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# Federal Register

4–26–10 Monday
Vol. 75 No. 79 Apr. 26, 2010

Pages 21499–21972

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2010–0430; Directorate Identifier 2010–NM–098–AD; Amendment 39–16270; AD 2010–09–05]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER Series Airplanes

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) that applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. The existing AD currently requires doing a detailed inspection of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms for gaps between the swage ring and the aft attach lug, and between the spacer and the aft attach lug; trying to move or rotate the spacer using hand pressure; and replacing any discrepant elevator tab control mechanism, including performing the detailed inspection on the replacement part before and after installation. For certain airplanes, this new AD adds improved repetitive inspections for discrepancies of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms, and replacement if necessary. For certain other airplanes, this new AD adds a one-time inspection for discrepancies of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms, and replacement if necessary. For airplanes on which the elevator control tab mechanism is replaced with a certain mechanism, this AD requires repetitive inspections for discrepancies of the elevator control tab mechanism and replacement if necessary. Replacing the elevator control tab mechanism with a new, Boeing-built mechanism terminates the repetitive inspections. This AD results from a report of failure of the aft attach lugs on the left elevator tab control mechanism, which resulted in severe elevator vibration; this event occurred on an airplane on which the existing AD had been done. We are issuing this AD to detect and correct a loose bearing in the aft lug of the elevator tab control mechanism, which could result in unwanted elevator and tab vibration. Consequent structural failure of the elevator or horizontal stabilizer could result in loss of structural integrity and aircraft control.

**DATES:** This AD becomes effective April 29, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 29, 2010.

On April 7, 2010 (75 FR 16648, April 2, 2010), the Director of the Federal Register approved the incorporation by reference of a certain other publication listed in the AD.

We must receive any comments on this AD by June 10, 2010.

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

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

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

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6490; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On March 18, 2010, we issued AD 2010–06–51, amendment 39–16250 (75 FR 16648, April 2, 2010). That AD applies to all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. That AD requires doing a detailed inspection of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms for gaps between the swage ring and the aft attach lug, and between the spacer and the aft attach lug; trying to move or rotate the spacer using hand pressure; and replacing any discrepant elevator tab control mechanism, including performing the detailed inspection on the replacement part before and after installation. That AD resulted from a report of failure of the aft attach lugs on the left elevator tab control mechanism, which resulted in severe elevator vibration. The actions specified in that AD are intended to detect and correct a loose bearing in the aft lug of the elevator tab control mechanism, which could result in unwanted elevator and tab vibration. Consequent structural failure of the elevator or horizontal stabilizer could result in loss of structural integrity and aircraft control.

### Actions Since AD Was Issued

Since we issued that AD, we received an additional report of failure of the aft attach lugs on the left elevator tab control mechanism. This event occurred on an airplane that had been inspected

in accordance with AD 2010–06–51. We have determined that an improved inspection is necessary to address the identified unsafe condition. We verified the inspection procedure with an operator prior to approval of Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010.

**Relevant Service Information**

We have reviewed Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010. The service bulletin describes procedures for Model 737–700, –700C, –800, and –900ER series airplanes, line numbers 2508 through 3250 inclusive. The service bulletin specifies a one-time detailed inspection (for all airplanes having line numbers 2708 through 3250 inclusive that are approved for operation under ETOPS), and repetitive detailed inspections (for all airplanes having line numbers 2508 through 2707 inclusive) for discrepancies of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms, and replacing any discrepant mechanisms. The detailed inspection includes the use of a feeler gage and finger pressure and instructs to apply hand pressure during the inspection for gaps and looseness. Discrepancies include the following conditions:

- The spacer moves or rotates.
- Gap exists between the swage ring and the outer face of the aft attach lug such that a 0.005 inch feeler gage can be inserted more than 0.025 inch.
- Gap exists between two nested lugs such that a 0.005 inch feeler gage can be inserted more than 0.050 inch.
- Gap exists between the inner face of the aft attach lug and the spacer such that a 0.005 inch feeler gage can be inserted more than 0.050 inch.

The service bulletin also specifies that for airplanes on which the elevator control tab mechanism is replaced with an elevator control tab mechanism that is not a Boeing-built mechanism, the repetitive detailed inspections described above are necessary.

The service bulletin also specifies that replacing discrepant elevator control tab mechanisms with Boeing-built elevator control tab mechanisms eliminates the need for the repetitive inspections.

**FAA's Determination and Requirements of This AD**

The unsafe condition described previously is likely to exist or develop on other airplanes of these same type designs. For this reason, we are issuing this AD to supersede AD 2010–06–51. This new AD retains the inspection requirements of AD 2010–06–51, and also requires, for certain airplanes, accomplishing the actions specified in Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010, described previously, except as discussed under "Differences Between the AD and Boeing Alert Service Bulletin 737–27A1297." This new AD also requires sending the inspection results to the manufacturer and sending discrepant elevator control tab mechanisms to the manufacturer.

**Differences Between the AD and Boeing Alert Service Bulletin 737–27A1297**

Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010, specifies that replacing discrepant elevator control tab mechanisms with Boeing-built elevator control tab mechanisms eliminates the need for the repetitive inspections. This AD specifies that installing only a new, Boeing-built elevator control tab mechanism terminates the repetitive inspections. We have not received sufficient data to demonstrate that repaired elevator control tab mechanisms were repaired using procedures that will adequately address the identified unsafe condition. We find that only allowing new Boeing elevator control tab mechanisms as terminating action, as specified by this AD, will adequately address the unsafe condition. We have coordinated this issue with Boeing.

While Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010, does not identify Model 737–600 and –900 series airplanes, this AD applies to those airplanes because they are subject to the Parts Installation paragraph of this AD.

**Interim Action**

This AD is considered to be interim action. The inspection reports and the returned discrepant parts that are required by this AD will enable the airframe manufacturer and the FAA to obtain better insight into the nature, cause, and extent of the issue, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we might consider further rulemaking.

**FAA's Justification and Determination of the Effective Date**

A loose bearing in the aft lug of the elevator tab control mechanism could result in unwanted elevator and tab vibration. Consequent structural failure of the elevator or horizontal stabilizer could result in loss of structural integrity and aircraft control. Because of our requirement to promote safe flight of civil aircraft and thus the critical need to ensure the structural integrity of the airplane, and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0430; Directorate Identifier 2010–NM–098–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–16250 (75 FR 16648, April 2, 2010) and by adding the following new airworthiness directive (AD):

**2010–09–05 The Boeing Company:** Amendment 39–16270. Docket No. FAA–2010–0430; Directorate Identifier 2010–NM–098–AD.

**Effective Date**

(a) This AD becomes effective April 29, 2010.

**Affected ADs**

(b) This AD supersedes AD 2010–06–51, Amendment 39–16250.

**Applicability**

(c) This AD applies to all The Boeing Company Model 737–600, −700, −700C, −800, −900, and −900ER series airplanes; certificated in any category.

**Subject**

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

**Unsafe Condition**

(e) This AD results from a report of failure of the aft attach lugs on the left elevator tab control mechanism, which resulted in severe elevator vibration; this event occurred on an airplane on which the existing AD had been done. The Federal Aviation Administration is issuing this AD to detect and correct a loose bearing in the aft lug of the elevator tab control mechanism, which could result in unwanted elevator and tab vibration. Consequent structural failure of the elevator or horizontal stabilizer could result in loss of structural integrity and aircraft control.

**Compliance**

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

**Restatement of Requirements of AD 2010–06–51**

**Inspection and Corrective Action**

(g) For Groups 1, 2, and 3; and Group 4, Configuration 2; as identified in Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010: At the applicable time specified in paragraph 1.E. Compliance of Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010, except as required by paragraph (i) of this AD, do a detailed inspection of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms for gaps between the swage ring and the aft attach lug, and between the spacer and the aft attach lug; and try to move or rotate the spacer using hand pressure; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010. Doing the inspection required by paragraph (m) or (o) of this AD, as applicable, terminates the requirements of this paragraph.

(h) If, during accomplishment of the actions required by paragraph (g) of this AD, any gap is found between the swage ring and the aft attach lug, or between the spacer and the aft attach lug; or if the spacer moves or rotates: Before further flight, do the actions required by paragraphs (h)(1) and (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010.

(1) Inspect the replacement elevator tab control mechanism for discrepancies, as specified in paragraph (g) of this AD; and, if no discrepancy is found, install the replacement elevator tab control mechanism.

(2) Re-inspect the installed elevator tab control mechanism, as required by paragraph (g) of this AD.

**Exception to Service Bulletin Specifications**

(i) Where Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010, specifies a compliance time after the date of the original issue of the service bulletin, this AD requires compliance within the specified compliance time after April 7, 2010 (the effective date of AD 2010–06–51).

**Inspection Done According to Multi Operator Message (MOM)**

(j) An inspection done before April 7, 2010, according to Boeing Multi Operator Message Number MOM–MOM–10–0159–01B, dated March 10, 2010, is considered acceptable for compliance with the corresponding inspection specified in paragraph (g) of this AD.

**Reporting**

(k) At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD: Submit a report of the findings (both positive and negative) of the inspections required by paragraph (g) of this AD to Boeing Commercial Airplanes Group, *Attention:* Manager, Airline Support, e-mail: *rse.boecom@boeing.com.* The report must include the inspection results including a description of any discrepancies found, the airplane line number, and the number of flight cycles and flight hours accumulated on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after April 7, 2010: Submit the report within 10 days after the inspection.

(2) If the inspection was done before April 7, 2010: Submit the report within 10 days after April 7, 2010.

**Parts Installation Specified in AD 2010–06–51**

(l) For all airplanes: As of April 7, 2010, and until the effective date of this AD, no person may install an elevator tab control mechanism, part number 251A2430-( ), on any airplane, unless the mechanism has been inspected before and after installation, in accordance with the requirements of paragraph (g) of this AD, and no discrepancies have been found. As of the effective date of this AD, comply with paragraph (u) of this AD.

**New Requirements of This AD**

**Repetitive Inspections for Group 1 Airplanes, as Identified in Boeing Alert Service Bulletin 737–27A1297, Dated April 16, 2010**

(m) For Group 1 airplanes, as identified in Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010: Except as required by paragraph (n) of this AD, within 12 days after the effective date of this AD, do a detailed inspection for discrepancies of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010. Repeat the inspection thereafter at intervals not to exceed 300 flight hours until the replacement specified in paragraph (r) of this AD is done. Doing the initial inspection required by this paragraph terminates the requirements of paragraph (g) of this AD.

(n) For Group 1 airplanes as identified in Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010: Beginning 7 days after

the effective date of this AD, no person may operate an airplane on an extended twin operations (ETOPS) flight unless the initial inspection required by paragraph (m) of this AD has been accomplished.

**One-Time Inspection for Group 2, Configuration 1 Airplanes, as Identified in Boeing Alert Service Bulletin 737–27A1297, Dated April 16, 2010**

(o) For Group 2, Configuration 1 airplanes as identified in Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010: Within 30 days after the effective date of this AD, do a one-time detailed inspection for discrepancies of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010. Doing the inspection required by this paragraph terminates the requirements of paragraph (g) of this AD.

**Corrective Actions**

(p) If, during any inspection required by paragraph (m), (o), or (q) of this AD, any discrepancy is found, before further flight, replace the elevator tab control mechanism by doing the actions specified in paragraphs (p)(1) and (p)(2) of this AD.

(1) Do a detailed inspection for discrepancies of the replacement elevator tab control mechanism; and, if no discrepancy is found, install the replacement elevator tab control mechanism; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010. If any discrepancy is found, then that elevator tab control mechanism cannot be installed and the actions specified in this paragraph must be done before further flight on another replacement elevator tab control mechanism.

(2) Re-inspect the installed elevator tab control mechanism using the inspection procedure specified in paragraph (o) of this AD.

**Repetitive Inspections for Certain Group 2, Configuration 1 Airplanes, as Identified in Boeing Alert Service Bulletin 737–27A1297, Dated April 16, 2010**

(q) For Group 2, Configuration 1 airplanes as identified in Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010, on which the elevator control tab mechanism is replaced with a mechanism other than a new, Boeing-built mechanism: Within 300 flight hours after doing the replacement, do a detailed inspection for discrepancies of the inboard and outboard aft attach lugs of the left and right elevator control tab mechanisms, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010. Repeat the inspection thereafter at intervals not to exceed 300 flight hours until the replacement specified in paragraph (r) of this AD is done.

**Terminating Action**

(r) Replacing an elevator tab mechanism with a new, Boeing-built mechanism, as specified in paragraphs (r)(1) and (r)(2) of this AD, terminates the inspections required by paragraphs (m), (o), and (q) of this AD.

**Note 1:** Refer to paragraphs 3.B.7.b.(1)(a)1) and 3.B.7.b.(1)(a)2) of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010, to establish whether the mechanism is Boeing-built.

(1) Do a detailed inspection for discrepancies of the new, Boeing-built replacement elevator tab control mechanism; and, if no discrepancy is found, install the replacement elevator tab control mechanism; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010. If any discrepancy is found, then that elevator tab control mechanism cannot be installed and the actions specified in this paragraph must be done on another new, Boeing-built replacement elevator tab control mechanism.

(2) Re-inspect the installed elevator tab control mechanism using the inspection procedure specified in paragraph (o) of this AD.

**Reporting**

(s) At the applicable time specified in paragraph (s)(1) or (s)(2) of this AD: Submit a report of any findings (positive and negative) of the first inspection required by paragraphs (m), (o), and (q) of this AD, and any positive findings from the repetitive inspections required by this AD, to Boeing Commercial Airplanes Group, Attention: Manager, Airline Support, e-mail: *rse.boecom@boeing.com.* The report must include the inspection results including a description of any discrepancies found, the airplane line number, and the total number of flight cycles and flight hours accumulated on the airplane. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

**Return of Discrepant Parts**

(t) If, during any inspection required by paragraph (m), (o), or (q) of this AD, any discrepancy is found, and if the inspection was done on or after the effective date of this AD: Within 30 days after the inspection, return the discrepant elevator tab control mechanism, and include a copy of the inspection report sent to Boeing, as specified in paragraph (s) of this AD, to: Spares Distribution Center, Attention: Manager, Airline Support, Repair Overhaul and Exchange Services, SSA 111, Boeing Commercial Airplane Group, 2201 South 142nd Street, Door W10, Seatac, Washington, USA, 98168.

**Parts Installation**

(u) For all airplanes identified in paragraph (c) of this AD: As of the effective date of this AD, comply with the conditions specified in paragraphs (u)(1) and (u)(2) of this AD.

(1) No person may install an elevator tab control mechanism, part number 251A2430-(), on any airplane, unless the mechanism has been inspected before and after installation using the inspection procedures specified in either paragraphs (p)(1) and (p)(2) of this AD, or in paragraphs (r)(1) and (r)(2) of this AD; and no discrepancies have been found.

(2) An elevator tab control mechanism, part number 251A2430-(), that is not a new, Boeing-built elevator tab control mechanism may be installed, provided that the mechanism is inspected using the inspection procedures specified in paragraph (m) of this AD within 300 flight hours after doing the installation, and that the inspection is repeated thereafter at the interval specified in paragraph (m) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(v)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Kelly McGuckin, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–917–6490; fax 425–917–6590. Information may be e-mailed to *9–ANM–Seattle-ACO–AMOC–Requests@faa.gov.*

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

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

(4) AMOCs approved previously in accordance with AD 2010–06–51 are approved as AMOCs for the corresponding provisions of paragraph (g) or (l) of this AD.

**Material Incorporated by Reference**

(w) You must use Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010; or Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010; as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 737–27A1297, dated April 16, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Boeing Alert Service Bulletin 737–27A1296, dated March 12, 2010, on April 7, 2010 (75 FR 16648, April 2, 2010).

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

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

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

Issued in Renton, Washington, on April 19, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–9692 Filed 4–22–10; 4:15 pm]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 1b

**[Docket No. RM10–21–000; Order No. 734]**

## Transferring Certain Enforcement Hotline Matters to the Dispute Resolution Service

Issued April 15, 2010.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is revising its regulations to substitute the Commission's Dispute Resolution Service (DRS) for the Commission's Enforcement Hotline as the contact for handling dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects, effective May 1, 2010. Currently, the Commission's regulations require that natural gas pipeline companies provide contact information for the Enforcement Hotline when providing notice to affected landowners on a blanket certificate project under the Natural Gas Act. In practice, the Enforcement Hotline also attempts to resolve disputes between individuals and natural gas pipeline companies on all certificated construction projects under the Natural Gas Act. The Enforcement Hotline also receives calls pertaining to hydroelectric projects regulated under the Federal Power Act. The Commission is implementing this Final Rule because the Office of Enforcement's priorities currently are to focus on matters involving: fraud and market manipulation; serious violations of the reliability standards; anticompetitive conduct; and conduct that threatens the transparency of regulated markets.[1] By transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects to DRS, with its expertise in conflict resolution, and allowing the Office of Enforcement to focus on its priorities, the Commission will ensure an efficient allocation of its resources that will better serve the public interest.

**DATES:** *Effective Date:* The rule will become effective on May 1, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Stuart Fischer, Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8517;

Nils Nichols, Office of Administrative Litigation/Dispute Resolution Service, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8638.

**SUPPLEMENTARY INFORMATION:**

*Before Commissioners:* Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

### I. Introduction

1. The Commission is revising its regulations to substitute the Commission's Dispute Resolution Service (DRS) for the Commission's Enforcement Hotline as the contact for handling dispute-related calls pertaining to the construction and operation of jurisdictional natural gas and hydroelectric infrastructure projects, effective May 1, 2010. The Commission is implementing this Final Rule because the Office of Enforcement's priorities currently are to focus on matters involving: fraud and market manipulation; serious violations of the reliability standards; anticompetitive conduct; and conduct that threatens the transparency of regulated markets. By transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects to DRS, with its expertise in conflict resolution, and allowing the Office of Enforcement to focus on its priorities, the Commission will ensure an efficient allocation of its resources that will better serve the public interest.

### II. Background

2. The Commission's Enforcement Hotline has been in existence since June 1987. In April 1999, the Enforcement Hotline was codified under section 1b.21 of the Commission's regulations. 18 CFR 1b.21. In addition to providing information to the public and informal, non-binding staff opinions, any person may seek the Enforcement Hotline's assistance in the informal resolution of a dispute, provided that the dispute is not before the Commission in a docketed proceeding. 18 CFR 1b.21(b). The Enforcement Hotline is staffed by personnel from the Division of Investigations in the Office of Enforcement.

3. The Enforcement Hotline receives communications relating to a wide variety of matters including: Allegations of market manipulation; failure to follow the requirements of a transmission tariff; abuse of an affiliate relationship; failure to follow electric reliability standards; and landowner complaints relating to natural gas pipeline construction or compliance with hydroelectric project licensing conditions.[2]

4. Landowner calls to the Enforcement Hotline are partly the result of the dispute resolution process set forth in the Commission's regulations. Section 157.203(d) of the Commission's regulations sets forth the landowner notification requirements that a natural gas pipeline company must follow if it plans to engage in a project authorized under a blanket certificate under the Natural Gas Act (NGA). Among the requirements is to provide all affected landowners with a description of the company's environmental complaint resolution procedures, which must include company contact telephone numbers which landowners can use to identify and resolve environmental mitigation problems and concerns during

[1] *2009 Report on Enforcement,* Docket No. AD07–13–002 at 2 (2009).

[2] For internal recordkeeping purposes, the Office of Enforcement considers "landowner" calls to include calls from tenants renting from the landowner or any other individual affected by a project's construction or physical operation. As noted earlier, section 1b.21, which codifies the Enforcement Hotline, provides that "any person" may seek assistance. This rulemaking also includes disputes involving tenants and other individuals affected by a project's construction or physical operation. However, for the purpose of convenience, this preamble includes them in the general category of "landowner" except as discussed in the next paragraph herein when that term is used in connection with the specific provisions of section 157.203(d).

construction of the project and restoration of the right-of-way. 18 CFR 157.203(d)(iii). The complaint resolution procedures must also instruct landowners that, if they are still not satisfied with the company's response to their complaints, they may contact the Commission's Enforcement Hotline. 18 CFR 157.203(d)(iii)(D). The company must provide the affected landowners with the current telephone number and e-mail address of the Enforcement Hotline. *Id.*

5. In practice, natural gas pipeline companies provide affected landowners with environmental complaint resolution procedures, including contact information for the Enforcement Hotline, for all certificate projects under the NGA.

6. Landowner calls to the Enforcement Hotline primarily raise substantive issues concerning the effects of project construction, such as whether a pipeline company has properly restored the construction right-of-way, whether compressor stations exceed the noise limits set forth in the Commission's order or regulations, and whether the use of the easement is consistent with the purpose for which the easement was granted. The Enforcement Hotline attempts to resolve such calls primarily in consultation with the Commission's Office of Energy Projects (OEP) and, when needed, the Commission's Office of the General Counsel.

7. The Enforcement Hotline also at times receives calls from landowners concerned about whether a hydroelectric project operator is in compliance with the project's licensing conditions. In such instances, the Enforcement Hotline refers the matter to the OEP's Division of Hydropower Administration and Compliance.

## III. Commission Determination

8. This Final Rule amends 18 CFR 157.203(d)(iii)(D) to substitute the Commission's DRS for the Enforcement Hotline as the contact for landowners that have unresolved disputes with pipeline companies following use of the pipeline companies' environmental complaint resolution procedure. This change will result in a better allocation of Commission resources that will better serve the public interest. While the Enforcement Hotline continues to successfully handle landowner calls, such calls are unrelated to the current priorities of the Office of Enforcement, which are: Fraud and market manipulation; serious violations of the reliability standards; anticompetitive conduct; and conduct that threatens the transparency of regulated markets.[3] By transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional infrastructure projects to DRS, with its expertise in conflict resolution, and allowing the Office of Enforcement to focus on its priorities, the Commission will ensure an efficient allocation of its resources, thereby better serving the public interest. Similarly, the Commission is transferring the responsibility of dispute-related calls pertaining to the construction and operation of jurisdictional hydroelectric power projects to DRS, which will interact with the OEP's Division of Hydropower Administration and Compliance. This transfer of responsibilities will become effective on May 1, 2010.

9. The DRS is well suited to take over the Enforcement Hotline's role in attempting to informally resolve landowner disputes with natural gas pipeline companies, as well as landowner disputes relating to hydroelectric projects which the OEP's Division of Hydropower Administration and Compliance wishes to submit for DRS resolution. The central mission of the Commission's DRS is to reach consensual resolution of disputed matters through the use of alternative dispute resolution methods such as mediation. DRS staff also has extensive substantive expertise in environmental, natural gas pipeline certificate, hydroelectric, and liquefied natural gas facility matters. Finally, DRS already receives and addresses a number of calls from landowners affected by projects under the Commission's jurisdiction. This will not be a new duty, but rather an extension of an existing service.[4] Thus, the Commission will be able to continue serving the public interest through the use of DRS' expertise in attempting to resolve landowner disputes formerly handled by the Enforcement Hotline, and will better serve the public interest by allowing the Office of Enforcement to focus on its priorities.

10. This Final Rule also amends 18 CFR 1b.21 to add a provision stating that any person affected by either the construction or operation of a certificated natural gas pipeline under the NGA or by the construction or operation of a project under the Federal Power Act (FPA) may seek the informal resolution of a dispute by calling or writing the DRS. Finally, because DRS will be the contact, this Final Rule deletes 18 CFR 157.203(d)(iv), which references the Enforcement Hotline regulation at 18 CFR 1b.21 as a source for obtaining further information about the Enforcement Hotline.

## IV. Information Collection Statement

11. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[5] This Final Rule contains no information reporting requirements, and, as such, is exempt from the provisions of the Paperwork Reduction Act.[6]

## V. Environmental Analysis

12. 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.[7] Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[8] Part 380 of the Commission's regulations lists exemptions to the Environmental Analysis or Environmental Impact Statement requirement. Included is an exemption for procedural, ministerial or internal administrative actions.[9] This rulemaking is exempt under that provision.

## VI. Regulatory Flexibility Act Certification

13. The Regulatory Flexibility Act of 1980[10] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This Final Rule concerns a matter of internal agency procedure and the Commission therefore certifies that it will not have such an impact. An analysis under the RFA is not required.

[3] *2009 Report on Enforcement* at 2.

[4] The Commission's Office of External Affairs (OEA) currently handles calls from landowners asking general questions about the Commission's certificate or licensing process, as well as specific questions about particular proceedings such as the dates of meetings or site visits. Such questions will remain within the purview of OEA.

[5] 5 CFR Part 1320.

[6] 44 U.S.C. 3518(c); 5 CFR 1320.4.

[7] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[8] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (Dec. 10, 1984) (*codified at* 18 CFR Part 380).

[9] 18 CFR 380.4(1) and (5).

[10] 5 U.S.C. 601–612 (RFA).

**VII. Document Availability**

14. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

15. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

16. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

**VIII. Effective Date**

17. These regulations are effective on May 1, 2010. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this Final Rule effective less than 30 days after its publication in the **Federal Register**. The rule concerns a matter of administrative procedures and does not affect the rights of persons appearing before the Commission. Therefore, there is no reason to make it effective at a later time.

18. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

19. The Commission is issuing this as a Final Rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of agency procedure and will not significantly affect regulated entities or the general public.

**List of Subjects in 18 CFR Part 1b**

Rules relating to investigations.

**List of subjects in 18 CFR Part 157**

Interstate Pipeline Blanket Certificates and Authorization under Section 7 of the Natural Gas Act for Certain Transactions and Abandonment.

By the Commission.

**Kimberly D. Bose,**

*Secretary.*

■ In consideration of the foregoing, the Commission amends Parts 1b and 257, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

## PART 1b—RULES RELATING TO INVESTIGATIONS

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

**Authority:** 15 U.S.C. 717 *et seq.;* 16 U.S.C. 792 *et seq.;* 49 U.S.C. 60502; 49 A.P.U.S.C. 1–85; 42 U.S.C. 7101–7352; E.O. 12009, 42 FR 46297.

■ 2. In § 1b.21, paragraph (b) is revised and paragraphs (g) and (h) are added to read as follows:

**§ 1b.21 Enforcement hotline.**

* * * * *

(b) Except as provided for in paragraph (g) of this section, any person may seek information or the informal resolution of a dispute by calling or writing to the Hotline at the telephone number and address in paragraph (f) of this section. The Hotline Staff will informally seek information from the caller and any respondent, as appropriate. The Hotline Staff will attempt to resolve disputes without litigation or other formal proceedings. The Hotline Staff may not resolve matters that are before the Commission in docketed proceedings.

* * * * *

(g) Any person affected by either the construction or operation of a certificated natural gas pipeline under the Natural Gas Act or by the construction or operation of a project under the Federal Power Act may seek the informal resolution of a dispute by calling or writing the Commission's Dispute Resolution Service. The Dispute Resolution Service may be reached by calling the DRS Helpline toll-free at 1–877–337–2237, or by e-mail at *ferc.adr@ferc.gov,* or writing to: Dispute Resolution Service, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

(h) Any person who contacts the Dispute Resolution Service Helpline is not precluded from filing a formal action with the Commission if discussions assisted by the Dispute Resolution Service staff are unsuccessful at resolving the matter. A caller may terminate the use of alternative dispute resolution procedures at any time.

## PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONNENT UNDER SECTION 7 OF THE NATURAL GAS ACT

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

**Authority:** 15 U.S.C. 717–717w.

■ 2. In § 157.203, paragraph (d)(1)(iii)(D) is revised to read as follows and paragraph (d)(1)(iv) is removed.

**§ 157.203 Blanket certification.**

* * * * *

(d) *Landowner Notification*

(1) * * *

(iii) * * *

(D) Instruct landowners that, if they are still not satisfied with the response, they may contact the Commission's Dispute Resolution Service at the current telephone number and e-mail address, which is to be provided in the notification.

* * * * *

[FR Doc. 2010–9125 Filed 4–23–10; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 279

**[Docket ID: DOD–2009–OS–0141; RIN 0790–AI59]**

### Retroactive Stop Loss Special Pay Compensation; Correction

**AGENCY:** Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

**ACTION:** Final rule; correction.

**SUMMARY:** The Office of the Secretary of Defense published a final rule on April 16, 2010 (75 FR 19878), concerning Retroactive Stop Loss Special Pay Compensation that was authorized and appropriated in the Supplemental Appropriations Act, 2009. This document corrects the words of issuance that were included in the final rule.

**DATES:** This rule is effective October 21, 2009, to comply with section 310 of Public Law 111–32 that calls for the Secretary of Defense to issue a rule not later than 120 days from the date of enactment of the Act. The change of eligibility for Retroactive Stop Loss

Special Pay is effective on December 19, 2009, the enactment date of the 2010 Department of Defense Appropriations Act.

**FOR FURTHER INFORMATION CONTACT:** LTC Brigitte Williams, (703) 614–3973.

**SUPPLEMENTARY INFORMATION:**

### Need for Correction

The words of issuance that were set out within the final rule must be corrected to allow for the proper codification of the rule's regulatory text.

### Correction

In rule FR Doc. 2010–8739, published on April 16, 2010 (75 FR 19878) make the following correction. On page 19879, in the first column, in the words of issuance, correct the word "added" to read "revised".

Dated: April 20, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–9541 Filed 4–23–10; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 280

**RIN 1855–AA07**

**[Docket ID ED–2010–OII–0003]**

### Magnet Schools Assistance Program

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Interim final rule; reopening comment period.

**SUMMARY:** On March 4, 2010, the Department of Education published in the **Federal Register** an interim final rule and requested comments on that rule for the Magnet Schools Assistance Program (MSAP). The rule became effective March 4, 2010, and the comment period for the interim final rule ended on April 5, 2010. During the comment period, the Department received requests asking that the Department extend the comment period for the interim final rule. This document announces the reopening of the comment period.

**DATES:** The Department reopens the public comment period for the interim final rule that was published in the **Federal Register** on March 4, 2010 (75 FR 9777). Comments must be received on or before May 17, 2010.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under "How To Use This Site."
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final regulations, address them to Anna Hinton, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W229, Washington, DC 20202.

**Privacy Note:** The Department's policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at: *http://www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

**FOR FURTHER INFORMATION CONTACT:** Anna Hinton, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W229, Washington, DC 20202. Telephone: (202) 260–1816 or by e-mail: *FY10MSAPCOMP@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

**SUPPLEMENTARY INFORMATION:** The Department reopens the public comment period for the interim final rule that was published in the **Federal Register** on March 4, 2010 (75 FR 9777) because we have determined that a longer comment period would provide local educational agencies submitting grant applications under the MSAP for fiscal year (FY) 2010 funding and other interested parties an opportunity to submit comments on the interim rule after the May 3, 2010 application deadline date announced for the FY 2010 grant competition in the notice inviting applications published on March 4, 2010 (75 FR 9879).

The Department believes this approach will improve the quality of information available for rulemaking, so the Secretary is reopening the comment period.

Dated: April 16, 2010.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2010–9195 Filed 4–23–10; 8:45 am]

**BILLING CODE 4000–01–P**

## LEGAL SERVICES CORPORATION

### 45 CFR Parts 1609, 1610, and 1642

### Fee-Generating Cases; Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity; Attorneys' Fees

**AGENCY:** Legal Services Corporation.

**ACTION:** Final rule.

**SUMMARY:** On February 11, 2010, LSC issued an Interim Final Rule and Request for Comments repealing its regulatory prohibition on the claiming of, and the collection and retention of attorneys' fees pursuant to Federal and State law permitting or requiring the awarding of such fees. The action was taken in accordance with the elimination on the statutory prohibition on attorneys' fees in LSC's FY 2010 appropriation legislation. The rule moved provisions on accounting for and use of attorneys' fees and acceptance of reimbursements from clients from part 1642 (which was eliminated) to part 1609 of LSC's regulations. LSC also made technical changes to its regulations to remove cross references to the obsolete statutory and regulatory citations. With this document, LSC is responding to the comments received and confirming the February 11 rule as final without change.

**DATES:** This final rule is effective April 26, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington DC 20007; 202–295–1624 (ph); 202–337–6519 (fax); *mcohan@lsc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

LSC's FY 1996 appropriation legislation provided that none of the funds appropriated in that Act could be used to provide financial assistance to any person or entity (which may be referred to in this section as a recipient) that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of

such fees. Section 504(a)(13), Public Law 104–134, 110 Stat. 1321 (April 26, 1996). Since appropriations legislation expires with the end of the Fiscal Year to which it applies, for the statutory restriction on attorneys' fees to remain in place by statute, it needed to be, and was, carried forth in each subsequent appropriation law by reference. *See, e.g.,* Consolidated Appropriations Act, 2009, Public Law 111–8, 123 Stat. 524 (March 11, 2009).

LSC adopted regulations found in 1996 and 1997 which implemented the statutory attorneys' fees restriction. 45 CFR Part 1642; 61 FR 45762 (August 29, 1996); 62 FR 25862 (May 12, 1997). The attorneys' fees regulation restates the basic prohibition on claiming or collecting and retaining attorneys' fees, providing that except as permitted by § 1642.4 (providing exceptions cases filed prior to the prohibition and for cases undertaken by private attorneys providing pro bono services in connection with a recipient's private attorney involvement program), no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. 46 CFR 1642.3. The regulation provides further guidance to recipients by, among other things, providing a regulatory definition of attorneys' fees; setting forth rules for the applicability of the restriction to private attorneys providing legal assistance to a recipient's private attorney involvement program; and providing express authority to recipients to accept reimbursements of costs from a client. The regulation also sets forth rules for the accounting for and use of those attorneys' fees which recipients are not prohibited from claiming, collecting or retaining.

