Commission implemented the "productive and beneficial" and "fundamental use" requirements of EPAct 2005 through the inclusion of a new section in the Form No. 556 that required applicants to respond to the text of the statute, providing applicants space to demonstrate compliance with EPAct 2005's requirements. In the NOPR, the Commission explained that, in practice, Form No. 556 had not provided sufficient guidance to applicants whether their facilities enjoy a presumption of compliance under § 292.205(d)(4) of the Commission's regulations, or whether such facilities fall within the safe harbor established by the "fundamental use test" in § 292.205(d)(3).

123. The Commission noted in the NOPR that, in implementing the "productive and beneficial" requirement of EPAct 2005, the Commission essentially maintained its long-standing "usefulness" standard, except that what it deemed as presumptively useful was now rebuttable.[73] The Commission explained that the current Form No. 556 requirement that applicants demonstrate compliance both with the "productive and beneficial" standard (in item 15) and the "useful" standard (in items 12, 13 and/or 14) could be condensed and streamlined without degrading the information provided or the level of Commission and public oversight of the QF program. The Commission proposed to consolidate these requirements into the portion of the proposed Form No. 556 where applicants demonstrate the "usefulness" of the thermal output (lines 12a, 12b, 14a, and 14b of the proposed form).

124. The Commission explained that the "fundamental use" requirement for EPAct 2005 cogeneration facilities, on the other hand, involved data collection that was specific to EPAct 2005 facilities. As such, the Commission proposes to implement a new section of the Form No. 556 entitled "EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities." This section would replace the current "For New Cogeneration Facilities" section. The Commission proposed this new section to facilitate an applicant's determination, in accordance with the applicable regulations (1) whether the EPAct 2005 cogeneration requirements apply to its facility, given the date on which the facility was originally a QF or originally filed for QF certification; (2) whether (if applicable) its pre-EPAct 2005 facility is subject to EPAct 2005 by virtue of changes to the facility which essentially make it a "new" EPAct 2005 facility; (3) whether its facility is excluded from the "fundamental use" requirement by virtue of the fact that power will not be sold from the facility pursuant to section 210 of PURPA; (4) whether its facility enjoys a rebuttable presumption of compliance with the "fundamental use" requirement by virtue of its small electric output; and/or (5) whether its facility complies with the fundamental use requirement by virtue of meeting the fundamental use test established in § 292.205(d)(3) of the Commission's regulations. If an applicant's facility is found to be subject to the EPAct 2005 requirements, but to fail the fundamental use test, then the applicant is instructed by line 11d of the proposed Form No. 556 to provide a narrative explanation of and support for why its facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and

[72] Congress in EPAct 2005, and the Commission in implementing EPAct 2005, referred to the facilities subject to the EPAct 2005 requirements as "new" cogeneration facilities. 16 U.S.C. 824a–3(n); 18 CFR 292.205(d). To avoid confusion that this "new" label will create as time passes and such facilities are not "new" anymore (except with respect to the date of the implementation of EPAct 2005), we will refer in the Form No. 556 to such facilities as "EPAct 2005 cogeneration facilities."

[73] Order No. 671, FERC Stats. & Regs. ¶ 31,203 at P 17.

variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility.

125. Additionally, in proposed line 11c, applicants are required to provide information to be used in determining whether a modification to a pre-EPAct 2005 cogeneration facility might be so significant that the facility should be considered a new facility that would be subject to the additional requirements (if applicable) for EPAct 2005 cogeneration facilities. In Order No. 671, the Commission established a rebuttable presumption that a pre-EPAct 2005 cogeneration facility does not become an EPAct 2005 cogeneration facility merely because it files for recertification; however, the Commission cautioned that "changes to an existing cogeneration facility could be so great (such as an increase in capacity from 50 MW to 350 MW) that what an applicant is claiming to be an existing facility should, in fact, be considered a 'new' cogeneration facility at the same site." [74] The Commission explained in the NOPR that it will continue this rebuttable presumption, but also that it was proposing to require that an applicant filing a self-recertification or an application for Commission recertification for a pre-EPAct 2005 cogeneration facility provide sufficient information about any changes to the facility to evaluate whether in fact the changes are so significant that the facility should be considered an EPAct 2005 cogeneration facility.

126. Thus, under the Commission's proposal, an applicant for recertification of a pre-EPAct 2005 cogeneration facility which intends to rely upon the rebuttable presumption that recertification of its existing facility does not make the facility subject to EPAct 2005's requirements must provide a description of the relevant changes to the facility, including the purpose of the changes, and an explanation why the facility should not be considered an EPAct 2005 cogeneration facility.

Comments

127. EEI requests clarifications regarding the threshold above which changes to a facility would be deemed significant enough to render a facility "new" for the purposes of the new cogeneration requirements. Specifically, EEI requests that a facility be found to be "new" if (1) there has been a material change in the electrical characteristics (such as size and/or number of generators), or (2) there has been a material change in the utilization of thermal energy (such as reduction in useful thermal output). EEI recommends that the Commission consider establishing a rebuttable presumption that a 20 percent or greater sustained change in electrical or thermal output of a QF is a material change that would render it an EPAct 2005 cogeneration facility, but that an existing certified cogeneration facility would have the opportunity to provide evidence to rebut this presumption.

Commission Determination

128. The Commission adopts the NOPR proposal to consolidate the requirements for the "productive and beneficial" use of thermal output into that portion of the proposed Form No. 556 where applicants demonstrate the "usefulness" of the thermal output (lines 12a, 12b, 14a, and 14b of the form).

129. The Commission also adopts the NOPR proposal to implement a new section of the Form No. 556, entitled "EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities." However, we reject requests to specify exactly what types of changes would make an existing facility a "new" facility for the purposes of the additional EPAct 2005 requirements in § 292.205(d). The Commission finds EEI's requests for clarifications and EEI's related proposals with respect to the threshold above which changes to a facility would render a facility "new" for the purposes of the § 292.205(d) requirements to be beyond the scope of this rulemaking.

130. The Commission, in its NOPR proposal, intended only to ensure that adequate information is being sought to make an informed decision regarding a QF's status as a new or existing cogeneration facility. The Commission did not propose to modify, and does not modify here, the standard for making that determination. The Commission indicated in Order No. 671 that such determinations would be made on a case-by-case basis, considering the extent of each individual change. There will be cases where the correct determination is not obvious, and hence a case-by-case approach will continue to be used. However, we note that, in the four years that Order No. 671 has been in effect, the current standards have not presented a problem with respect to the determination of whether an existing cogeneration facility has been so substantially changed that it now constitutes a "new cogeneration facility."

131. If an applicant's facility is found to be subject to the EPAct 2005 requirements, but to fail the fundamental use test, then the applicant is instructed by line 11d of the Form No. 556 to provide a narrative explanation of and support for why its facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility.

132. The Commission adopts the NOPR proposal to continue the rebuttable presumption that a pre-EPAct 2005 cogeneration facility does not become an EPAct 2005 cogeneration facility merely because it files for recertification, but also to require that an applicant filing a self-recertification or an application for Commission recertification for a pre-EPAct 2005 cogeneration facility provide sufficient information about any changes to the facility to evaluate whether in fact the changes are so significant that the facility should be considered an EPAct 2005 cogeneration facility. Going forward, an applicant for recertification of a pre-EPAct 2005 cogeneration facility which intends to rely upon the rebuttable presumption that recertification of its existing facility does not make the facility subject to the EPAct 2005 requirements must provide a description of the relevant changes to the facility, including the purpose of the changes, and an explanation why the facility should not be considered an EPAct 2005 cogeneration facility. We stress that not every facility that has undergone a change should be considered an EPAct 2005 cogeneration facility; however, an applicant filing a self-recertification or an application for Commission recertification for a pre-EPAct 2005 cogeneration facility must provide enough information about any changes to the facility to allow the Commission and the public to evaluate the changes. The Commission finds EEI's requests for clarifications and EEI's related proposals to be beyond the scope of this rulemaking, concerning the threshold above which changes to a facility would be deemed significant enough to render a facility "new" for the purposes of the new cogeneration requirements.

V. Information Collection Statement

133. The collection of information contained in this Final Rule has been

[74] *Id.* P 115.

submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act.[75] The Commission solicited comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

Estimated Annual Burden

134. The Commission has previously broken down its estimated annual burden for completing the Form No. 556 by filing type (self-certification or Commission certification). We believe that breaking down the filings by facility type (small power production facility or cogeneration facility) in addition to filing type will result in a significantly improved burden estimate. Using this method, the total estimated annual time for the collection of information associated with the Form No. 556 is 2,156 hours, calculated as follows:

Facility type	Filing type	Number of respondents	Hours per respondent	Total annual hours
cogeneration facility > 1 MW	self-certification	100	8	800
cogeneration facility > 1 MW	application for Commission certification	3	50	150
small power production facility > 1 MW	self-certification	400	3	1,200
small power production facility > 1 MW	application for Commission certification	1	6	6

Information Collection Costs: In response to the NOPR, the Commission received no comments concerning its estimates for burden and costs and will use those estimates here in the Final Rule. As almost all of the regulation changes are intended to make seeking certification easier, and because we are exempting applicants for facilities not greater than 1 MW from the certification requirement, the Commission estimates that the collection costs associated with the new form will be less burdensome than with the existing form. Although the length of the form has increased, this is a result of the proposal to change the form to more effectively "walk" applicants through the certification and compliance determinations that they currently have to research and process on their own.