On December 16, 2009 President Obama signed the Consolidated Appropriations Act of 2010 into law. Public Law 111–117. This act provides LSC's appropriation for FY 2010. Like its predecessors, this law incorporates the various restrictions first imposed by the FY 1996 legislation by reference. However, section 533 of that same law also provides that Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Pub. L. 104–134) is amended by striking paragraph (13). Taken together, these provisions serve to incorporate by reference all of the restrictions in section 504 of the FY 1996 law, except for paragraph (a)(13), which contained the restriction on attorneys' fees. As such, there is no current statutory restriction on LSC providing the money FY 2010 appropriated to it to any recipient which claims, or collects and retains attorneys' fees

**Repeal of Part 1642 and Issuance of the Interim Final Rule**

The current law lifts the statutory restriction, but does not affirmatively provide recipients the right to claim or collect and retain attorneys' fees, nor does it prohibit LSC from restricting a recipient's ability to claim or collect and retain attorneys' fees. As such, in accordance with LSC inherent regulatory authority, the regulation remained in place notwithstanding the lifting of the statutory restriction unless and until repealed. At its Board Meeting on January 30, 2010, the LSC Board of Director's determined that retaining the regulatory restriction was no longer either necessary or appropriate instructed staff to publish an Interim Final Rule repealing its regulatory prohibition on the claiming of, and the collection and retention of attorneys' fees pursuant to Federal and State law permitting or requiring the awarding of such fees. LSC published the Interim Final Rule and Request for Comments implementing the Board's direction on February 11, 2010, 75 FR 6816. The Interim Final Rule also moved provisions on accounting for and use of attorneys' fees and acceptance of reimbursements from clients from Part 1642 (which is being eliminated) to Part 1609 of LSC's regulations. LSC also made technical changes to Part 1609 and Part 1610 of its regulations to remove cross references to the obsolete statutory and regulatory citations. The Interim Final Rule became effective on March 15, 2010.

LSC received ten (10) comments on the Interim Final Rule. All of the comments strongly supported the changes reflected in the Interim Final Rule and urged LSC to issue a Final Rule making permanent the Interim Final Rule without further amendment.[1] At its meeting of April 17, 2010 the Board of Directors adopted the Interim Final Rule as permanent and instructed staff to publish this Final Rule in the **Federal Register**. Because this Final Rule is retaining the changes made by the Interim Final Rule without further amendment, prior notice is unnecessary and contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Accordingly, this Final Rule is effective upon publication.

In adopting the Interim Final Rule and this Final Rule, LSC's determination reflects a number of considerations. First, LSC notes that the lifting of the restriction indicates that Congress itself has had a change of heart regarding this restriction. Although Congress did not prohibit LSC from retaining the restriction, the fact that Congress chose not to re-impose this particular restriction (and no others) does indicate that support for this restriction has waned and that the policy arguments in support of the original restriction are no longer reflective of the will of Congress. Rather, the legislative history suggests that Congress chose not to re-impose the attorneys' fees restriction in express recognition of the fact that the restriction imposes several significant burdens on recipient. *See,* H. Rpt. 111–149 at p. 163; Transcript of Hearing of the Subcommittee on Commerce, Justice and Science of the House Committee of Appropriations of April 1, 2009 at pp. 220–223. As such, LSC believes that repealing the regulatory restriction is consistent with the expectations of Congress.

Moreover, LSC agrees that the restriction imposes unnecessary burdens on recipients and places clients at a disadvantage with respect to other litigants. Specifically, the ability to make a claim for attorneys' fees is often a strategic tool in the lawyers' arsenal to obtain a favorable settlement from the opposing side. Restricting a recipient's ability to avail itself of this strategic tool puts clients at a disadvantage and undermines clients' ability to obtain equal access to justice. The attorneys' fees restriction can also be said to undermine one of the primary purposes of fee-shifting statutes, namely to punish those who have violated the rights of persons protected under such statutes. In addition, in a time of extremely tight funding, the inability of a recipient to obtain otherwise legally available attorneys' fees places an unnecessary financial strain on the recipient. If a recipient could collect and retain attorneys' fees, it would free up other funding of the recipient to provide services to additional clients and help close the justice gap.[2] More

[1] One commenter requested that LSC provide clarification in two places of the preamble. LSC has responded to this request and the preamble reflects the commenter's concerns.

[2] It should be noted that the LSC Act and the implementing regulatory restriction on fee-generating cases found at 45 CFR Part 1609 restrict recipients from taking fee-generating cases. This restriction is not affected by the lifting of the statutory ban on the claiming and collecting and retention of attorneys' fees and is not be affected by any regulatory amendment to Part 1642. Accordingly, amendment of Part 1642 does not have an adverse impact on the private bar nor provide any incentive for recipients to seek out fee-

Continued

fundamental, the restriction results in clients of grantees being treated differently and less advantageously than all other private litigants, which LSC believes is unwarranted and fundamentally at odds with the Corporation's Equal Justice mission.

This action makes permanent the Interim Final Rule's lifting of the regulatory prohibition on claiming, or collecting and retaining attorneys' fees available under Federal or State law permitting or requiring the awarding of such fees. Accordingly as of March 15, 2010, recipients were and remain permitted make claims for attorneys' fees in any case in which they are otherwise legally permitted to make such a claim. Recipients are also permitted to collect and retain attorneys' fees whenever such fees are awarded to them.

With the repeal of the restriction, recipients are permitted to claim and collect and retain attorneys' fees with respect to any work they have performed for which fees are available to them, without regard to when the legal work for which fees are claimed or awarded was performed. LSC considered whether recipients should be limited seek or obtain attorneys fees related to "new" work; that is, work done only as of the date of the statutory change or the effective date of the Interim Final Rule. LSC rejected that position because the attorneys' fees prohibition applies to the particular activity of seeking and receiving attorneys' fees, but is irrelevant to the permissibility of the underlying legal work. Limiting the ability of recipients to seek and receive attorneys' fees on only future case work would create a distinction between some work and other work performed by a recipient, all of which was permissible when performed. LSC continues to find such a distinction to be artificial and not necessary to effectuate Congress' intention.

LSC also believes that not limiting the work for which recipients may now seek or obtain attorneys' fees will best afford recipients the benefits of the lifting of the restriction. There may well be a number of ongoing cases where the newly available option of the potentiality of attorneys' fees will still be effective to level the playing field and afford recipients additional leverage with respect to opposing counsel in those cases. Likewise, being able to obtain attorneys' fees in cases in which prior work has been performed would likely help relieve more financial pressure on recipients than a "new work only" implementation choice would because it would increase sources and amount of work for which fees might potentially be awarded.

generating cases at the expense of the needs of other clients.

**Amendment of Part 1609 and Part 1610**

As noted above, Part 1642 contains two provisions not directly related to the restriction on claiming and collecting attorneys' fees. These provisions address the accounting for and use of attorneys' fees and the acceptance of reimbursement from a client. 45 CFR 1642.5 and 1642.6. These provisions used to be incorporated into LSC's regulation on fee-generating cases at 45 CFR Part 1609, but were separated out and included in the new Part 1642 regulation when it was adopted. Amending these provisions was not necessary to effectuate the lifting of the attorneys' fees restriction and they provide useful guidance to recipients. In fact, with recipients likely collecting and retaining fees more often than they have since 1996, the provision on accounting for and use of attorneys' fees will be of greater importance than it has been. Retaining these provisions would continue to provide clear guidance to the benefit of both recipients and LSC. Accordingly, LSC is adopting as permanent the changes which moved these provisions back into Part 1609 as §§ 1609.4 and 1609.5, with only technical amendment to the regulatory text to remove references to Part 1642 and which redesignated § 1609.4 as § 1609.6.[3]

LSC is also adopting as permanent technical conforming amendments to delete references to Part 1642 and the attorneys' fees statutory prohibition that are now obsolete. Having obsolete and meaningless regulatory provisions is not good regulatory practice and can at the very least lead to unnecessary confusion. Accordingly, LSC adopts permanently the deletion of paragraph (c) of § 1609.3, General requirements, to eliminate that paragraph's reference to the attorneys' fees restriction in Part 1642. Similarly, LSC adopts permanently a technical conforming amendment to its regulation at Part 1610. Part 1610 sets forth in regulation the application of the appropriations law restrictions to a recipient's non-LSC funds. Section 1610.2 sets forth the list of the restrictions as contained in section 504 of the FY 1996 appropriations act, and the implementing LSC regulations which are applicable to a recipient's non-LSC funds. Subsection (b)(9) was the provision that references the attorneys' fees restriction (504(a)(13) and Part 1642) and which became obsolete.

[3] For additional information about the provision on the accounting for attorneys' fees, see the preamble to the 1997 Attorneys' Fees Final Rule: 62 FR 25862 (May 12, 1997) at 25864.

**List of Subjects in 45 CFR Parts 1609, 1610, and 1642**

Grant programs—Law, Legal services.

■ Accordingly, for reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC hereby adopts the interim rule published February 11, 2010 (75 FR 6816) as final without change.

**Mattie Cohan,**

*Senior Assistant General Counsel.*

[FR Doc. 2010–9397 Filed 4–23–10; 8:45 am]

BILLING CODE 7050–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## 48 CFR Chapter 3

## Health and Human Services Acquisition Regulation; Corrections

**AGENCY:** Department of Health and Human Services.

**ACTION:** Correcting amendments.

**SUMMARY:** This action corrects minor errors, inconsistencies and omissions in the final rule, which revised the Health and Human Services Acquisition Regulation (HHSAR) to implement statutes and government-wide mandates enacted or issued since December 2006.

**DATES:** These corrections are effective on April 26, 2010.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Howe, Procurement Analyst, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Financial Resources, Office of Grants and Acquisition Policy and Accountability, Division of Acquisition, 202–690–5552 (voice); *cheryl.howe@hhs.gov* (e-mail); 202–690–8772 (facsimile).

**SUPPLEMENTARY INFORMATION:**

### I. Background

HHS published a revision of the entire HHSAR (48 CFR parts 301 through 370) in the **Federal Register** on November 27, 2009 to reflect changes since the last revision was published in the **Federal Register** in December 2006. No adverse comments were received.

The revisions included, but were not limited to, the following:

A. Revising Subpart 301.6 regarding training and certification of acquisition officials to implement federal acquisition certification programs.

B. Adding a new Subpart 304.13 to implement Homeland Security Presidential Directive—12.

C. Adding a new Subpart 315.70 regarding acquisition of electronic information technology (EIT) products and services to implement the requirements of Section 508 of the Rehabilitation Act of 1973 [29 U.S.C. 794(d)], as amended by the Workforce Improvement Act of 1998.

D. Adding a new Subpart 317.1 to implement FAR coverage on multi-year contracting and amending Subpart 332.7 to address awards made during a continuing resolution.

E. Adding a new Subpart 334.2 to implement FAR coverage on earned value management (EVM).

The final rule, which became effective on January 26, 2010, contained some minor errors, inconsistencies and omissions which this document corrects. Those technical corrections are set forth below. The corrections to the affected sections are merely procedural in nature and propose no substantive changes on which public comment could be solicited. HHS therefore finds that prior notice and opportunity for comment on these corrections are unnecessary pursuant to 5 U.S.C. 553(b)(3)(A) and that good cause exists for these corrections to be exempt from the 30-day delayed effective date requirement of 5 U.S.C. 553(d).

## II. Summary of Changes

The following summarizes the corrections set forth in this notice.

A. HHS has changed multiple organizational titles to reflect recent reorganizations within the Office of the Secretary.

B. HHS has resolved minor inconsistencies regarding Project Officer and Contracting Officer's Technical Representative (COTR) training and clarified the training requirements for technical evaluation panels.

C. HHS has clarified requirements related to (1) use of multi-year contracting, (2) use of options under multi-year contracts, and (3) preparation of a "determination and findings" for an assisted contract.

## List of Subjects in 48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 315, 316, 317, 319, 324, 332, 352, and 370

Government procurement.

■ Accordingly, 48 CFR parts 301, 302, 303, 304, 305, 306, 307, 315, 316, 317, 319, 324, 332, 352, and 370 are corrected by making the following amendments:

■ 1. The authority citation for 48 CFR parts 301, 302, 303, 304, 305, 306, 307, 315, 316, 317, 319, 324, 332, 352, and 370 continues to read as follows:

**Authority:** 5 U.S.C. 301; 40 U.S.C. 486(c).

## PART 301—HHS ACQUISITION REGULATION SYSTEM

■ 2. Section 301.101(a) is revised to read as follows:

### 301.101 Purpose.

(a) The Department of Health and Human Services (HHS) Acquisition Regulation (HHSAR) establishes uniform HHS acquisition policies and procedures that conform to the Federal Acquisition Regulations (FAR) System.

* * * * *

■ 3. Section 301.270(b)(3) is revised to read as follows:

### 301.270 Executive Committee for Acquisition.

* * * * *

(b) * * *

(3) Assistant Secretary for Preparedness and Response/Office of Acquisitions Management, Contracts and Grants (ASPR/OAMCG)

* * * * *

■ 4. Section 301.603–73(e) is revised to read as follows:

### 301.603–73 Additional HHS training requirements.

* * * * *

(e) *Section 508 training.* When the HHS Office on Disability (OD) so requires, all GS–1102s, GS–1105s and GS–1106s who award or administer acquisitions that involve electronic information technology (EIT) products or services (subject to Section 508 of the Rehabilitation Act of 1973 and pertinent HHSAR provisions), must complete all applicable OD sponsored training. For information on frequency, timing, and duration of the training requirement, personnel shall consult with the HHS OD.

* * * * *

■ 5. In section 301.604–70, the first sentence is revised to read as follows:

### 301.604–70 General.

In accordance with the Federal Acquisition Certification for Contracting Officers' Technical Representatives (FAC–COTR) program, HHS has established a training program for certification and designation of personnel as COTRs—see HHS' Federal Acquisition Certification for Contracting Officers' Technical Representatives Program Handbook (COTR Handbook), dated January 2009, for information on the methods for earning FAC–COTR certification. * * *

■ 6. Section 301.604–72 is revised to read as follows:

### 301.604–72 Requirements for certification maintenance.

Maintaining HHS FAC–COTR certification requires at least 40 relevant CLPs every 2 years. See Appendix A of OFPP's FAC–COTR memorandum, dated November 26, 2007, and HHS' COTR Handbook for information on CLPs.

■ 7. Section 301.604–74 is revised to read as follows:

### 301.604–74 Additional COTR training requirements.

(a) See HHS' COTR Handbook for information on additional COTR training requirements.

(b) *Training policy exceptions.*

(1) *EVM training.* In the event that there is an urgent requirement for a COTR to administer a contract to which EVM will be applied, and the individual has not yet met the EVM training requirement, the HCA (non-delegable) may authorize the individual to perform the position duties, provided that the individual meets the training requirement within 9 months from the date of assignment to the contract. If the individual does not complete the training requirement within 9 months, the HCA's approval for the individual's assignment to the contract will automatically terminate on that date. In addition, during any extension period, the COTR must work under the direction of a COTR, or Program/Project Manager who has taken an EVM course.

(2) *Other additional HHS training.* The HCA (non-delegable) may grant a time extension of up to 9 months to a COTR to complete the PBA, Federal appropriations law, and green purchasing training requirements, including completion of refresher training. If the individual does not complete the training requirement within the extension period, the HCA's approval will automatically terminate on that date.

■ 8. In section 301.606–71, the last sentence is revised to read as follows:

### 301.606–71 Project Officer training.

* * * See HHS' COTR Handbook for additional information on the basic training requirement for Project Officers and guidance on the training requirement for technical proposal evaluators in 315.305(a)(3)(ii).

### 301.606–73 and 301.606–74 [Redesignated as 301.606–74 and 301.606–75]

■ 9. Sections 301.606–73 and 301.606–74 are redesignated as sections 301.606–74 and 301.606–75, respectively.

■ 10. Add new section 301.606–73 to read as follows:

**301.606–73 Requirements for continuous learning maintenance.**

Designated Project Officers require at least 40 relevant CLPs every 2 years. See HHS' COTR Handbook for information on CLPs.

■ 11. Revise redesignated section 301.606–75 to read as follows:

**301.606–75 Additional Project Officer training requirements.**

(a) See HHS' COTR Handbook for information on additional training requirements.

(b) *Training policy exceptions.*

(1) *EVM training.* In the event that there is an urgent requirement to assign a Project Officer to a contract project to which EVM will be applied, and the individual has not yet met the EVM training requirement, the HCA (non-delegable) may authorize the individual to perform the position duties, provided that the individual meets the training requirement within 3 months from the date of submission of the AP or other acquisition request documentation to the contracting office. If the individual does not complete the training requirement within the extension period, the HCA's approval for the individual's assignment to the project will automatically terminate on that date. In addition, during any extension period, the Project Officer must work under the direction of a Project Officer, COTR, or Program/Project Manager who has taken an EVM course.

(2) *Other additional HHS training.* The HCA (non-delegable) may grant a time extension of up to 9 months to a Project Officer to complete the PBA, Federal appropriations law, and green purchasing training requirements, including completion of refresher training. If the individual does not complete the training requirement within the extension period, the HCA's approval will automatically terminate on that date.

**301.607–77 [Removed]**

■ 12. Remove section 301.607–77.

**301.607–78 and 301.607–79 [Redesignated as 301.607–77 and 301.607–78]**

■ 13. Sections 301.607–78 and 301.607–79 are redesignated as sections 301.607–77 and 301.607–78, respectively.

## PART 302—DEFINITIONS OF WORDS AND TERMS

■ 14. In section 302.101, paragraph (d)(1), and the first sentences of paragraphs (e) and (f), are revised to read as follows:

**302.101 Definitions.**

* * * * *

(d) * * *

(1) The HHS HCAs are as follows:

AHRQ: Director, Division of Contracts Management.
ASPR: Director, Office of Acquisitions Management, Contracts and Grants.
CDC: Director, Procurement and Grants Office.
CMS: Director, Office of Acquisition and Grants Management.
FDA: Director, Office of Acquisitions and Grant Services.
HRSA: Director, Office of Acquisition Management and Policy.
IHS: Director, Division of Acquisition Policy.
NIH: Director, Office of Acquisition and Logistics Management.
PSC: Director, Strategic Acquisition Service.
SAMHSA: Director, Division of Contracts Management.

* * * * *

(e) *Program Manager* is a federal employee whom an OPDIV official or designee one level above the head of the sponsoring program office has designated in writing to act as a Program Manager for a group of related major or non-major IT or construction capital investments—see HHS' P/PM Handbook. * * *

(f) *Project Manager* is a federal employee whom a head of the sponsoring program office (Program Manager) or designee has designated in writing to act as a Project Manager for a major or non-major IT or construction capital investment—see HHS' P/PM Handbook. * * *

* * * * *

**302.7000 [Amended]**

■ 15. In section 302.7000(b), the table is amended by removing the acronym "BARDA" and its associated term "Biomedical Advanced Research and Development Authority" and adding in their place after "ASFR" the acronym "ASPR/OAMCG" and its associated term "Assistant Secretary for Preparedness and Response, Office of Acquisitions Management, Contracts and Grants".

## PART 303—IMPROPER BUSINESS PRACTICIES AND PERSONAL CONFLICTS OF INTEREST

■ 16. Section 303.1003(b)(1) is revised to read as follows:

**303.1003 Requirements.**

* * * * *

(b) * * *

(1) Notify the OIG at *http://www.oig.hhs.gov/fraud/hotline;*

* * * * *

## PART 304—ADMINISTRATIVE MATTERS

**304.7001 [Amended]**

■ 17. Sections 304.7001(b)(2) and (c)(2) are amended by removing the acronym "BARDA" and adding in its place the acronym "ASPR/OAMCG".

## PART 305—PUBLICIZING CONTRACT ACTIONS

■ 18. Section 305.303 is revised to read as follows:

**305.303 Announcement of contract awards.**

(a) *Public Announcement.* The Contracting Officer shall report awards over $3.5 million, not otherwise exempt under FAR 5.303, to the Office of the Assistant Secretary for Legislation (OASL) (Congressional Liaison). The Contracting Officer shall e-mail a copy of the contract or award document face page to *grantfax@hhs.gov* prior to the day of award or in sufficient time to allow OASL to make an announcement by 5 p.m. Washington, DC time on the day of award.

## PART 306—COMPETITION REQUIREMENTS

**306.501 [Amended]**

■ 19. Section 306.501 is amended by removing "BARDA: Chief of Mission Support and Acquisition Policy" and adding in its place "ASPR/OAMCG: Chief of Acquisition Policy".

## PART 307—ACQUISITION PLANNING

■ 20. In section 307.7101(c), the last sentence is revised to read as follows:

**307.7101 Policy.**

* * * * *

(c) * * * Alternatively, OPDIVs may prescribe use of an AP for acquisitions excepted under 307.7101(a)(1) through (a)(8).

■ 21. Section 307.7102(b) is revised to read as follows:

**307.7102 Content.**

* * * * *

(b) HCA or designee shall notify ASFR/OGAPA/DA of the need to revise the AP; and

* * * * *

## PART 315—CONTRACTING BY NEGOTIATION

■ 22. In section 315.305, the first sentence in paragraph (a)(3)(ii)(A)(*3*) is removed and three sentences are added in its place; and the second sentence in paragraph (a)(3)(v) is revised to read as follows:

**315.305 Proposal evaluation.**

(a) * * *

(3) * * *

(ii) * * *

(A) * * *

(*3*) At least 50 percent of the HHS personnel on a technical evaluation panel shall have successfully completed HHS University's "Basic Contracting Officer's Technical Representative" course or an equivalent course within 4 years before assuming their designated role. This training requirement applies to evaluators performing the initial technical evaluation and any subsequent technical evaluations, but does not apply to peer review panel members. The Contracting Officer may waive this training requirement in exigent circumstances if documented in writing and approved by the Head of Contracting Activity.

* * * * *

(v) * * * The evaluators may then discuss in detail the individual strengths and weaknesses described by each evaluator and, if possible, arrive at a common understanding of the major strengths and weaknesses and the potential for correcting each offeror's weakness(es). * * *

* * * * *

## PART 316—TYPES OF CONTRACTS

**316.505 [Amended]**

■ 23. Section 316.505(b)(5) is amended by removing "BARDA: Chief of Mission Support and Acquisition Policy" and adding in its place "ASPR/OAMCG: Chief of Acquisition Policy".

## PART 317—SPECIAL CONTRACTING METHODS

■ 24. In section 317.105–1, the first sentence of paragraph (a) introductory text, and paragraphs (a)(1) and (b), are revised; and a new paragraph (c) is added to read as follows:

**317.105–1 Uses.**

(a) Each HCA determination to use multi-year contracting, as defined in FAR 17.103, is limited to individual acquisitions where the full estimated cancellation ceiling does not exceed 20 percent of the total contract value over the multi-year term or $11.5 million, whichever is less. * * *

(1) The amount of, and basis for, the estimated cancellation ceiling.

* * * * *

(b) (1) SPE approval is required for any—

(i) Individual determination to use multi-year contracting with a cancellation ceiling in excess of the limits in 317.105–1(a); or

(ii) Class determination (see FAR Subpart 1.7).

(2) A determination involving a cancellation ceiling in excess of the limits in 317.105–1(a) shall present a compelling justification for the estimated cancellation ceiling. When the estimated cancellation ceiling exceeds $11.5 million, the determination shall be accompanied by a draft congressional notification letter pursuant to FAR 17.108 and 317.108.

(c) The funding required for performance of each year of a multi-year contract under FAR Subpart 17.1 and this subpart must be provided in full at the start of that program year.

■ 25. Section 317.107 is revised to read as follows:

**317.107 Options.**

When used as part of a multi-year contract, options shall not be used to extend the performance of the original requirement for non-severable services beyond 5 years. Options may serve as a means to acquire related services (severable or non-severable) and, upon being exercised, shall be funded from the then-current fiscal year's appropriation.

■ 26. In section 317.503, paragraphs (a)(6) and (a)(7) are revised and a new paragraph (a)(8) is added to read as follows:

**317.503 Determination and findings requirements.**

(a) * * *

(6) The recommended multi-agency or intra-agency contracting approach;

(7) The conclusion that the contract to be awarded by the selected servicing organization is the most advantageous alternative to the Government, notwithstanding fees and the increased risk associated with assisted contracting; and

(8) The steps that will be taken to ensure that contract funding will comply with the *bona fide* needs rule and the Anti-Deficiency Act.

## PART 319—SMALL BUSINESS PROGRAMS

**319.201 [Amended]**

■ 27. Section 319.201(e)(1) is amended by removing the acronym "BARDA" and adding in its place "ASPR/OAMCG".

## PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

■ 28. Section 324.102(f) is revised to read as follows:

**324.102 General.**

* * * * *

(f) Whenever a Contracting Officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the Contracting Officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records.

## PART 332—CONTRACT FINANCING

■ 29. In section 332.703–70(b), the first sentence is revised to read as follows:

**332.703–70 Funding contracts during a continuing resolution.**

* * * * *

(b) * * * Because the terms of CRs may vary, for each CR, specific operating guidance will be issued by the Office of the Assistant Secretary for Financial Resources (ASFR). * * *

* * * * *

## PART 352—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**352.219–70 [Amended]**

■ 30. In the provision heading in section 352.219–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.219–71 [Amended]**

■ 31. In the clause heading in section 352.219–71, remove "(October 2009)" and add in its place "(January 2010)".

**352.222–70 [Amended]**

■ 32. In the clause heading in section 352.222–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.231–70 [Amended]**

■ 33. In the clause heading in section 352.231–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.233–70 [Amended]**

■ 34. In the clause heading in section 352.233–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.239–70 [Amended]**

■ 35. In the clause heading in section 352.239–70, remove "(October 2009)" and add in its place "(January 2010)".

**352.239–71 [Amended]**

■ 36. In the clause heading in section 352.239–71, remove "(October 2009)" and add in its place "(January 2010)".

**352.239–72 [Amended]**

■ 37. In the clause heading in section 352.239–72, remove "(October 2009)" and add in its place "(January 2010)".

**352.239–73 [Amended]**

■ 38. In the provision heading in section 352.239–73(a) and the clause heading in 352.239–73(b), remove "(October 2009)" and add in its place "(January 2010)".

**352.270–7 [Amended]**

■ 39. In the clause heading in section 352.270–7, remove "(October 2009)" and add in its place "(January 2010)".

**352.270–8 [Amended]**

■ 40. In the clause heading in section 352.270–8, remove "(October 2009)" and add in its place "(January 2010)".

**352.270–9 [Amended]**

■ 41. In the provision heading in section 352.270–9, remove "(October 2009)" and add in its place "(January 2010)".

## PART 370—SPECIAL PROGRAMS AFFECTING ACQUISITION

■ 42. Section 370.400 is revised to read as follows:

**370.400 Scope of subpart.**

This subpart applies to all R & D, research training, biological testing, housing and maintenance, and other activities involving live vertebrate animals conducted under contract (*see* Public Health Service Policy on Humane Care and Use of Laboratory Animals (PHS Policy), Rev. 1986, Repr. 1996).

■ 43. Paragraph 370.403(a) is revised to read as follows:

**370.403 Notice to offerors.**

(a) The Contracting Officer shall insert the provision in 352.270–5(a), Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals, in solicitations that involve live vertebrate animals.

* * * * *

■ 44. Section 370.404 is revised to read as follows:

**370.404 Contract clause.**

The Contracting Officer shall insert the clause in 352.270–5(b), Care of Live Vertebrate Animals, in solicitations, contracts, and orders that involve live vertebrate animals.

Dated: April 15, 2010.

**Ellen G. Murray,**

*Assistant Secretary for Financial Resources.*

[FR Doc. 2010–9382 Filed 4–23–10; 8:45 am]

BILLING CODE 4151–17–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 223 and 622

**[Docket No. 090225243–0170–03]**

**RIN 0648–AX67**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 31

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 31 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 final rule will implement restrictions applicable to the bottom longline component of the reef fish fishery in the exclusive economic zone (EEZ) of the eastern Gulf of Mexico (Gulf). The restrictions include a bottom longline endorsement requirement, a seasonal closed area, and a limitation on the number of hooks that can be possessed and fished. The intent of this rule is to balance the continued operation of the bottom longline component of the reef fish fishery in the eastern Gulf while maintaining adequate protective measures for sea turtles.

**DATES:** This rule is effective May 26, 2010.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) and record of decision may be obtained from Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by e-mail to *rich.malinowski@noaa.gov*, or *David_Rostker@omb.eop.gov*, or by fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Meyer, telephone: 727–824–5305.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery of the Gulf 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). The taking of sea turtles is prohibited, with certain exceptions, identified at 50 CFR part 223 under the authority of the Endangered Species Act (ESA) and its implementing regulations.

On December 31, 2009, NMFS published a notice of availability of Amendment 31 and requested public comment (74 FR 69322). On January 15, 2010, NMFS published a proposed rule for Amendment 31 and requested public comment (75 FR 2469). NMFS approved Amendment 31 on March 29, 2010. This final rule establishes adequate protective measures for loggerhead sea turtles while maintaining a viable bottom longline fleet. These measure include a bottom longline endorsement, a seasonal closed area in the eastern Gulf, and a limitation on the number of hooks that can be possessed and fished. The rationale for the measures contained in Amendment 31 is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

### Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and Amendment 31, and NMFS' respective responses. During the respective comment periods for Amendment 31 and the proposed rule, NMFS received 976 submissions. The submissions included two scripted form letters with 457 and 393 copies. NMFS also received 126 unique mailed letters. In addition, a non-governmental organization submitted a petition with 2,297 signatures. Many of the faxes and electronic comments were duplicate submissions by the same person.

*Comment 1:* NMFS needs to take action to stop additional sea turtle mortality and reverse the decline in the sea turtle population.

*Response*: NMFS has concluded that the actions contained in this final rule are sufficient to address sea turtle interactions in the Gulf reef fish fishery. NMFS reinitiated a formal section 7 consultation investigating continued authorization of the reef fish fishery. An emergency rule, effective May 18, 2009, prohibited bottom longline gear for the reef fish fishery in waters less than 50 fathoms (91 m) to address the issue in the short-term and closed the portion of the Gulf EEZ east of 85° 30′ W. longitude to bottom longlining for reef fish after the deepwater grouper quota was met on June 27, 2009. According to the NMFS 2009 report on sea turtle take estimates for the commercial reef fish fishery of the eastern Gulf, all but one observed sea turtle take occurred in water depths less than 50 fathoms (91

m). In October 2009, NMFS implemented a rule under the authority of the ESA to replace the emergency rule, pending implementation of Amendment 31. This rule prohibited using bottom longline gear to fish for reef fish in water depths less than 35 fathoms (64 m) and restricted the number of hooks allowed on each vessel to 1000 hooks, of which no more than 750 hooks could be fished or rigged for fishing at any given time. NMFS and the Council have developed Amendment 31 as a long-term method to address the bycatch of sea turtles in the Gulf reef fish fishery.

*Comment 2*: The pending legislation and influence from special interest groups seem to continue to dictate short-sighted management plans.

*Response*: Amendment 31 establishes long-term management measures to address sea turtle bycatch in the Gulf reef fish fishery. The amendment was developed and approved based on input from diverse interest groups participating in the regulatory process. Increased observer coverage and monitoring in the reef fish fishery will continue to help evaluate the effectiveness of the regulations. If the actions described in Amendment 31 do not meet the necessary reductions for sea turtle takes, the Council may reconsider these management measures in the future.

*Comment 3*: Amendment 31 will actually increase, rather than decrease, the number of allowable incidental takes of loggerhead sea turtles over the next three years, despite the fact that these populations are in decline and protected under the ESA. The allowed 1,152 takes with 631 deaths should be reduced. Florida loggerhead sea turtle nesting populations have declined more than 40 percent over the past decade. The agency has now authorized a huge increase in the number of sea turtles killed by this fishery. This decision is unlawful and the underlying Biological Opinion is fundamentally flawed.

*Response*: The actions in Amendment 31 aim to reduce the bycatch of sea turtles in the bottom longline component of the Gulf reef fish fishery. The Biological Opinion evaluated the actions in Amendment 31 and developed an incidental take statement (ITS) for the Gulf reef fish fishery based on the best available scientific data. The ITS from the previous Biological Opinion is not directly comparable to the 2009 Biological Opinion due to the improvement of evaluation methods and updated scientific information. Based on the lack of significant changes in the fishery, prior to the recent actions, it is reasonable to conclude that the level of take observed in the fishery has been occurring for some time now. For the bottom longline component of the Gulf reef fish fishery, the measures are expected to obtain a 48- to 67–percent reduction in sea turtle takes resulting in the authorized take of 623 loggerhead sea turtles with 378 mortalities. In addition, the Biological Opinion has determined that, beginning in 2012, the authorized triennial take of 1,043 loggerhead sea turtles with 566 mortalities, will not jeopardize the continued existence this species.

*Comment 4*: Amendment 31 is inadequate to conserve threatened and endangered sea turtle species, particularly loggerhead sea turtles, and fails to meet applicable legal requirements necessary for its approval. Amendment 31 would authorize an expansion of the bottom longline component of the Gulf reef fish fishery. Amendment 31 should be rejected, and NMFS should re-analyze the impacts of the existing bottom longline component of the reef fish fishery under the Magnuson-Stevens Act, the ESA, and the National Environmental Policy Act (NEPA), using the best available science and proper legal standards.