135. *Title:* FERC Form No. 556, "Certification of qualifying facility (QF) status for small power production or cogeneration facility."

Action: Information collection.

OMB Control No. 1902–0075.

Respondents: Residences, businesses or other for profit entities, and government agencies.

Frequency of responses: On occasion.

Necessity of the information: The Form No. 556 was originally established in Order No. 575 to allow an applicant to self-certify that or to request the Commission to determine that a facility meets the criteria for qualifying small power production or cogeneration status under the Commission's regulations, and thus whether the applicant is eligible to receive the benefits available to it under PURPA.

Internal review: The Commission has reviewed its proposed changes to the requirements pertaining to the certification of qualifying small power production and cogeneration facilities and determined the proposed changes appear to decrease the existing burden on applicants. These proposed requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry.

136. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Deputy Chief Information Officer, phone: (202) 502–8663, fax: (202) 273–0873, e-mail: *DataClearance@ferc.gov*]. Comments concerning the collection of information and the associated burden estimates, should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638; fax: (202) 395–7285].

VI. Environmental Analysis

137. 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.[76] No environmental consideration is needed for the promulgation of a rule that addresses information gathering, analysis, and dissemination.[77] This Final Rule involves information gathering, analysis, and dissemination. Consequently, neither an Environmental Impact Statement nor Environmental Assessment is required.

VII. Regulatory Flexibility Act

138. The Regulatory Flexibility Act of 1980 (RFA)[78] requires rulemakings to contain either a description or analysis of the effect that the rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. In this Final Rule, we implement three different types of regulatory changes, and we address each in turn.

139. First, we clarify and streamline the Form No. 556. These changes make the form easier for applicants, whether large or small, to complete, because the new form leads applicants step-by-step through the compliance determinations.

140. Second, we require certain limited additional disclosures of information. In particular, we implement (1) collection of the geographic coordinates of facilities that do not have a street address, and (2) collection of certain information used to determine applicability of the EPAct 2005 cogeneration requirements that was not previously explicitly required to be included in Form No. 556.

141. The requirement to report in line 3g geographic coordinates is applicable only to those facilities that do not have a street address and is therefore not generally applicable to all applicants. Moreover, in most cases, geographic coordinates can be obtained from a simple web search (with help provided by the instructions and the Commission's Web site); a GPS device (including some cellular phones); the use of free computer programs (such as Google Earth); or the review of certain documents, such as a property survey, various engineering or construction drawings, a property deed, or a

[75] 44 U.S.C. 3507(d).

[76] *See Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[77] *See* 18 CFR 380.4(a)(5).

[78] 5 U.S.C. 601–12.

municipal or county map showing property lines.

142. The new information to be collected from applicants for cogeneration facilities serves to guide the applicants through the determination whether the EPAct 2005 cogeneration requirements apply to their facilities. The process of completing lines 11a through 11f replicates, but in a clearer and more concise manner, the process that such applicants already have to go through in completing the current form. Completing lines 11a through 11f should substantially decrease the burden of complying with the EPAct 2005 cogeneration requirements for most or all applicants for cogeneration facilities. In the absence of this step-by-step guide adopted in lines 11a through 11f, applicants (particularly small applicants) must independently research the requirements and determine compliance with the relatively complex EPAct 2005 cogeneration requirements.

143. Third, we require applicants for certification of QF status to submit their Forms No. 556 electronically, via the Commission's eFiling Web site. However, we also exempt applicants for facilities with net power production capacities of 1 MW and smaller from any filing requirement. Thus, the electronic filing requirement does not apply to applicants for relatively small QFs. We believe that any applicant for a facility larger than 1 MW should have access to the resources needed to make an electronic filing.

VIII. Document Availability

144. 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 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 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

145. 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 this document in the docket number field.

146. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email at *public.referenceroom@ferc.gov*.

IX. Effective Date

147. These regulations are effective June 1, 2010. The Commission has determined, with the concurrence of the Adminstrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

List of Subjects

18 CFR Part 131

Electric power, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power, Electric power plants, Electric utilities.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends parts 131 and 292 of Title 18 of the *Code of Federal Regulations,* as set forth below:

Subchapter D—Approved Forms, Federal Power Act and Public Utility Regulatory Policies Act of 1978

PART 131—FORMS

■ 1. The authority citation for part 131 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. Section 131.80 is revised to read as follows:

§ 131.80 FERC Form No. 556, Certification of qualifying facility (QF) status for a small power production or cogeneration facility.

(a) *Who must file.* Any person seeking to certify a facility as a qualifying facility pursuant to sections 3(17) or 3(18) of the Federal Power Act, 16 U.S.C. 796(3)(17), (3)(18), unless otherwise exempted or granted a waiver by Commission rule or order pursuant to § 292.203(d), must complete and file the Form of Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility, FERC Form No. 556. Every Form of Certification of Qualifying Status must be submitted on the FERC Form No. 556 then in effect and must be prepared in accordance with the instructions incorporated in that form.

(b) *Availability of FERC Form No. 556.* The currently effective FERC Form No. 556 shall be made available for download from the Commission's Web site.

(c) *How to file a FERC Form No. 556.* All applicants must file their FERC Forms No. 556 electronically via the Commission's eFiling Web site.

Subchapter K—Regulations Under the Public Utility Regulatory Policies Act of 1978

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

■ 1. The authority citation for part 292 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. Section 292.203 is revised to read as follows:

§ 292.203 General requirements for qualification.

(a) *Small power production facilities.* Except as provided in paragraph (c) of this section, a small power production facility is a qualifying facility if it:

(1) Meets the maximum size criteria specified in § 292.204(a);

(2) Meets the fuel use criteria specified in § 292.204(b); and

(3) Unless exempted by paragraph (d), has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

(b) *Cogeneration facilities.* A cogeneration facility, including any diesel and dual-fuel cogeneration facility, is a qualifying facility if it:

(1) Meets any applicable standards and criteria specified in §§ 292.205(a), (b) and (d); and

(2) Unless exempted by paragraph (d), has filed with the Commission a notice of self-certification, pursuant to § 292.207(a); or has filed with the Commission an application for Commission certification, pursuant to § 292.207(b)(1), that has been granted.

(c) *Hydroelectric small power production facilities located at a new dam or diversion.* (1) A hydroelectric small power production facility that impounds or diverts the water of a natural watercourse by means of a new dam or diversion (as that term is defined in § 292.202(p)) is a qualifying facility if it meets the requirements of:

(i) Paragraph (a) of this section; and

(ii) Section 292.208.

(2) [Reserved]

(d) *Exemptions and waivers from filing requirement.* (1) Any facility with a net power production capacity of 1 MW or less is exempt from the filing requirements of paragraphs (a)(3) and (b)(2) of this section.

(2) The Commission may waive the requirement of paragraphs (a)(3) and (b)(2) of this section for good cause. Any applicant seeking waiver of paragraphs (a)(3) and (b)(2) of this section must file a petition for declaratory order describing in detail the reasons waiver is being sought.

■ 3. In § 292.204, paragraph (a)(1) is revised and paragraph (a)(4) is added to read as follows:

§ 292.204 Criteria for qualifying small power production facilities.

(a) *Size of the facility*—(1) *Maximum size.* Except as provided in paragraph (a)(4) of this section, the power production capacity of a facility for which qualification is sought, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts.

* * * * *

(4) *Exception.* Facilities meeting the criteria in section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)) have no maximum size, and the power production capacity of such facilities shall be excluded from consideration when determining the maximum size of other small power production facilities within one mile of such facilities.

* * * * *

■ 4. In § 292.205, paragraph (d) is revised to read as follows:

§ 292.205 Criteria for qualifying cogeneration facilities.

* * * * *

(d) *Criteria for new cogeneration facilities.* Notwithstanding paragraphs (a) and (b) of this section, any cogeneration facility that was either not a qualifying cogeneration facility on or before August 8, 2005, or that had not filed a notice of self-certification or an application for Commission certification as a qualifying cogeneration facility under § 292.207 of this chapter prior to February 2, 2006, and which is seeking to sell electric energy pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a–1, must also show:

* * * * *

■ 5. In § 292.207, paragraphs (a) through (d)(1)(i) are revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

(a) *Self-certification.* The qualifying facility status of an existing or a proposed facility that meets the requirements of § 292.203 may be self-certified by the owner or operator of the facility or its representative by properly completing a Form No. 556 and filing that form with the Commission, pursuant to § 131.80 of this chapter, and complying with paragraph (c) of this section.