*Response*: Amendment 31 contains actions to establish gear modifications, a June through August seasonal-area closure, and a restrictive endorsement program. The combined effects of these actions are anticipated to achieve a 48- to 67–percent reduction in bottom longline fishing effort and corresponding sea turtle takes. This level of reduction has been determined to be consistent with NMFS' obligations under the Magnuson-Stevens Act, ESA and other applicable laws. The restrictive endorsement under which vessels will be allowed to continue using bottom longline gear is expected to reduce the fleet from approximately 120 to approximately 60 vessels. This is expected to translate to an 18- to 37–percent reduction in fleet effort and corresponding sea turtle takes, depending on the number of vessels that exit the fishery or convert to vertical line gear. The action does not limit the ability of vessels remaining in the fishery to increase capacity through permit transfers. However, because qualification for an endorsement is based on landings, the qualifying vessels tend to be the most active participants in the fishery. These qualifying vessels are believed to already be operating near full capacity and have little or no ability to increase effort. Further, the grouper and tilefish individual fishing quota program is also expected to limit longline effort in the fishery because each fisherman is limited to their own annual allocation and must therefore stop fishing when their total allocation has been used for the year taking into account any allocation that has been bought or sold.

*Comment 5*: Amendment 31 does not use the best available science. The Council and NMFS did not adequately consider the information provided by the Florida Fish and Wildlife Conservation Commission or information provided by scientists at Mote Marine Laboratory. Satellite tracking data indicate loggerhead sea turtles use the entire shelf area throughout all months of the year. Establishing a gear restriction during only June through August does not adequately address sea turtle interactions during the remainder of the year. The best available science shows the ESA rule provides more protection for threatened and endangered sea turtles, as it is a year-round closure, rather than the seasonal closure contained in Amendment 31.

*Response*: NMFS is aware that sea turtles are documented throughout the continental shelf waters along Florida's west coast, as illustrated by recent research efforts to satellite-tag and track sea turtles in the area. These data were discussed extensively by the Council, by NMFS staff, and in Amendment 31. However, these data indicate only presence or absence of sea turtles. The best scientific information available to NMFS and the Council to quantitatively assess the seasonal distribution and density of loggerhead sea turtles over the west Florida continental shelf is derived from aerial surveys conducted by the NMFS Southeast Fishery Science Center. Those data reveal a significant decrease in density of loggerhead sea turtles with increasing depth during the summer months. The Council chose their preferred option for a seasonal-area closure, and NMFS is implementing this closure, after consideration of the satellite-tag, fishery observer, and aerial survey information on sea turtle distribution and density on the west Florida continental shelf.

It should also be noted that the ESA rule, implemented in October 2009, was enacted pending the implementation of Amendment 31. Further, based upon the best scientific information available for Amendment 31, NMFS analysis indicates that the effort reductions realized from the ESA-based restrictions currently in place will be less than the reductions associated with the measures in Amendment 31. Thus, the sea turtle takes under Amendment 31 are anticipated to be less than under the current ESA rule.

*Comment 6*: Amendment 31 does not comply with ESA, NEPA or the Magnuson-Stevens Act. The 2009 Biological Opinion is flawed and not based on the best available scientific information, therefore, actions in Amendment 31, which are based on the conclusions of the Biological Opinion, are similarly impacted. Similarly, the Final Environmental Impact Statement (FEIS) prepared in conjunction with Amendment 31 is flawed because it has not adequately analyzed a true "no action" alternative as a baseline to which Amendment 31 actions could be compared. Rather than analyzing as the "no action" alternative the ESA Rule that is currently in place and that has been in place since October 2009, Amendment 31's FEIS chooses a "no action" alternative involving the status quo of no restrictions at all.

*Response*: The Biological Opinion used the best scientific information available to quantitatively assess the effects of the alternatives. The "no action" alternative in the FEIS is the status quo that existed at the time the Council voted to submit Amendment 31 for Secretarial review, approval, and implementation. The status quo in the FEIS, therefore, equates to no permanent restrictions on the longline component of the fishery that are specifically intended to limit interactions with sea turtles. On October 16, 2009, subsequent to Council submission of Amendment 31, NMFS implemented a rule under the authority of the ESA that established some of the measures contained in Amendment 31, as well as modified measures from Amendment 31; i.e., an indefinite closure inside 35 fathoms (64 m) rather than a seasonal closure for the same area. Although the ESA rule contains no specific expiration date, the preamble to the rule clearly established that the rule was intended to be effective on an interim basis during the development and implementation of Amendment 31, or some other long-term measures. As NMFS has consistently and publicly announced, the management measures contained in the ESA rule were intended to be replaced by the management measures contained in this rulemaking upon approval and implementation of Amendment 31. Also, the ESA measures currently in place were addressed as a reasonably foreseeable future, but temporary, action in the FEIS. As the comments point out, this could be viewed as a changed baseline, which means the impacts of the alternatives described in Amendment 31 are actually less than when compared to the prior baseline represented by the no action alternative in the FEIS. However, NMFS has determined that the impacts analysis in the FEIS contains the requisite hard look at the impacts of the proposed action relative to both the status quo as defined in the FEIS and the existing ESA rule. Accordingly, NMFS has determined that the FEIS is in compliance with applicable law.

*Comment 7*: The proposed actions in Amendment 31 are projected to achieve sea turtle mortality reductions in the bottom longline component of the reef fish fishery of 48 to 67 percent, and 50 percent for the overall reef fish fishery. This reduction is not adequate to meet the 60–to 70–percent mortality reduction target identified by NMFS to recover loggerhead sea turtles. NMFS and the Council should consider additional actions to achieve bycatch mortality reduction goals, including longer seasonal closures, extending the seasonal bottom longline closure to at least 50 fathoms (91 m), or to 35 fathoms (64 m) year-round, or establish more restrictive endorsement levels for the bottom longline sector.

*Response*: There are multiple sources of mortality affecting loggerhead sea turtles, and anthropogenic mortality on the species occurs at every life stage, although the exact magnitude of the mortality is often unknown. The Biological Opinion indicates it is likely that several factors compound to create the loggerhead sea turtle decline. With multiple sources of mortality, there is need for broad-based reductions in mortality across these multiple sources. In a NMFS presentation to the Council, preliminary results of a novel loggerhead sea turtle life history model estimated the need for a potential 60- to 70–percent reduction in total anthropogenic mortality from all sources for benthic-state loggerhead sea turtles to have a likelihood of positive growth for the loggerhead sea turtle population. However, there were dramatic uncertainties associated with these preliminary analyses and results, and the range of examined parameters estimated that the anthropogenic mortality reductions should be from less than 0 percent to greater than 100 percent.

NMFS did not make a recommendation to the Council regarding a "target" reduction in sea turtle mortality for the bottom longline component of the reef fish fishery. Amendment 31 is clear regarding the Council's considerations and deliberations regarding the actions it chose to address sea turtle interactions with bottom longline gear. There is no definitive information available regarding possible gear, bait, or fishing practice modifications that would ensure reductions in sea turtle takes. Therefore, the Council decided to address sea turtle takes indirectly by reducing bottom longline effort in the reef fish fishery, which is expected, in turn, to reduce sea turtle takes. To that end, a reduction in sea turtle takes will result in a reduction of sea turtle mortalities. NMFS and the Council considered several alternatives for various depth closures, seasonal closures, and endorsement qualifications. The Council chose the preferred actions in Amendment 31 to balance the continued operation of the bottom longline component of the reef fish fishery in the eastern Gulf while implementing adequate protective measures for sea turtles. The Council's suite of actions, in combination, are expected to achieve a 47 percent to 68 percent reduction in fishing effort by the bottom longline component of the reef fish fishery.

After the Council completed development of Amendment 31 and submitted it for Secretarial review in September 2009, NMFS considered the impacts of the proposed actions in its Biological Opinion, completed in October 2009. The Biological Opinion stated that the proposed management regime would reduce lethal takes of loggerhead sea turtles in the bottom longline component of the Gulf reef fish fishery from 942 triennially to 378 triennially with full implementation of Amendment 31; this is a 60 percent reduction in mortality by the bottom longline component of the reef fish fishery. Total, triennial, loggerhead sea turtle mortality attributed to the proposed action is expected to be reduced from 1130 lethal takes, in the past, to 566 lethal takes, with full implementation of Amendment 31. Thus, this is a 50–percent reduction in the fishery's overall impact on loggerhead sea turtles. Based on these findings, the Biological Opinion concluded that the continued authorization of the Gulf reef fish fishery was likely to adversely affect sea turtles and sawfish, but was not likely to jeopardize the continued existence of any listed species.

*Comment 8*: Amendment 31 fails to provide adequate protection for sea turtles. Far more protective measures are available and feasible, such as prohibiting the use of squid for bait, limiting mainline lengths, and using circle hooks.

*Response*: NMFS does not agree that gear and bait changes are certain to reduce takes. NMFS agrees there is documentation that sea turtles may prefer squid for bait, based on

observations in other fisheries. Most data come from the pelagic longline fisheries, which use larger hooks baited with whole squid, and which catch smaller sea turtles. In contrast, reef fish bottom longlines use relatively small hooks baited with cut bait, which catch much larger (often adult) sea turtles. As noted in Amendment 31, approximately 38 percent of all takes occurred when squid was used as bait; however, the take rate of sea turtles on squid bait may be an artifact of squid being the predominant bait used in the fishery, and because it stays on the hook longer than some fish baits, thus there is simply a greater probability of a sea turtle encountering squid bait than other types of bait. In addition, as noted in the amendment, sea turtles were taken on both squid and fish bait, including skate and shark bait, which would be a non-natural food for sea turtles. Information specific to the quantitative reductions of sea turtle interactions from a change of bait type are not available. Similarly, having less gear in the water at any one time may not reduce overall sea turtle takes. By having shorter mainlines, gear retrieval would be shorter and more sets could be made per day. Circle hooks have been required, when using natural baits, in the reef fish fishery since 2008. The majority of sea turtles taken by bottom longlines are adult loggerhead sea turtles. Using circle hooks large enough to physically preclude large sea turtles from being taken would also preclude all but the largest grouper from being caught. Information is not available to determine if hook size or hook guards are practical alternatives that would reduce sea turtle takes. Additional future research might provide an indication of the value of these gear modifications, or there may be some sea turtle repellant or deterrent designed in the future, but without some quantitative documentation of the effectiveness of any gear, bait, or fishing technique changes, NMFS agrees with the Council's choice to not select these actions as preferred procedures.

*Comment 9*: Gangion length on longlines should be restricted to 2 - 5 ft (0.6 - 1.5 m) with no more than 150–lb (68–kg) test line. This will reduce damage to the bottom, catch of gag, and deaths of sea turtles.

*Response*: Amendment 31 contains information illustrating that shorter gangion length does not necessarily correlate to fewer sea turtle takes. Amendment 31 presents information that gangions 4 ft (1.2 m) in length are only used by 13 percent of the fleet, but their use is associated with 33 percent of all observed sea turtle takes, thus representing a larger proportion of the total takes by gangions of that length. The Council discussed placing restrictions on strength of line, however, they did not include such a restriction in this rulemaking because injury to a sea turtle may occur from entanglement in a broken line or the presence of the hook. Further, anecdotal information from the industry suggests that line weak enough to allow most sea turtles to break free would also be too week to hold fish of the size commonly harvested.

*Comment 10*: With the proposed longline restriction based on a line approximating the 35–fathom (64 m) depth contour, it appears that longlining will be allowed on the middle and the lower part of the area called the "Elbow". Depths in this area range from roughly 27 to 32 fathoms (49 to 59 m). This area needs protection from this destructive gear. Running a straight line between two points is what is causing this problem and it needs to be addressed.

*Response*: NMFS agrees that the line approximating the 35–fathom (64 m) bathymetry contour will not prohibit bottom longline fishing in the described area in which some of the depths are less than 35 fathoms. However, it would not be feasible to follow the exact curvature of the 35–fathom (64 m) bathymetry contour due to the fine scale variation of the contour. The 35–fathom line is a generalization of the contour with waypoints published in the regulations and used by law enforcement to monitor the fishery. Due to the scale and resolution of the bathymetry contour, it is prohibitive to use an increased number of waypoints to capture all the curves of the contour.

*Comment 11*: NMFS should consider the 40,000 lb (18,144 kg) endorsement by including landings from all gear types with the majority of landings from bottom longline gear.

*Response*: The Council considered several alternatives for the endorsement action. The Council used the longline landings as qualification criteria for the endorsement to maintain vessels in the fishery that rely mostly or exclusively on longline gear to harvest fish. In addition, the Council considered the application of fish trap landings towards the endorsement qualification due to the phase out of fish traps in 2007, and the resultant conversion to a longline gear type on those vessels.

*Comment 12*: The Council and NMFS failed to consider several viable alternative actions to address the issue of sea turtle interactions in the bottom longline component of the reef fish fishery, including increasing observer coverage to better document interactions and establishing sea turtle take triggers for the reinitiation of consultation under ESA. NMFS should consider placing an observer on every longline vessel to accurately document bycatch within this fishery. The cost of the observer should be paid for by the industry using some kind of bottom longline cost recovery fee.

*Response*: Increasing observer coverage would not help to reduce sea turtle takes, but it would increase the monitoring of the Gulf reef fish fishery. Pursuant to the terms and conditions of the 2009 Biological Opinion, NMFS has already increased observer coverage levels to reduce reporting error and increase the statistical reliability of bycatch estimates. At the present time, applicable law does not authorize NMFS to impose fees on longline vessels to fund observers in the fleet.

*Comment 13*: Bottom longline gear is more indiscriminate than netting and is the single most deadly threat to sea turtles. Bottom longline gear causes excessive bycatch and kills unintended species, including endangered and threatened marine species. NMFS should consider applying methods used for catching tuna and swordfish without longline fishing, and force the industry to adopt them, or eliminate longlining all together. This would reduce the issue of overfishing.

*Response*: Amendment 31 addresses the need to reduce sea turtle bycatch within the bottom longline component of the Gulf reef fish fishery. NMFS and the Council considered many alternatives to reduce the number of sea turtle takes in the fishery, with an objective of maintaining a more restricted but still viable bottom longline component of the reef fish fishery. The Council chose their preferred alternatives and NMFS is implementing them through this final rule. In accordance with the Magnuson-Stevens Act, NMFS cannot substitute measures for, or add measures to, the specific measures proposed by the Councils; NMFS may only approve, disapprove, or partially approve the proposed measures and implement the approved measures through rulemaking. It would not meet the Council's objective to phase out bottom longlining in the Gulf of Mexico.

*Comment 14*: Regulations proposed in Amendment 31 are typical management responses to an increase in sea turtle takes, but lead fishing vessels to race to catch fish before a bycatch limit is met. Bycatch regulations should give fisherman incentives to avoid sea turtles and sea turtle takes. Regulations should be designed to meet the conservation and economic goals of the ESA and

Magnuson-Stevens Act. Regulations could include bycatch caps, bycatch auctions, and bycatch conservation banks. The Council should form an Advisory Panel to examine ways to develop incentive-based tools.

*Response*: NMFS has concluded that the actions contained in Amendment 31 and this final rule are sufficient to address sea turtle interactions in the Gulf reef fish fishery, at the same time maintain a viable bottom longline fleet. NMFS agrees that there are numerous additional management options available to the Council to effectively manage the Gulf reef fish resources. If the actions described in Amendment 31 do not meet the necessary reductions for sea turtle takes, the Council will have to reconsider these management measures in the future. NMFS encourages the public to be actively involved in the Council process and provide suggestions to the Councils for their deliberations.

*Comment 15*: NMFS has failed to consider all sources of mortality in its Biological Opinion such as vessel strikes, takes by hook and line gear in both the recreational and commercial sector, and entanglement by marine debris. Sea turtles also face threats from egg poachers, fishing boats, plastic bags, cold weather conditions, and capture in shrimp nets without sea turtle excluder devices. Injuries from these hooks affect a sea turtle's ability to feed, swim, avoid predators, and reproduce. Many times the sea turtles drown, or are unable to recover from the extreme physiological stress of being caught and die soon after being released.

*Response*: NMFS' 2009 Biological Opinion includes information on vessel strikes, interactions with hooks, and other anthropogenic threats to sea turtles. In addition, the Biological Opinion considered the delayed effects of non-lethal interactions with fishing gear. Using the best scientific information available, the Council and NMFS, developed and are implementing through this final rule, management measures that will both help reduce sea turtle takes and maintain a viable bottom longline component of the Gulf reef fish fishery.

**Removal of Bottom Longline Measures Under ESA Authority**

On October 21, 2009, NMFS published a final rule under the ESA to reduce the incidental take and mortality of sea turtles in the bottom longline component of the Gulf reef fish fishery until Amendment 31 is implemented. The ESA rule included provisions to prohibit the use of bottom longline gear for the harvest of reef fish shoreward of a line approximating the 35–fathom depth contour in the eastern Gulf and limit bottom longline vessels operating in the reef fish fishery east of 85° 30′ W. longitude to 1,000 hooks onboard, of which only 750 may be fished or rigged for fishing. Although the preambles to both the ESA rule (74 FR 53889, October 21, 2009) and the proposed rule to implement Amendment 31 (75 FR 2469, January 15, 2010), as well as the notice of availability (74 FR 69322, December 31, 2009) all indicated the ESA rule would be replaced by this final rule, amendatory regulatory text was omitted from the proposed rule. Nonetheless, comments 5 and 6 demonstrate that commenters understood this final rule would supercede and replace the ESA rule. The appropriate amendatory regulatory text is included in this final rule, which removes from 50 CFR part 223 the measures implemented through the ESA rule published October 21, 2009 (74 FR 53889), and restores the provisions of 50 CFR part 223.206(d) to the form in which it existed prior to the publication of the ESA rule. This change is the logical outgrowth of the proposed rule.

**Classification**

The Administrator, Southeast Region, NMFS has determined that Amendment 31 is necessary for the conservation and management of Gulf reef fish and the protection of sea turtles and is consistent with the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an FEIS for this amendment. A notice of availability for the FEIS was published on February 5, 2010 (75 FR 6026). A copy of the ROD is available from NMFS (*see* **ADDRESSES**).

NMFS prepared a FRFA, as required by section 603 of the Regulatory Flexibility Act. The FRFA describes the economic impact this final rule is expected to have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from NMFS (*see* **ADDRESSES**). A summary of the FRFA analysis follows.

The purpose of this final rule is to reduce interactions between sea turtles and bottom longline gear in the reef fish fishery in the eastern Gulf. The Magnuson-Stevens Act provides the statutory basis for this final rule.

No duplicative, overlapping, or conflicting Federal rules have been identified.

This final rule will prohibit the use of bottom longline gear to fish for reef fish in the eastern Gulf (east of 85° 30′ W. longitude) shoreward of a line approximating the 35–fathom (64–m) depth contour from June through August, require a permit endorsement to fish for reef fish using bottom longline gear in the eastern Gulf, and limit the number of hooks per vessel using bottom longline gear to fish for reef fish in the eastern Gulf to 1,000 hooks, of which no more than 750 hooks can be rigged for fishing or fished at any given time.

No significant issues were raised by public comments in response to the Initial Regulatory Flexibility Analysis (IRFA). Therefore, no changes were made in the final rule as a result of such comments.

This final rule is expected to directly affect commercial fishing vessels that use bottom longline gear to fish for reef fish in the eastern Gulf. Based on logbook records, for the period 2003–2007, an average of 149 vessels per year recorded reef fish landings using bottom longline gear. These vessels are estimated to average $108,635 per year in gross revenues and $72,649 per year in net operating revenues (NOR; revenues net of non-labor trip costs).

Some fleet activity is known to occur in the commercial sector of the Gulf 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. It is unknown whether all of these linked permits are for vessels that use longline gear, which generate higher average annual revenues than vessels that use other gear types to harvest reef fish. Nevertheless, assuming each of these six vessels use bottom longline gear, and, using the average revenue per vessel provided above, the average annual combined revenues for this entity would be approximately $652,000.

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 affiliated operations worldwide. Based on the gross revenue estimates

provided above, all commercial reef fish vessels expected to be directly affected by this final rule are determined for the purpose of this analysis to be small business entities.

As previously stated, this final rule will require a new compliance requirement of a permit endorsement to fish for reef fish using bottom longline gear in the eastern Gulf. Initial acquisition of the endorsement will not require an application or additional fees. Eligibility for the endorsement will be determined by NMFS, based on an evaluation of the landings history associated with each commercial reef fish permit. The permit endorsement will be provided to qualified vessels. As a result, no additional costs or administrative burdens will be imposed on qualifying entities. Renewal of the endorsement will require a $10 fee in addition to the $25 for their commercial reef fish permit. Applicants will also incur an additional time burden, estimated to average less than 1 minute per response, to review instructions and complete the endorsement portion of the permit application. Permit holders that do not qualify for the endorsement will be prohibited from using bottom longline gear to harvest reef fish in the prescribed area of the eastern Gulf. The expected economic effects of the endorsement requirement on entities that historically have harvested reef fish with bottom longline gear but will not qualify for the endorsement are discussed below. This final rule will not establish any new reporting or record-keeping requirements.

The expected effects of the seasonal bottom longline gear prohibition and endorsement requirement were evaluated in tandem. Vessels affected by the endorsement and gear restrictions will be expected to either shift fishing effort to areas that remain open and continue to fish with bottom longline gear, or convert to vertical line gear. However, because of the absence of adequate data, effort shift was not modeled in the analysis of the expected economic effects of this final rule. Instead, only gear conversion was modeled, with gear conversion rates ranging from 0 percent to 100 percent of affected vessels and trips. Under this modeling approach, any affected effort that did not convert bottom longline gear to vertical line gear was assumed not to occur, resulting in the loss of all normal harvests and revenues for that vessel and trip. As such, this may be considered an extreme assumption. In reality, rather than trip cancellation, effort shift is likely to occur, resulting in some amount of continued historic harvest. The absence of an effort shift analysis results in over-estimation of the expected economic effects of this final rule and, as a result, the following results should be viewed as the upper bounds of any anticipated economic impacts.

This final rule will be expected to reduce the net operating revenues (NOR; revenues minus non-labor variable operating costs) of commercial vessels that have historically harvested reef fish using bottom longline gear in the eastern Gulf by $1.28 million (100–percent conversion to vertical line gear) to $3.44 million (0–percent conversion to vertical line gear) per year. Averaged across the average number of vessels per year with recorded landings of reef fish using bottom longline gear from 2003–2007 (149 vessels), the estimated reduction in NOR per vessel ranges from approximately $8,600 to $23,100, or approximately 12 percent to 32 percent of the average annual NOR per vessel. Individual vessels may experience higher or lower losses than these averages. Gear conversion is estimated to cost approximately $13,750 per vessel, though partial financial assistance is available for up to 50 vessels in the fishery from an environmental advocacy group. Additional economic losses may accrue as a result of the hook restriction. Although these losses cannot currently be quantified with available data, the hook restriction may result in a reduced harvest efficiency for some vessels. This would be expected to result in either reduced harvests or increased costs to maintain normal harvests if fishermen have to fish longer or make more sets than under current conditions. The hook restrictions could also increase the possibility that a trip may have to be terminated early if a line is lost and insufficient replacement hooks are available onboard to allow continued fishing.

Four alternatives, including the no action alternative (status quo), with multiple sub-alternatives, were considered for the action to establish seasonal and area gear restrictions. One alternative and set of sub-options focused on the geographic scope of the gear restriction, one alternative and set of sub-options focused on the depth specification of the gear restriction, and one alternative and set of sub-options focused on the temporal application of the gear restriction. The no-action alternative would not establish any new gear restrictions, would not be expected to reduce interactions between sea turtles and bottom longline gear in the reef fish fishery, and would not be expected to achieve the Council's objectives.

The alternative specifications of the geographic scope of the gear restrictions would have imposed the restrictions on smaller areas than this final rule and, as a result, would be expected to result in lower estimates of adverse economic effects than those contained in this final rule. However, the reduced geographic scope of these alternative specifications would be expected to result in an insufficient reduction in interactions between sea turtles and bottom longline gear, and would not be expected to achieve the Council's objectives.

One alternative to the depth specification of this final rule would have prohibited the use of bottom longline gear to harvest reef fish in waters less than 30 fathoms (55 m), which would be less restrictive than this final rule, while two alternatives would have been more restrictive, prohibiting the use of the gear in waters less than 40 fathoms (73 m) and 50 fathoms (91 m), respectively. The less restrictive alternative would be expected to reduce the loss of NOR to commercial vessels relative to this final rule. However, the reduced scope of the restriction would be expected to result in an insufficient reduction in interactions between sea turtles and bottom longline gear, and would not be expected to achieve the Council's objectives. While the two more restrictive alternatives may be expected to result in a greater level of protection of sea turtles than this final rule, both deeper depth alternatives would be expected to result in greater adverse economic effects than the depth specification in this final rule. As a result, these alternative depth specifications would not be expected to achieve the Council's objectives of sufficiently reducing interactions between sea turtles and bottom longline gear while minimizing the adverse effects on the reef fish fishery.

Both alternatives to the seasonal specification of this final rule would have increased the duration of the gear prohibition and would be expected to result in greater adverse economic effects than the seasonal restriction of this final rule. Similar to the more restrictive depth alternatives, while increased seasonal application of the gear prohibition would be expected to result in greater protection of sea turtles, these alternatives would not be expected to achieve the Council's objectives of sufficiently reducing interactions between sea turtles and bottom longline gear while minimizing the adverse economic effects on the reef fish fishery.

Seven alternatives, including the no action alternative (status quo), were considered for the action to reduce the

total number of vessels allowed to use bottom longline gear to harvest reef fish in the eastern Gulf. Except for the no action alternative, the alternatives varied by the minimum average annual reef fish harvest threshold that would be required to qualify for a permit endorsement that allowed the use of bottom longline gear to harvest reef fish in the eastern Gulf. Each alternative included two sub-options for the qualifying time period from which average annual harvests would be evaluated (1999–2004 or 1999–2007) and three sub-options that addressed the transferability of the endorsement. The no action alternative would not establish a longline endorsement to the reef fish permit, would not be expected to reduce the number of vessels (permits) allowed to use bottom longline gear to harvest reef fish in the eastern Gulf, and would not be expected to achieve the Council's objectives.

Two alternatives would have established lower average annual harvest thresholds (20,000 lb (9,072 kg) and 30,000 lb (13,608 kg), gutted weight) for endorsement qualification than this final rule endorsement qualification (40,000 lb (18,144 kg), gutted weight), while two alternatives would establish higher thresholds (50,000 lb (22,680 kg) and 60,000 lb (27,216 kg), gutted weight). Because lower thresholds would allow more vessels to continue to participate in the reef fish fishery using bottom longline gear, these alternatives would be expected to result in lower adverse economic effects than the qualification threshold described in this final rule. However, neither of these two alternatives would be expected to result in sufficient reduction in the number of vessels allowed to use bottom longline gear to harvest reef fish in the eastern Gulf or, in turn, sufficient reduction in bottom longline effort necessary to achieve target reductions in interactions between sea turtles and bottom longline gear. As a result, these alternatives would not be expected to achieve the Council's objectives. The two alternatives that would have established higher qualification thresholds would be expected to result in fewer qualifying vessels, greater economic losses, and greater reduction in interactions between sea turtles and bottom longline gear than is necessary to achieve the Council's objectives.

Under the seventh alternative for the action to reduce the number of vessels allowed to use bottom longline gear to harvest reef fish in the eastern Gulf, bottom longline endorsement qualification would have been based on landings histories in communities where the ex-vessel value of red grouper landings accounted for at least 15 percent of the total ex-vessel value of all species landed in the community. Qualifying permits would have been required to have reported landings in these communities for at least 5 years during the period of 1999–2007, with minimum average annual reef fish harvests of 30,000 lb (13,608 kg) per permit. The net economic effects of this alternative are unknown. However, while over 80 vessels would be expected to qualify for an endorsement under a 30,000–lb (13,608–kg) threshold without a community-linkage requirement, fewer than 50 vessels would qualify with the imposition of the community requirement. The intent of this alternative was to reduce bottom longline effort to a level that would adequately reduce sea turtle interactions while protecting specific communities dependent on the longline gear-component of the commercial sector of the Gulf reef fish fishery. However, this alternative was not capable of achieving the Council's objectives because qualifying vessels could not be required to continue landing their harvests in the target communities. Additionally, the exclusion of vessels that met the landings threshold but lacked the required history with a specific dependent community was determined to be inequitable within the fishery.

This final rule will establish a bottom longline endorsement qualification based on harvest history from 1999–2007. The alternative period of evaluation, 1999–2004, would have, for all landings thresholds, resulted in fewer qualifying permits and greater adverse economic effects within the fishery than those economic impacts anticipated in this final rule.

This final rule will also allow unrestricted transfer of endorsements between commercial Gulf reef fish permit holders. The alternative sub-options would either have not allowed endorsement transfer or only allowed transfer to reef fish permit holders with a vessel of equal or lesser length. Each of these sub-options would have been more restrictive than the transfer allowance of this final rule and, as a result, would be expected to result in greater adverse economic effects than this final rule.

Four alternatives, including the no action alternative (status quo), were considered for the action to modify fishing gear or practices. The no action alternative would not establish further restrictions on fishing gear or practices and, as a result, would not be expected to achieve the Council's objectives.

One alternative, with multiple sub-options, to the final fishing gear restriction would limit the mainline length for bottom longlines, while another would limit the gangion length. The economic effects of these alternatives cannot be quantitatively evaluated with available data. In general, these actions would be expected to adversely affect the catch rates, operating efficiency, and NOR of affected vessels. Whether these alternatives would result in lower adverse economic effects than the final hook restriction is unknown. However, available data does not indicate that these measures would be more effective in reducing interactions between sea turtles and bottom longline gear than the hook restriction in this final rule.

Two alternative hook limits, 500 hooks and 1,500 hooks, were also considered relative to the limit of 750 hooks stated in this final rule. The lower hook limit of 500 would be expected to result in greater adverse economic effects than the final limit and is more restrictive than is believed necessary to achieve the targeted reduction in interactions between sea turtles and bottom longline gear. Conversely, while the higher hook limit of 1,500 would be expected to result in lower adverse economic effects to the fishery than the final limit, it is not believed to be a sufficiently restrictive measure to achieve the targeted reduction in sea turtle interactions.

The amendment on which this final rule is based also considered an action to establish restrictions on the bait used in the bottom longline reef fish fishery. Two alternatives, including the no action alternative (status quo), were considered. However, the no action alternative with respect to bait restrictions was selected by the Council as the preferred alternative. As a result, no regulatory action is required, no direct adverse economic effects are expected to accrue to entities involved in the bottom longline component of the reef fish fishery in the eastern Gulf, and the issue of significant alternatives is not relevant.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0205. The public reporting burden contained in this final rule includes an estimated 1 minute per response for selecting a Gulf reef fish bottom longline endorsement on the Federal Permit Application Form and 2 hours per response for permit holders appealing their eligibility of a bottom longline endorsement, including the 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 estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and OMB (*see* **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

*50 CFR Part 223*

Endangered and threatened species; Exports; Imports; Transportation.

*50 CFR Part 622*

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 20, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR parts 223 and 622 are amended as follows:

## PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.206, paragraph (d)(12) is removed and paragraph (d) introductory text is revised to read as follows:

### § 223.206 Exceptions to prohibitions relating to sea turtles.

* * * * *

(d) *Exception for incidental taking.* The prohibitions against taking in § 223.205(a) do not apply to the incidental take of any member of a threatened species of sea turtle (i.e., a take not directed towards such member) during fishing or scientific research activities, to the extent that those involved are in compliance with all applicable requirements of paragraphs (d)(1) through (d)(11) of this section, or in compliance with the terms and conditions of an incidental take permit issued pursuant to paragraph (a)(2) of this section.

* * * * *

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.2, the definition of "Annual catch target" and "Bottom longline" are added in alphabetical order to read as follows:

### § 622.2 Definitions and acronyms.

* * * * *

*Annual catch target (ACT)* means an amount of annual catch of a stock or stock complex that is the management target of the fishery, and accounts for management uncertainty in controlling the actual catch at or below the ACL.

* * * * *

*Bottom longline* means a longline that is deployed, or in combination with gear aboard the vessel, e.g., weights or anchors, is capable of being deployed to maintain contact with the ocean bottom.

* * * * *

■ 5. In § 622.4, the third sentence of paragraph (a)(2)(v) and the first sentence of paragraph (g)(1) are revised, and paragraph (a)(2)(xiv) is added to read as follows:

### § 622.4 Permits and fees.

* * * * *

(a) * * *

(2) * * *

(v) * * * See paragraph (a)(2)(ix) of this section regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes and paragraph (a)(2)(xiv) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf. * * *

* * * * *

(xiv) *Eastern Gulf reef fish bottom longline endorsement.* For a person aboard a vessel, for which a valid commercial vessel permit for Gulf reef fish has been issued, to use a bottom longline for Gulf reef fish in the Gulf EEZ east of 85°30′ W. long., a valid eastern Gulf reef fish bottom longline endorsement must have been issued to the vessel and must be on board. A permit or endorsement that has expired is not valid. This endorsement must be renewed annually and may only be renewed if the associated vessel has a valid commercial vessel permit for Gulf reef fish or if the endorsement and associated permit are being concurrently renewed. The RA will not reissue this endorsement if the endorsement is revoked or if the RA does not receive a complete application for renewal of the endorsement within 1 year after the endorsement's expiration date.

(A) *Initial eligibility.* To be eligible for an initial eastern Gulf reef fish bottom longline endorsement a person must have been issued and must possess a valid or renewable commercial vessel permit for Gulf reef fish that has bottom longline landings of Gulf reef fish averaging at least 40,000 lb (18,144 kg), gutted weight, annually during the period 1999 through 2007. In addition, for a commercial reef fish permit with reef fish longline landings after February 7, 2007, and with reef fish trap or longline landings during 1999 through February 7, 2007, such reef fish trap landings may be applied toward satisfaction of the eligibility requirement for an initial eastern Gulf reef fish bottom longline endorsement. All applicable reef fish landings associated with a current reef fish permit for the applicable landings history, including those reported by a person(s) who held the license prior to the current license owner, will be attributed to the current license owner. However, landings accumulated via permit stacking are not creditable for the purpose of determining eligibility for an initial eastern Gulf reef fish bottom longline endorsement. Only legal landings reported in compliance with applicable state and Federal regulations will be accepted.

(B) *Initial issuance.* On or about May 26, 2010 the RA will mail each eligible permittee an eastern Gulf reef fish bottom longline endorsement via certified mail, return receipt requested, to the permittee's address of record as listed in NMFS' permit files. An eligible permittee who does not receive an endorsement from the RA, must contact the RA no later than June 25, 2010 to clarify his/her endorsement status. A permittee who is denied an endorsement based on the RA's initial determination of eligibility and who disagrees with that determination may appeal to the RA.

(C) *Procedure for appealing longline endorsement eligibility and/or landings information.* The only items subject to appeal are initial eligibility for an eastern Gulf reef fish bottom longline endorsement based on ownership of a qualifying reef fish permit, the accuracy of the amount of landings, and correct assignment of landings to the permittee. Appeals based on hardship factors will not be considered. Appeals must be submitted to the RA postmarked no later than August 24, 2010, and must contain documentation supporting the basis for the appeal. The RA will review all appeals, render final decisions on the

appeals, and advise the appellant of the final decision.

(*1*) *Eligibility appeals*. NMFS' records of reef fish permits are the sole basis for determining ownership of such permits. A person who believes he/she meets the permit eligibility criteria based on ownership of a vessel under a different name, as may have occurred when ownership has changed from individual to corporate or vice versa, must document his/her continuity of ownership.

(*2*) *Landings appeals*. Appeals regarding landings data for 1999 through 2007 will be based on NMFS' logbook records. If NMFS' logbooks are not available, the RA may use state landings records or data for the period 1999 through 2007 that were submitted in compliance with applicable Federal and state regulations on or before December 31, 2008.

(D) *Transferability*. An owner of a vessel with a valid eastern Gulf reef fish bottom longline endorsement may transfer that endorsement to an owner of a vessel that has a valid commercial vessel permit for Gulf reef fish.

(E) *Fees*. There is no fee for initial issuance of an eastern Gulf reef fish bottom longline endorsement. A fee is charged for each renewal, transfer, or replacement of such endorsement. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application for renewal, transfer, or replacement.

* * * * *

(g) * * *

(1) A vessel permit, license, or endorsement or a dealer permit or endorsement issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a commercial vessel permit for Gulf reef fish, in paragraph (o) of this section for a king mackerel gillnet permit, in paragraph (q) of this section for a commercial vessel permit for king mackerel, in paragraph (r) of this section for a charter vessel/headboat permit for Gulf coastal migratory pelagic fish or Gulf reef fish, in paragraph (s) of this section for a commercial vessel moratorium permit for Gulf shrimp, in § 622.17(c) for a commercial vessel permit for golden crab, in § 622.18(b) for a commercial vessel permit for South Atlantic snapper-grouper, in § 622.19(b) for a commercial vessel permit for South Atlantic rock shrimp, or in § 622.4(a)(2)(xiv)(D) for an eastern Gulf reef fish bottom longline endorsement.

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■ 6. In § 622.34, paragraph (q) is added to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

* * * * *

(q) *Prohibitions applicable to bottom longline fishing for Gulf reef fish*. (1) From June through August each year, bottom longlining for Gulf reef fish is prohibited in the portion of the Gulf EEZ east of 85°30′ W. long. that is shoreward of rhumb lines connecting, in order, the following points:

| Point | North lat. | West long. |
|---|---|---|
| A | 28°58.70′ | 85°30.00′ |
| B | 28°59.25′ | 85°26.70′ |
| C | 28°57.00′ | 85°13.80′ |
| D | 28°47.40′ | 85°3.90′ |
| E | 28°19.50′ | 84°43.00′ |
| F | 28°0.80′ | 84°20.00′ |
| G | 28°48.80′ | 83°40.00′ |
| H | 25°17.00′ | 83°19.00′ |
| I | 24°54.00′ | 83°21.00′ |
| J | 24°29.50′ | 83°12.30′ |
| K | 24°26.50′ | 83°00.00′ |

(2) Within the prohibited area and time period specified in paragraph (q)(1) of this section, a vessel with bottom longline gear on board may not possess Gulf reef fish unless the bottom longline gear is appropriately stowed, and a vessel that is using bottom longline gear to fish for species other than Gulf reef fish may not possess Gulf reef fish. For the purposes of paragraph (q) of this section, appropriately stowed means that a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck; hooks cannot be baited; and all buoys must be disconnected from the gear but may remain on deck.

(3) Within the Gulf EEZ east of 85°30′ W. long., a vessel for which a valid eastern Gulf reef fish bottom longline endorsement has been issued that is fishing bottom longline gear or has bottom longline gear on board cannot possess more than a total of 1000 hooks including hooks on board the vessel and hooks being fished and cannot possess more than 750 hooks rigged for fishing at any given time. For the purpose of this paragraph, "hooks rigged for fishing" means hooks attached to a line or other device capable of attaching to the mainline of the longline.

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[FR Doc. 2010–9613 Filed 4–23–10; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 75, No. 79
Monday, April 26, 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.

## SMALL BUSINESS ADMINISTRATION

## 13 CFR Part 115

**RIN 3245–AF77**

## Surety Bond Guarantee Program; Disaster and Miscellaneous Amendments

**AGENCY:** Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This Proposed Rule would implement the authority provided by the Small Business Disaster Response and Loan Improvements Act of 2008 for issuing surety bond guarantees for contracts and orders related to a major disaster. The Proposed Rule would also clarify that the Small Business Administration (SBA) does not cover any costs related to any insurance or indemnification requirements in the bonded contract.

**DATES:** Comments must be received on or before May 26, 2010.

**ADDRESSES:** You may submit comments, identified by RIN 3245–AF77 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of Surety Guarantees, Suite 8600, 409 Third Street, SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Ms. Barbara Brannan, Special Assistant, Office of Surety Guarantees, 409 Third Street, SW., Washington, DC 20416 or send an e-mail to *barbara.brannan@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara J. Brannan, Office of Surety Guarantees, 202–205–6545, e-mail: *barbara.brannan@sba.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background Information

SBA guarantees a portion of bid, payment and performance bonds on contracts up to $2 million for small and emerging contractors who cannot obtain Surety bonds through regular commercial channels. SBA's guarantee gives Sureties an incentive to provide bonding for small businesses and thereby assists small businesses in obtaining greater access to contracting opportunities. The Proposed Rule includes four proposed revisions to 13 CFR 115. Three of the four revisions would implement the authority granted to the Agency in § 12079 of subtitle B of title XII of Public Law 110–246. The fourth revision would clarify that SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract.

Section 12079 of Public Law 110–246 sets forth the bonding thresholds for any procurement related to a major disaster. For Contracts and Orders, as defined in 13 CFR 115.10, related to a major disaster, a new provision would be added to SBA regulations, 13 CFR 115.12(e)(5), to authorize SBA to approve, under certain conditions, an SBA bond guarantee on an individual Contract or Order up to $5,000,000 at the time of bond execution. For products or services procured under non-Federal Contracts or Orders up to $5,000,000, an SBA bond guarantee may be issued if the products will be manufactured or the services will be performed in the major disaster area identified in the Federal Emergency Management Agency (FEMA) Web site. SBA finds that the manufacturing of any products or the performance of any services in the disaster area will assist recovery efforts in the disaster area by generating economic activity and that, therefore, these procurements are reasonably related to the major disaster.

*For products or services procured under a Federal Contract or Order up to $5,000,000, an SBA bond guarantee may be issued if:* (a) The products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site; or (b) the products will be manufactured or the services will be performed outside the major disaster area and the products or services will directly assist in the recovery efforts in the major disaster area. The SBA bond guarantee may be issued on a Federal Contract or Order that meets one of the above two conditions up to $10,000,000 at the request of the Head of the Agency involved in disaster reconstruction efforts.

In addition, SBA believes that recovery efforts after a major disaster will generally continue for the first 12 months after the disaster is declared. Accordingly, the Proposed Rule provides that SBA's authority to guarantee bonds in the amounts authorized by Public Law 110–246 for a particular disaster would apply only during the 12 months following the disaster declaration unless SBA extends, in its discretion, the authority for such disaster. SBA will publish a notice of any extension in the **Federal Register**.

This new bond authority is also subject to the availability of funds appropriated in advance specifically to carry out § 12079 of Public Law 110–246. In accordance with the new authority, the definition of Applicable Statutory Limit set forth in 13 CFR 115.10 would be revised, and a new definition for Head of Agency would be added to 13 CFR 115.10.

In addition, the Proposed Rule would clarify that SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract. As insurance and indemnification requirements may appear in Contracts, SBA is proposing to add a new paragraph (5) to § 115.16(f) to clarify that SBA excludes the following from the losses covered by the SBA guarantee: (1) Any costs that arise from the Principal's failure to secure and maintain insurance coverage required by the Contract or Order; (2) any costs that result from any claims or judgments that exceed the amount of any insurance coverage required by the Contract or Order; and (3) any costs that arise from any agreement by the Principal in the Contract or Order to indemnify the Obligee or any other Persons.

### II. Section by Section Analysis

*Section 115.10.* SBA is proposing to revise the definition of the term, "Applicable Statutory Limit" to reflect

that the maximum amount of any Contract or Order for which the Agency may issue a surety bond guarantee may be set by statutory provisions other than § 411(a) of the Small Business Investment Act, such as by § 12079 of Public Law 110–246. SBA is also proposing to add a new definition for "Head of Agency" to implement § 12079(b) of Public Law 110–246.

*Section 115.12(e)(5).* SBA is proposing to add a new provision relating to the new surety bond guarantee authority provided under § 12079 of Public Law 110–246 for Contracts and Orders related to a major disaster area. This new authority would apply to an individual Contract or Order up to $5,000,000 at the time of bond execution. For products or services procured under non-Federal Contracts or Orders up to $5,000,000, an SBA bond guarantee may be issued if the products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site. For products or services procured under a Federal Contract or Order up to $5,000,000, an SBA bond guarantee may be issued if: (a) The products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site; or (b) the products are manufactured or the services are performed outside the major disaster area and the products or services will directly assist in the recovery efforts in the major disaster area. The SBA bond guarantee may be issued on a Federal Contract or Order that meets one of the above two conditions up to $10,000,000 at the request of the Head of the Agency involved in disaster reconstruction efforts.

In addition, this provision would apply to a Contract or Order for which an offer is submitted or award made within 12 months from the date an area is designated a major disaster area as identified in the FEMA Web site at *http://www.fema.gov.* SBA may, at its discretion, extend this time period for any particular disaster. SBA expects that it would consider extending the time period only where efforts to recover from the major disaster were still underway one year after its occurrence. SBA will publish a notice of any extension in the **Federal Register**. The new bond authority is also expressly conditioned on the appropriation of funds in advance.

*Section 115.16(f).* SBA is proposing to add a new paragraph (5) to clarify that SBA does not cover any costs related to any insurance or indemnification requirements in the bonded contract. As insurance and indemnification requirements may appear in Contracts, SBA is proposing to clarify that the following costs are excluded from the losses covered by the SBA guarantee: (1) Any costs that arise from the Principal's failure to secure and maintain insurance coverage required by the Contract or Order; (2) any costs that result from any claims or judgments that exceed the amount of any insurance coverage required by the Contract or Order; and (3) any costs that arise from any agreement in the Contract or Order by the Principal to indemnify the Obligee or any other Persons.

**Compliance With Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866. This rule is also not a major rule under the Congressional Review Act.

**Executive Order 12988**

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

**Executive Order 13132**

For purposes of Executive Order 13132, SBA has determined that the rule 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. Therefore, for the purpose of Executive Order 13132, Federalism, SBA has determined that this Proposed Rule has no federalism implications warranting preparation of a federalism assessment.

**Paperwork Reduction Act, 44 U.S.C., Ch. 35**

SBA has determined that this Proposed Rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35.

**Regulatory Flexibility Act, 5 U.S.C. 601–612**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are approximately one dozen Sureties that participate in the SBA program, and no part of this Proposed Rule would impose any significant additional cost or burden on them.

**List of Subjects in 13 CFR Part 115**

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

For the reasons stated in the preamble, the Small Business Administration proposes to amend 13 CFR Part 115 as follows:

## PART 115—SURETY BOND GUARANTEE

1. The authority citation for part 115 is revised to read as follows:

**Authority:** 5 U.S.C. app. 3; 15 U.S.C. 687b, 687c, 694a, 694b note, Pub. L. 106–554; Pub. L. 108–447, Div K, § 203; Pub. L. 110–246, § 12079, 122 Stat. 1651; and Pub. L. 111–5, 123 Stat.115.

2. In § 115.10, revise the definition of "Applicable Statutory Limit" and add the definition of "Head of Agency" to read as follows:

**§ 115.10 Definitions.**

* * * * *

*Applicable Statutory Limit* means the maximum amount of any Contract or Order for which § 411(a) of the Small Business Investment Act, as amended from time to time, or other law, authorizes SBA to guarantee, or commit to guarantee, a Bid Bond, Payment Bond, Performance Bond, or Ancillary Bond.

* * * * *

*Head of Agency* means in the case of a cabinet department, the Secretary; and in the case of an independent commission, board, or agency, the Chair or Administrator; or any person to whom the Secretary, Chair, or Administrator has directly delegated the authority to request SBA to guarantee bonds on Contracts or Orders in excess of $5,000,000.

* * * * *

3. In § 115.12, add paragraph (e)(5) to read as follows:

**§ 115.12 General program policies and provisions.**

* * * * *

(e) * * *

(5) *Guarantee authority for Contracts and Orders related to a major disaster area.* Subject to the availability of funds appropriated in advance specifically for the purpose of guaranteeing bonds for any Contract or Order related to a major disaster, SBA may guarantee bonds on any Contract or Order under the following terms and conditions:

(i) The Contract or Order does not exceed $5,000,000 at the time of bond execution, and:

(A) For products or services procured under a Federal Contract or Order, the products will be manufactured or the services will be performed in the major disaster area identified in the Federal Emergency Management Agency (FEMA) Web site at *http://www.fema.gov,* or the products will be manufactured or the services will be performed outside the major disaster area and the products or services will directly assist in the recovery efforts in the major disaster area; or

(B) For products or services procured under any other Contract or Order, the products will be manufactured or the services will be performed in the major disaster area identified in the FEMA Web site at *http://www.fema.gov;*

(ii) At the request of the Head of the Agency involved in reconstruction efforts in response to a major disaster, SBA may guarantee bonds on Federal Contracts or Orders in excess of $5,000,000, but not more than $10,000,000;

(iii) The restrictions set forth in § 115.12(e)(3) do not apply to the guarantees issued under this paragraph (e)(5); and

(iv) A guarantee may be issued under this paragraph (e)(5) for any Contract or Order for which an offer is submitted or an award is made within 12 months from the date an area is designated a major disaster area in the **Federal Register.** SBA may, at its discretion, extend this time period for any particular disaster, and will publish a notice of the extension in the **Federal Register.**

* * * * *

4. Amend § 115.16 as follows:

a. Remove the word "and" at the end of paragraph (f)(3);

b. Remove the punctuation "." at the end of paragraph (f)(4); and

c. Add paragraph (f)(5) to read as follows:

**§ 115.16 Determination of Surety's Loss.**

* * * * *

(f) * * *

(5) Any costs that arise from the Principal's failure to secure and maintain insurance coverage required by the Contract or Order, or any costs that result from any claims or judgments that exceed the amount of any insurance coverage required by the Contract or Order, as well as any costs that arise as a result of any agreement by the Principal in the Contract or Order to indemnify the Obligee or any other Persons.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2010–9434 Filed 4–23–10; 8:45 am]

**BILLING CODE 8025–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 33

**[Docket No. FAA–2010–0398; Notice No. 10–06]**

**RIN 2120–AJ62**

## Airworthiness Standards; Rotor Overspeed Requirements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend the aircraft turbine engine rotor overspeed type certification standards. This action would establish uniform rotor overspeed design and test requirements for aircraft engines and turbochargers certificated by the FAA and the European Aviation Safety Agency (EASA). The proposed rule would also establish uniform standards for the design and testing of engine rotor parts in the United States and in Europe, eliminating the need to comply with two differing sets of requirements. The proposed rule would improve safety by clarifying existing overspeed requirements for aircraft turbine engine rotor parts.

**DATES:** Send your comments on or before July 26, 2010.

**ADDRESSES:** You may send comments identified by docket number FAA–2010–0398 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send Comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Take comments to Docket Operations 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.
- Fax: 1–202–493–2251.

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) or you may visit *http://DocketsInfo.dot.gov.*

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or go to Docket Operations 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:** For technical questions concerning this proposed rule, contact Tim Mouzakis, Engine and Propeller Directorate Standards Staff, ANE–111, Engine and Propeller Directorate, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7114; fax (781) 238–7199; e-mail *timoleon.mouzakis@faa.gov.* For legal questions concerning this proposed rule contact Vincent Bennett, ANE–7, Office of Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; fax (781) 238–7055; e-mail *vincent.bennett@faa.gov.*

**SUPPLEMENTARY INFORMATION:** Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of

this proposal and related rulemaking documents.

**Authority for This Rulemaking**

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.

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, including minimum safety standards for aircraft engines. This proposed rule is within the scope of that authority because it updates existing regulations for rotor overspeed for aircraft turbine engines.

**Background**

Part 33 of Title 14 of the Code of Federal Regulations prescribes aircraft engine airworthiness certification standards for products certified in the United States. The Certification Specifications for Engines (CS–E) prescribe the corresponding airworthiness standards for products certified in Europe by the European Aviation Safety Agency. While part 33 and CS–E are similar, they differ in several respects.

The FAA tasked the Aviation Rulemaking Advisory Committee through its Engine Harmonization Working Group to review existing regulations and recommend changes that would eliminate differences between the U.S. and European engine certification standards by harmonizing to the higher standards. This proposed rule is a result of this harmonization effort.

This proposed rule would harmonize rotor overspeed requirements found in 14 CFR part 33 with EASA CS–E specifications in CS–E 840, Rotor Integrity. The proposed rule would improve safety by establishing one harmonized standard requiring:

(1) Rotors be designed with a burst/failure speed that exceeds the certified operating speeds;

(2) Burst speeds to exceed overspeed conditions that can result from the failure of other engine components; and

(3) Limits on the amount of rotor growth or damage that results from an overspeed.

**Definition of Terms Used in the Rule**

For the purposes of the rule, the following definitions, which are consistent with part 33 and CS–E, apply:

*Maximum permissible rotor speed.* The maximum approved rotor speed, including transients, for the maximum approved rating, including One-Engine-Inoperative (OEI) ratings.

*Overspeed Capability.* The r.p.m. (revolutions per minute) at which the part fails or bursts.

*Rotor Growth.* The permanent increase in a rotor part's radial dimensions caused by an overspeed condition.

**General Discussion of the Proposal**

The proposed rule would require that rotor parts be designed with a safety margin large enough that the parts have an overspeed capability that exceeds the engine's certified operating conditions, including overspeed conditions which can occur in the event of a failure of another engine component and/or system malfunction. For failures that may result in an overspeed, the proposed rule would limit rotor growth to that which would not lead to a hazardous condition as defined by § 33.75.

The proposed rule would harmonize U.S. requirements with EASA's by:

- Changing the current FAA overspeed design margin from 115 to 120 percent of maximum permissible speed for all engine ratings except OEI ratings of less than 2½ minutes;
- Changing the current FAA overspeed design margin from100 to 105 percent for operating conditions associated with multiple failures;
- Introducing similar OEI overspeed design requirements;
- Requiring new similar rotor pass/fail design criteria;
- Requiring similar overspeed margin requirements;
- Allowing the use of validated structural analysis tools to demonstrate compliance;
- Requiring that validated structural analysis tools be calibrated to actual overspeed tests of similar rotors; and
- Allowing engine test durations of less than 5 minutes for failure conditions for which a 5-minute duration is not realistic.

Like EASA's CS–E, the proposed rule would specify that rotors may not burst for overspeed conditions that do not involve component or system failure. For component or engine failures that result in an overspeed, the proposed rule specifies that rotors may not burst and limits the amount of rotor growth.

**Overspeed Test Requirements**

The current rule allows the rotor part being tested to be selected at random and does not require the test speed to be adjusted to ensure a minimum specification rotor can achieve the required overspeed. The proposed rule would allow the test speed to be adjusted/increased to account for the most adverse combination of material properties and dimensional tolerances. This proposed change harmonizes our overspeed test requirements with CS–E 840(a) and (d).

Single or multiple failures of components and/or systems can result in an overspeed that is sudden, transient and continues for a brief period of time. In this situation, the FAA considers it unrealistic to require an engine test that is attempting to duplicate these types of failures to maintain an overspeed beyond that which can be expected to occur. Under the proposed rule, the FAA would accept the actual overspeed duration provided the required maximum rotor speed is achieved.

**Overspeed Requirements for OEI Ratings**

The current rule does not specify the overspeed requirements for one-engine inoperative ratings and assumes overspeed requirements are the same for any engine rating. The current rule requires an overspeed margin of 115 percent of the maximum permissible speed if tested in an engine. The proposed rule requires an overspeed margin of 120 percent for all ratings, except for 115 percent for OEI ratings less than 2½ minutes. The proposed change to overspeed requirements for OEI ratings would harmonize with CS–E 840(b).

**Overspeed Events Due to Failure of Components or Systems**

The current rule requires a 5 percent overspeed margin for the failure of a single component or system and zero overspeed margin for the failure of multiple components. The proposed rule specifies a 5 percent overspeed margin for both single and combined failure situations for all ratings except OEI ratings of less than 2½ minutes.

When operating at an OEI rating of less than 2½-minute duration and a single failure occurs, the proposed rule requires that rotor components be designed and tested to withstand 100 percent of the resulting overspeed. The proposed changes to overspeed requirements for OEI ratings harmonize with those in CS–E 840(b).

**Exclusion of Certain Shaft Sections From Overspeed Tests**

The current rule in § 33.27(c)(2)(v) requires that all shaft locations be considered in determining the terminal rotor speed due to failure and be tested to 105 percent of the highest terminal rotor speed. The proposed rule in § 33.27(f) would exclude certain shaft sections, but not the whole shaft system, from this requirement. The FAA finds the proposed rule is consistent with the way the FAA has applied the current rule to industry in certification tests. The FAA has consistently accepted engineering assessments that support the applicant's findings that certain location(s) (sections) of a shaft system are considered "prime reliable," which means that these shaft locations are not likely to fail during the life of the engine. The FAA is, therefore, proposing to change the current rule to be consistent with the current certification practices. The proposed changes to overspeed requirements due to shaft failures would be consistent with those in CS–E–850(b).

**Rulemaking Analyses and Notices**

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined there is no current or new information collection requirements associated with this proposed rule.

*International Compatibility*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. We determined that no conflict with ICAO Standards and Recommended Practices exists, since there are no corresponding ICAO Standards and Recommended Practices.

*Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment*

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires 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 private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble contains the FAA's analysis of the economic impacts of this proposed rule.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

*Total Estimated Benefits and Costs of This Proposed Rule*

Presently, turbine aircraft engine manufacturers must satisfy both FAA part 33 and EASA CS–E regulations to certify their products in the United States and Europe. Certification to one standard would improve certification efficiency by eliminating duplicate testing and documentation. We have not attempted to quantify the cost savings that may accrue due to this improved certification efficiency beyond noting that these are expected to be minor. We have drawn that conclusion based on the consensus among potentially affected aircraft engine manufacturers.

Industry must currently certificate to the two standards that are substantively similar, but have a few slightly different testing and documentation procedures and requirements. The proposed rule would harmonize these procedures and requirements to the higher standard and, thereby, may increase safety. In addition, by reducing the amount of duplicative testing that would need to be either witnessed or analyzed by the FAA, the FAA would be better able to prioritize its resources to other, more safety critical areas. Consequently, the FAA determines there could be unquantifiable future minimal benefits from the proposed rule.

As a result, the FAA concludes that the combination of cost savings and potential increased safety benefits would make this proposed rule cost beneficial.

The FAA requests comments on these estimates of potential cost savings and benefits from this proposed rule.

The FAA has, therefore, determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

*Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The net effect of this proposed rule would provide regulatory cost relief. Second, all but one U.S. aircraft turbine engine manufacturer exceeds the Small

Business Administration small-entity criteria for aircraft engine manufacturers of 1,500 employees. U.S. transport category aircraft engine manufacturers include: General Electric (GE); CFM International (a joint company of GE and Snecma); Pratt & Whitney (P&W); Honeywell; Rolls-Royce Corporation (formerly Allison Engines); International Aero Engines (a privately-held consortium that includes P&W, Rolls-Royce, Japanese Aero Engines Corporation, and MTU Aero Engines); and Williams International. Williams International is the only one of these manufacturers that is categorized as a U.S. small business by the SBA criteria. This proposed rule would reduce costs, and there is only one small entity manufacturing part 33 aircraft engines. Therefore, the FAA certifies that this action would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

*International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA assessed the potential effect of this proposed rule and determined that it uses European standards as the basis for regulation and thus is consistent with the Trade Assessments Act.

*Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million. This proposed rule does not contain such a mandate, therefore, the requirements of Title II of the Act do not apply.

*Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

*Environmental Analysis*

FAA Order 1050.1E defines FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, and involves no extraordinary circumstances.

*Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*Additional Information*

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

*Availability of Rulemaking Documents*

You can get an electronic copy using the Internet by—

(1) Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/search/home.action*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

**List of Subjects in 14 CFR Part 33**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations as follows:

## PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

1. The authority citation for part 33 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Revise § 33.27 to read as follows:

### § 33.27 Turbine, compressor, fan, and turbosupercharger rotor overspeed.

(a) For each fan, compressor, turbine, and turbosupercharger rotor, the applicant must establish by test, analysis, or a combination of both, that each rotor will not burst when operated in the engine for 5 minutes at whichever of the conditions defined in paragraph (b) of this section is the most critical with respect to the integrity of such a rotor.

(1) Test rotors used to demonstrate compliance with this section that do not have the most adverse combination of material properties and dimensional tolerances must be tested at conditions which have been adjusted to ensure the minimum specification rotor possesses the required overspeed capability. This can be accomplished by increasing test speed, temperature, and/or loads.

(2) When an engine test is being used to demonstrate compliance with the overspeed conditions listed in paragraph (b)(3) or (b)(4) of this section and the failure of a component or system is sudden and transient, it may not be possible to operate the engine for 5 minutes after the failure. Under these circumstances, the actual overspeed duration is acceptable if the required maximum overspeed is achieved.

(b) When determining the maximum overspeed condition applicable to each rotor in order to comply with paragraphs (a) and (c) of this section, the applicant must evaluate the following rotor speeds taking into consideration the part's operating temperatures and temperature gradients throughout the engine's operating envelope:

(1) 120 percent of the maximum permissible rotor speed associated with any of the engine ratings except one-engine-inoperative (OEI) ratings of less than 2½ minutes.

(2) 115 percent of the maximum permissible rotor speed associated with any OEI ratings of less than 2½ minutes.

(3) 105 percent of the highest rotor speed that would result from either:

(i) The failure of the component or system which, in a representative installation of the engine, is the most critical with respect to overspeed when operating at any rating condition except OEI ratings of less than 2½ minutes, or

(ii) The failure of any component or system in a representative installation of the engine, in combination with any other failure of a component or system that would not normally be detected during a routine pre-flight check or during normal flight operation, that is the most critical with respect to overspeed, except as provided by paragraph (c) of this section, when operating at any rating condition except OEI ratings of less than 2½ minutes.

(4) 100 percent of the highest rotor speed that would result from the failure of the component or system which, in a representative installation of the engine, is the most critical with respect to overspeed when operating at any OEI rating of less than 2½ minutes.

(c) The highest overspeed that results from a complete loss of load on a turbine rotor, except as provided by paragraph (f) of this section, must be included in the overspeed conditions considered by paragraphs (b)(3)(i), (b)(3)(ii), and (b)(4) of this section, regardless of whether that overspeed results from a failure within the engine or external to the engine. The overspeed resulting from any other single failure must be considered when selecting the most limiting overspeed conditions applicable to each rotor. Overspeeds resulting from combinations of failures must also be considered unless the applicant can show that the probability of occurrence is not greater than $10^{-9}$ per flight.

(d) In addition, the applicant must demonstrate that each fan, compressor, turbine, and turbosupercharger rotor complies with paragraphs (d)(1) and (d)(2) of this section for the maximum overspeed achieved when subjected to the conditions specified in paragraphs (b)(3) and (b)(4) of this section. The applicant must use the approach in paragraph (a) of this section which specifies the required test conditions.

(1) Rotor Growth must not cause the engine to:

(i) Catch fire,

(ii) Release hazardous fragments through the engine casing or result in a hazardous failure of the engine casing,

(iii) Generate loads greater than those ultimate loads specified in § 33.23(a), or

(iv) Lose the capability of being shut down.

(2) Following an overspeed event and after continued operation, the rotor may not exhibit conditions such as cracking or distortion which preclude continued safe operation.

(e) The design and functioning of engine control systems, instruments, and other methods not covered under § 33.28 must ensure that the engine operating limitations that affect turbine, compressor, fan, and turbosupercharger rotor structural integrity will not be exceeded in service.

(f) Failure of a shaft section may be excluded from consideration in determining the highest overspeed that would result from a complete loss of load on a turbine rotor if the applicant:

(1) Identifies the shaft as an engine life-limited-part and complies with § 33.70.

(2) Uses material and design features that are well understood and that can be analyzed by well-established and validated stress analysis techniques.

(3) Determines, based on an assessment of the environment surrounding the shaft section, that environmental influences are unlikely to cause a shaft failure. This assessment must include complexity of design, corrosion, wear, vibration, fire, contact with adjacent components or structure, overheating, and secondary effects from other failures or combination of failures.

(4) Identifies and declares, in accordance with § 33.5, any assumptions regarding the engine installation in making the assessment described above in paragraph (f)(3) of this section.

(5) Assesses, and considers as appropriate, experience with shaft sections of similar design.

(6) Does not exclude the entire shaft.

(g) If analysis is used to meet the overspeed requirements, then the analytical tool must be calibrated to prior overspeed test results of a similar rotor. The tool must be calibrated for the same material, rotor geometry, stress level, and temperature range as the rotor being certified. Calibration includes the ability to accurately predict rotor dimensional growth and the burst speed. The predictions must also show that the rotor being certified does not have lower burst and growth margins than rotors used to calibrate the tool.

Issued in Washington, DC, on April 20, 2010.

**Dorenda D. Baker,**

*Director, Aircraft Certification Service.*

[FR Doc. 2010–9588 Filed 4–23–10; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2010–0433; Directorate Identifier 2009–NM–117–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Corporation Model MD–90–30 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Model MD–90–30 airplanes. This proposed AD would require inspecting for corrosion of the retract cylinder support fitting for the main landing gear (MLG) and the mating bore for the support fitting in the MLG trunnion fitting and performing corrective actions if necessary, and replacing cadmium-plated retract cylinder support bushings and bearings. This proposed AD results from reports of the retract cylinder support fitting for the MLG failing during gear extension and subsequently damaging the hydraulic system. We are proposing this AD to prevent corrosion and damage that could compromise the integrity of the retract cylinder support fitting for the MLG, which could adversely affect the airplane's safe landing.

**DATES:** We must receive comments on this proposed AD by June 10, 2010.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

**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–2010–0433; Directorate Identifier 2009–NM–117–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 because of those comments.

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

### Discussion

We have received reports of failure of the retract cylinder support fitting for the main landing gear (MLG) during gear extension, damaging the hydraulic system on McDonnell Douglas Corporation MD–80 series airplanes. This condition, if not corrected, could result in corrosion and damage that could compromise the integrity of the retract cylinder support fitting for the MLG, which could subsequently damage the hydraulic system and adversely affect the airplane's ability to make a safe landing.

The retract cylinder support fittings for the MLG on McDonnell Douglas Model MD–80 series airplanes have the same design as those installed on Model MD–90–30 airplanes. Therefore, Model MD–90–30 airplanes may be subject to the identified unsafe condition.

### Relevant Service Information

We have reviewed Boeing Service Bulletin MD90–57–016, Revision 2, dated April 28, 2006. The service bulletin describes procedures for doing a general visual inspection of the cylinder bore in the MLG support for corrosion, and performing corrective actions if necessary.

*Corrective actions include the following:*

- For airplanes on which a cadmium-plated fitting is installed with or without corrosion present: Replacing the cadmium-plated retract cylinder support fitting for the MLG with an electroless nickel-plated fitting, and replacing the cadmium-plated retract cylinder support bushings and bearings for the MLG with bushings and bearings having no cadmium plating in the bore.
- For airplanes on which an electroless nickel-plated fitting is installed with no corrosion present: Installing the retained electroless nickel-plated retract cylinder support fitting for the MLG, and replacing the cadmium-plated retract cylinder support bushings and bearings for the MLG with bushings and bearings having no cadmium plating in the bore.
- For airplanes on which the electroless nickel plated fitting is installed with corrosion present: Replacing the electroless nickel-plated retract cylinder support fitting for the MLG, and replacing the cadmium-plated retract cylinder support bushings and bearings for the MLG with bushings and bearings having no cadmium plating in the bore.