(b) *Optional procedure*—(1) *Application for Commission certification.* In lieu of the self-certification procedures in paragraph (a) of this section, an owner or operator of an existing or a proposed facility, or its representative, may file with the Commission an application for Commission certification that the facility is a qualifying facility. The application must be accompanied by the fee prescribed by part 381 of this chapter, and the applicant for Commission certification must comply with paragraph (c) of this section.

(2) *General contents of application.* The application must include a properly completed Form No. 556 pursuant to § 131.80 of this chapter.

(3) *Commission action.* (i) Within 90 days of the later of the filing of an application or the filing of a supplement, amendment or other change to the application, the Commission will either: Inform the applicant that the application is deficient; or issue an order granting or denying the application; or toll the time for issuance of an order. Any order denying certification shall identify the specific requirements which were not met. If the Commission does not act within 90 days of the date of the latest filing, the application shall be deemed to have been granted.

(ii) For purposes of paragraph (b) of this section, the date an application is filed is the date by which the Office of the Secretary has received all of the information and the appropriate filing fee necessary to comply with the requirements of this Part.

(c) *Notice requirements*—(1) *General.* An applicant filing a self-certification, self-recertification, application for Commission certification or application for Commission recertification of the qualifying status of its facility must concurrently serve a copy of such filing on each electric utility with which it expects to interconnect, transmit or sell electric energy to, or purchase supplementary, standby, back-up or maintenance power from, and the State regulatory authority of each state where the facility and each affected electric utility is located. The Commission will publish a notice in the **Federal Register** for each application for Commission certification and for each self-certification of a cogeneration facility that is subject to the requirements of § 292.205(d).

(2) *Facilities of 500 kW or more.* An electric utility is not required to purchase electric energy from a facility with a net power production capacity of 500 kW or more until 90 days after the facility notifies the facility that it is a qualifying facility or 90 days after the utility meets the notice requirements in paragraph (c)(1) of this section.

(d) *Revocation of qualifying status.* (1)(i) If a qualifying facility fails to conform with any material facts or representations presented by the cogenerator or small power producer in its submittals to the Commission, the notice of self-certification or Commission order certifying the qualifying status of the facility may no longer be relied upon. At that point, if the facility continues to conform to the Commission's qualifying criteria under this part, the cogenerator or small power producer may file either a notice of self-recertification of qualifying status pursuant to the requirements of paragraph (a) of this section, or an application for Commission recertification pursuant to the requirements of paragraph (b) of this section, as appropriate.

* * * * *

■ 6. In § 292.601, paragraph (a) is revised to read as follows:

§ 292.601 Exemption to qualifying facilities from the Federal Power Act.

(a) *Applicability.* This section applies to qualifying facilities, other than those described in paragraph (b) of this section. This section also applies to qualifying facilities that meet the criteria of section 3(17)(E) of the Federal Power Act (16 U.S.C. 796(17)(E)), notwithstanding paragraph (b).

* * * * *

■ 7. In § 292.602, the title and paragraph (c)(1) are revised to read as follows:

§ 292.602 Exemption to qualifying facilities from the Public Utility Holding Company Act of 2005 and certain State laws and regulations.

* * * * *

(c) *Exemption from certain State laws and regulations.* (1) Any qualifying facility described in paragraph (a) of this section shall be exempted (except as provided in paragraph (c)(2) of this

section) from State laws or regulations respecting:

* * * * *

Note: The following Appendix will not be published in the *Code of Federal Regulations.*

BILLING CODE 6717–01–P

Appendix A—Proposed FERC Form No. 556

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC

OMB Control # [ ]

Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

General

Questions about completing this form should be sent to Form556@ferc.gov. Information about the Commission's QF program, answers to frequently asked questions about QF requirements or completing this form, and contact information for QF program staff are available at the Commission's QF website, www.ferc.gov/QF. The Commission's QF website also provides links to the Commission's QF regulations (18 C.F.R. § 131.80 and Part 292), as well as other statutes and orders pertaining to the Commission's QF program.

Who Must File

Any applicant seeking QF status or recertification of QF status for a generating facility with a net power production capacity (as determined in lines 7a through 7g below) greater than 1000 kW must file a self-certification or an application for Commission certification of QF status, which includes a properly completed Form 556. Any applicant seeking QF status for a generating facility with a net power production capacity 1000 kW or less is exempt from the certification requirement, and is therefore not required to complete or file a Form 556. *See* 18 C.F.R. § 292.203.

How to Complete the Form 556

This form is intended to be completed by responding to the items in the order they are presented, according to the instructions given. If you need to back-track, you may need to clear certain responses before you will be allowed to change other responses made previously in the form. If you experience problems, click on the nearest help button (?) for assistance, or contact Commission staff at Form556@ferc.gov.

Certain lines in this form will be automatically calculated based on responses to previous lines, with the relevant formulas shown. You must respond to all of the previous lines within a section before the results of an automatically calculated field will be displayed. If you disagree with the results of any automatic calculation on this form, contact Commission staff at Form556@ferc.gov to discuss the discrepancy before filing.

You must complete all lines in this form unless instructed otherwise. Do not alter this form or save this form in a different format. Incomplete or altered forms, or forms saved in formats other than PDF, will be rejected.

How to File a Completed Form 556

Applicants are required to file their Form 556 electronically through the Commission's eFiling website (see instructions on page 2). By filing electronically, you will reduce your filing burden, save paper resources, save postage or courier charges, help keep Commission expenses to a minimum, and receive a much faster confirmation (via an email containing the docket number assigned to your facility) that the Commission has received your filing.

If you are simultaneously filing both a waiver request and a Form 556 as part of an application for Commission certification, see the "Waiver Requests" section on page 3 for more information on how to file.

Paperwork Reduction Act Notice

This form is approved by the Office of Management and Budget (OMB Control No. [ ], expiration [ ]). Compliance with the information requirements established by the FERC Form No. 556 is required to obtain or maintain status as a QF. See 18 C.F.R. § 131.80 and Part 292. 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 estimated burden for completing the FERC Form No. 556, including gathering and reporting information, is as follows: 3 hours for self-certification of a small power production facility, 8 hours for self-certifications of a cogeneration facility, 6 hours for an application for Commission certification of a small power production facility, and 50 hours for an application for Commission certification of a cogeneration facility. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the following: Information Clearance Officer, Office of the Executive Director (ED-32), Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426; and Desk Officer for FERC, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (oira_submission@omb.eop.gov). Include the Control No. [ ] in any correspondence. [When OMB approval is received, the OMB Control No. and expiration date will be added to the form/instructions.]

Electronic Filing (eFiling)

To electronically file your Form 556, visit the Commission's QF website at www.ferc.gov/QF and click the eFiling link.

If you are eFiling your first document, you will need to register with your name, email address, mailing address, and phone number. If you are registering on behalf of an employer, then you will also need to provide the employer name, alternate contact name, alternate contact phone number and and alternate contact email.

Once you are registered, log in to eFiling with your registered email address and the password that you created at registration. Follow the instructions. When prompted, select one of the following QF-related filing types, as appropriate, from the Electric or General filing category.

Filing category	Filing Type as listed in eFiling	Description
Electric	(Fee) Application for Commission Cert. as Cogeneration QF	Use to submit an application for Commission certification or Commission recertification of a cogeneration facility as a QF.
	(Fee) Application for Commission Cert. as Small Power QF	Use to submit an application for Commission certification or Commission recertification of a small power production facility as a QF.
	Self-Certification Notice (QF, EG, FC)	Use to submit a notice of self-certification of your facility (cogeneration or small power production) as a QF.
	Self-Recertification of Qualifying Facility (QF)	Use to submit a notice of self-recertification of your facility (cogeneration or small power production) as a QF.
	Supplemental Information or Request	Use to correct or supplement a Form 556 that was submitted with errors or omissions, or for which Commission staff has requested additional information. Do not use this filing type to report new changes to a facility or its ownership; rather, use a self-recertification or Commission recertification to report such changes.
General	(Fee) Petition for Declaratory Order (not under FPA Part 1)	Use to submit a petition for declaratory order granting a waiver of Commission QF regulations pursuant to 18 C.F.R. §§ 292.204(a)(3) and/or 292.205(c). A Form 556 is not required for a petition for declaratory order unless Commission recertification is being requested as part of the petition.

You will be prompted to submit your filing fee, if applicable, during the electronic submission process. Filing fees can be paid via electronic bank account debit or credit card.

During the eFiling process, you will be prompted to select your file(s) for upload from your computer.

Filing Fee

No filing fee is required if you are submitting a self-certification or self-recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(a).