For airplanes on which an electroless nickel-plated fitting is installed in accordance with a previous issue of the service bulletin, no further work is required if the following actions have been accomplished.

- An inspection for corrosion and damage of the cylinder bore in the MLG support has been performed.
- The cadmium-plated retract cylinder support fitting for the MLG has been replaced with an electroless nickel-plated fitting.
- An electroless nickel-plated retract cylinder support fitting for the MLG is already installed and has no corrosion.

• The cadmium-plated retract cylinder support bushings and bearings for the MLG have been replaced with bushings and bearings with no cadmium plating in the bore.

For airplanes on which the cadmium-plated fitting is installed, and on which the cadmium-plated retract cylinder support fitting for the MLG was reinstalled and on which a previous issue of the service bulletin was performed, the service bulletin specifies:

• Removing the cadmium-plated retract cylinder support fitting for the MLG and replacing with an electroless nickel-plated fitting.

• Verifying that the cadmium-plated retract cylinder support bushings and bearings for the MLG have been replaced with bushings and bearings with no cadmium plating in the bore.

## FAA's Determination and Requirements of this Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

## Costs of Compliance

We estimate that this proposed AD would affect 16 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection | 1 | $85 | $0 | $85 | 16 | $1,360 |
| Replacement | 8 | 85 | 24,580 | 25,260 | 16 | 404,160 |

## 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.

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

## List of Subjects in 14 CFR Part 39

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

## 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:

**McDonnell Douglas Corporation:** Docket No. FAA–2010–0433; Directorate Identifier 2009–NM–117–AD.

**Comments Due Date**

(a) We must receive comments by June 10, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to McDonnell Douglas Corporation Model MD–90–30 airplanes, certificated in any category, as identified in Boeing Service Bulletin MD90–57–016, Revision 2, dated April 28, 2006.

**Subject**

(d) Air Transport Association (ATA) of America Code 57: Wings.

**Unsafe Condition**

(e) This AD results from reports of the retract cylinder support fitting for the main landing gear (MLG) failing during gear extension, and subsequently damaging the hydraulic system. The Federal Aviation Administration is issuing this AD to prevent corrosion and damage that could compromise the integrity of the retract cylinder support fitting for the MLG, which could adversely affect the airplane's safe landing.

**Compliance**

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

**Inspection and Corrective Actions**

(g) Before the accumulation of 30,000 total flight hours, or within 15,000 flight hours after the effective date of this AD, whichever occurs later, do a general visual inspection of the retract cylinder support fitting for the MLG and the mating bore in the MLG trunion fitting for corrosion, install bushings and bearings without cadmium plating in the bore, and do all applicable corrective actions, in accordance with Configuration 1 of the Accomplishment Instructions of Boeing Service Bulletin MD90–57–016, Revision 2, dated April 28, 2006. Do all applicable corrective actions before further flight.

**Note 1:** For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or

droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(h) Doing a general visual inspection, installing bushings and bearings, and doing all applicable corrective actions is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD90–57–016, Revision 1, dated October 26, 2005.

(i) Doing a general visual inspection, installing bushings and bearings, and doing all applicable corrective actions is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin MD90–57–016, dated September 18, 2002, provided that before the accumulation of 30,000 total flight hours, or within 15,000 flight hours after the effective date of this AD, whichever occurs later, electroless nickel fittings are installed, and bushings and bearings without cadmium plating in the bore are installed in accordance with the Accomplishment Instructions of any of the service bulletins listed in Table 1 of this AD.

TABLE 1—ACCEPTABLE SERVICE INFORMATION

| Document | Revision | Date |
|---|---|---|
| Boeing Service Bulletin MD90–57–016 | 0 | September 18, 2002. |
| Boeing Service Bulletin MD90–57–016 | 1 | October 26, 2005. |
| Boeing Service Bulletin MD90–57–016 | 2 | April 28, 2006. |

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Los Angeles 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: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on April 16, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–9572 Filed 4–23–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2010–0432; Directorate Identifier 2010–NM–001–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Model DHC–8–200 and DHC–8–300 Series Airplanes

**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) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: During a recent production fuel system test, it was found that all three flapper valves located in each collector tank did not conform to the design requirements, due to the fact that a valve spring was installed on the flapper hinge pin. This valve spring should have been removed prior to installation of the valves. With the valve spring installed, the flapper valve is held closed by the valve spring, preventing gravity feed. In the event of scavenge system failure, the collector tank fuel level can no longer be maintained, potentially leading to an in-flight engine shutdown.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by June 10, 2010.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

**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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Kent Fredrickson, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7364; fax (516) 794–5531.

**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–2010–0432; Directorate Identifier 2010–NM–001–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 have lengthened the 30-day comment period for proposed ADs that address MCAI originated by aviation authorities of other countries to provide adequate time for interested parties to submit comments. The comment period for these proposed ADs is now typically 45 days, which is consistent with the comment period for domestic transport ADs.

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

## Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–40, dated November 9, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During a recent production fuel system test, it was found that all three flapper valves located in each collector tank did not conform to the design requirements, due to the fact that a valve spring was installed on the flapper hinge pin. This valve spring should have been removed prior to installation of the valves.
>
> It was subsequently determined that this condition is restricted to the 21 aircraft listed in the Applicability section above.
>
> With the valve spring installed, the flapper valve is held closed by the valve spring, preventing gravity feed. In the event of scavenge system failure, the collector tank fuel level can no longer be maintained, potentially leading to an in-flight engine shutdown.
>
> In order to ensure adequate fuel transfer to the collector tank at all times, this directive mandates a one-time [detailed] inspection of each of the six flapper valves, removal of the valve spring, if installed, and application of an identification mark on each inspected valve.

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

## Relevant Service Information

Bombardier has issued Service Bulletin 8–28–54, dated April 22, 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 another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

## Differences Between This AD and the MCAI or Service Information

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

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

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry. We also estimate that it would take about 30 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $10,200, or $2,550 per product.

## Authority for This Rulemaking

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

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

## Regulatory Findings

We determined that this 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:

**Bombardier, Inc.:** Docket No. FAA–2010–0432; Directorate Identifier 2010–NM–001–AD.

**Comments Due Date**

(a) We must receive comments by June 10, 2010.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier, Inc. Model DHC–8–201, –202, –301, –311, and –315 airplanes, certificated in any category, having serial numbers 644 through 664 inclusive.

**Subject**

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

**Reason**

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

During a recent production fuel system test, it was found that all three flapper valves located in each collector tank did not conform to the design requirements, due to the fact that a valve spring was installed on the flapper hinge pin. This valve spring should have been removed prior to installation of the valves.

It was subsequently determined that this condition is restricted to the 21 aircraft listed in the Applicability section above.

With the valve spring installed, the flapper valve is held closed by the valve spring, preventing gravity feed. In the event of scavenge system failure, the collector tank fuel level can no longer be maintained, potentially leading to an in-flight engine shutdown.

In order to ensure adequate fuel transfer to the collector tank at all times, this directive mandates a one-time [detailed] inspection of each of the six flapper valves, removal of the valve spring, if installed, and application of an identification mark on each inspected valve.

**Compliance**

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

**Actions**

(g) Within 1,000 flight hours after the effective date of this AD, do a detailed inspection of each collector tank flapper valve for the presence of a valve spring, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–54, dated April 22, 2009. If the valve spring is not present, before further flight, apply an identification mark, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–54, dated April 22, 2009. If the valve spring is present, before further flight, remove the valve spring and apply an identification mark, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–28–54, dated April 22, 2009.

**FAA AD Differences**

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

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

**Related Information**

(i) Refer to MCAI Canadian Airworthiness Directive CF–2009–40, dated November 9, 2009; and Bombardier Service Bulletin 8–28–54, dated April 22, 2009; for related information.

Issued in Renton, Washington, on April 16, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–9573 Filed 4–23–10; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2009–1011; Airspace Docket No. 09–ANM–19]**

## Proposed Establishment of Class E Airspace; Bryce Canyon, UT

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking (SNPRM).

**SUMMARY:** This SNPRM elicits comments addressing the proposed establishment of Class E surface airspace at Bryce Canyon Airport, Bryce Canyon, UT. In a NPRM published in the **Federal Register** November 18, 2009, the FAA proposed only to establish Class E airspace extending upward from 700 feet above the surface, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at the airport. This action would increase safety within the National Airspace System.

**DATES:** Comments must be received on or before June 10, 2010.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1011; Airspace Docket No. 09–ANM–19, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

### History

On November 18, 2009, the FAA published in the **Federal Register** a NPRM to establish Class E airspace, extending upward from 700 feet or more above the surface, at Bryce Canyon Airport, Bryce Canyon, UT (74 FR 59492). The comment period closed January 4, 2010. Two comments were received.

Both commenters recommended establishing Class E surface airspace for aircraft safety. The FAA found merit in

their comments, and, therefore, seeks comments on the proposal for establishment of Class E surface airspace in this SNPRM.

**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 2009–1011 and Airspace Docket No. 09–ANM–19) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2009–1011 and Airspace Docket No. 09–ANM–19." The postcard will be date/time stamped and returned to the commenter.

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

**Availability of NPRMs**

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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

**The Supplemental Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E surface airspace at Bryce Canyon, UT, in concert with Class E airspace extending upward from 700 feet above the surface, to accommodate aircraft using the new RNAV (GPS) SIAPs at Bryce Canyon Airport. This action would enhance the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 establish controlled airspace at Bryce Canyon Airport, Bryce Canyon, UT.

**List of Subjects in 14 CFR Part 71**

Airspace, incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

*Paragraph 6002 Class E airspace Designated as Surface Areas.*

* * * * *

**ANM UT E2 Bryce Canyon, UT [New]**

Bryce Canyon Airport, UT
(Lat. 37°42′23″ N., long. 112°08′45″ W.)

Within a 4.2-mile radius of Bryce Canyon Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM UT E5 Bryce Canyon, UT [New]**

Bryce Canyon Airport, UT
(Lat. 37°42′23″ N., long. 112°08′45″ W.)

That airspace extending upward from 700 feet above the surface within 8 miles each side of the 047° and 227° bearing from the airport, extending 18 miles northeast and 15.9 miles southwest of the airport.

Issued in Seattle, Washington, on April 16, 2010.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2010–9614 Filed 4–23–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 943

**[SATS No. TX–059–FOR; Docket ID: OSM–2010–0001]**

## Texas Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its regulations regarding annual permit fees. Texas intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

**DATES:** We will accept written comments on this amendment until 4 p.m., c.d.t., May 26, 2010. If requested, we will hold a public hearing on the amendment on May 21, 2010. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on May 11, 2010.

**ADDRESSES:** You may submit comments, identified by Docket No. TX–059–FOR, by any of the following methods:

- *E-mail: aclayborne@osmre.gov.* Include "Docket No. TX–059–FOR" in the subject line of the message.
- *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office or going to *http://www.regulations.gov.* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629, Telephone: (918) 581–6430, E-mail: *aclayborne@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

**FOR FURTHER INFORMATION CONTACT:** Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. E-mail: *aclayborne@osmre.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Background on the Texas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

### I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

### II. Description of the Proposed Amendment

By letter dated January 5, 2010 (Administrative Record No. TX–666), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) section 12.108(b) regarding annual permit fees by:

(1) Decreasing the amount of the fee for each acre of land within the permit area on which coal or lignite was actually removed during the calendar year,

(2) Increasing the amount of the fee for each acre of land within a permit area covered by a reclamation bond on December 31st of the year, and

(3) Increasing the amount of the fee for each permit in effect on December 31st of the year.

Texas fully funds its 50% state share of costs to regulate the coal mining industry with fees paid by the coal industry. Texas charges various fees to meet these costs including permit application fees, and annual fees for lands in various stages of mining and reclamation. The proposed fee revisions are intended to provide incentives for industry to accomplish reclamation and achieve bond release as quickly as possible. This would be achieved by decreasing the fee per acre where coal or lignite is removed, and increasing both the fee for each acre under permit and the fee for each permit which remains active on December 31st of each year. By making these changes, companies are encouraged to make every effort to achieve bond release before the end of each year.

### III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

*Electronic or Written Comments*

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

*Public Availability of Comments*

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, 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.

*Public Hearing*

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on May 11, 2010. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak have been heard.

*Public Meeting*

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

## IV. Procedural Determinations

*Executive Order 12630—Takings*

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

*Executive Order 12866—Regulatory Planning and Review*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

*Executive Order 12988—Civil Justice Reform*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*Executive Order 13132—Federalism*

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

*Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve Federal regulations involving Indian lands.

*Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy*

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 22, 2010.

**Ervin J. Barchenger,**

*Regional Director, Mid-Continent Region.*

**Editorial Note:** This document was received in the Office of the Federal Register on Wednesday, April 21, 2010.

[FR Doc. 2010–9574 Filed 4–23–10; 8:45 am]

BILLING CODE 4310–05–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[MD Docket No. 10–87; FCC 10–51]**

## Assessment and Collection of Regulatory Fees for Fiscal Year 2010

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission will revise its Schedule of Regulatory Fees in order to recover an amount of $335,794,000 that Congress has required the Commission to collect for fiscal year 2010. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

**DATES:** Comments are due May 4, 2010, and reply comments are due May 11, 2010.

**ADDRESSES:** You may submit comments, identified by MD Docket No. 10–87, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov.* Include MD Docket No. 10–87 in the subject line of the message.
- *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of Managing Director at (202) 418–0444.

**SUPPLEMENTARY INFORMATION:**

*Adopted:* April 12, 2010.

*Released:* April 13, 2010.

By the Commission.

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## I. Introduction

1. In this *Notice of Proposed Rulemaking,* we propose to collect $335,794,000 in regulatory fees for Fiscal Year ("FY") 2010, pursuant to section 9 of the Communications Act of 1934, as amended (the "Act"). Section 9 regulatory fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1] The annual regulatory fee amount to be collected is established each year in the Commission's Annual Appropriations Act which is adopted by Congress and signed by the President and which funds the Commission.[2] In this annual regulatory fee proceeding, we retain many of the established methods, policies, and procedures for collecting section 9 regulatory fees adopted by the Commission in prior years. Consistent with our established practice, we intend to collect these regulatory fees during an August 2010 filing window in order to collect the required amount by the end of our fiscal year.

### *A. FY 2010 Regulatory Fee Assessment Methodology*

2. In our FY 2010 regulatory fee assessment, we will use the same section 9 regulatory fee assessment methodology adopted in FY 2009. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our FY 2010 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Appendix A. To collect the $335,794,000 required by Congress, we adjust the FY 2009 amount downward by 1.8 percent and allocate this amount across the various fee categories. Consistent with past practice, we then divide the FY 2010 amount by the number of estimated payment units in each fee category to determine the unit fee.[3] As in prior years, for cases involving small fees, *e.g.*, licenses that are renewed over a multiyear term, we divide the resulting unit fee by the term of the license and then rounded these unit fees consistent with the requirements of section 9(b)(2) of the Act.

3. In calculating the FY 2010 regulatory fees listed in Appendix B, we further adjusted the FY 2009 list of payment units (*see* Appendix C) based upon licensee databases, industry and trade group projections, as well as prior year payment information. In some instances, Commission licensee databases were used; in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[4] Where appropriate, we adjusted and rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and exemptions that may be filed in FY 2010, and fluctuations in the number of licenses or station operators due to economic, technical, or other reasons. Our estimated FY 2010 payment units, therefore, are based on several variable factors that are relevant to each fee category. The fee rate also may be rounded or adjusted slightly to account for these variables.

#### 1. AM and FM Radio Stations

4. As in previous years, we consider the additional factors of facility attributes and the population served by each radio station in determining regulatory fees for AM and FM radio stations. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Appendix D. Consequently, the population served, as well as the class and type of service (AM or FM), will continue to determine the amount of regulatory fee to be paid.[5]

#### 2. Submarine Cable Methodology

5. In its *Second Report and Order* ("*Submarine Cable Order*") released on March 24, 2009, the Commission adopted a new submarine cable bearer circuit methodology that assessed regulatory fees on a per cable landing license basis, with higher fees for larger submarine cable systems and lower fees for smaller systems, without distinguishing between common

[1] 47 U.S.C. 159(a).

[2] *See* Consolidated Appropriations Act, 2010, Public Law 111–117 for the FY 2010 appropriations act language for the Commission establishing the amount of $335,794,000 of offsetting collections to be assessed and collected by the Commission pursuant to section 9 of the Communications Act.

[3] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. In some instances, the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service ("CMRS") Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider ("ITSP") fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, or subscriber fee.

[4] The databases we consulted are the following: The Commission's Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"). We also consulted reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast* and *Annual CMRS Competition Report*, as well as industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc.

[5] In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee for a licensed station in that respective service category. For example, in FY 2009 the regulatory fee for an AM radio station Construction Permit was no higher than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

carriers and non-common carriers.[6] For all other categories of international bearer circuits—common carrier and non-common carrier satellite facilities and common carrier terrestrial facilities—the *Submarine Cable Order* retained the existing regulatory fee methodology of assessing fees on a per 64 kbps circuit basis.

6. In the *Submarine Cable Order* and in the *FY 2009 Regulatory Fees Report and Order*,[7] the Commission allocated the total FY 2009 bearer circuit expected revenue into two revenue components: A submarine cable revenue component (87.6 percent) and a satellite/terrestrial revenue component (12.4 percent) using the Consensus Proposal allocation adopted by the Commission in the *Submarine Cable Order*.[8] According to the Consensus Proposal, this allocation of 87.6 percent (submarine cable) and 12.4 percent (satellite/terrestrial) was calculated by determining the revenue obligations of submarine cable systems with the revenue obligations of the satellite and terrestrial facilities using the FY 2008 revenue requirement as its basis.[9] Since we do not have any additional information that would lead us to change this allocation percentage for FY 2010, we propose to continue to use the allocation percentages of 87.6 percent (submarine cable) and 12.4 percent (satellite and terrestrial) for calculating FY 2010 submarine cable regulatory fees. Consistent with the Commission's annual process of updating its schedule of regulatory fees with recent data, however, we reserve the right to re-examine the allocation percentages described above on an annual basis.

*B. Regulatory Fee Obligations for Digital Full Service Television Broadcasters*

7. In our *FY 2009 Report and Order*, we stated that, beginning in FY 2010, we plan to collect regulatory fees from digital broadcasters, and we sought comment on this plan to collect regulatory fees on full-power digital broadcast stations beginning with FY 2010, *i.e.,* the fiscal year after the nation-wide transition date on June 12, 2009.[10] Since the digital transition on June 12, 2009 has eliminated the distinction between digital and analog full-service television stations, the digital-only exemption will no longer apply beginning in FY 2010. Beginning in FY 2010, we will collect annual regulatory fees from all digital full-service television stations, and the "digital-only" exemption will no longer be applicable. Also, because this is the first year following the Commission's transition to digital full service television, it is possible that some facilities may be operating under a Special Temporary Authority (STA) beginning on October 1, 2009 until the digital license is issued. For FY 2010 regulatory fee purposes, these facilities operating under an STA will be considered to be fully operational licensed facilities and will be obligated to pay the same regulatory fee as a licensed full-service television station.

*C. Regulatory Fee Obligations for Digital Low Power, Class A, and TV Translators/Boosters*

8. Although the digital transition of full-service television stations was completed on June 12, 2009, the digital transition for Low Power, Class A, and TV Translators/Boosters is still voluntary, and there is currently no set date for the completion of this transition. Historically, the discussion of digital transition conversion with respect to regulatory fees has applied only to full-service television stations, and therefore, the elimination of the "digital only" exemption described in the above paragraph has no impact on this class of regulatees. Because the digital transition in the Low Power, Class A, and TV Translators/Booster facilities is voluntary and the transition will occur over a period time, it is possible that some facilities will convert from analog to digital more quickly than others. During this interim transition period, licensees of Low Power, Class A, and TV Translator/Booster facilities could be operating in analog mode, in digital mode, or in an analog and digital simulcast mode. For regulatory fee purposes, a fee will be assessed for each facility operating either in an analog or digital mode. In instances in which a licensee is operating in both an analog and digital mode as a simulcast, a single regulatory fee will be assessed for this analog facility that has a digital companion channel. As greater numbers of facilities convert to digital mode, the Commission will provide revised instructions on how regulatory fees will be assessed.

*D. Commercial Mobile Radio Service Messaging Service*

9. Commercial Mobile Radio Service ("CMRS") Messaging Service, which replaced the CMRS One-Way Paging fee category in 1997, includes all narrowband services.[11] Since 1997, the number of subscribers has declined from 40.8 million to 6.5 million, and there does not appear to be any sign of recovery to the subscriber levels of 1997–1999. Maintaining the fee at the existing level of $.08 per subscriber is the minimum reasonable and appropriate action to take under the prevailing circumstances in the paging industry. We propose in FY 2010 to continue maintaining the regulatory fee rate at $0.08 per subscriber due to the declining subscriber base in this industry.[12] We seek comment on this proposal.

*E. Administrative and Operational Issues*

10. In FY 2009, the Commission implemented several changes in procedures which simplified the payment and reconciliation processes of FY 2009 regulatory fees. These changes proved to be very helpful to both licensees and to the Commission, and we propose in the following paragraphs to expand upon these improvements. In FY 2010, the Commission will promote greater use of technology (and less use of paper) to improve the regulatory fee notification and collection process. We seek general comment on ways to promote greater use of technology in collecting regulatory fees.

1. Mandatory Use of Fee Filer

11. In *FY 2009,* we instituted a mandatory filing requirement using the Commission's electronic filing and payment system (also known as "Fee Filer").[13] Licensees filing their annual regulatory fee payments were required to begin the process by entering the Commission's Fee Filer system with a valid FRN and password. This change was beneficial to both licensees and to the Commission. For example, for licensees, the mandatory use of Fee Filer eliminated the need to manually complete and submit a hardcopy Form 159, and for the Commission, the data in electronic format made it much easier to process payments more efficiently and effectively. Because of the success of this process change, we propose to continue to make the use of Fee Filer for filing annual regulatory fees mandatory. We seek comment on this proposal. As

[6] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208, para. 1 (March 24, 2009) ("*Submarine Cable Order*").

[7] *See FY 2009 Report and Order* at Appendix B.

[8] *See Submarine Cable Order* at paragraphs 1 and 6.

[9] *Id.* at 6.

[10] *Id.* at para. 13.

[11] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96–186, Report and Order, 12 FCC Rcd 17161, 17184–85, para. 60 (1997) ("*FY 1997 Report and Order*").

[12] Between FY 1997 and FY 2009, the subscriber base in the paging industry declined 84 percent from 40.8 million to 6.5 million subscribers, according to FY 2009 collections data as of September 30, 2009.

[13] *FY 2009 Report and Order* at paragraphs 20 and 21.

in FY 2009, the mandatory use of Fee Filer does not mean that licensees are expected to pay only through Fee Filer—it is only mandatory for licensees to begin the process of filing their annual regulatory fees using Fee Filer. This is one reason it is very important for licensees to have a current and valid FRN address on file in the Commission's Registration System (CORES). Going forward, only Form 159–E documents generated from Fee Filer will be permitted when sending in a regulatory fee payment to U.S. Bank. These Form 159–E's not only will reduce errors resulting from illegible handwriting on hardcopy Form 159's, but, because they are generated from Fee Filer, these forms also will create an electronic record of licensee payment attributes that are more easily tracked and searched than hardcopy Form 159's that are completed manually and mailed to the Commission.

2. Notification and Collection of Regulatory Fees

a. Pre-bills

12. In prior years, the Commission mailed pre-bills via surface mail to licensees in select regulatory fee categories: Interstate telecommunications service providers ("ITSPs"), Geostationary ("GSO") and Non-Geostationary ("NGSO") satellite space station licensees,[14] holders of Cable Television Relay Service ("CARS") licenses, and Earth Station licensees.[15] The remaining regulatees did not receive pre-bills. In our *FY 2009 Report and Order,* the Commission decided to have the attributes of these pre-bills viewed in Fee Filer, rather than mailing pre-bills out to licensees via surface mail.[16] Although the overall response to this procedural change was positive, it was apparent that a greater effort should have been made to inform licensees that they would not be receiving a hardcopy regulatory fee bill in the mail. In FY 2010, the Commission will continue to reduce its use of hardcopy documents by not mailing out annual regulatory fee bills, but the Commission is seeking to increase its efforts in notifying licensees that hardcopy regulatory fee bills will not be mailed out. We seek comment on how to most efficiently and effectively notify licensees that hardcopy regulatory fee bills will not be mailed out, but that, instead, the amount and attributes of the bills will be available in Fee Filer for review.

## II. Procedural Matters

13. Included below are procedural items as well as our current payment and collection methods, which we have revised over the past several years to expedite the processing of regulatory fee payments. We include these payments and collection procedures here as a useful way of reminding regulatory fee payers and the public about these aspects of the annual regulatory fee collection process.

*A. Public Notices and Fact Sheets*

14. Each year we post public notices and fact sheets pertaining to regulatory fees on our Web site. These documents contain information about the payment due date and the regulatory fee payment procedures. We will continue to post this information on *http://www.fcc.gov/fees/regfees.html*, but as in previous years we will not send out public notices and fact sheets to regulatees *en masse.*

*B. Assessment Notifications*

1. Media Services Licensees

15. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis.[17] The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.[18] Consistent with procedures used last year, we will mail out media assessment notifications to licensees in FY 2010 at their primary record of contact populated in our Consolidated Database System ("CDBS"), and to a secondary record of contact, if available.[19] However, after FY 2010, as part of the Commission's initiative to emphasize electronic filing and reduce paper usage, the Commission will stop mailing out media notification assessments to media licensees. Instead the Commission will rely more on its various Web sites, including the Commission-authorized Web site at *http://www.fccfees.com*, to notify licensees of pending annual regulatory fees and to update or correct any information regarding their facilities and their fee-exempt status.[20] We seek comment on our proposal to discontinue sending out media notification letters after the FY 2010 regulatory fee season.

16. The decision to discontinue mailing media notifications beginning in FY 2011 is consistent with the Commission's effort to become more electronic and less paper-oriented. However, the Commission understands that not all media licensees are able to access the Commission's various electronic Web sites once the hardcopy notification letters are discontinued in FY 2011. Therefore, to be receptive to the needs of these licensees, the Commission will leave the comment and reply comment period open until September 30, 2010 on the specific issue of whether the media notification letters should be discontinued in FY 2011. Because this decision does not impact FY 2010 regulatory fees, we will be addressing this issue in the Commission's FY 2011 *Notice of Proposed Rulemaking* after we have had the chance to review the various

[14] Geostationary orbit space station ("GSO") licensees received regulatory fee pre-bills for satellites that (1) were licensed by the Commission and operational on or before October 1 of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.,* were not functioning as a spare satellite). Non-geostationary orbit space station ("NGSO") licensees received regulatory fee pre-bills for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

[15] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt. A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[16] *See FY 2009 Report and Order* at paragraphs 24, 26.

[17] As stated previously at footnote 41, an assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt.

[18] Some of those refinements have been to provide licensees with a Commission-authorized Web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

[19] We will issue fee assessments for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television ("LPTV") Stations and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. As in prior years, fee assessments will not be issued for broadcast auxiliary stations.

[20] If there is a change of address for the facility, it is the licensee's responsibility to make the address change in the Media Bureau's CDBS system, as well as in the Commission's Registration System ("CORES"). There is also a Commission-authorized Web site that media services licensees can use to view and update their exempt status (*http://www.fccfees.com*).

comments and reply comments that have been submitted. In addition to raising this issue in this document, the Commission will also remind media licensees of this proposed change in notification procedures when it sends out letters to media licensees later in the fiscal year regarding their FY 2010 regulatory fee obligations. To ensure that the comments of all potentially affected persons are properly included in the record, media licensees should submit their comments and reply comments on this issue as follows:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*or the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

17. Although the Commission will mail media assessment notifications to licensees in FY 2010, all licensees (including media services) will be required to use Fee Filer as the first step in paying their regulatory fee obligations. The notification assessments provide licensees with the same media data attributes found on Fee Filer; however, receiving this information in FY 2010 via mail notification does not obviate, nor should it be considered a substitute for, using Fee Filer as the first step in filing and paying annual regulatory fees. As explained previously, licensees must first log onto the Commission's Fee Filer system to begin the process of filing and paying their regulatory fees, but once in Fee Filer, licensees may pay by check or money order, credit card, or wire transfer. A Form 159–E generated from Fee Filer is required, even when mailing in the annual regulatory fee payment.

2. CMRS Cellular and Mobile Services Assessments

18. As we have done in prior years, we will mail an initial assessment letter to Commercial Mobile Radio Service (CMRS) providers using data from the Numbering Resource Utilization Forecast ("NRUF") report that is based on "assigned" number counts that have been adjusted for porting to net Type 0 ports ("in" and "out").[21] The letter will include a listing of the carrier's Operating Company Numbers ("OCNs") upon which the assessment is based.[22] The letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier.

19. If the carrier does not agree with the number of subscribers listed on the initial assessment letter, providers will have an opportunity within a specific timeframe to revise their subscriber counts by submitting supporting documentation to substantiate the change. However, instead of mailing the revised figures, providers will be asked to access Fee Filer and follow the instructions provided in order to submit their revised subscriber count along with any supporting documentation.[23] The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. The provider will be able to review the decision online in Fee Filer. If the submission is disapproved, the Commission will also attempt to contact the provider so that the provider will have an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response or correction to the initial assessment letter, or we do not reverse the disapproval of the provider's revised count submission, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment. Once the timeframe for revision has passed, the subscriber counts will be finalized. These subscriber counts will then be the basis upon which CMRS regulatory fees will be expected. Providers will be able to view their final subscriber counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

20. Because some carriers do not file the NRUF report, they may not receive an initial letter of assessment. In these instances, the carriers should compute their fee payment using the standard methodology[24] that is currently in place for CMRS Wireless services (*e.g.,* compute their subscriber counts as of December 31, 2009), and submit their fee payment accordingly. Whether a carrier receives an assessment letter or not, the Commission reserves the right to audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

*C. Streamlined Regulatory Fee Payment Process*

1. Cable Television Subscribers

21. We will continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier ("CUID") basis.

2. CMRS Cellular and Mobile Providers

22. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, instead allowing CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[25] We will continue this practice in FY 2010. In FY 2007, we consolidated the CMRS cellular and CMRS mobile fee categories into one fee category with a single fee code, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. This consolidation of fee categories enabled the Commission to process payments more quickly and accurately. For FY 2010, we will continue this practice of combining the CMRS cellular and

[21] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005* and *Assessment and Collection of Regulatory Fees for Fiscal Year 2004,* MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paragraphs 38–44 (2005).

[22] *Id.*

[23] In the supporting documentation, the provider will need to state a reason for the change, such as a purchase or sale of a subsidiary, the date of the transaction, and any other pertinent information that will help to justify a reason for the change.

[24] *See, e.g.,* Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2009* at 1 (rel. September 2009).

[25] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006,* MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

CMRS mobile fee categories into one regulatory fee category.

3. Interstate Telecommunications Service Providers ("ITSP")

23. In FY 2007, we adopted a proposal to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W to the nearest dollar. This revision enabled the Commission to process the ITSP regulatory fee payments more quickly because rounding was performed in a consistent manner and eliminated processing issues that occurred in prior years. In FY 2010, we will continue rounding lines 14 and 16 when calculating the FY 2010 ITSP fee obligation. In addition, as in FY 2009, we will continue the practice of not mailing out Form 159–W via surface mail.

*D. Payment of Regulatory Fees*

1. Lock Box Bank

24. All lock box payments to the Commission for FY 2010 will be processed by U.S. Bank, St. Louis, Missouri, and payable to the FCC. During the regulatory fee season, for those licensees paying by check, money order, or by credit card using Form 159–E remittance advice, the fee payment and Form 159–E remittance advice should be mailed to the following address: Federal Communications Commission, Regulatory Fees, P.O. Box 979084, St. Louis, MO 63197–9000. Additional payment options and instructions are posted at *http://www.fcc.gov/fees/regfees.html*.

2. Receiving Bank for Wire Payments

25. The receiving bank for all wire payments is the Federal Reserve Bank, New York, New York (TREAS NYC). When making a wire transfer, regulatees must fax a copy of their Fee Filer generated Form 159–E to U.S. Bank, St. Louis, Missouri at (314) 418–4232 at least one hour before initiating the wire transfer (but on the same business day), so as to not delay crediting their account. Regulatees should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://www.fcc.gov/fees/wiretran.html*.

3. De Minimis Regulatory Fees

26. Regulatees whose total FY 2010 regulatory fee liability, including all categories of fees for which payment is due, is less than $10 are exempted from payment of FY 2010 regulatory fees.

4. Standard Fee Calculations and Payment Dates

27. The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits (including construction permits for digital television stations) that were granted on or before October 1, 2009 for AM/FM radio stations, analog VHF/UHF full service television stations, and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date. We note that audio bridging service providers are included in this category.[26]
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2009. The number of subscribers, units, or telephone numbers on December 31, 2009 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Appendix B) pay "small multi-year wireless regulatory fees." Entities pay these regulatory fees in advance for the entire amount of their five-year or ten-year term of initial license, and only pay regulatory fees again when the license is renewed or a new license is obtained. We include these fee categories in our Schedule of Regulatory Fees to publicize our estimates of the number of "small multi-year wireless" licenses that will be renewed or newly obtained in FY 2010.
- *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2009.[27] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2009. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services: Submarine Cable Systems:* Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on circuit capacity as of December 31, 2009. In instances where a license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the license as of the fee due date.
- *International Services: Terestrial and Satellite Services:* Finally, regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31, 2009 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must

[26] Audio bridging services are toll teleconferencing services, and audio bridging service providers are required to contribute directly to the universal service fund based on revenues from these services. On June 30, 2008, the Commission released the *InterCall Order,* in which the Commission stated that InterCall, Inc. and all similarly situated audio bridging service providers are required to contribute directly to the universal service fund. *See Request for Review by InterCall, Inc. of Decision of Universal Service Administrator,* CC Docket No. 96–45, Order, 23 FCC Rcd 10731 (2008) ("*InterCall Order*").