A filing fee is required if you are filing either of the following:

(1) an application for Commission certification or recertification of your facility as a QF pursuant to 18 C.F.R. § 292.207(b), or
(2) a petition for declaratory order granting waiver pursuant to 18 C.F.R. §§ 292.204(a)(3) and/or 292.205(c).

The current fees for applications for Commission certifications and petitions for declaratory order can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Fee Schedule link.

You will be prompted to submit your filing fee, if applicable, during the electronic filing process described on page 2.

Required Notice to Utilities and State Regulatory Authorities

Pursuant to 18 C.F.R. § 292.207(a)(ii), you must provide a copy of your self-certification or request for Commission certification to the utilities with which the facility will interconnect and/or transact, as well as to the State regulatory authorities of the states in which your facility and those utilities reside. Links to information about the regulatory authorities in various states can be found by visiting the Commission's QF website at www.ferc.gov/QF and clicking the Notice Requirements link.

What to Expect From the Commission After You File

An applicant filing a Form 556 electronically will receive an email message acknowledging receipt of the filing and showing the docket number assigned to the filing. Such email is typically sent within one business day, but may be delayed pending confirmation by the Secretary of the Commission of the contents of the filing.

An applicant submitting a self-certification of QF status should expect to receive no documents from the Commission, other than the electronic acknowledgement of receipt described above. Consistent with its name, a self-certification is a certification by the applicant itself that the facility meets the relevant requirements for QF status, and does not involve a determination by the Commission as to the status of the facility. An acknowledgement of receipt of a self-certification, in particular, does not represent a determination by the Commission with regard to the QF status of the facility. An applicant self-certifying may, however, receive a rejection, revocation or deficiency letter if its application is found, during periodic compliance reviews, not to comply with the relevant requirements.

An applicant submitting a request for Commission certification will receive an order either granting or denying certification of QF status, or a letter requesting additional information or rejecting the application. Pursuant to 18 C.F.R. § 292.207(b)(3), the Commission must act on an application for Commission certification within 90 days of the later of the filing date of the application or the filing date of a supplement, amendment or other change to the application.

Waiver Requests

18 C.F.R. § 292.204(a)(3) allows an applicant to request a waiver to modify the method of calculation pursuant to 18 C.F.R. § 292.204(a)(2) to determine if two facilities are considered to be located at the same site, for good cause. 18 C.F.R. § 292.205(c) allows an applicant to request waiver of the requirements of 18 C.F.R. §§ 292.205(a) and (b) for operating and efficiency upon a showing that the facility will produce significant energy savings. A request for waiver of these requirements must be submitted as a petition for declaratory order, with the appropriate filing fee for a petition for declaratory order. Applicants requesting Commission recertification as part of a request for waiver of one of these requirements should electronically submit their completed Form 556 along with their petition for declaratory order, rather than filing their Form 556 as a separate request for Commission recertification. Only the filing fee for the petition for declaratory order must be paid to cover both the waiver request and the request for recertification if such requests are made simultaneously.

18 C.F.R. § 292.203(d)(2) allows an applicant to request a waiver of the Form 556 filing requirements, for good cause. Applicants filing a petition for declaratory order requesting a waiver under 18 C.F.R. § 292.203(d)(2) do not need to complete or submit a Form 556 with their petition.

Geographic Coordinates

If a street address does not exist for your facility, then line 3c of the Form 556 requires you to report your facility's geographic coordinates (latitude and longitude). Geographic coordinates may be obtained from several different sources. You can find links to online services that show latitude and longitude coordinates on online maps by visiting the Commission's QF webpage at www.ferc.gov/QF and clicking the Geographic Coordinates link. You may also be able to obtain your geographic coordinates from a GPS device, Google Earth (available free at http://earth.google.com), a property survey, various engineering or construction drawings, a property deed, or a municipal or county map showing property lines.

Filing Privileged Data or Critical Energy Infrastructure Information in a Form 556

The Commission's regulations provide procedures for applicants to either (1) request that any information submitted with a Form 556 be given privileged treatment because the information is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. § 552, and should be withheld from public disclosure; or (2) identify any documents containing critical energy infrastructure information (CEII) as defined in 18 C.F.R. § 388.113 that should not be made public.

If you are seeking privileged treatment or CEII status for any data in your Form 556, then you must follow the procedures in 18 C.F.R. § 388.112. See www.ferc.gov/help/filing-guide/file-ceii.asp for more information.

Among other things (see 18 C.F.R. § 388.112 for other requirements), applicants seeking privileged treatment or CEII status for data submitted in a Form 556 must prepare and file both (1) a complete version of the Form 556 (containing the privileged and/or CEII data), and (2) a public version of the Form 556 (with the privileged and/or CEII data redacted). Applicants preparing and filing these different versions of their Form 556 must indicate below the security designation of this version of their document. If you are not seeking privileged treatment or CEII status for any of your Form 556 data, then you should not respond to any of the items on this page.

☐	**Non-Public:** Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines indicated below. This non-public version of the applicant's Form 556 contains all data, including the data that is redacted in the (separate) public version of the applicant's Form 556.
☐	**Public (redacted):** Applicant is seeking privileged treatment and/or CEII status for data contained in the Form 556 lines indicated below. This public version of the applicants's Form 556 contains all data except for data from the lines indicated below, which has been redacted.
Privileged: Indicate below which lines of your form contain data for which you are seeking privileged treatment	
Critical Energy Infrastructure Information (CEII): Indicate below which lines of your form contain data for which you are seeking CEII status	

The eFiling process described on page 2 will allow you to identify which versions of the electronic documents you submit are public, privileged and/or CEII. The filenames for such documents should begin with "Public", "Priv", or "CEII", as applicable, to clearly indicate the security designation of the file. Both versions of the Form 556 should be unaltered PDF copies of the Form 556, as available for download from www.ferc.gov/QF. To redact data from the public copy of the submittal, simply omit the relevant data from the Form. For numerical fields, leave the redacted fields blank. For text fields, complete as much of the field as possible, and replace the redacted portions of the field with the word "REDACTED" in brackets. Be sure to identify above all fields which contain data for which you are seeking non-public status.

The Commission is not responsible for detecting or correcting filer errors, including those errors related to security designation. If your documents contain sensitive information, make sure they are filed using the proper security designation.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC

OMB Control # [ ]

Form 556 Certification of Qualifying Facility (QF) Status for a Small Power Production or Cogeneration Facility

Application Information

1a Full name of applicant (legal entity on whose behalf qualifying facility status is sought for this facility)

1b Applicant street address

1c City | **1d** State/province

1e Postal code | **1f** Country (if not United States) | **1g** Telephone number

1h Has the instant facility ever previously been certified as a QF? Yes ☐ No ☐

1i If yes, provide the docket number of the last known QF filing pertaining to this facility: QF ____ - ____ - ____

1j Under which certification process is the applicant making this filing?

☐ Notice of self-certification (see note below)

☐ Application for Commission certification (requires filing fee; see "Filing Fee" section on page 3)

Note: a notice of self-certification is a notice by the applicant itself that its facility complies with the requirements for QF status. A notice of self-certification does not establish a proceeding, and the Commission does not review a notice of self-certification to verify compliance. See the "What to Expect From the Commission After You File" section on page 3 for more information.

1k What type(s) of QF status is the applicant seeking for its facility? (check all that apply)

☐ Qualifying small power production facility status ☐ Qualifying cogeneration facility status

1l What is the purpose and expected effective date(s) of this filing?

☐ Original certification; facility expected to be installed by ____ and to begin operation on ____

☐ Change(s) to a previously certified facility to be effective on ____
(identify type(s) of change(s) below, and describe change(s) in the Miscellaneous section starting on page 19)

- ☐ Name change and/or other administrative change(s)
- ☐ Change in ownership
- ☐ Change(s) affecting plant equipment, fuel use, power production capacity and/or cogeneration thermal output

☐ Supplement or correction to a previous filing submitted on ____
(describe the supplement or correction in the Miscellaneous section starting on page 19)

1m If any of the following three statements is true, check the box(es) that describe your situation and complete the form to the extent possible, explaining any special circumstances in the Miscellaneous section starting on page 19.

☐ The instant facility complies with the Commission's QF requirements by virtue of a waiver of certain regulations previously granted by the Commission in an order dated ____ (specify any other relevant waiver orders in the Miscellaneous section starting on page 19)

☐ The instant facility would comply with the Commission's QF requirements if a petition for waiver submitted concurrently with this application is granted

☐ The instant facility complies with the Commission's regulations, but has special circumstances, such as the employment of unique or innovative technologies not contemplated by the structure of this form, that make the demonstration of compliance via this form difficult or impossible (describe in Misc. section starting on p. 19)

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Contact Information

2a Name of contact person

2b Telephone number

2c Which of the following describes the contact person's relationship to the applicant? (check one)

☐ Applicant (self) ☐ Employee, owner or partner of applicant authorized to represent the applicant

☐ Employee of a company affiliated with the applicant authorized to represent the applicant on this matter

☐ Lawyer, consultant, or other representative authorized to represent the applicant on this matter

2d Company or organization name (if applicant is an individual, check here and skip to line 2e) ☐

2e Street address (if same as Applicant, check here and skip to line 3a) ☐

2f City

2g State/province

2h Postal code

2i Country (if not United States)

Facility Identification and Location

3a Facility name

3b Street address (if a street address does not exist for the facility, check here and skip to line 3c) ☐

3c Geographic coordinates: If you indicated that no street address exists for your facility by checking the box in line 3b, then you must specify the latitude and longitude coordinates of the facility in degrees (to three decimal places). Use the following formula to convert to decimal degrees from degrees, minutes and seconds: decimal degrees = degrees + (minutes/60) + (seconds/3600). See the "Geographic Coordinates" section on page 4 for help. If you provided a street address for your facility in line 3b, then specifying the geographic coordinates below is optional.

Longitude ☐ East (+) ☐ West (-) _____ degrees Latitude ☐ North (+) ☐ South (-) _____ degrees

3d City (if unincorporated, check here and enter nearest city) ☐

3e State/province

3f County (or check here for independent city) ☐

3g Country (if not United States)

Transacting Utilities

Identify the electric utilities that are contemplated to transact with the facility.

4a Identify utility interconnecting with the facility

4b Identify utilities providing wheeling service or check here if none ☐

4c Identify utilities purchasing the useful electric power output or check here if none ☐

4d Identify utilities providing supplementary power, backup power, maintenance power, and/or interruptible power service or check here if none ☐

Ownership and Operation

5a Direct ownership as of effective date or operation date: Identify all direct owners of the facility holding at least 10 percent equity interest. For each identified owner, also (1) indicate whether that owner is an electric utility, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or a holding company, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)), and (2) for owners which are electric utilities or holding companies, provide the percentage of equity interest in the facility held by that owner. If no direct owners hold at least 10 percent equity interest in the facility, then provide the required information for the two direct owners with the largest equity interest in the facility.

	Full legal names of direct owners	Electric utility or holding company	If Yes, % equity interest
1)		Yes ☐ No ☐	%
2)		Yes ☐ No ☐	%
3)		Yes ☐ No ☐	%
4)		Yes ☐ No ☐	%
5)		Yes ☐ No ☐	%
6)		Yes ☐ No ☐	%
7)		Yes ☐ No ☐	%
8)		Yes ☐ No ☐	%
9)		Yes ☐ No ☐	%
10)		Yes ☐ No ☐	%

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5b Upstream (i.e., indirect) ownership as of effective date or operation date: Identify all upstream (i.e., indirect) owners of the facility that both (1) hold at least 10 percent equity interest in the facility, and (2) are electric utilities, as defined in section 3(22) of the Federal Power Act (16 U.S.C. 796(22)), or holding companies, as defined in section 1262(8) of the Public Utility Holding Company Act of 2005 (42 U.S.C. 16451(8)). Also provide the percentage of equity interest in the facility held by such owners. (Note that, because upstream owners may be subsidiaries of one another, total percent equity interest reported may exceed 100 percent.)

Check here if no such upstream owners exist. ☐

	Full legal names of electric utility or holding company upstream owners	% equity interest
1)		%
2)		%
3)		%
4)		%
5)		%
6)		%
7)		%
8)		%
9)		%
10)		%

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

5c Identify the facility operator

FERC Form 556 Page 8 - All Facilities

Energy Input

6a Describe the primary energy input: (check one main category and, if applicable, one subcategory)

- ☐ Biomass (specify)
  - ☐ Landfill gas
  - ☐ Manure digester gas
  - ☐ Municipal solid waste
  - ☐ Sewage digester gas
  - ☐ Wood
  - ☐ Other biomass (describe on page 19)
- ☐ Waste (specify type below in line 6b)
- ☐ Renewable resources (specify)
  - ☐ Hydro power - river
  - ☐ Hydro power - tidal
  - ☐ Hydro power - wave
  - ☐ Solar - photovoltaic
  - ☐ Solar - thermal
  - ☐ Wind
  - ☐ Other renewable resource (describe on page 19)
- ☐ Geothermal
- ☐ Fossil fuel (specify)
  - ☐ Coal (not waste)
  - ☐ Fuel oil/diesel
  - ☐ Natural gas (not waste)
  - ☐ Other fossil fuel (describe on page 19)
- ☐ Other (describe on page 19)

6b If you specified "waste" as the primary energy input in line 6a, indicate the type of waste fuel used: (check one)

☐ Waste fuel listed in 18 C.F.R. § 292.202(b) (specify one of the following)

- ☐ Anthracite culm produced prior to July 23, 1985
- ☐ Anthracite refuse that has an average heat content of 6,000 Btu or less per pound and has an average ash content of 45 percent or more
- ☐ Bituminous coal refuse that has an average heat content of 9,500 Btu per pound or less and has an average ash content of 25 percent or more
- ☐ Top or bottom subbituminous coal produced on Federal lands or on Indian lands that has been determined to be waste by the United States Department of the Interior's Bureau of Land Management (BLM) or that is located on non-Federal or non-Indian lands outside of BLM's jurisdiction, provided that the applicant shows that the latter coal is an extension of that determined by BLM to be waste
- ☐ Coal refuse produced on Federal lands or on Indian lands that has been determined to be waste by the BLM or that is located on non- Federal or non-Indian lands outside of BLM's jurisdiction, provided that applicant shows that the latter is an extension of that determined by BLM to be waste
- ☐ Lignite produced in association with the production of montan wax and lignite that becomes exposed as a result of such a mining operation
- ☐ Gaseous fuels (except natural gas and synthetic gas from coal) (describe on page 19)
- ☐ Waste natural gas from gas or oil wells (describe on page 19 how the gas meets the requirements of 18 C.F.R. § 2.400 for waste natural gas; include with your filing any materials necessary to demonstrate compliance with 18 C.F.R. § 2.400)
- ☐ Materials that a government agency has certified for disposal by combustion (describe on page 19)
- ☐ Heat from exothermic reactions (describe on page 19) ☐ Residual heat (describe on page 19)
- ☐ Used rubber tires ☐ Plastic materials ☐ Refinery off-gas ☐ Petroleum coke

☐ Other waste energy input that has little or no commercial value and exists in the absence of the qualifying facility industry (describe in the Miscellaneous section starting on page 19; include a discussion of the fuel's lack of commercial value and existence in the absence of the qualifying facility industry)

6c Provide the average energy input, calculated on a calendar year basis, in terms of Btu/h for the following fossil fuel energy inputs, and provide the related percentage of the total average annual energy input to the facility (18 C.F.R. § 292.202(j)). For any oil or natural gas fuel, use lower heating value (18 C.F.R. § 292.202(m)).

Fuel	Annual average energy input for specified fuel	Percentage of total annual energy input
Natural gas	Btu/h	%
Oil-based fuels	Btu/h	%
Coal	Btu/h	%

Technical Facility Information

Indicate the maximum gross and maximum net electric power production capacity of the facility at the point(s) of delivery by completing the worksheet below. Respond to all items. If any of the parasitic loads and/or losses identified in lines 7b through 7e are negligible, enter zero for those lines.

7a The maximum gross power production capacity at the terminals of the individual generator(s) under the most favorable anticipated design conditions	kW
7b Parasitic station power used at the facility to run equipment which is necessary and integral to the power production process (boiler feed pumps, fans/blowers, office or maintenance buildings directly related to the operation of the power generating facility, etc.). If this facility includes non-power production processes (for instance, power consumed by a cogeneration facility's thermal host), do not include any power consumed by the non-power production activities in your reported parasitic station power.	kW
7c Electrical losses in interconnection transformers	kW
7d Electrical losses in AC/DC conversion equipment, if any	kW
7e Other interconnection losses in power lines or facilities (other than transformers and AC/DC conversion equipment) between the terminals of the generator(s) and the point of interconnection with the utility	kW
7f Total deductions from gross power production capacity = 7b + 7c + 7d + 7e	0 kW
7g Maximum net power production capacity = 7a - 7f	0 kW

7h Description of facility and primary components: Describe the facility and its operation. Identify all boilers, heat recovery steam generators, prime movers (any mechanical equipment driving an electric generator), electrical generators, photovoltaic solar equipment, fuel cell equipment and/or other primary power generation equipment used in the facility. Descriptions of components should include (as applicable) specifications of the nominal capacities for mechanical output, electrical output, or steam generation of the identified equipment. For each piece of equipment identified, clearly indicate how many pieces of that type of equipment are included in the plant, and which components are normally operating or normally in standby mode. Provide a description of how the components operate as a system. Applicants for cogeneration facilities do not need to describe operations of systems that are clearly depicted on and easily understandable from a cogeneration facility's attached mass and heat balance diagram; however, such applicants should provide any necessary description needed to understand the sequential operation of the facility depicted in their mass and heat balance diagram. If additional space is needed, continue in the Miscellaneous section starting on page 19.