[27] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, *etc.*) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on "a typical day in the last full week" of December 2009, rather than on a count as of December 31, 2009.

pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. "Active circuits" for these purposes include backup and redundant circuits as of December 31, 2009. Whether circuits are used specifically for voice or data is not relevant for these purposes in determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2009, responsibility for payment rests with the holder of the permit or license as of the fee due date.

*E. Enforcement*

28. To be considered timely, regulatory fee payments must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window. Section 9(c) of the Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee.[28] A late payment penalty of 25 percent of the unpaid amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including those set forth in section 1.1910 of the Commission's rules [29] and in the Debt Collection Improvement Act of 1996 ("DCIA").[30] We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules.[31] These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

29. We will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made.[32] Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

*F. Initial Regulatory Flexibility Analysis*

30. An initial regulatory flexibility analysis ("IRFA") is contained in Appendix E. Comments to the IRFA must be identified as responses to the IRFA and filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

*G. Initial Paperwork Reduction Act of 1995 Analysis*

31. This Notice of Proposed Rulemaking does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 ("PRA"), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c) (4). Completion of the 159 family of forms required by the Commission's regulatory fee payment process is already approved by the Office of Management and Budget under information collections 3060–0589 and 3060–0949.

*H. Congressional Review Act Analysis*

32. The Commission will send a copy of this Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[33]

*I. Ex Parte Rules*

33. This is as a "permit-but-disclose" proceeding subject to the requirements under section 1.1206(b) of the Commission's rules.[34] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.[35] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

*J. Filing Requirements*

34. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

35. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/or* the Federal eRulemaking Portal: *http://www.regulations.gov.*

36. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be

[28] 47 U.S.C. 159(c).

[29] *See* 47 CFR 1.1910.

[30] Delinquent debt owed to the Commission triggers application of the "red light rule" which requires offsets or holds on pending disbursements. 47 CFR 1.1910. In 2004, the Commission adopted rules implementing the requirements of the DCIA. *See Amendment of Parts 0 and 1 of the Commission's Rules,* MD Docket No. 02–339, Report and Order, 19 FCC Rcd 6540 (2004); 47 CFR part 1, subpart O, Collection of Claims Owed the United States.

[31] 47 CFR 1.1940(d).

[32] *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

[33] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, 251, of the CWAAA; *see* Public Law 104–121, Title II, 251, 110 Stat. 868.

[34] *See* 47 CFR 1.1206(b); *see also* 47 CFR 1.1202, 1.1203.

[35] *See* 47 CFR 1.1206(b)(2).

addressed to 445 12th Street, SW., Washington, DC 20554.

*People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

37. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word, and/or Adobe Acrobat.

38. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format ("PDF") at: *http://www.fcc.gov*.

III. Ordering Clauses

39. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Notice of Proposed Rulemaking *is hereby adopted.*

40. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis in Appendix E, to the Chief Counsel for Advocacy of the U.S. Small Business Administration.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

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## APPENDIX A

### Calculation of FY 2010 Revenue Requirements and Pro-Rata Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

| Fee Category | FY 2010 Payment Units | Years | FY 2009 Revenue Estimate | Pro-Rated FY 2010 Revenue Require-ment | Computed New FY 2010 Regulatory Fee | Rounded New FY 2010 Regula-tory Fee | Expected FY 2010 Revenue |
|---|---|---|---|---|---|---|---|
| PLMRS (Exclusive Use) | 1,200 | 10 | 480,000 | 469,912 | 39 | 40 | 480,000 |
| PLMRS (Shared use) | 11,500 | 10 | 2,300,000 | 2,251,662 | 20 | 20 | 2,300,000 |
| Microwave | 9,500 | 10 | 2,250,000 | 2,202,713 | 23 | 25 | 2,375,000 |
| 218-219 MHz (Formerly IVDS) | 3 | 10 | 1,950 | 1,909 | 64 | 65 | 1,950 |
| Marine (Ship) | 8,000 | 10 | 750,000 | 734,238 | 9 | 10 | 800,000 |
| GMRS | 9,700 | 5 | 275,000 | 269,220 | 6 | 5 | 242,500 |
| Aviation (Aircraft) | 4,600 | 10 | 350,000 | 342,644 | 7 | 5 | 230,000 |
| Marine (Coast) | 265 | 10 | 123,750 | 121,149 | 46 | 45 | 119,250 |
| Aviation (Ground) | 1,500 | 10 | 150,000 | 146,848 | 10 | 10 | 150,000 |
| Amateur Vanity Call Signs | 14,800 | 10 | 201,000 | 196,776 | 1.33 | 1.33 | 196,840 |
| AM Class A[4a] | 68 | 1 | 248,625 | 244,032 | 3,589 | 3,600 | 244,800 |
| AM Class B[4b] | 1,566 | 1 | 2,977,300 | 2,922,297 | 1,866 | 1,875 | 2,936,250 |
| AM Class C[4c] | 918 | 1 | 1,055,250 | 1,035,755 | 1,128 | 1,125 | 1,032,750 |
| AM Class D[4d] | 1,689 | 1 | 3,515,750 | 3,450,799 | 2,043 | 2,050 | 3,462,450 |
| FM Classes A, B1 & C3[4e] | 3,104 | 1 | 7,384,125 | 7,250,936 | 2,336 | 2,325 | 7,216,800 |
| FM Classes B, C, C0, C1 & C2[4f] | 3,129 | 1 | 9,076,725 | 8,912,267 | 2,848 | 2,850 | 8,917,650 |
| AM Construction Permits | 100 | 1 | 42,800 | 42,009 | 420 | 420 | 42,000 |
| FM Construction Permits[1] | 217 | 1 | 145,600 | 136,456 | 629 | 630 | 136,710 |
| Satellite TV | 126 | 1 | 161,925 | 158,934 | 1,261 | 1,250 | 157,500 |
| Satellite TV Construction Permit | 3 | 1 | 1,950 | 1,914 | 638 | 640 | 1,920 |
| VHF Markets 1-10 | 41 | 1 | 3,258,150 | 3,197,929 | 77,998 | 78,000 | 3,198,000 |
| VHF Markets 11-25 | 54 | 1 | 3,330,250 | 3,268,697 | 60,531 | 60,525 | 3,268,350 |
| VHF Markets 26-50 | 68 | 1 | 2,818,125 | 2,766,033 | 40,677 | 40,675 | 2,765,900 |

| Fee Category | FY 2010 Payment Units | Years | FY 2009 Revenue Estimate | Pro-Rated FY 2010 Revenue Require-ment | Computed New FY 2010 Regulatory Fee | Rounded New FY 2010 Regula-tory Fee | Expected FY 2010 Revenue |
|---|---|---|---|---|---|---|---|
| VHF Markets 51-100 | 117 | 1 | 2,708,100 | 2,658,053 | 22,718 | 22,725 | 2,658,825 |
| VHF Remaining Markets | 199 | 1 | 1,190,000 | 1,168,016 | 5,869 | 5,875 | 1,169,125 |
| VHF Construction Permits[1] | 3 | 1 | 17,850 | 17,625 | 5,875 | 5,875 | 17,625 |
| UHF Markets 1-10 | 82 | 1 | 2,109,750 | 2,073,657 | 25,288 | 25,300 | 2,074,600 |
| UHF Markets 11-25 | 69 | 1 | 1,743,525 | 1,714,198 | 24,843 | 24,850 | 1,714,650 |
| UHF Markets 26-50 | 105 | 1 | 1,468,500 | 1,444,253 | 13,755 | 13,750 | 1,443,750 |
| UHF Markets 51-100 | 149 | 1 | 1,246,400 | 1,225,210 | 8,223 | 8,225 | 1,225,525 |
| UHF Remaining Markets | 185 | 1 | 380,250 | 373,225 | 2,017 | 2,025 | 374,625 |
| UHF Construction Permits[1] | 9 | 1 | 29,250 | 18,225 | 2,025 | 2,025 | 18,225 |
| Broadcast Auxiliaries | 27,500 | 1 | 275,000 | 269,920 | 10 | 10 | 275,000 |
| LPTV/Trans-lators/Boosters/Class A TV | 3,400 | 1 | 1,380,000 | 1,354,506 | 398 | 400 | 1,360,000 |
| CARS Stations | 550 | 1 | 169,000 | 165,878 | 302 | 300 | 165,000 |
| Cable TV Systems | 64,500,000 | 1 | 56,760,000 | 55,711,406 | 0.86374 | 0.86 | 55,470,000 |
| Interstate Tele-communication Service Providers | $44,800,000,000 | 1 | 160,056,000 | 157,099,099 | 0.00350668 | 0.00351 | 157,248,000 |
| CMRS Mobile Services (Cellular/Public Mobile) | 281,000,000 | 1 | 49,680,000 | 48,781,083 | 0.1736 | 0.170 | 47,770,000 |
| CMRS Messag. Services | 6,600,000 | 1 | 560,000 | 530,774 | 0.0804 | 0.080 | 528,000 |
| BRS[2] | 1,660 | 1 | 552,000 | 499,414 | 301 | 300 | 498,000 |
| LMDS | 510 | 1 | 107,200 | 153,259 | 301 | 300 | 153,000 |
| Per 64 kbps Int'l Bearer Circuits Terrestrial (Common) & Satellite (Common & Non-Common) | 1,648,589 | 1 | 1,111,779 | 1,086,841 | .659 | .66 | 1,088,069 |
| Submarine Cable Providers (see chart in Appendix C)[3] | 35.13 | 1 | 7,818,040 | 7,678,007 | 218,560 | 218,550 | 7,677,662 |
| Earth Stations | 3,600 | 1 | 850,500 | 834,788 | 232 | 230 | 828,000 |

| Fee Category | FY 2010 Payment Units | Years | FY 2009 Revenue Estimate | Pro-Rated FY 2010 Revenue Require-ment | Computed New FY 2010 Regulatory Fee | Rounded New FY 2010 Regula-tory Fee | Expected FY 2010 Revenue |
|---|---|---|---|---|---|---|---|
| | | | | | | | |
| Space Stations (Geostationary) | 87 | 1 | 11,064,225 | 10,859,823 | 124,826 | 124,825 | 10,859,775 |
| Space Stations (Non-Geostationary | 6 | 1 | 823,350 | 808,139 | 134,690 | 134,700 | 808,200 |
| ****** Total Estimated Revenue to be Collected | | | 342,998,994 | 336,650,529 | | | 335,702,275 |
| ****** Total Revenue Requirement | | | 341,875,000 | 335,794,000 | | | 335,794,000 |
| Difference | | | 1,123,994 | 856,529 | | | (91,725) |

[1] The FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. The reductions in the FM Construction Permit revenues are offset by increases in the revenue totals for FM radio stations. Similarly, reductions in the VHF and UHF Construction Permit revenues are offset by increases in the revenue totals for VHF and UHF television stations, respectively.

[2] MDS/MMDS category was renamed Broadband Radio Service (BRS). See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[3] The chart at the end of Appendix B lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the following proceedings: Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Second Report and Order (MD Docket No. 08-65, RM-11312), released March 24, 2009; and Assessment and Collection of Regulatory Fees for Fiscal Year 2009 and Assessment and Collection of Regulatory Fees for Fiscal Year 2008, Notice of Proposed Rulemaking and Order (MD Docket No. 09-65, MD Docket No. 08-65), released on May 14, 2009.

[4] The fee amounts listed in the column entitled "Rounded New FY 2010 Regulatory Fee" constitute a weighted average media regulatory fee by class of service. The actual FY 2010 regulatory fees for AM/FM radio station are listed on a grid located in Appendix B.

## APPENDIX B

### FY 2010 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

| Fee Category | Annual Regulatory Fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 40 |
| Microwave (per license) (47 CFR part 101) | 25 |
| 218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) | 65 |
| Marine (Ship) (per station) (47 CFR part 80) | 10 |
| Marine (Coast) (per license) (47 CFR part 80) | 45 |
| General Mobile Radio Service (per license) (47 CFR part 95) | 5 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 20 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 20 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 5 |
| Aviation (Ground) (per license) (47 CFR part 87) | 10 |
| Amateur Vanity Call Signs (per call sign) (47 CFR part 97) | 1.33 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .17 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21) | 300 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 300 |
| AM Radio Construction Permits | 420 |
| FM Radio Construction Permits | 630 |
| TV (47 CFR part 73) VHF Commercial | |
| Markets 1-10 | 78,000 |
| Markets 11-25 | 60,525 |
| Markets 26-50 | 40,675 |
| Markets 51-100 | 22,725 |
| Remaining Markets | 5,875 |

| Fee Category | Annual Regulatory Fee (U.S. $'s) |
|---|---|
| Construction Permits | 5,875 |
| TV (47 CFR part 73) UHF Commercial | |
| Markets 1-10 | 25,300 |
| Markets 11-25 | 24,850 |
| Markets 26-50 | 13,750 |
| Markets 51-100 | 8,225 |
| Remaining Markets | 2,025 |
| Construction Permits | 2,025 |
| Satellite Television Stations (All Markets) | 1,250 |
| Construction Permits – Satellite Television Stations | 640 |
| Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) | 400 |
| Broadcast Auxiliaries (47 CFR part 74) | 10 |
| CARS (47 CFR part 78) | 300 |
| Cable Television Systems (per subscriber) (47 CFR part 76) | .86 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00351 |
| Earth Stations (47 CFR part 25) | 230 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) | 124,825 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 134,700 |
| International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit) | .66 |
| International Bearer Circuits - Submarine Cable | See Table Below |
| | |

**FY 2010 SCHEDULE OF REGULATORY FEES (continued)**

| FY 2010 RADIO STATION REGULATORY FEES | | | | | | |
|---|---|---|---|---|---|---|
| **Population Served** | **AM Class A** | **AM Class B** | **AM Class C** | **AM Class D** | **FM Classes A, B1 & C3** | **FM Classes B, C, C0, C1 & C2** |
| **<=25,000** | $650 | $550 | $475 | $575 | $625 | $800 |
| **25,001 – 75,000** | $1,300 | $1,075 | $725 | $875 | $1,250 | $1,400 |
| **75,001 – 150,000** | $1,950 | $1,350 | $950 | $1,450 | $1,725 | $2,600 |
| **150,001 – 500,000** | $2,925 | $2,300 | $1,425 | $1,725 | $2,650 | $3,400 |
| **500,001 – 1,200,000** | $4,225 | $3,500 | $2,375 | $2,875 | $4,225 | $5,000 |
| **1,200,001 – 3,000,00** | $6,500 | $5,400 | $3,575 | $4,600 | $6,875 | $8,000 |
| **>3,000,000** | $7,800 | $6,475 | $4,525 | $5,750 | $8,750 | $10,400 |

**FY 2010 SCHEDULE OF REGULATORY FEES**
**International Bearer Circuits - Submarine Cable**

| Submarine Cable Systems (capacity as of December 31, 2009) | Fee amount | Address |
|---|---|---|
| **< 2.5 Gbps** | $13,650 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |
| **2.5 Gbps or greater, but less than 5 Gbps** | $27,325 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |
| **5 Gbps or greater, but less than 10 Gbps** | $54,650 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |
| **10 Gbps or greater, but less than 20 Gbps** | $109,300 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |
| **20 Gbps or greater** | $218,600 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |

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## Appendix C

### Sources of Payment Unit Estimates for FY 2010

In order to calculate individual service fees for FY 2010, we adjusted FY 2009 payment units for each service to more accurately reflect expected FY 2010 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System ("ULS"), International Bureau Filing System ("IBFS"), Consolidated Database System ("CDBS") and Cable Operations and Licensing System ("COALS"), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast*.

We sought verification for these estimates from multiple sources and, in all cases we compared FY 2010 estimates with actual FY 2009 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2010 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2010 payment units are based on FY 2009 actual payment units, it does not necessarily mean that our FY 2010 projection is exactly the same number as FY 2009. We have either rounded the FY 2010 number or adjusted it slightly to account for these variables.

| Fee category | Sources of payment unit estimates |
|---|---|
| Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed. | Based on Wireless Telecommunications Bureau ("WTB") projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis. |
| CMRS Cellular/Mobile Services | Based on WTB projection reports, and FY 09 payment data. |
| CMRS Messaging Services | Based on WTB reports, and FY 09 payment data. |
| AM/FM Radio Stations | Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units. |
| UHF/VHF Television Stations | Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units. |
| AM/FM/TV Construction Permits | Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units. |
| LPTV, Translators and Boosters, Class A Television. | Based on CDBS data, adjusted for exemptions, and actual FY 2009 payment units. |
| Broadcast Auxiliaries | Based on actual FY 2009 payment units. |
| BRS (formerly MDS/MMDS) | Based on WTB reports and actual FY 2009 payment units. |
| LMDS | Based on WTB reports and actual FY 2009 payment units. |
| Cable Television Relay Service ("CARS") Stations. | Based on data from Media Bureau's COALS data base and actual FY 2009 payment units. |
| Cable Television System Subscribers | Based on publicly available data sources for estimated subscriber counts and actual FY 2009 payment units. |
| Interstate Telecommunication Service Providers | Based on FCC Form 499–Q data for the four quarters of calendar year 2009, the Wireline Competition Bureau projected the amount of calendar year 2009 revenue that will be reported on 2010 FCC Form 499–A worksheets in April 2010. |
| Earth Stations | Based on International Bureau ("IB") licensing data and actual FY 2009 payment units. |
| Space Stations (GSOs & NGSOs) | Based on IB data reports and actual FY 2009 payment units. |
| International Bearer Circuits | Based on IB reports and submissions by licensees. |
| Submarine Cable Licenses | Based on IB license information. |

## Appendix D

### Factors, Measurements, and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

*AM Stations*

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane ("RMS") figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in 73.150 and 73.152 of the Commission's rules.[1] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3.[2] Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2,000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

*FM Stations*

The greater of the horizontal or vertical effective radiated power ("ERP") (kW) and respective height above average terrain ("HAAT") (m) combination was used. Where the antenna height above mean sea level ("HAMSL") was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[3] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2,000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

[1] 47 CFR 73.150 and 73.152.

[2] *See* Map of Estimated Effective Ground Conductivity in the United States, 47 CFR 73.190 Figure R3.

[3] 47 CFR 73.313.

## Appendix E

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act ("RFA"),[36] the Commission prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this Notice. The Commission will send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[37] In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register.**[38]

### I. Need for, and Objectives of, the Notice

2. This rulemaking proceeding is initiated for the Commission to obtain comments regarding its proposed amendment to its Schedule of Regulatory Fees in the amount of $335,794,000, which is the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its revised Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

### II. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[39]

### III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[40] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[41] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[42] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[43]

5. *Small Businesses.* Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[44]

6. *Small Organizations.* Nationwide, as of 2002, there are approximately 1.6 million small organizations.[45] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[46]

7. *Small Governmental Jurisdictions.* The term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[47] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[48] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[49] Thus, we estimate that most governmental jurisdictions are small.

8. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[50] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.[51] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. *Incumbent Local Exchange Carriers ("ILECs").* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[52] According to Commission data,[53] 1,311 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

10. *Competitive Local Exchange Carriers ("CLECs"), Competitive Access Providers ("CAPs"), "Shared-Tenant Service Providers," and "Other Local Service Providers."* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[54] According to Commission data,[55] 1005 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 1005 carriers, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. In addition, 16 carriers have reported that they are "Shared-Tenant Service Providers," and all 16 are estimated to have 1,500 or fewer employees. In addition, 89 carriers have reported that they are "Other Local Service Providers." Of the 89, all have 1,500 or fewer employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, "Shared-Tenant Service Providers," and "Other Local Service Providers" are small entities that may be affected by our proposed action.

11. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[56] According to Commission data,[57] 151 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 149 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

12. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is

[36] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[37] 5 U.S.C. 603(a).

[38] *Id.*

[39] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[40] 5 U.S.C. 603(b)(3).

[41] 5 U.S.C. 601(6).

[42] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[43] 15 U.S.C. 632.

[44] *See* SBA, Office of Advocacy, "Frequently Asked Questions," *http://web.sba.gov/faqs* (accessed Jan. 2009).

[45] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[46] 5 U.S.C. 601(4).

[47] 5 U.S.C. 601(5).

[48] U.S. Census Bureau, *Statistical Abstract of the United States:* 2006, section 8, p. 272, Table 415.

[49] We assume that the villages, school districts, and special districts are small, and total 48,558. *See* U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, p. 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[50] 15 U.S.C. 632.

[51] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) ("Small Business Act"); 5 U.S.C. 601(3) ("RFA"). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[52] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[53] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "*Trends in Telephone Service*" at Table 5.3, Page 5–5 (Aug. 2008) ("*Trends in Telephone Service*"). This source uses data that are current as of November 1, 2006.

[54] 13 CFR 121.201, NAICS code 517110.

[55] "*Trends in Telephone Service*" at Table 5.3.

[56] 13 CFR 121.201, NAICS code 517310.

[57] "*Trends in Telephone Service*" at Table 5.3.

small if it has 1,500 or fewer employees.[58] According to Commission data,[59] 815 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 787 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

13. *Payphone Service Providers ("PSPs").* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[60] According to Commission data,[61] 526 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 524 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

14. *Interexchange Carriers ("IXCs").* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[62] According to Commission data,[63] 300 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

15. *Operator Service Providers ("OSPs").* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[64] According to Commission data,[65] 28 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 27 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

16. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[66] According to Commission data,[67] 88 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 85 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our proposed action.

17. *800 and 800–Like Service Subscribers.*[68] Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service ("toll free") subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[69] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[70] According to our data, at the end of December 2007, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,210,184; the number of 877 numbers assigned was 4,388,682; and the number of 866 numbers assigned was 7,029,116. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,210,184 or fewer small entity 888 subscribers; 4,388,682 or fewer small entity 877 subscribers, and 7,029,116 or fewer entity 866 subscribers.

18. *Satellite Telecommunications and All Other Telecommunications.* These two economic census categories address the satellite industry. The first category has a small business size standard of $15 million or less in average annual receipts, under SBA rules.[71] The second has a size standard of $25 million or less in annual receipts.[72] The most current Census Bureau data in this context, however, are from the (last) economic census of 2002, and we will use those figures to gauge the prevalence of small businesses in these categories.[73]

19. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications."[74] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[75] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[76] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

20. The second category of All Other Telecommunications comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems."[77] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[78] Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[79] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

21. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[80] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[81] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500

[58] 13 CFR 121.201, NAICS code 517310.

[59] "*Trends in Telephone Service*" at Table 5.3.

[60] 3 CFR 121.201, NAICS code 517110.

[61] "*Trends in Telephone Service*" at Table 5.3.

[62] 13 CFR 121.201, NAICS code 517110.

[63] "*Trends in Telephone Service*" at Table 5.3.

[64] 13 CFR 121.201, NAICS code 517110.

[65] "*Trends in Telephone Service*" at Table 5.3.

[66] 13 CFR 121.201, NAICS code 517310.

[67] "*Trends in Telephone Service*" at Table 5.3.

[68] We include all toll-free number subscribers in this category.

[69] 13 CFR 121.201, NAICS code 517310.

[70] "*Trends in Telephone Service*" at Tables 18.4, 18.5, 18.6, and 18.7.

[71] 13 CFR 121.201, NAICS code 517410.

[72] 13 CFR 121.201, NAICS code 517919.

[73] 13 CFR 121.201, NAICS codes 517410 and 517910 (2002).

[74] U.S. Census Bureau, 2007 NAICS Definitions, "517410 Satellite Telecommunications"; *http://www.census.gov/naics/2007/def/ND517410.HTM.*

[75] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517410 (issued Nov. 2005).

[76] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[77] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[78] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 517910 (issued Nov. 2005).

[79] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[80] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[81] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.;* U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

or fewer employees.[82] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[83] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[84] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[85] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[86] Thus, we estimate that the majority of wireless firms are small.

22. *Common Carrier Paging.* As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite) firms within the broad economic census categories of "Cellular and Other Wireless Telecommunications."[87] Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[88] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[89] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[90] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[91] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[92] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[93] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[94] Thus, we estimate that the majority of wireless firms are small.

23. In addition, in the *Paging Second Report and Order,* the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[95] A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[96] The SBA has approved this definition.[97] An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[98] Fifty-seven companies claiming small business status won 440 licenses.[99] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[100] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[101]

24. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of "paging and messaging" services.[102] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[103] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

25. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services ("WCS") auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[104] The SBA has approved these definitions.[105] The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

26. *1670–1675 MHz Services.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

27. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[106] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[107] According to *Trends in Telephone Service* data, 434 carriers reported that they were engaged in wireless telephony.[108] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[109] We have estimated that 222 of these are small under the SBA small business size standard.

28. *Broadband Personal Communications Service.* The broadband personal

[82] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[83] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[84] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[85] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[86] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[87] 13 CFR 121.201, NAICS code 517212.

[88] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.*

[89] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.;* U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[90] 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[91] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[92] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[93] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[94] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[95] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 ("*Paging Second Report and Order*"); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems,* Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[96] *Paging Second Report and Order,* 12 FCC Rcd at 2811, para. 179.

[97] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau ("WTB"), FCC (Dec. 2, 1998) ("*Alvarez Letter 1998*").

[98] *See* "*929 and 931 MHz Paging Auction Closes,*" Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[99] *See id.*

[100] *See* "*Lower and Upper Paging Band Auction Closes,*" Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[101] *See* "*Lower and Upper Paging Bands Auction Closes,*" Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[102] "*Trends in Telephone Service*" at Table 5.3.

[103] "*Trends in Telephone Service*" at Table 5.3.

[104] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS),* Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[105] *See Alvarez Letter 1998.*

[106] 13 CFR 121.201, NAICS code 517210.

[107] *Id.*

[108] "*Trends in Telephone Service*" at Table 5.3.

[109] "*Trends in Telephone Service*" at Table 5.3.

communications services ("PCS") spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[110] For Block F, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[111] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[112] No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 "small" and "very small" business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.[113] In 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[114]

29. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses.[115] Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses.[116] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71.[117] Of the 14 winning bidders, six were designated entities.[118] In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.[119]

30. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses.[120] This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS–1"). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status.[121] Four winning bidders that identified themselves as very small businesses won 17 licenses.[122] Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

31. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less.[123] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[124] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[125] A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million.[126] A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million.[127] The SBA has approved these small business size standards.[128] A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[129] Three of these claimed status as a small or very small entity and won 311 licenses.

32. *700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[130] The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[131] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[132] Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area ("MSA/RSA") licenses. The third category is "entrepreneur," which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[133] The SBA approved these small size standards.[134] The Commission conducted an auction in 2002 of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. [135] The Commission conducted a second auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area

[110] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996) ("*PCS Report and Order*"); *see also* 47 CFR 24.720(b).

[111] *See PCS Report and Order,* 11 FCC Rcd at 7852, para. 60.

[112] *See Alvarez Letter 1998.*

[113] FCC News, "Broadband PCS, D, E and F Block Auction Closes," No. 71744 (rel. Jan. 14, 1997).

[114] *See* "C, D, E, and F Block Broadband PCS Auction Closes," *public notice,* 14 FCC Rcd 6688 (WTB 1999).

[115] *See* "C and F Block Broadband PCS Auction Closes; Winning Bidders Announced," *public notice,* 16 FCC Rcd 2339 (2001).

[116] *See* "Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58," *public notice,* 20 FCC Rcd 3703 (2005).

[117] *See* "Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71," *public notice,* 22 FCC Rcd 9247 (2007).

[118] *Id.*

[119] *See* Auction of AWS–1 and Broadband PCS Licenses Rescheduled for August 13, 2008, Notice of Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures For Auction 78, *public notice,* 23 FCC Rcd 7496 (2008) ("AWS–1 and Broadband PCS Procedures Public Notice").

[120] *See* AWS–1 and Broadband PCS Procedures Public Notice, 23 FCC Rcd 7496. Auction 78 also included an auction of Broadband PCS licenses.

[121] *Id.* at 23 FCC Rcd at 7521–22.

[122] *See* "Auction of AWS–1 and Broadband PCS Licenses Closes, Winning Bidders Announced for Auction 78, Down Payments Due September 9, 2008, FCC Forms 601 and 602 Due September 9, 2008, Final Payments Due September 23, 2008, Ten-Day Petition to Deny Period", *public notice,* 23 FCC Rcd 12749–65 (2008).

[123] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS,* Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[124] *See* "Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674," *Public Notice,* PNWL 94–004 (rel. Aug. 2, 1994); "Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787," *public notice,* PNWL 94–27 (rel. Nov. 9, 1994).

[125] *Amendment of the Commission's Rules to Establish New Personal Communications Services,* Narrowband PCS, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000) ("*Narrowband PCS Second Report and Order*").

[126] *Narrowband PCS Second Report and Order,* 15 FCC Rcd at 10476, para. 40.

[127] *Id.*

[128] *See Alvarez Letter 1998.*

[129] *See* "Narrowband PCS Auction Closes," *public notice,* 16 FCC Rcd 18663 (WTB 2001).

[130] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59),* Report and Order, 17 FCC Rcd 1022 (2002) ("*Channels 52–59 Report and Order*").

[131] *See Channels 52–59 Report and Order,* 17 FCC Rcd at 1087–88, para. 172.

[132] *See id.*

[133] *See id.,* 17 FCC Rcd at 1088, para. 173.

[134] *See* Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, WTB, FCC (Aug. 10, 1999) ("*Alvarez Letter 1999*").

[135] *See* "Lower 700 MHz Band Auction Closes," *public notice,* 17 FCC Rcd 17272 (WTB 2002).

licenses.[136] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[137] In 2005, the Commission completed an auction of 5 licenses in the lower 700 MHz band (Auction 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

33. In 2007, the Commission adopted the *700 MHz Second Report and Order.*[138] The *Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission commenced Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission's standard simultaneous multiple-round ("SMR") auction format for the A, B, D, and E block licenses and an SMR auction design with hierarchical package bidding ("HPB") for the C Block licenses. Later in 2008, the Commission concluded Auction 73.[139] A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (very small business) qualified for a 25 percent discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded $15 million, but did not exceed $40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. There were 36 winning bidders (who won 330 of the 1,090 licenses won) that identified themselves as very small businesses. There were 20 winning bidders that identified themselves as a small business that won 49 of the 1,090 licenses won.[140] The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.[141]

34. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[142] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[143] Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[144] SBA approval of these definitions is not required.[145] In 2000, the Commission conducted an auction of 52 Major Economic Area ("MEA") licenses.[146] Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced and closed in 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.[147]

35. *Specialized Mobile Radio.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years.[148] The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[149] The SBA has approved these small business size standards for the 900 MHz Service.[150] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[151] A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[152]

36. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[153] In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.[154] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

37. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.[155] We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

38. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees.

[136] *See* "Lower 700 MHz Band Auction Closes," *public notice,* 18 FCC Rcd 11873 (WTB 2003).

[137] *See id.*

[138] Service Rules for the 698–746, 747–762 and 777–792 MHz Band, WT Docket No. 06–150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems,* CC Docket No. 94–102, *Section 68.4(a) of the Commission's rules Governing Hearing Aid-Compatible Telephone,* WT Docket No. 01–309, *Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services,* WT Docket No. 03–264, *Former Nextel Communications, Inc. Upper700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's rules,* WT Docket No. 06–169, *Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band,* PS Docket No. 06–229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010,* WT Docket No. 96–86, Second Report and Order, FCC 07–132 (2007) ("700 MHz Second Report and Order"), 22 FCC Rcd 15289 (2007).

[139] Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73, Down Payments Due April 3, 2008, FCC Forms 601 and 602 April 3, 2008, Final Payment Due April 17, 2008, Ten-Day Petition to Deny Period, *Public Notice,* 23 FCC Rcd 4572 (2008).

[140] *Id.* 23 FCC Rcd at 4572–73.

[141] *Id.*

[142] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's rules,* Second Report and Order, 15 FCC Rcd 5299 (2000) ("*746–764 MHz Band Second Report and Order*").

[143] *See 746–764 MHz Band Second Report and Order,* 15 FCC Rcd at 5343, para. 108.

[144] *See id.*

[145] *See id.,* 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[146] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *public notice,* 15 FCC Rcd 18026 (2000).

[147] *See* "700 MHz Guard Bands Auction Closes: Winning Bidders Announced," *public notice,* 16 FCC Rcd 4590 (WTB 2001).

[148] 47 CFR 90.814(b)(1).

[149] 47 CFR 90.814(b)(1).

[150] *See Alvarez Letter 1999.*

[151] *See* "Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,' " *public notice,* 18 FCC Rcd 18367 (WTB 1996).

[152] *See* "Multi-Radio Service Auction Closes," *public notice,* 17 FCC Rcd 1446 (WTB 2002).

[153] *See* "800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced," *public notice,* 15 FCC Rcd 17162 (2000).

[154] *See,* "800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced," *public notice,* 16 FCC Rcd 1736 (2000).

[155] *See generally* 13 CFR 121.201, NAICS code 517210.

To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite).[156] This category provides that a small business is a wireless company employing no more than 1,500 persons.[157] The Commission estimates that most such licensees are small businesses under the SBA's small business standard.

39. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, the Commission adopted a small business size standard for defining "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[158] This small business standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years.[159] A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[160] The SBA has approved these small size standards.[161] Auctions of Phase II licenses commenced on and closed in 1998.[162] In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group ("EAG") Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[163] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[164] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[165] In 2007, the Commission conducted a fourth auction of the 220 MHz licenses.[166] Bidding credits were offered to small businesses. A bidder with attributed average annual gross revenues that exceeded $3 million and did not exceed $15 million for the preceding three years ("small business") received a 25 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $3 million for the preceding three years received a 35 percent discount on its winning bid ("very small business"). Auction 72, which offered 94 Phase II 220 MHz Service licenses, concluded in 2007.[167] In this auction, five winning bidders won a total of 76 licenses. Two winning bidders identified themselves as very small businesses won 56 of the 76 licenses. One of the winning bidders that identified themselves as a small business won 5 of the 76 licenses won.

40. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.[168] Bidding credits for designated entities were not available in Auction 77.[169] In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.[170]

41. *Private Land Mobile Radio ("PLMR").* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[171] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[172]

42. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

43. *Fixed Microwave Services.* Fixed microwave services include common carrier,[173] private operational-fixed,[174] and broadcast auxiliary radio services.[175] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[176] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

44. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years.[177] An

[156] *Id.*

[157] *Id.*

[158] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[159] *Id.* at 11068, para. 291.

[160] *Id.*

[161] *See* Letter from Aida Alvarez, Administrator, SBA, to Daniel Phythyon, Chief, WTB, FCC (Jan. 6, 1998) ("*Alvarez to Phythyon Letter 1998*").

[162] *See generally* "220 MHz Service Auction Closes," *public notice,* 14 FCC Rcd 605 (1998).

[163] *See* "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," *public notice,* 14 FCC Rcd 1085 (1999).

[164] *See* "Phase II 220 MHz Service Spectrum Auction Closes," *public notice,* 14 FCC Rcd 11218 (1999).

[165] *See* "Multi-Radio Service Auction Closes," *public notice,* 17 FCC Rcd 1446 (2002).

[166] *See* "Auction of Phase II 220 MHz Service Spectrum Scheduled for June 20, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction 72, *public notice,* 22 FCC Rcd 3404 (2007).

[167] *See* "Auction of Phase II 220 MHz Service Spectrum Licenses Closes, Winning Bidders Announced for Auction 72, Down Payments due July 18, 2007, FCC Forms 601 and 602 due July 18, 2007, Final Payments due August 1, 2007, Ten-Day Petition to Deny Period, *public notice,* 22 FCC Rcd 11573 (2007).

[168] *See* Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77, *public notice,* 23 FCC Rcd 6670 (2008).

[169] *Id.* at 6685.

[170] *See* Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008, *public notice,* 23 FCC Rcd 9501 (2008).

[171] *See* 13 CFR 121.201, NAICS code 517210.

[172] *See generally* 13 CFR 121.201.

[173] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[174] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[175] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's rules. *See* 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[176] 13 CFR 121.201, NAICS code 517210.

[177] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz*

additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[178] The SBA has approved these small business size standards.[179] The auction of the 2,173, 39 GHz licenses, began and closed in 2000. The 18 bidders who claimed small business status won 849 licenses.

45. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service ("LMDS") is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[180] The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[181] An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[182] The SBA has approved these small business size standards in the context of LMDS auctions.[183] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

46. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas ("MSAs").[184] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after Federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[185] In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years.[186] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[187] The SBA has approved of these definitions.[188] A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

47. *Location and Monitoring Service ("LMS").* Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[189] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[190] These definitions have been approved by the SBA.[191] An auction for LMS licenses commenced and closed in 1999. Of the 528 licenses auctioned, 289 licenses were sold to four small businesses.

48. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[192] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System ("BETRS").[193] In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[194] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

49. *Air-Ground Radiotelephone Service.*[195] The Commission has previously used the SBA's small business definition applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons.[196] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[197] A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[198] These definitions were approved by the SBA.[199] In 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction 65). Later in 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

50. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[200] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, we will use the SBA small business size standard for the category Wireless Telecommunications

*Bands,* ET Docket No. 95–183, Report and Order, 12 FCC Rcd 18600 (1997).

[178] *Id.*

[179] *See* Letter from Aida Alvarez, Administrator, SBA, to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb. 4, 1998); *see* Letter from Hector Barreto, Administrator, SBA, to Margaret Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Jan. 18, 2002).

[180] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997) ("*LMDS Second Report and Order*").

[181] *See LMDS Second Report and Order,* 12 FCC Rcd at 12689–90, para. 348.

[182] *See id.*

[183] *See Alvarez to Phythyon Letter 1998.*

[184] *See* "*Interactive Video and Data Service (IVDS) Applications Accepted for Filing,*" public notice, 9 FCC Rcd 6227 (1994).

[185] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[186] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[187] *Id.*

[188] *See Alvarez to Phythyon Letter 1998.*

[189] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192, para. 20 (1998) ("*Automatic Vehicle Monitoring Systems Second Report and Order*"); *see also* 47 CFR 90.1103.

[190] *Automatic Vehicle Monitoring Systems Second Report and Order,* 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[191] *See Alvarez Letter 1998.*

[192] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[193] BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[194] 13 CFR 121.201, NAICS code 517210.

[195] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[196] 13 CFR 121.201, NAICS codes 517210.

[197] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service,* WT Docket Nos. 03–103 and 05–42, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

[198] *Id.*

[199] *See* Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, WTB, FCC (Sept. 19, 2005).

[200] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of parts 80 and 87 of the Commission's rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT Docket No. 96–82, 11 FCC Rcd 14849 (1996).

Carriers (except Satellite), which is 1,500 or fewer employees.[201] We are unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[202] In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[203] Further, the Commission made available Automated Maritime Telecommunications System ("AMTS") licenses in Auctions 57 and 61.[204] Winning bidders could claim status as a very small business or a small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years.[205] Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

51. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies ("UHF") television broadcast channels that are not used for television broadcasting in the coastal areas of States bordering the Gulf of Mexico.[206] There is presently 1 licensee in this service. We do not have information whether that licensee would qualify as small under the SBA's small business size standard for Wireless Telecommunications Carriers (except Satellite) services.[207] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[208]

52. *Multiple Address Systems ("MAS").* Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines "small entity" for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[209] "Very small business" is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[210] The SBA has approved of these definitions.[211] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of March 5, 2010, there were over 11,500 MAS station authorizations. In addition, an auction for 5,104 MAS licenses in 176 EAs was conducted in 2001.[212] Seven winning bidders claimed status as small or very small businesses and won 611 licenses. In 2005, the Commission completed an auction (Auction 59) of 4,226 MAS licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

53. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.[213] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

54. *1.4 GHz Band Licensees.* The Commission conducted an auction of 64 1.4 GHz band licenses[214] in 2007.[215] In that auction, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, had average gross revenues that exceed $15 million but do not exceed $40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years.[216] Neither of the two winning bidders sought designated entity status.[217]

55. *Incumbent 24 GHz Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of Wireless Telecommunications Carriers (except Satellite). This category provides that such a company is small if it employs no more than 1,500 persons.[218] The broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent[219] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer than 1,500 employees, though this may change in the future. TRW is not a small entity. There are approximately 122 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 122 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

56. *Future 24 GHz Licensees.* With respect to new applicants in the 24 GHz band, we have defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[220] "Very small business" in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[221] The SBA has approved these definitions.[222] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

57. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service ("MDS")

[201] 13 CFR 121.201, NAICS code 517210.

[202] A licensee may have a license in more than one category.

[203] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[204] *See* "*Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,*" public notice, 19 FCC Rcd 9518 (WTB 2004); "*Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,*" public notice, 20 FCC Rcd 7811 (WTB 2005).

[205] 47 CFR 80.1252.

[206] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001–22.1037.

[207] 13 CFR 121.201, NAICS code 517210.

[208] *Id.*

[209] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[210] *Id.*

[211] *See Alvarez Letter 1999.*

[212] *See* "*Multiple Address Systems Spectrum Auction Closes,*" public notice, 16 FCC Rcd 21011 (2001).

[213] *See* 13 CFR 121.201, NAICS code 517210.

[214] *See* "*Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007,*" public notice, 21 FCC Rcd 12393 (WTB 2006).

[215] *See* "*Auction of 1.4 GHz Band Licenses Closes; Winning Bidders Announced for Auction No. 69,*" public notice, 22 FCC Rcd 4714 (2007) ("*Auction No. 69 Closing PN*").

[216] *Auction No. 69 Closing PN,* Attachment C.

[217] *See Auction No. 69 Closing PN.*

[218] 13 CFR 121.201, NAICS code 517210.

[219] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[220] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967, para 77 (2000) ("*24 GHz Report and Order*"); *see also* 47 CFR 101.538(a)(2).

[221] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[222] *See* Letter from Gary M. Jackson, Assistant Administrator, SBA, to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, WTB, FCC (July 28, 2000).

and Multichannel Multipoint Distribution Service ("MMDS") systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") (previously referred to as the Instructional Television Fixed Service ("ITFS")).[223] In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years.[224] The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas ("BTAs"). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.[225] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.[226] The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) will receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) will receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) will receive a 35 percent discount on its winning bid.[227] Auction 86 concluded in 2009 with the sale of 61 licenses.[228] Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

58. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.[229] Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[230] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[231] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[232] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[233] Thus, the majority of these firms can be considered small.

59. *Television Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public."[234] The SBA has created the following small business size standard for Television Broadcasting firms: those having $14 million or less in annual receipts.[235] The Commission has estimated the number of licensed commercial television stations to be 1,395.[236] In addition, according to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database (BIA) on March 30, 2007, about 986 of an estimated 1,395 commercial television stations (or approximately 72 percent) had revenues of $13 million or less.[237] We therefore estimate that the majority of commercial television broadcasters are small entities.

60. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations[238] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any television station from the definition of a small business on this basis and is therefore possibly over-inclusive to that extent.

61. In addition, the Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 390.[239] These stations are non-profit, and therefore considered to be small entities.[240]

62. In addition, there are also 2,386 low power television stations (LPTV).[241] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

63. *Radio Broadcasting.* This Economic Census category "comprises establishments primarily engaged in broadcasting aural programs by radio to the public. Programming may originate in their own

[223] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* MM Docket No. 94–131 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589, 9593, para 7 (1995) ("*MDS Auction R&O*").

[224] 47 CFR 21.961(b)(1).

[225] 47 U.S.C. 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard.

[226] Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *public notice,* 24 FCC Rcd 8277 (2009).

[227] *Id.* at 8296.

[228] Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *public notice,* 24 FCC Rcd 13572 (2009).

[229] The term "small entity" within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on EBS licensees.

[230] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[231] 13 CFR 121.201, NAICS code 517110.

[232] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[233] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[234] U.S. Census Bureau, 2007 NAICS Definitions, "515120 Television Broadcasting" (partial definition); *http://www.census.gov/naics/2007/def/ND515120.HTM#N515120.*

[235] 13 CFR 121.201, NAICS code 515120 (updated for inflation in 2008).

[236] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC–280836A1.pdf.*

[237] We recognize that BIA's estimate differs slightly from the FCC total given *supra.*

[238] "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has the power to control both." 13 CFR 21.103(a)(1).

[239] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

[240] *See generally* 5 U.S.C. 601(4), (6).

[241] *See FCC News Release,* "Broadcast Station Totals as of June 30, 2009," dated September 4, 2009; *http://www.fcc.gov/Daily_Releases/Daily_Business/2008/db0318/DOC-280836A1.pdf.*

studio, from an affiliated network, or from external sources."[242] The SBA has established a small business size standard for this category, which is: such firms having $7 million or less in annual receipts.[243] According to Commission staff review of BIA Publications, Inc.'s *Master Access Radio Analyzer Database* on March 31, 2005, about 10,840 (95%) of 11,410 commercial radio stations had revenues of $6 million or less. Therefore, the majority of such entities are small entities.

64. We note, however, that in assessing whether a business concern qualifies as small under the above size standard, business affiliations must be included.[244] In addition, to be determined to be a "small business," the entity may not be dominant in its field of operation.[245] We note that it is difficult at times to assess these criteria in the context of media entities, and our estimate of small businesses may therefore be over-inclusive.

65. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[246]

66. The Commission estimates that there are approximately 5,618 FM translators and boosters.[247] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($7.0 million for a radio station or $14.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[248]

67. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[249] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[250] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[251] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[252] Thus, the majority of these firms can be considered small.

68. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide.[253] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[254] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[255] Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers.[256] Thus, under this second size standard, most cable systems are small.

69. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[257] The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate.[258] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[259] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[260] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

70. *Open Video Systems.* The open video system ("OVS") framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.[261] The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,[262] OVS falls within the SBA small business size standard covering cable services, which is "Wired Telecommunications Carriers."[263] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for such services we must, however, use current census data that are based on the previous category of

[242] U.S. Census Bureau, 2007 NAICS Definitions, "515112 Radio Stations"; *http://www.census.gov/naics/2007/def/ND515112.HTM#N515112.*

[243] 13 CFR 121.201, NAICS code 515112 (updated for inflation in 2008).

[244] "Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists." 13 CFR 121.103(a)(1) (an SBA regulation).

[245] 13 CFR 121.102(b) (an SBA regulation).

[246] 13 CFR 121.201, NAICS codes 515112 and 515120.

[247] *See supra* note 242.

[248] *See* 15 U.S.C. 632.

[249] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[250] 13 CFR 121.201, NAICS code 517110.

[251] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[252] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[253] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation,* Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[254] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[255] 47 CFR 76.901(c).

[256] Warren Communications News, *Television & Cable Factbook 2008,* "U.S. Cable Systems by Subscriber Size," page F–2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

[257] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[258] 47 CFR 76.901(f); *see* public notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001).

[259] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* "Top 25 Cable/Satellite Operators," pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* "Ownership of Cable Systems in the United States," pages D–1805 to D–1857.

[260] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR 76.909(b).

[261] 47 U.S.C. 571(a)(3)–(4). *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Thirteenth Annual Report,* 24 FCC Rcd 542, 606 para. 135 (2009) ("*Thirteenth Annual Cable Competition Report*").

[262] *See* 47 U.S.C. 573.

[263] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[264] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[265] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[266] Thus, the majority of cable firms can be considered small. In addition, we note that the Commission has certified some OVS operators, with some now providing service.[267] Broadband service providers ("BSPs") are currently the only significant holders of OVS certifications or local OVS franchises.[268] The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

71. *Cable Television Relay Service.* This service includes transmitters generally used to relay cable programming within cable television system distribution systems. This cable service is defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." [269] The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having $13.5 million or less in annual receipts.[270] According to Census Bureau data for 2002, there were a total of 1,191 firms in this previous category that operated for the entire year.[271] Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million.[272] Thus, the majority of these firms can be considered small.

72. *Multichannel Video Distribution and Data Service.* MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[273] These definitions were approved by the SBA.[274] On January 27, 2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[275] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[276]

73. *Amateur Radio Service.* These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

74. *Aviation and Marine Services.* Small businesses in the aviation and marine radio services use a very high frequency ("VHF") marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[277] Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[278] There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

75. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[279] These services include Citizen Band Radio Service ("CB"), General Mobile Radio Service ("GMRS"), Radio Control Radio Service ("R/C"), Family Radio Service ("FRS"), Wireless Medical Telemetry Service ("WMTS"), Medical Implant Communications Service ("MICS"), Low Power Radio Service ("LPRS"), and Multi-Use Radio Service ("MURS").[280] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of Wireless Telecommunications Carriers (except Satellite), pursuant to which a small entity is defined as employing 1,500 or fewer

[264] 13 CFR 121.201, NAICS code 517110.

[265] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[266] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[267] A list of OVS certifications may be found at *http://www.fcc.gov/mb/ovs/csovscer.html.*

[268] *See Thirteenth Annual Cable Competition Report,* 24 FCC Rcd at 606–07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

[269] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers" (partial definition); *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[270] 13 CFR 121.201, NAICS code 517110.

[271] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[272] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[273] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band, ET Docket No. 98–206,* Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9711, para. 252 (2002).

[274] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, WTB, FCC (Feb.13, 2002).

[275] *See* "*Multichannel Video Distribution and Data Service Auction Closes,*" public notice, 19 FCC Rcd 1834 (2004).

[276] *See Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,* public notice, 20 FCC Rcd 19807 (2005).

[277] 13 CFR 121.201, NAICS code 517210.

[278] *Amendment of the Commission's Rules Concerning Maritime Communications,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[279] 47 CFR Part 90.

[280] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by subpart D, subpart A, subpart C, subpart B, subpart H, subpart I, subpart G, and subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

persons.[281] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

76. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[282] There are a total of approximately 127,540 licensees in these services. Governmental entities [283] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[284]

77. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications connections (*e.g.* cable and DSL, ISPs), or over client-supplied telecommunications connections (*e.g.* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,[285] which has an SBA small business size standard of 1,500 or fewer employees.[286] The latter are within the category of All Other Telecommunications,[287] which has a size standard of annual receipts of $25 million or less.[288] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[289] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[290] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999.[291] Consequently, we estimate that the majority of ISP firms are small entities.

78. The ISP industry has changed dramatically since 2002. The 2002 data cited above may therefore include entities that no longer provide Internet access service and may exclude entities that now provide such service. To ensure that this (IRFA/FRFA) describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing Internet access service.

79. We note that, although we have no specific information on the number of small entities that provide Internet access service over unlicensed spectrum, we include these entities in our IRFA/FRFA.

## IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

80. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[292] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.,* cellular telephones, pagers, cable TV subscribers) they have in service when they complete and submit the FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

81. As discussed previously in this *Notice of Proposed Rulemaking,* the Commission concluded in its FY 2009 regulatory fee cycle that licensees filing their annual regulatory fee payments must begin the process by entering the Commission's Fee Filer system with a valid FRN and password. In some instances, it will be necessary to use a specific FRN and password that is linked to a particular regulatory fee bill. Going forward, the submission of hardcopy Form 159 documents will not be permitted for making a regulatory fee payment during the regulatory fee cycle. By requiring licensees to use Fee Filer to begin the regulatory fee payment process, errors resulting from illegible handwriting on hardcopy Form 159's will be reduced, and we will create an electronic record of licensee payment attributes that are more easily traced than those payments that are simply mailed in with a hardcopy Form 159.

82. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[293] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[294] Further, in accordance with the DCIA, Federal agencies may bar a person or entity from obtaining a Federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any Federal agency.[295] Nonpayment of regulatory fees is a debt owed to the United States pursuant to 31 U.S.C. 3711 *et seq.,* and the DCIA. Appropriate

[281] 13 CFR 121.201, NAICS Code 517210.

[282] With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve State, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are State, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from State departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 State and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service ("EMRS") use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[283] 47 CFR 1.1162.

[284] 5 U.S.C. 601(5).

[285] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers", *http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.*

[286] 13 CFR 121.201, NAICS code 517110 (updated for inflation in 2008).

[287] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; *http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.*

[288] 13 CFR 121.201, NAICS code 517919 (updated for inflation in 2008).

[289] U.S. Census Bureau, 2002 NAICS Definitions, "518111 Internet Service Providers"; *http://www.census.gov/eped/naics02/def/NDEF518.HTM.*

[290] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

[291] An additional 45 firms had receipts of $25 million or more.

[292] *See* 47 CFR 1.1162 for the general exemptions from regulatory fees. *E.g.,* Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.,* Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[293] 47 CFR 1.1164.

[294] 47 CFR 1.1164(c).

[295] Public Law 104–134, 110 Stat. 1321 (1996).

enforcement measures, as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a Federal loan or loan guarantee pending before another Federal agency until such obligations are paid.[296]

83. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[297] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (*e.g.,* where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

**V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

84. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[298] In this *NPRM,* we seek comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

85. Several categories of licensees and regulatees are exempt from payment of regulatory fees. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. We note that small entities should be assisted by our implementation of the Fee Filer program, and that we have continued our practice of exempting fees whose total sum owed is less than $10.00.

**VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules**

86. None.

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[293] 47 CFR 1.1164.

[294] 47 CFR 1.1164(c).

[295] Public Law 104–134, 110 Stat. 1321 (1996).

## APPENDIX F

### FY 2009 Schedule of Regulatory Fees

Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted along with the application at the time the application is filed.

| Fee Category | Annual Regulatory Fee (U.S. $'s) |
|---|---|
| PLMRS (per license) (Exclusive Use) (47 CFR part 90) | 40 |
| Microwave (per license) (47 CFR part 101) | 30 |
| 218-219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95) | 65 |
| Marine (Ship) (per station) (47 CFR part 80) | 10 |
| Marine (Coast) (per license) (47 CFR part 80) | 45 |
| General Mobile Radio Service (per license) (47 CFR part 95) | 5 |
| Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category) | 20 |
| PLMRS (Shared Use) (per license) (47 CFR part 90) | 20 |
| Aviation (Aircraft) (per station) (47 CFR part 87) | 5 |
| Aviation (Ground) (per license) (47 CFR part 87) | 10 |
| Amateur Vanity Call Signs (per call sign) (47 CFR part 97) | 1.34 |
| CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) | .18 |
| CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90) | .08 |
| Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21) | 320 |
| Local Multipoint Distribution Service (per call sign) (47 CFR, part 101) | 320 |
| AM Radio Construction Permits | 400 |
| FM Radio Construction Permits | 650 |
| TV (47 CFR part 73) VHF Commercial | |
| Markets 1-10 | 77,575 |
| Markets 11-25 | 60,550 |
| Markets 26-50 | 37,575 |

| Fee Category | Annual Regulatory Fee (U.S. $'s) |
|---|---|
| Markets 51-100 | 22,950 |
| Remaining Markets | 5,950 |
| Construction Permits | 5,950 |
| TV (47 CFR part 73) UHF Commercial | |
| Markets 1-10 | 24,250 |
| Markets 11-25 | 21,525 |
| Markets 26-50 | 13,350 |
| Markets 51-100 | 7,600 |
| Remaining Markets | 1,950 |
| Construction Permits | 1,950 |
| Satellite Television Stations (All Markets) | 1,275 |
| Construction Permits – Satellite Television Stations | 650 |
| Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74) | 400 |
| Broadcast Auxiliaries (47 CFR part 74) | 10 |
| CARS (47 CFR part 78) | 260 |
| Cable Television Systems (per subscriber) (47 CFR part 76) | .88 |
| Interstate Telecommunication Service Providers (per revenue dollar) | .00342 |
| Earth Stations (47 CFR part 25) | 210 |
| Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100) | 127,175 |
| Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) | 137,225 |
| International Bearer Circuits - Terrestrial/Satellites (per 64KB circuit) | .75 |
| International Bearer Circuits - Submarine Cable | See Table Below |
| | |

**FY 2009 SCHEDULE OF REGULATORY FEES (continued)**

| FY 2009 RADIO STATION REGULATORY FEES | | | | | | |
|---|---|---|---|---|---|---|
| **Population Served** | **AM Class A** | **AM Class B** | **AM Class C** | **AM Class D** | **FM Classes A, B1 & C3** | **FM Classes B, C, C0, C1 & C2** |
| **<=25,000** | $675 | $550 | $500 | $575 | $650 | $825 |
| **25,001 – 75,000** | $1,350 | $1,075 | $750 | $875 | $1,325 | $1,450 |
| **75,001 – 150,000** | $2,025 | $1,350 | $1,000 | $1,450 | $1,825 | $2,725 |
| **150,001 – 500,000** | $3,050 | $2,300 | $1,500 | $1,725 | $2,800 | $3,550 |
| **500,001 – 1,200,000** | $4,400 | $3,500 | $2,500 | $2,875 | $4,450 | $5,225 |
| **1,200,001 – 3,000,00** | $6,750 | $5,400 | $3,750 | $4,600 | $7,250 | $8,350 |
| **>3,000,000** | $8,100 | $6,475 | $4,750 | $5,750 | $9,250 | $10,850 |

**FY 2009 SCHEDULE OF REGULATORY FEES**

**International Bearer Circuits - Submarine Cable**

| Submarine Cable Systems (capacity as of December 31, 2008) | Fee amount | Address |
|---|---|---|
| **< 2.5 Gbps** | $15,075 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |
| **2.5 Gbps or greater, but less than 5 Gbps** | $30,125 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |
| **5 Gbps or greater, but less than 10 Gbps** | $60,250 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |
| **10 Gbps or greater, but less than 20 Gbps** | $120,525 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |
| **20 Gbps or greater** | $241,025 | FCC, International, P.O. Box 979084, St. Louis, MO 63197-9000 |

[FR Doc. 2010–9553 Filed 4–23–10; 8:45 am]
BILLING CODE 6712–01–C

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

## Federal Motor Vehicle Safety Standard No. 108; Lamp, Reflective Devices and Associated Equipment; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** BMW of North America, LLC (BMW) requested a modification to the motorcycle headlighting system location requirements for a single headlamp with multiple light sources. The current standard requires that the light sources contained in a single motorcycle headlamp containing multiple light sources be located on the vertical centerline of the vehicle or horizontally disposed about the vertical centerline and mounted at the same height. BMW requested that the location requirements be based on the axes of reference instead of the light sources.

For compliance testing purposes, the agency utilizes the manufacturer's specified optical axis marking. As NHTSA explained in a letter of interpretation to Mr. Kiminori,[1] the optical axis is determined by the manufacturer in the certification process. Our lighting standard does not currently have requirements to specify where the optical axis marking must be located and we note that a modification of the standard, as requested by BMW, would effectively remove the location requirements for a single motorcycle headlamp with multiple light sources. Therefore, NHTSA is denying BMW's petition.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mr. Markus Price, Office of Crash Avoidance Standards (Phone: 202–366–0098; FAX: 202–366–7002).

For legal issues, you may call Mr. J. Edward Glancy Office of the Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 108; *Lamps, reflective devices, and associated equipment,* establishes lighting requirements for motor vehicles.[2] Motorcycle headlamp systems that contain a single headlamp with multiple light sources must be arranged according to the requirements of paragraph S7.9.6.2.[3] S7.9.6.2(a) requires that "If the headlamp contains more than one light source, each light source shall be mounted on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and mounted at the same height."

### BMW Group Petition

On October 10, 2008, BMW North America, LLC (BMW) petitioned the agency requesting that the requirements for a motorcycle headlighting system, containing a single headlamp, with multiple light sources, be modified. BMW stated that the purpose of its petition was to harmonize the requirements of FMVSS No. 108 with the similar European Communities (ECE) regulation No. 53 requirements, which have location requirements relative to the vehicle based on the axis of reference rather than the physical filaments in the lamp.

Specifically, BMW requested that paragraph S10.17.1.1.2 [4] of the reorganized standard be amended from the sentence quoted above in "Background," to read as follows:

> S10.17.1.1.2 If the headlamp contains more than one light source, each *axis of reference* must be *located* on the vertical centerline with the upper beam no higher than the lower beam, or horizontally disposed about the vertical centerline and *located* at the same height.[5]

BMW stated that "when using modern, state of the art asymmetrical reflectors, the center of reference is, because of the reflector surface, slightly differently located compared to the original light source. The center of reference is the basis for all photometric measurement, which are required by the ECE regulation." BMW also stated that its requested modification would harmonize FMVSS No. 108 with ECE Regulation No. 53, and would have no negative impact on traffic safety.

### Analysis

In consideration of this petition, the agency reviewed the use of the defined term "axis of reference" in order to evaluate the appropriate use of this term within paragraph S10.14.1.1.2.

The axis of reference is defined as the following:

> Axis of reference means the characteristic axis of the lamp for use as the direction of reference (H = 0°, V = 0°) for angles of field or photometric measurements and for installing the lamp on the vehicle.[6]

The term "axis of reference" is used in two key areas within the standard. First, the axis of reference is used in the determination of the effective projected luminous lens area.[7] The other key area in which this term is used is, in determination of the mounting height of various lamps. Lamps mounted with their axis of reference less than 750 millimeters (mm) above the road surface may meet the photometric requirements for the test points located below 5° down at 5° down, rather than at the specified required downward angle. This general concept applies to various lamps and is listed in the table of photometric requirements for each lamp to which it applies.[8]

The agency has also used the term "axis of reference" in a key guidance letter. In a letter to Mr. Kiminori, the agency explains the flexibility manufacturers have in the establishment of the optical marking and therefore the location of the axis of reference. The agency stated, "Paragraph S7.8.5.3(f) [paragraph numeration prior to the technical rewrite of 2007] of FMVSS No. 108 requires that a visually/optically aimed headlamp include a mark or markings identifying the optical axis of the headlamp. The location of this mark or markings is to be determined by the

of polar bears through Letters of Authorization issued under 16 U.S.C.

[2] 49 CFR 571.108 (2009).

[3] In the amended standard, this requirement is found in paragraph S10.17.1.1.2 and paragraph S10.17.1.1.3. *See* 72 FR 68234 (Dec. 4, 2007). In a December 2007 final rule, NHTSA rewrote and reorganized FMVSS No. 108 to provide a more straightforward and logical presentation of the applicable regulatory requirements. *Id.* The effective date of those amendments has been delayed to December 1, 2012. 74 FR 58214 (Nov. 12, 2009).

[4] Paragraph S10.17.1.1.2 of the reorganized standard is identical to the same sentence currently found in paragraph S7.9.6.2(a), i.e., the requirement prior to the 2007 reorganization of the standard. *See* 72 FR 68234, 68283.

[5] *Id.* (emphasis added).

[6] 49 CFR 571.108 S4, Definitions.

[7] "*Effective projected luminous lens area* means the area of the orthogonal projection of the effective light-emitting surface of a lamp on a plane perpendicular to a defined direction relative to the axis of reference. Unless otherwise specified, the direction is coincident with the axis of reference." *Id.*

[8] *See* 72 FR 68234, 68301–68327 (Tables V, VII, VIII, IX, X, XI, XII, XIV, XVI, XVII) (noting in Table footnotes that where various lamps are "mounted with their axis of reference less than 750 mm above the road surface, photometry requirements below 5° down may be met at 5° down rather than at the specified requirement downward angle").

headlamp manufacturer. Once chosen, the mark establishes the reference axis that will be used to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. NHTSA will use this mark to identify the reference axis, and will conduct its compliance testing accordingly." [9]

Although BMW claimed that the petitioned modification would have no negative impact on traffic safety, BMW did not provide data to demonstrate that the requested new specifications would provide safety benefits comparable to those of the existing standard or that cost savings would be realized without compromising safety.

Considering the flexibility with which a manufacturer has in determining the location of the axis of reference, the agency is concerned that modifying the standard as suggested by BMW would create a disconnect between the physical attributes of the lamp and the location of the axis of reference. While the agency understands that the focal center of a complex headlamp may not be at the center of the light source, the agency continues to believe that the light source provides the best physical attribute with which to link the location requirements of paragraph S10.17.1.1.2. Considering the flexibility with which manufactures have in choosing the optical axis marking and thus the location of the reference axis and the lack of demonstrable benefits, the agency is denying this petition from BMW in order to avoid ambiguity in the requirement.

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

Issued: April 20, 2010.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2010–9587 Filed 4–23–10; 8:45 am]

BILLING CODE 4910–59–P

[9] Letter of Interpretation to Mr. Hyodo (May 2007), *available at http://isearch.nhtsa.gov/files/06–005429as-6.htm* (last accessed March 29, 2010).

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS-R4-ES-2010-0026]**
**[MO 92210-0-0008-B2]**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the Harlequin Butterfly as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on a petition to list the harlequin butterfly (*Atlantea tulita*), a butterfly endemic to Puerto Rico, as endangered under the Endangered Species Act of 1973, as amended, and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the harlequin butterfly may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the harlequin butterfly is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12–month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that you send us your information on or before June 25, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see **ADDRESSES** section, below) the deadline for submitting an electronic comment is 11:59 p.m. Eastern Standard Time on this date.

After June 25, 2010, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

**ADDRESSES:** You may submit comments by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. In the box that reads "Enter Keyword or ID," enter the Docket number for this finding, which is FWS-R4-ES-2010-0026. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

• U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R4-ES-2010-0026; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Edwin Muniz, Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone (787) 851-7297; or by facsimile (787) 851-7440. If you use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

### Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the harlequin butterfly from governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species or its habitat or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) The potential effects of climate change on this species and its habitat.

If, after the status review, we determine that listing the harlequin butterfly is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the harlequin butterfly, we request data and information on:

(1) What may constitute "physical or biological features essential to the conservation of the species,"

(2) Where these features are currently found, and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on "specific areas outside the geographical area occupied by the species" that are "essential to the conservation of the species." Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via http:// *www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12–month finding.

## Petition History

On February 25, 2009, we received a petition dated February 24, 2009, from Mr. Javier Biaggi-Caballero requesting that we list the harlequin butterfly as endangered and designate critical habitat under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required in 50 CFR 424.14(a). In an April 9, 2009, letter to the petitioner, we responded that we had received the petition. We stated that we would make a finding, to the maximum extent practicable within 90 days, as to whether or not the petition presented substantial information. We have been unable to respond to the petition until now.

In that letter, we also stated that if this initial finding concludes that the petition presents substantial information indicating that the requested action may be warranted, we must commence a review of the status of the species concerned. Section 4(b)(3)(B) of the Act gives us one year from the date we received the petition to determine whether the petitioned action is not warranted, warranted, or warranted but precluded; we must promptly publish notice of our finding in the **Federal Register**. At the conclusion of our status review, we will prepare and publish our 12–month finding on the petition to list the harlequin butterfly as endangered and, if warranted, designate critical habitat under the Act.

## Previous Federal Actions

There have been no previous Federal actions concerning this species.