Information Required for Small Power Production Facility

If you indicated in line 1k that you are seeking qualifying small power production facility status for your facility, then you must respond to the items on this page. Otherwise, skip page 10.

Certification of Compliance with Size Limitations

Pursuant to 18 C.F.R. § 292.204(a), the power production capacity of any small power production facility, together with the power production capacity of any other small power production facilities that use the same energy resource, are owned by the same person(s) or its affiliates, and are located at the same site, may not exceed 80 megawatts. To demonstrate compliance with this size limitation, or to demonstrate that your facility is exempt from this size limitation under the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Pub. L. 101-575, 104 Stat. 2834 (1990) *as amended by* Pub. L. 102-46, 105 Stat. 249 (1991)), respond to lines 8a through 8e below (as applicable).

8a Identify any facilities with electrical generating equipment located within 1 mile of the electrical generating equipment of the instant facility, and for which any of the entities identified in lines 5a or 5b, or their affiliates, holds at least a 5 percent equity interest.

Check here if no such facilities exist. ☐

	Facility location (city or county, state)	Root docket # (if any)	Common owner(s)	Maximum net power production capacity
1)		QF -		kW
2)		QF -		kW
3)		QF -		kW

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

8b The Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990 (Incentives Act) provides exemption from the size limitations in 18 C.F.R. § 292.204(a) for certain facilities that were certified prior to 1995. Are you seeking exemption from the size limitations in 18 C.F.R. § 292.204(a) by virtue of the Incentives Act?

☐ Yes (continue at line 8c below) ☐ No (skip lines 8c through 8e)

8c Was the original notice of self-certification or application for Commission certification of the facility filed on or before December 31, 1994? Yes ☐ No ☐

8d Did construction of the facility commence on or before December 31, 1999? Yes ☐ No ☐

8e If you answered No in line 8d, indicate whether reasonable diligence was exercised toward the completion of the facility, taking into account all factors relevant to construction? Yes ☐ No ☐ If you answered Yes, provide a brief narrative explanation in the Miscellaneous section starting on page 19 of the construction timeline (in particular, describe why construction started so long after the facility was certified) and the diligence exercised toward completion of the facility.

Certification of Compliance with Fuel Use Requirements

Pursuant to 18 C.F.R. § 292.204(b), qualifying small power production facilities may use fossil fuels, in minimal amounts, for only the following purposes: ignition; start-up; testing; flame stabilization; control use; alleviation or prevention of unanticipated equipment outages; and alleviation or prevention of emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages. The amount of fossil fuels used for these purposes may not exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.

9a Certification of compliance with 18 C.F.R. § 292.204(b) with respect to uses of fossil fuel:

☐ Applicant certifies that the facility will use fossil fuels exclusively for the purposes listed above.

9b Certification of compliance with 18 C.F.R. § 292.204(b) with respect to amount of fossil fuel used annually:

☐ Applicant certifies that the amount of fossil fuel used at the facility will not, in aggregate, exceed 25 percent of the total energy input of the facility during the 12-month period beginning with the date the facility first produces electric energy or any calendar year thereafter.

Information Required for Cogeneration Facility

If you indicated in line 1k that you are seeking qualifying cogeneration facility status for your facility, then you must respond to the items on pages 11 through 13. Otherwise, skip pages 11 through 13.

General Cogeneration Information

Pursuant to 18 C.F.R. § 292.202(c), a cogeneration facility produces electric energy and forms of useful thermal energy (such as heat or steam) used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy. Pursuant to 18 C.F.R. § 292.202(s), "sequential use" of energy means the following: (1) for a topping-cycle cogeneration facility, the use of reject heat from a power production process in sufficient amounts in a thermal application or process to conform to the requirements of the operating standard contained in 18 C.F.R. § 292.205(a); or (2) for a bottoming-cycle cogeneration facility, the use of at least some reject heat from a thermal application or process for power production.

10a What type(s) of cogeneration technology does the facility represent? (check all that apply)

☐ Topping-cycle cogeneration ☐ Bottoming-cycle cogeneration

10b To help demonstrate the sequential operation of the cogeneration process, and to support compliance with other requirements such as the operating and efficiency standards, include with your filing a mass and heat balance diagram depicting average annual operating conditions. This diagram must include certain items and meet certain requirements, as described below. You must check next to the description of each requirement below to certify that you have complied with these requirements.

Check to certify compliance with indicated requirement	Requirement
☐	Diagram must show orientation within system piping and/or ducts of all prime movers, heat recovery steam generators, boilers, electric generators, and condensers (as applicable), as well as any other primary equipment relevant to the cogeneration process.
☐	Any average annual values required to be reported in lines 10b, 12a, 13a, 13b, 13d, 13f, 14a, 15b, 15d and/or 15f must be computed over the anticipated hours of operation.
☐	Diagram must specify all fuel inputs by fuel type and average annual rate in Btu/h. Fuel for supplementary firing should be specified separately and clearly labeled. All specifications of fuel inputs should use lower heating values.
☐	Diagram must specify average gross electric output in kW or MW for each generator.
☐	Diagram must specify average mechanical output (that is, any mechanical energy taken off of the shaft of the prime movers for purposes not directly related to electric power generation) in horsepower, if any. Typically, a cogeneration facility has no mechanical output.
☐	At each point for which working fluid flow conditions are required to be specified (see below), such flow condition data must include mass flow rate (in lb/h or kg/s), temperature (in °F, R, °C or K), absolute pressure (in psia or kPa) and enthalpy (in Btu/lb or kJ/kg). Exception: For systems where the working fluid is liquid only (no vapor at any point in the cycle) and where the type of liquid and specific heat of that liquid are clearly indicated on the diagram or in the Miscellaneous section starting on page 19, only mass flow rate and temperature (not pressure and enthalpy) need be specified. For reference, specific heat at standard conditions for pure liquid water is approximately 1.002 Btu/(lb*R) or 4.195 kJ/(kg*K).
☐	Diagram must specify working fluid flow conditions at input to and output from each steam turbine or other expansion turbine or back-pressure turbine.
☐	Diagram must specify working fluid flow conditions at delivery to and return from each thermal application.
☐	Diagram must specify working fluid flow conditions at make-up water inputs.

EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities

EPAct 2005 cogeneration facilities: The Energy Policy Act of 2005 (EPAct 2005) established a new section 210(n) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 824a-3(n), with additional requirements for any qualifying cogeneration facility that (1) is seeking to sell electric energy pursuant to section 210 of PURPA and (2) was either not a cogeneration facility on August 8, 2005, or had not filed a self-certification or application for Commission certification of QF status on or before February 1, 2006. These requirements were implemented by the Commission in 18 C.F.R. § 292.205(d). Complete the lines below, carefully following the instructions, to demonstrate whether these additional requirements apply to your cogeneration facility and, if so, whether your facility complies with such requirements.

11a Was your facility operating as a qualifying cogeneration facility on or before August 8, 2005? Yes ☐ No ☐

11b Was the initial filing seeking certification of your facility (whether a notice of self-certification or an application for Commission certification) filed on or before February 1, 2006? Yes ☐ No ☐

If the answer to either line 11a or 11b is Yes, then continue at line 11c below. Otherwise, if the answers to both lines 11a and 11b are No, skip to line 11e below.

11c With respect to the design and operation of the facility, have any changes been implemented on or after February 2, 2006 that affect general plant operation, affect use of thermal output, and/or increase net power production capacity from the plant's capacity on February 1, 2006?

☐ Yes (continue at line 11d below)

☐ No. Your facility is not subject to the requirements of 18 C.F.R. § 292.205(d) at this time. However, it may be subject to to these requirements in the future if changes are made to the facility. At such time, the applicant would need to recertify the facility to determine eligibility. Skip lines 11d through 11j.

11d Does the applicant contend that the changes identified in line 11c are not so significant as to make the facility a "new" cogeneration facility that would be subject to the 18 C.F.R. § 292.205(d) cogeneration requirements?

☐ Yes. Provide in the Miscellaneous section starting on page 19 a description of any relevant changes made to the facility (including the purpose of the changes) and a discussion of why the facility should not be considered a "new" cogeneration facility in light of these changes. Skip lines 11e through 11j.

☐ No. Applicant stipulates to the fact that it is a "new" cogeneration facility (for purposes of determining the applicability of the requirements of 18 C.F.R. § 292.205(d)) by virtue of modifications to the facility that were initiated on or after February 2, 2006. Continue below at line 11e.

11e Will electric energy from the facility be sold pursuant to section 210 of PURPA?

☐ Yes. The facility is an EPAct 2005 cogeneration facility. You must demonstrate compliance with 18 C.F.R. § 292.205(d)(2) by continuing at line 11f below.

☐ No. Applicant certifies that energy will <u>not</u> be sold pursuant to section 210 of PURPA. Applicant also certifies its understanding that it must recertify its facility in order to determine compliance with the requirements of 18 C.F.R. § 292.205(d) <u>before</u> selling energy pursuant to section 210 of PURPA in the future. Skip lines 11f through 11j.

11f Is the net power production capacity of your cogeneration facility, as indicated in line 7g above, less than or equal to 5,000 kW?

☐ Yes, the net power production capacity is less than or equal to 5,000 kW. 18 C.F.R. § 292.205(d)(4) provides a rebuttable presumption that cogeneration facilities of 5,000 kW and smaller capacity comply with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2). Applicant certifies its understanding that, should the power production capacity of the facility increase above 5,000 kW, then the facility must be recertified to (among other things) demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Skip lines 11g through 11j.

☐ No, the net power production capacity is greater than 5,000 kW. Demonstrate compliance with the requirements for fundamental use of the facility's energy output in 18 C.F.R. § 292.205(d)(2) by continuing on the next page at line 11g.

EPAct 2005 Requirements for Fundamental Use of Energy Output from Cogeneration Facilities (continued)

Lines 11g through 11k below guide the applicant through the process of demonstrating compliance with the requirements for "fundamental use" of the facility's energy output. 18 C.F.R. § 292.205(d)(2). Only respond to the lines on this page if the instructions on the previous page direct you to do so. Otherwise, skip this page.

18 C.F.R. § 292.205(d)(2) requires that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility. If you were directed on the previous page to respond to the items on this page, then your facility is an EPAct 2005 cogeneration facility that is subject to this "fundamental use" requirement.

The Commission's regulations provide a two-pronged approach to demonstrating compliance with the requirements for fundamental use of the facility's energy output. First, the Commission has established in 18 C.F.R. § 292.205(d)(3) a "fundamental use test" that can be used to demonstrate compliance with 18 C.F.R. § 292.205(d)(2). Under the fundamental use test, a facility is considered to comply with 18 C.F.R. § 292.205(d)(2) if at least 50 percent of the facility's total annual energy output (including electrical, thermal, chemical and mechanical energy output) is used for industrial, commercial, residential or institutional purposes.

Second, an applicant for a facility that does not pass the fundamental use test may provide a narrative explanation of and support for its contention that the facility nonetheless meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a qualifying facility to its host facility.

Complete lines 11g through 11j below to determine compliance with the fundamental use test in 18 C.F.R. § 292.205 (d)(3). Complete lines 11g through 11j even if you do not intend to rely upon the fundamental use test to demonstrate compliance with 18 C.F.R. § 292.205(d)(2).

11g Amount of electrical, thermal, chemical and mechanical energy output (net of internal generation plant losses and parasitic loads) expected to be used annually for industrial, commercial, residential or institutional purposes and not sold to an electric utility	MWh
11h Total amount of electrical, thermal, chemical and mechanical energy expected to be sold to an electric utility	MWh
11i Percentage of total annual energy output expected to be used for industrial, commercial, residential or institutional purposes and not sold to a utility = 100 * 11g /(11g + 11h)	0 %

11j Is the response in line 11i greater than or equal to 50 percent?

☐ Yes. Your facility complies with 18 C.F.R. § 292.205(d)(2) by virtue of passing the fundamental use test provided in 18 C.F.R. § 292.205(d)(3). Applicant certifies its understanding that, if it is to rely upon passing the fundamental use test as a basis for complying with 18 C.F.R. § 292.205(d)(2), then the facility must comply with the fundamental use test both in the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years.

☐ No. Your facility does not pass the fundamental use test. Instead, you must provide in the Miscellaneous section starting on page 19 a narrative explanation of and support for why your facility meets the requirement that the electrical, thermal, chemical and mechanical output of an EPAct 2005 cogeneration facility is used fundamentally for industrial, commercial, residential or institutional purposes and is not intended fundamentally for sale to an electric utility, taking into account technological, efficiency, economic, and variable thermal energy requirements, as well as state laws applicable to sales of electric energy from a QF to its host facility. Applicants providing a narrative explanation of why their facility should be found to comply with 18 C.F.R. § 292.205(d)(2) in spite of non-compliance with the fundamental use test may want to review paragraphs 47 through 61 of Order No. 671 (accessible from the Commission's QF website at www.ferc.gov/QF), which provide discussion of the facts and circumstances that may support their explanation. Applicant should also note that the percentage reported above will establish the standard that that facility must comply with, both for the 12-month period beginning with the date the facility first produces electric energy, and in all subsequent calendar years. *See* Order No. 671 at paragraph 51. As such, the applicant should make sure that it reports appropriate values on lines 11g and 11h above to serve as the relevant annual standard, taking into account expected variations in production conditions.

Information Required for Topping-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents topping-cycle cogeneration technology, then you must respond to the items on pages 14 and 15. Otherwise, skip pages 14 and 15.

Usefulness of Topping-Cycle Thermal Output

The thermal energy output of a topping-cycle cogeneration facility is the net energy made available to an industrial or commercial process or used in a heating or cooling application. Pursuant to sections 292.202(c), (d) and (h) of the Commission's regulations (18 C.F.R. §§ 292.202(c), (d) and (h)), the thermal energy output of a qualifying topping-cycle cogeneration facility must be useful. In connection with this requirement, describe the thermal output of the topping-cycle cogeneration facility by responding to lines 12a and 12b below.

12a Identify and describe each thermal host, and specify the annual average rate of thermal output made available to each host for each use. For hosts with multiple uses of thermal output, provide the data for each use in separate rows.

	Name of entity (thermal host) taking thermal output	Thermal host's relationship to facility; Thermal host's use of thermal output	Average annual rate of thermal output attributable to use (net of heat contained in process return or make-up water)
1)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
2)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
3)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
4)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
5)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h
6)		Select thermal host's relationship to facility Select thermal host's use of thermal output	Btu/h

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

12b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each use of the thermal output identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's use of thermal output is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific use of thermal output related to the instant facility, then you need only provide a brief description of that use and a reference by date and docket number to the order certifying your facility with the indicated use. Such exemption may not be used if any change creates a material deviation from the previously authorized use.) If additional space is needed, continue in the Miscellaneous section starting on page 19.

Topping-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing topping-cycle technology must demonstrate compliance with the topping-cycle operating standard and, if applicable, efficiency standard. Section 292.205(a)(1) of the Commission's regulations (18 C.F.R. § 292.205(a)(1)) establishes the operating standard for topping-cycle cogeneration facilities: the useful thermal energy output must be no less than 5 percent of the total energy output. Section 292.205(a)(2) (18 C.F.R. § 292.205(a)(2)) establishes the efficiency standard for topping-cycle cogeneration facilities for which installation commenced on or after March 13, 1980: the useful power output of the facility plus one-half the useful thermal energy output must (A) be no less than 42.5 percent of the total energy input of natural gas and oil to the facility; and (B) if the useful thermal energy output is less than 15 percent of the total energy output of the facility, be no less than 45 percent of the total energy input of natural gas and oil to the facility. To demonstrate compliance with the topping-cycle operating and/or efficiency standards, or to demonstrate that your facility is exempt from the efficiency standard based on the date that installation commenced, respond to lines 13a through 13l below.

If you indicated in line 10a that your facility represents both topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 13a through 13l below considering only the energy inputs and outputs attributable to the topping-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion (topping or bottoming) of the cogeneration system.

13a Indicate the annual average rate of useful thermal energy output made available to the host(s), net of any heat contained in condensate return or make-up water	Btu/h
13b Indicate the annual average rate of net electrical energy output	kW
13c Multiply line 13b by 3,412 to convert from kW to Btu/h	0 Btu/h
13d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
13e Multiply line 13d by 2,544 to convert from hp to Btu/h	0 Btu/h
13f Indicate the annual average rate of energy input from natural gas and oil	Btu/h
13g Topping-cycle operating value = 100 * 13a / (13a + 13c + 13e)	0 %
13h Topping-cycle efficiency value = 100 * (0.5*13a + 13c + 13e) / 13f	0 %

13i Compliance with operating standard: Is the operating value shown in line 13g greater than or equal to 5%?

☐ Yes (complies with operating standard) ☐ No (does not comply with operating standard)

13j Did installation of the facility in its current form commence on or after March 13, 1980?

☐ Yes. Your facility is subject to the efficiency requirements of 18 C.F.R. § 292.205(a)(2). Demonstrate compliance with the efficiency requirement by responding to line 13k or 13l, as applicable, below.

☐ No. Your facility is exempt from the efficiency standard. Skip lines 13k and 13l.

13k Compliance with efficiency standard (for low operating value): If the operating value shown in line 13g is less than 15%, then indicate below whether the efficiency value shown in line 13h greater than or equal to 45%:

☐ Yes (complies with efficiency standard) ☐ No (does not comply with efficiency standard)

13l Compliance with efficiency standard (for high operating value): If the operating value shown in line 13g is greater than or equal to 15%, then indicate below whether the efficiency value shown in line 13h is greater than or equal to 42.5%:

☐ Yes (complies with efficiency standard) ☐ No (does not comply with efficiency standard)

Information Required for Bottoming-Cycle Cogeneration Facility

If you indicated in line 10a that your facility represents bottoming-cycle cogeneration technology, then you must respond to the items on pages 16 and 17. Otherwise, skip pages 16 and 17.

Usefulness of Bottoming-Cycle Thermal Output

The thermal energy output of a bottoming-cycle cogeneration facility is the energy related to the process(es) from which at least some of the reject heat is then used for power production. Pursuant to sections 292.202(c) and (e) of the Commission's regulations (18 C.F.R. § 292.202(c) and (e)), the thermal energy output of a qualifying bottoming-cycle cogeneration facility must be useful. In connection with this requirement, describe the process(es) from which at least some of the reject heat is used for power production by responding to lines 14a and 14b below.

14a Identify and describe each thermal host and each bottoming-cycle cogeneration process engaged in by each host. For hosts with multiple bottoming-cycle cogeneration processes, provide the data for each process in separate rows.

	Name of entity (thermal host) performing the process from which at least some of the reject heat is used for power production	Thermal host's relationship to facility; Thermal host's process type	Has the energy input to the thermal host been augmented for purposes of increasing power production capacity? (if yes, describe on p. 19)
1)		Select thermal host's relationship to facility Select thermal host's process type	Yes ☐ No ☐
2)		Select thermal host's relationship to facility Select thermal host's process type	Yes ☐ No ☐
3)		Select thermal host's relationship to facility Select thermal host's process type	Yes ☐ No ☐

☐ Check here and continue in the Miscellaneous section starting on page 19 if additional space is needed

14b Demonstration of usefulness of thermal output: At a minimum, provide a brief description of each process identified above. In some cases, this brief description is sufficient to demonstrate usefulness. However, if your facility's process is not common, and/or if the usefulness of such thermal output is not reasonably clear, then you must provide additional details as necessary to demonstrate usefulness. Your application may be rejected and/or additional information may be required if an insufficient showing of usefulness is made. (Exception: If you have previously received a Commission certification approving a specific bottoming-cycle process related to the instant facility, then you need only provide a brief description of that process and a reference by date and docket number to the order certifying your facility with the indicated process. Such exemption may not be used if any material changes to the process have been made.) If additional space is needed, continue in the Miscellaneous section starting on page 19.

Bottoming-Cycle Operating and Efficiency Value Calculation

Applicants for facilities representing bottoming-cycle technology and for which installation commenced on or after March 13, 1990 must demonstrate compliance with the bottoming-cycle efficiency standards. Section 292.205(b) of the Commission's regulations (18 C.F.R. § 292.205(b)) establishes the efficiency standard for bottoming-cycle cogeneration facilities: the useful power output of the facility must be no less than 45 percent of the energy input of natural gas and oil for supplementary firing. To demonstrate compliance with the bottoming-cycle efficiency standard (if applicable), or to demonstrate that your facility is exempt from this standard based on the date that installation of the facility began, respond to lines 15a through 15h below.

If you indicated in line 10a that your facility represents both topping-cycle and bottoming-cycle cogeneration technology, then respond to lines 15a through 15h below considering only the energy inputs and outputs attributable to the bottoming-cycle portion of your facility. Your mass and heat balance diagram must make clear which mass and energy flow values and system components are for which portion of the cogeneration system (topping or bottoming).

15a Did installation of the facility in its current form commence on or after March 13, 1980?

☐ Yes. Your facility is subject to the efficiency requirement of 18 C.F.R. § 292.205(b). Demonstrate compliance with the efficiency requirement by responding to lines 15b through 15h below.

☐ No. Your facility is exempt from the efficiency standard. Skip the rest of page 17.

15b Indicate the annual average rate of net electrical energy output	kW
15c Multiply line 15b by 3,412 to convert from kW to Btu/h	0 Btu/h
15d Indicate the annual average rate of mechanical energy output taken directly off of the shaft of a prime mover for purposes not directly related to power production (this value is usually zero)	hp
15e Multiply line 15d by 2,544 to convert from hp to Btu/h	0 Btu/h
15f Indicate the annual average rate of supplementary energy input from natural gas or oil	Btu/h
15g Bottoming-cycle efficiency value = 100 * (15c + 15e) / 15f	0 %

15h Compliance with efficiency standard: Indicate below whether the efficiency value shown in line 15g is greater than or equal to 45%:

☐ Yes (complies with efficiency standard) ☐ No (does not comply with efficiency standard)

Certificate of Completeness, Accuracy and Authority

Applicant must certify compliance with and understanding of filing requirements by checking next to each item below and signing at the bottom of this section. Forms with incomplete Certificates of Completeness, Accuracy and Authority will be rejected by the Secretary of the Commission.

Signer identified below certifies the following: (check all items and applicable subitems)

- ☐ He or she has read the filing, including any information contained in any attached documents, such as cogeneration mass and heat balance diagrams, and any information contained in the Miscellaneous section starting on page 19, and knows its contents.
- ☐ He or she has provided all of the required information for certification, and the provided information is true as stated, to the best of his or her knowledge and belief.
- ☐ He or she possess full power and authority to sign the filing; as required by Rule 2005(a)(3) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2005(a)(3)), he or she is one of the following: (check one)
  - ☐ The person on whose behalf the filing is made
  - ☐ An officer of the corporation, trust, association, or other organized group on behalf of which the filing is made
  - ☐ An officer, agent, or employe of the governmental authority, agency, or instrumentality on behalf of which the filing is made
  - ☐ A representative qualified to practice before the Commission under Rule 2101 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2101) and who possesses authority to sign
- ☐ He or she has reviewed all automatic calculations and agrees with their results, unless otherwise noted in the Miscellaneous section starting on page 19.
- ☐ He or she has provided a copy of this Form 556 and all attachments to the utilities with which the facility will interconnect and transact (see lines 4a through 4d), as well as to the regulatory authorities of the states in which the facility and those utilities reside. See the Required Notice to Public Utilities and State Regulatory Authorities section on page 3 for more information.

Provide your signature, address and signature date below. Rule 2005(c) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2005(c)) provides that persons filing their documents electronically may use typed characters representing his or her name to sign the filed documents. A person filing this document electronically should sign (by typing his or her name) in the space provided below.

Your Signature	Your address	Date

Audit Notes
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Miscellaneous

Use this space to provide any information for which there was not sufficient space in the previous sections of the form to provide. For each such item of information clearly identify the line number that the information belongs to. You may also use this space to provide any additional information you believe is relevant to the certification of your facility.

Your response below is not limited to one page. Additional page(s) will automatically be inserted into this form if the length of your response exceeds the space on this page. Use as many pages as you require.

[FR Doc. 2010–6769 Filed 3–29–10; 8:45 am]

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Federal Register

Tuesday,
March 30, 2010

Part V

The President

Proclamation 8486—Education and Sharing Day, U.S.A., 2010

Federal Register
Vol. 75, No. 60
Tuesday, March 30, 2010

Presidential Documents

Title 3—

The President

Proclamation 8486 of March 25, 2010

Education and Sharing Day, U.S.A., 2010

By the President of the United States of America

A Proclamation

To secure a bright future for America, we must instill in our children a love of learning as well as a spirit of compassion. These are two of our Nation's most cherished and enduring values. Today, let us rededicate ourselves to preparing our next generation of leaders for the world they will inherit.

For America to thrive in the 21st century, we need a workforce with the knowledge and skills to compete in the global economy. More than ever before, the success of every American will depend on their level of academic achievement. A world class education can unlock every child's full potential, and that remains our best roadmap to prosperity.

However, our leadership in the world relies upon citizens who are not only well-educated, but also driven by their humanity and civic virtue. In the wake of this year's devastating earthquakes in Haiti and Chile, Americans stepped forward to help, carrying on the unmatched tradition of generosity that defines our national character. By passing on this spirit of compassion to our children, we help ensure America remains a beacon of hope to people around the world.

The importance of education and kindness was promoted in the work of Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, inspiring countless individuals to uphold these values in their own lives and communities. Each year, Education and Sharing Day, U.S.A., reminds us of his legacy and the principles to which he dedicated himself. As we strengthen our Nation's ladders of opportunity, let us teach our children to lift up generations yet to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 26, 2010, as "Education and Sharing Day, U.S.A." I call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of March, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

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H.R. 3433/P.L. 111–149
To amend the North American Wetlands Conservation Act to establish requirements regarding payment of the non-Federal share of the costs of wetlands conservation projects in Canada that are funded under that Act, and for other purposes. (Mar. 25, 2010; 124 Stat. 1025)

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