## Species Information

The harlequin butterfly is endemic to the island of Puerto Rico and is one of the four species endemic to the Greater Antillean genus *Atlantea* (Biaggi-Caraballo 2009, p. 1). The species was described by German lepidopterist Dr. Herman Dewitz in 1877, from specimens collected by Dr. Leopold Krug in the municipality of Quebradillas, Puerto Rico.

The harlequin butterfly has a wing span of about 2-2.5 inches (in) (6 centimeters (cm)) wide. Both female and male harlequin butterflies are similar in color patterns and size. This butterfly is brownish black at the dorsal area with deep orange markings and confused black markings at the half basal anterior wing. The posterior wing has a wide black border enclosing a set of reddish-bronze sub-marginal points. The ventral side of the anterior wing is similar to the dorsal anterior wing, and the posterior is black with orange basal spots and a complete postdiscal beige band with a band of reddish spots distally and sub-marginal white half-moons. The costa, the most anterior (leading) edge of a wing, in males is gray and wide. Females are multivoltine ovopositors (produce several broods in a single season) (Biaggi-Caraballo 2009, p. 2).

The harlequin butterfly has only been observed utilizing the prickly bush (*Oplonia spinosa*) as its host plant (plant used for laying eggs and serves as a food source for the development of larvae). The chrysalis (the hard-shelled pupa of a butterfly) is also attached to dried twigs of the host plant (Biaggi-Caraballo 2009, p. 3). The adult butterflies feed from the nectars of the flowers available nearby but have not

been observed feeding from the prickly bush.

Currently, the harlequin butterfly is only known from one small colony in the municipality of Quebradillas, at the northern karst region of Puerto Rico (Biaggi-Caraballo 2009, p. 4). This colony is located in the Terranova-San Jose Ward, in Quebradillas, Puerto Rico. The species has been observed in a forest associated with the coastal cliffs of the area. Based on the information provided by the petitioner, census tracts yield no more than 50 adults on a given date (Biaggi-Caraballo 2009, p. 5). Larva counts are estimated to be around 10-100 per census day, and the presence of more than one generation confirms its multivoltine nature. From July to December, the larva population is lower than the rest of the year.

Carrión-Cabrera (2003, p. 40) states that the dispersion of the species is limited by the monophagus habit of the larvae (only utilizes the prickly bush). Additionally, the butterfly flies slowly and is weak and fragile; the species is considered sedentary (not able to move or disperse in a given environment) (Carrión-Cabrera 2003, p. 51).

**Evaluation of Information for this Finding**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth procedures for adding species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding threats to the harlequin butterfly, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range*

Information Provided in the Petition

The petitioner asserts that development pressure and the construction of a residential development in the habitat of the harlequin butterfly is the main threat to the species. The petitioner also states that the habitat of the species has been modified by past developments of the city of Quebradillas, reducing the butterfly habitat to a tract north of State Road PR-2, and that future developments have been approved in the same area. Furthermore, these developments are endangering the prickly bush, the only host plant of the harlequin butterfly. The petitioner asserts that the construction of residential projects within the suitable habitat for the species will substantially affect the distribution and abundance of the harlequin butterfly as well as its habitat throughout its range.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files supports the petitioner's contention that the current habitat of the harlequin butterfly is currently threatened by the construction of residential and tourist development projects. According to the petitioner, the only area where the species currently occurs is in Terranova-San José Ward (Biaggi-Caraballo 2009, p. 4). This area is classified as a Zone of Tourist Interest (ZTI) in the land use maps of the Puerto Rico Planning Board for the municipality of Quebradillas. In the last 3 years, the Service has provided comments and technical assistance to local agencies on at least three proposed development projects within the Terranova and San José Wards; two projects, proposed within Terranova Ward, affected approximately 40.0 acres (ac) (16 hectares (ha)), and another project, proposed within San José Ward, affected approximately 13.0 ac (5 ha). These projects are located within the area identified as suitable habitat for the species in the petition.

Based on the information provided in the petition and available in our files, we conclude that the petitioner has presented substantial information to indicate that the present or threatened destruction or modification of habitat or range may present a significant threat to status of this species and its habitat.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Neither the petition nor information in our files presents information indicating that overutilization of the harlequin butterfly for commercial, recreational, scientific, or educational purposes is a threat. Therefore, we find that the petition does not present substantial information to indicate that the overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the harlequin butterfly. However, we intend to assess this factor more thoroughly during the status review for the species.

*C. Disease or Predation*

Neither the petition nor information in our files presents information indicating that disease or predation is a threat to the harlequin butterfly. Therefore, we find that the petition does not present substantial information to indicate that disease or predation may present a threat to the harlequin butterfly. However, we intend to assess this factor more thoroughly during the status review for the species.

*D. Inadequacy of Existing Regulatory Mechanisms*

Information Provided in the Petition

The petitioner claims that although the Department of Natural and Environmental Resources (DNER) for the Commonwealth of Puerto Rico included this species in the Commonwealth list of endangered species, development projects are still being approved within the habitat of the species. The petitioner also states that DNER, under the advice of the petitioner and researchers, began designation of critical habitat for the species under Puerto Rican law. The petitioner believes that without listing and designation of critical habitat under the Act, the continued existence of the harlequin butterfly is imminently threatened.

Evaluation of Information Provided in the Petition and Available in Service Files

According to information in our files, the DNER designated the species as Critically Endangered under Commonwealth Law 241 and Regulation 6766 in July 2007 (DNER 2007, 42pp). According to Article 2 of Regulation 6766, the designation as Critically Endangered prohibits any person to take the species, with the term 'take' including harm, possess, transport, destroy, import or export individuals, nests, eggs or juveniles, without

previous authorization from the Secretary of DNER. At the present time, the DNER has not designated critical habitat for the species under Regulation 6766. Therefore, the level of protection to the species' habitat is uncertain.

Based on the information provided in the petition and available in our files, we conclude that the petitioner has presented substantial information to indicate that existing regulatory mechanisms may be inadequate to protect the habitat of the harlequin butterfly.

*E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

Information Provided in the Petition

The petitioner asserts that the species is vulnerable to extinction due to low population numbers, restricted distribution (only one small colony), and monophagous habits, coupled with habitat alteration or loss. The petitioner also asserts that the species' habitat is threatened by fires associated with an illegal garbage dump on road PR-4485.

Carrión-Cabrera (2003, p. 60) conducted a species' survey of the harlequin butterfly, and observed only 235 individuals in 16 months of surveys (2 sample days per month), with a maximum of 50 individuals in a sample day (mean = 9 individuals per sample day). The petitioner asserts that with a low population and limited geographical area, coupled with habitat loss and pressure for development, the species may not be able to reach the minimum population mass to sustain a population in the wild and, therefore, is extremely vulnerable to extinction (Biaggi-Caballero 2009, p. 6).

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files also suggests that the range of the harlequin butterfly is restricted to 10 small patches of habitat in the municipality of Quebradillas (Monzón-Carmona 2007, pp. 83-84). Small population size and range, compounded by threats to its habitat as discussed under Factor A, could threaten this species. In addition, we have no information in our files regarding the petitioner's claim that the species' habitat is threatened by fires associated with an illegal garbage dump on road PR-4485. Based on the information presented in the petition and available in our files, we find that the petition presents substantial information indicating that other natural or manmade factors in combination with other probable threats to the species habitat may pose a significant risk of extinction for the harlequin butterfly.

**Finding**

On the basis of our evaluation of the information presented under section 4(b)(3)(A) of the Act, we have determined that the petition presents substantial scientific or commercial information indicating that listing the harlequin butterfly throughout its entire range may be warranted. This finding is based on information provided under Factor A (present or threatened destruction, modification, or curtailment of the species' habitat or range), Factor D (the inadequacy of existing regulatory mechanisms), and Factor E (other natural or manmade factors affecting the species' continued existence). Because we have found that the petition presents substantial information indicating the harlequin butterfly may be at risk of extinction now or in the foreseeable future and therefore listing under the Act may be warranted, we are initiating a status review to determine whether listing the harlequin butterfly under the Act is warranted.

The "substantial information" standard for a 90–day finding differs from the Act's "best scientific and commercial data" standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

The petitioner requested that we designate critical habitat for this species. If we determine in our 12–month finding that listing the harlequin butterfly is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking. The proposed rulemaking may be published concurrently with the 12–month finding or at a later date.

**References Cited**

A complete list of references cited is available on the Internet at *http://www.regulations.govand* upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this notice are the staff members of the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 13, 2010

**Rowan W. Gould**

*Acting Director, U.S. Fish and Wildlife Service*

[FR Doc. 2010–9533 Filed 4–23–10; 8:45 am]

**BILLING CODE 4310–55–S**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 18

**[Docket No. FWS–R7–FHC–2010–0002; 71490–1351–0000–L5–FY10]**

**RIN 1018–AW94**

## Marine Mammal Protection Act; Deterrence Guidelines

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; availability of draft environmental assessment; request for comments.

**SUMMARY:** These proposed guidelines set forth best practices that we, the Fish and Wildlife Service, find are appropriate for safely and nonlethally deterring polar bears from damaging private and public property and endangering the public. We would not require anyone to implement these guidelines, nor would anyone be liable if they did not implement them. If the guidelines are finalized, anyone deciding to implement them could do so without our authorization or supervision. We are proposing these guidelines to reduce occurrences of bear–human interactions with only minor, short-term behavioral effects on polar bears. As discussed in the background section of this proposed rule, we authorize other, more aggressive deterrence activities through separate provisions of the Marine Mammal Protection Act. We seek public comment on these proposed guidelines.

**DATES:** We will consider comments on the proposed guidelines or draft environmental assessment received on or before May 26, 2010.

**ADDRESSES:** You may submit comments on the proposed guidelines and associated environmental assessment by one of the following methods:

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No.

FWS–R7–FHC–2010–0002; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203; Attention: Polar Bear Deterrence Guidelines; or

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS–R7–FHC–2010–0002.

Please indicate to which document, the proposed guidelines or the environmental assessment, your comments apply. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (*see* the PUBLIC COMMENTS section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Charles S. Hamilton, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone 907–786–3800 or 1–800–362–5148. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

## Public Comments

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) Suitability of the proposed guidelines for safely deterring the polar bear.

(2) Additional guidelines that the public could follow to safely deter a polar bear.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office (*see* **FOR FURTHER INFORMATION CONTACT**).

## Background

The Marine Mammal Protection Act of 1972, as amended, requires the Secretary of the Interior, through the U.S. Fish and Wildlife Service (Service), to publish a list of guidelines for use in safely deterring marine mammals and, for marine mammal species listed as threatened or endangered under the Endangered Species Act of 1973, to recommend specific measures that may be safely used to nonlethally deter these animals.

The deterrence provisions of the 1994 amendments to the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) provide an exception to otherwise prohibited acts, allowing the use of measures that may deter a marine mammal from, among other things, damaging private property or endangering personal safety [16 U.S.C. 1371(a)(4)(A)(ii) and (iii), respectively]. These acts of deterrence must not result in the death or serious injury of a marine mammal. Section 1371(a)(4)(B) directs the Service to recommend specific measures that the public may use to safely, nonlethally deter marine mammals, including those listed as endangered or threatened under the Endangered Species Act of 1973, as amended (ESA) (16 U.S.C. 1531 *et seq.*). Section 1371(a)(4)(C) of the MMPA provides for the prohibition of certain forms of deterrence if the Service determines, using the best scientific information available, and subsequent to public comment, that the deterrence measure has a significant adverse effect on marine mammals.

These proposed deterrence guidelines have been developed under the authority of 16 U.S.C. Section 1371(a)(4)(B), as described above. The proposed guidelines are based on information gained over the past twenty years through our programs for incidental take authorizations and our Alaska cooperative agreements (discussed further in this notice). Through this experience, we have learned what kinds of actions work to deter polar bears in ways that are safe for bears and humans.

We have incorporated these proven deterrence actions in the proposed guidelines to provide the public with measures that can deter polar bears safely and nonlethally. If properly implemented, these measures will not have a significant adverse impact to polar bears. We are not proposing any specific prohibitions under section 1371(a)(4)(C) at this time.

*On May 15, 2008, the Service issued two rules regarding the polar bear:* A final rule to list the polar bear as a threatened species (73 FR 82212) and an interim special rule under section 4(d) of the ESA (16 U.S.C. 1533(d)), which provided that activities authorized or exempted under the MMPA may not be considered as violations under the ESA or its implementing regulations (73 FR 28306). We finalized the interim rule on December 16, 2008 (73 FR 76249). Thus, if we issue these guidelines, citizens conducting activities that comply with these guidelines would need no additional authorizations under the ESA, nor would we consider their activities a violation under the take prohibitions of either the MMPA or the ESA.

The polar bear can be a large, dangerous predator with the capacity to injure and even kill a human. In proposing these guidelines, we are mindful of the inherent risks associated with deterring a large carnivore such as the polar bear and Congress's intent that the public be able to safely deter a polar bear while not resulting in the death or serious injury to the animal. Therefore, for example, these guidelines do not include the use of nonlethal projectiles discharged from a firearm, *e.g.,* crackershells, bean bags, or rubber bullets, which may be effective in moving a bear. This is because we have determined that such use is inconsistent with the language prohibiting serious injury or death of the animals.

These guidelines also do not include more aggressive hazing activities designed to stop bear activity patterns or to move an individual bear from areas of human populations or work environs. While the ability to move a polar bear away from a community, home, or industry site is intrinsic to both sound management of the species and human safety, some more aggressive hazing activities are inherently risky to both the person conducting the activity and the bear. Since such more aggressive hazing activities may result in injury to bears, and may present safety concerns for humans, they go beyond the scope of the provision of the MMPA that authorizes these proposed deterrence guidelines. We manage more aggressive hazing activities through other appropriate provisions of the MMPA.

Currently, the Service authorizes nonlethal incidental or intentional take of polar bears through Letters of Authorization issued under 16 U.S.C. 1371(a)(5)(A) for incidental take, or 1379(h) and 1382(c) for intentional take. Based on years of data obtained through

the monitoring and reporting requirements of these programs, their highly effective protocols for working with and training authorized individuals in bear deterrence have proven to reduce the possibility of bear-human interactions escalating into potentially lethal encounters. Although the Service developed these proposed deterrence guidelines based on the information gained through the above-referenced programs for incidental and intentional take, the Service does not intend these proposed guidelines, if issued, to replace or supersede those protocols or programs. Instead, consistent with the MMPA, the proposed guidelines list measures that any citizen could undertake to minimize potential interactions with polar bears but are not likely to cause a polar bear's death or serious injury. Actions the public elects to take that are consistent with these proposed deterrence guidelines would not be a violation of the MMPA, nor would the public need specific additional authorization from the Service to take these actions.

The Service encourages individuals living, travelling, or working in areas that polar bears may frequent to become aware of the practices in these guidelines to reduce the likelihood of bear-human interactions. Polar bears are generally found in the marine environment and along the coastline. Polar bears can be found far inland; however, most recorded polar bear-human interactions have occurred within 5 miles or less of the coastlines of the Chukchi and Beaufort seas.

We also encourage citizens, especially citizens within 5 miles of the coastline and within the range of the polar bear, to develop practices that may help prevent a bear-human interaction. These practices include: (1) Developing and attending polar bear awareness training; and (2) attending outreach events hosted by local communities or by the Service that provide information to reduce bear-human interactions.

For example, by attending an outreach event, citizens can share information on developing and implementing *detection systems,* which allow for early observation of polar bears in the vicinity of human settlement. Detection systems could include any of the following: bear monitors (*i.e.,* individuals trained to watch for and alert others to the presence of bears); trip-wire fences; closed-circuit TV; and electronic alarm systems. Furthermore, constant vigilance for polar bears by all personnel working at a work site augments a detection system web and can significantly reduce the occurrence of a bear-human interaction.

In addition, *operational management plans* for communities or private companies operating in polar bear habitat can be used to establish a formalized structure to incorporate passive and preventive deterrence measures. These could include measures for:

- *Attractants management*—Establishing protocols and procedures to limit attractants to wild animals within property boundaries by storing garbage, human waste, food, and other products in areas not accessible to bears;
- *Garbage management*—Establishing protocols and procedures for how communities or sites will control and dispose of garbage to limit its attraction to bears as a food source (*e.g.,* the use of incinerators);
- *Snow management*—Establishing protocols and procedures to remove snow around buildings and work areas to increase visibility, such as planning the placement of snow berms; and
- *Lighting systems management*—Establishing protocols and procedures to install appropriate lighting in areas where it is essential to detect bears that may be in the vicinity.

The Service recognizes our dual responsibilities to provide for the conservation of the polar bear, while at the same time work with local stakeholders that may be negatively affected by the presence of a large, curious, and at times hungry predator in their vicinity. In the past, we have worked with local communities to identify actions that may ameliorate the potential impacts of the presence of polar bears in local communities and will continue to do so by working with Alaska coastal communities on the implementation of these guidelines. Further, Federal, State, and local government officials have the authority to take marine mammals if doing so is for the protection or welfare of the animals or for the protection of the public health and welfare. Regulations governing such takings, which take into account the special training and experience levels of such officials, are in place at 50 CFR 18.22.

**Proposed Guidelines**

These proposed guidelines for safely deterring polar bears in the wild are acceptable deterrence actions that any citizen can use without obtaining specific authorization from the Service. Since these guidelines are voluntary in nature, no citizen is required to implement them. If the proposed guidelines are finalized, actions taken to properly implement the guidelines would not be subject to the take prohibitions of the MMPA or ESA. The proposed guidelines, developed using the best available information, incorporate caution and restraint in their use.

The Service believes that adhering to these guidelines, if they are finalized, would minimize the possibility of polar bear-human interactions that could lead to a polar bear being killed in the interest of public safety. Furthermore, these guidelines give direction to ensure that deterrence actions do not result in the serious injury or death of a marine mammal.

We are proposing two levels of deterrence guidelines that a citizen could follow in order to nonlethally deter a problem polar bear: passive and preventive. Each type of measure includes a suite of appropriate actions that the public may use.

Passive deterrence measures are those that prevent polar bears from gaining access to property or people. The proper use of these passive deterrence devices provides for human safety and does not increase the risk of serious injury or death of a polar bear. Such measures include rigid fencing and other fixed barriers such as gates and fence skirting to limit a bear's access, bear exclusion cages to provide a protective shelter for people in areas frequented by bears, and bear-proof garbage containers to exclude polar bear access and limit food-conditioning and habituation to humans.

Preventive deterrence measures are those that can dissuade a polar bear from initiating an interaction with property or people. The proper use of these preventive deterrence devices provides for safe human use and does not increase the risk of serious injury or death of a polar bear. Such measures include the use of acoustic devices to create an auditory disturbance causing polar bears to move away from the area and vehicles or boats to deter or block an approaching polar bear.

Acoustic deterrence is limited to devices that create no more than a reasonable level of noise, *e.g.,* vehicle engines, or an air horn, where such auditory stimuli could startle a bear and disrupt its approach to property or people. Recent research on responses of captive polar bears to auditory stimuli has shown that polar bears are able to detect sounds down to 125 Hertz (Hz) (Bowles *et al.* 2008) and high-frequency sounds up to 22.5 kHz (Nachtigall *et al.* 2007).

Polar bears possess an acute hearing ability with a wider frequency range than humans, which is less than 20 kHz. Data indicate that polar bears hear very well within the frequency rage of 11.2 to 22.5 kHz (Nachtigall *et al.* 2007).

Sounds ("roars") with frequency content between 100 and 600 Hz and broadcast directionally at over 120 dB SPL (sound pressure level) appeared to have the most success in deterring bears (Wooldridge 1978, Wooldridge and Belton 1980). However, there are no data available to indicate minimum received sound levels required to cause damage (*e.g.,* a temporary threshold shift [TTS]) to polar bear hearing.

While these upper limits are unknown, the Service believes that the use of sound deterrent devices will not harm polar bears and, therefore, is allowable as long as the sound level of the directed acoustic device used to deter bears has a sound strength of no greater than 150 dB SPL (the upper level that is painful to humans) (American Speech-Language-Hearing Association 2009). The use of commercially available air horns falls below this upper limit, is reasonable, and may be effective in deterring bears while causing no lasting or permanent harm to individual animals.

**MMPA Consultation**

Section 101(a)(4) of the MMPA (16 U.S.C. 1371(a)(4)) requires the Service to consult with appropriate experts on the development of safe and nonlethal deterrence provisions. The Service has compiled a list of individuals we believe have experience and knowledge of interactions with polar bears and/or the use of deterrence devices. We have sent these individuals a copy of these proposed guidelines and asked them to submit comments. The list of experts is available upon request; contact the individual identified above in **FOR FURTHER INFORMATION CONTACT**.

**Required Determinations**

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3225 of January 19, 2001 [Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)], Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), and the Native American Policy of the U.S. Fish and Wildlife Service, June 28, 1994, we readily acknowledge our responsibilities to work directly with Alaska Natives in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing conservation concerns for listed species, to remain sensitive to Alaska native culture, and to make information available to Tribes.

For these proposed guidelines we will consult with the Alaska Nanuuq Commission (Commission). The Commission, established in 1994, is a Tribally Authorized Organization created to represent the interests of subsistence users and Alaska Native polar bear hunters when working with the Federal Government on the conservation of polar bears in Alaska. Additionally, we do not anticipate that the proposed guidelines, if finalized, will have an effect on Tribal activities especially as they may pertain to Tribal subsistence activities. We have reached this determination because: (1) Under our incidental or intentional take programs, as discussed above, activities that whole communities are taking are being developed in partnership with the Service and under separate and relevant authorities; and (2) the taking for subsistence or handicraft purposes is exempted from these guidelines and, therefore, not impacted by these guidelines. The guidelines, if finalized, are designed to provide citizens with means to safely deter polar bears.

*Intra-Service Consultation Under Section 7 of the ESA*

On May 15, 2008, the Service listed the polar bear as a threatened species under the ESA (73 FR 28212). Section 7(a)(1) and (2) of the ESA (16 U.S.C. 1536(a)(1) and (2)) direct the Service to review its programs and to utilize such programs in the furtherance of the purposes of the ESA and to ensure that a proposed action is not likely to jeopardize the continued existence of an ESA-listed species. Consistent with these statutory requirements, the Service's Marine Mammal Management office has initiated consultation over these proposed guidelines with the Service's Fairbanks' Ecological Services Field Office. Subsequent to the closure of this request for comment, and our consideration of any comments received, either from the public, or our experts, we will complete any necessary ESA section 7(a)(2) consultation prior to finalizing any guidelines.

*National Environmental Policy Act (NEPA) Considerations*

We have prepared a draft environmental assessment in conjunction with these draft guidelines. Subsequent to closure of the comment period, we will decide whether the guidelines constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the NEPA of 1969. For a copy of the draft environmental assessment, go to *http://www.regulations.gov* and search for Docket No. FWS–R7–FHC–2010–0002 or contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) has determined that this rule is significant and will conduct a review under Executive Order 12866. OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

*Small Business Regulatory Enforcement Fairness Act*

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Expenses will be related to, but not necessarily limited to, the purchase of bear-proof garbage containers, fencing material, and air horns. Compliance with this rule is voluntary in nature, and any costs associated with implementing a guideline should be offset by reductions in potential bear-human interactions and safety.

*Regulatory Flexibility Act*

We have determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Compliance

with this rule is voluntary in nature, and any costs associated with implementing a guideline should be offset by reductions in potential bear-human interactions and safety. Therefore, a Regulatory Flexibility Analysis is not required.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Compliance with this rule is voluntary in nature, and any costs associated with implementing a guideline should be offset by reductions in potential bear-human interactions and safety. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Takings Implications*

This rule does not have takings implications under Executive Order 12630 because it authorizes the nonlethal take of polar bears by citizens and thereby exempts them from civil and criminal liability as long as they operate in compliance with the guidelines. Therefore, a takings implications assessment is not required.

*Federalism Effects*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect polar bears and specifically allows for citizens to undertake activities to deter polar bears.

*Civil Justice Reform*

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

*Paperwork Reduction Act*

This rule does not contain information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required.

*Information Quality Act*

In developing this rule we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

*Effects on the Energy Supply*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

*Clarity of this Regulation*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**References**

We include a list of the references cited in this proposed rule:

American Speech-Language-Hearing Association. 2009. Noise and Hearing Loss. *http://www.asha.org/public/hearing/disorders/noise.htm* downloaded from the Internet on 12–08–09.

Bowles, A. E., M. A. Owen, S. L. Denes, S. K. Graves, and J. L. Keating. 2008. Preliminary Results of a Behavioral Audiometric Study of the Polar Bear. J. Acoust. Soc. Am. 123, 3509.

Nachtigall, P. E., A. Y. Supin, M. Amundin, B. Roken, T. Moller, T. A. Monney, K. A. Taylor, and M. Yuen. 2007. Polar bear *Ursus maritimus* hearing measured with auditory evoked potentials. J. Exp. Biol. (210), 1116–1122.

Wooldridge, D. R. and P. Belton. 1980. Natural and synthesized aggressive sounds as polar bear repellents. pp. 85–92 In: C.J. Martinka and K.L. McArthur (eds.) Bears—their biology and management. Bear Biol. Assoc. Conf. on Bear Res. and Manage. 10–13 Feb. 1980. Madison, WI.

Wooldridge, D. R. 1978. Deterrent and detection systems: Churchill, Manitoba. Unpubl. rept to NWT Govt. by Wooldridge biological consulting, Burnaby, British Columbia. 40pp. In: J. Truett (ed.) Guidelines for Oil and Gas Operations in Polar Bear Habitats. 1993. OCS Study MMS 93–0008. LGL Ecol. Res. Assoc., Inc., Bryan, TX.

**List of Subjects in 50 CFR Part 18**

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

## PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

## Subpart D—Special Exceptions

2. Add § 18.34 to subpart D to read as follows:

### § 18.34 Guidelines for use in safely deterring polar bears.

(a) These guidelines are intended for use in safely deterring polar bears in the wild. They provide acceptable types of deterrence actions that any citizen can use and not cause the serious injury or death of a marine mammal. Citizens conducting activities that comply with the guidelines in this subpart do not need any authorizations under the ESA or MMPA. Furthermore, we would not consider their actions to violate the take prohibitions of either the MMPA or this part.

(b) There are two levels of deterrence guidelines that a citizen could follow in order to nonlethally deter a polar bear. Each type of measure includes a suite of appropriate actions that the public may use.

(1) *Passive deterrence measures.* Passive deterrence measures are those that prevent polar bears from gaining access to property or people. These measures provide for human safety and do not increase the risk of serious injury or death of a polar bear. They include:

(i) *Rigid fencing.* Rigid fencing and other fixed barriers such as gates and fence skirting can be used around buildings or areas to limit bears from accessing community or industrial sites and buildings. Fencing areas 5 acres (~2 ha) and smaller can be used to limit human-bear interactions. Industry standard chain-link fencing material can

be used. Chain-link fencing can be placed around buildings on pilings (10,000 square feet or larger) as fence skirting to limit access underneath the buildings.

(ii) *Bear exclusion cages.* Bear exclusion cages provide a protective shelter for people in areas frequented by bears. Cages erected at building entry and exit points exclude polar bears from the immediate area and allow safe entry and exit for persons gaining access to or leaving a building should a polar bear be in the vicinity. Additionally, they provide an opportunity for people exiting a building to conduct a visual scan upon exit; such a scan is especially important in areas where buildings are constructed above ground level due to permafrost because bears may be resting underneath. These cages can be used at homes or industrial facilities to deter bears. Cages can be used in remote areas of unknown bear use and bear travel corridors, *e.g.,* within 0.5 mile from coastline, to deter bears from facilities. Cages must be no smaller than 4 ft (width) by 4 ft (length) by 8 ft (height). Bars must be no smaller than 1 inch wide. Distance between bars must be no wider than 4 inches on center. The ceiling of the cage must be enclosed.

(iii) *Bear-proof garbage containers.* Bear-proof garbage containers exclude bears from accessing garbage as a food source and limit polar bears from becoming food-conditioned or habituated to people and facilities, which further reduces the potential for bear-human interactions. Commercially designed residential bear-proof containers (32–130 gallons) can be used. Two- to 6-cubic yard containers can be specifically designed by commercial vendors as bear-proof containers or have industry-standard lid locks to prohibit bear entry, depending on the need and location. Larger garbage containers, such as dumpsters or "roll-offs" (20 to 40 cubic yards), can limit bear-human interactions when the containers have bear-proof lids. Lids must be constructed of heavy steel tubing or similarly constructed with heavy expanded metal.

(2) *Preventive deterrence measures.* Preventive deterrence measures are those that can dissuade a polar bear from initiating an interaction with property or people. These measures provide for safe human use and do not increase the risk of serious injury or death of a polar bear. These are:

(i) *Acoustic devices.* Acoustic deterrent devices may be used to create an auditory disturbance causing polar bears to move away from the affected area. The reasonable use of loud noises, *e.g.,* vehicle engines, or an air horn, where such auditory stimuli could startle a bear and disrupt its approach to property or people, is authorized. This authorization is limited to deterrent devices with a sound strength of no greater than 150 dB SPL. The use of commercially available air horns, which create sounds that fall below this upper limit, is acceptable.

(ii) *Vehicle or boat deterrence.* Patrolling the periphery of a compound or encampment in an enclosed vehicle, or similarly patrolling an area in a small boat, and deterring, but not chasing, polar bears with engine noise, or by blocking their approach without making a physical contact with the animal, is an acceptable preventive deterrence.

(c) The deterrence guidelines are passive or preventive in nature. Any action to deter polar bears that goes beyond these specific measures could result in a taking and, unless otherwise exempted under the MMPA, would require authorization. Prior to conducting activities beyond those specifically described in these guidelines, citizens should contact the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–341, Anchorage, AK 99503, telephone (907) 786–3800, for further guidance.

Dated: March 18, 2010.

**Tom Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2010–9595 Filed 4–23–10; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 75, No. 79
Monday, April 26, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

April 20, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Spring Viremia of Carp-Susceptible Finfish and their Gametes, and Diagnostic Specimens Importation Permits.

*OMB Control Number:* 0579–0301.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of the health of animals under the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulatory authority. APHIS added import restrictions for certain species of finfish that are susceptible to spring viremia of carp disease (SVC). SVC is a disease of certain species of finfish, caused by an eponymous rhabdovirus. SVC is considered extremely contagious, and there are currently no U.S. approved vaccines or treatments for the virus.

*Need and Use of the Information:* APHIS has developed import requirements for SVC-susceptible fish species. This necessitates the use of several information collection activities, including the completion of VS forms 17–129, 17–29, 16–3, and 17–136; a health certificate and or cleaning and disinfection certificate; 72-hour notification of arrival, and recordkeeping requirements. Without the information, APHIS would be unable to effectively protect farmed fish populations that are known to be susceptible to SVC from imports of finfish or their gametes infected with SVC virus.

*Description of Respondents:* Individual or households; Federal Government.

*Number of Respondents:* 462.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 2,018.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2010–9543 Filed 4–23–10; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2010–0009]**

### Notice of Request for Extension of Approval of an Information Collection; Communicable Diseases in Horses

*Correction*

In notice document 2010–9054 on page 20559 in the issue of April 20, 2010, make the following correction:

On page 20559, in the third column, "*Estimated annual number of responses per respondent:* 197,124." should read "*Estimated annual number of responses per respondent:* 197.124."

[FR Doc. C1–2010–9054 Filed 4–23–10; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Rogue River-Siskiyou National Forest, Powers Ranger District, Coos County, OR; Eden Ridge Timber Sales

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) on proposed variable density thinning treatments designed to control stocking and maintain or improve overall forest vigor and resiliency within a 6,516-acre planning area known as Eden Ridge. Timber harvested from stand treatments will contribute commercial timber to the Forest's Probable Sale Quantity. The planning area is located approximately four (4) air miles southeast of the city of Powers, Oregon, on the Powers Ranger District. The district proposes timber harvest and other connected activities on approximately 3,650 acres in stands regenerated from timber harvested around the 1920s and 1930s. Candidate stands located on suitable forest land within the planning area are proposed for treatment that are designated as Matrix, with some minor amounts of Riparian Reserve under the Land and Resource Management Plan as amended by the Northwest Forest Plan. Approximately seventy-two (72) treatment units would be designed for

timber harvest with associated harvest systems that would use a combination of ground-based, skyline and helicopter operations depending on soil, slope and hydrological concerns. New system road construction, reconstruction of unclassified roads and/or construction of new temporary roads to facilitate treatments within the potential units are to be considered (approximately 8 miles). In addition, reconstruction and/or maintenance of existing system roads will be considered (approximately 22 miles). It is estimated the project could produce up to 55 million board feet from the 3,650 acres being considered, from multiple timber sales over a 5-year period. The alternatives will include the proposed action, no action, and additional alternatives that respond to issues generated through the scoping process. The agency will give notice of the full environmental analysis and decision making process so interested and affected people may participate and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by 30 days from date of publication in the **Federal Register**. The draft environmental impact statement is expected September 2010 and the final environmental impact statement is expected January 2011.

**ADDRESSES:** Send written comments concerning this proposal to District Ranger, Powers Ranger District, 42861 Highway 242, Powers, OR 97466–9700. Comments may also be sent via e-mail to *comments-pacificnorthwest-siskiyou-powers@fs.fed.us* or via facsimile to (541) 439–7704. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the scoping period and should clearly articulate the reviewer's concerns and contentions. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

**FOR FURTHER INFORMATION CONTACT:** For information about the proposal, contact Steve Boyer, Interdisciplinary Team Leader, phone (541) 247–3686, e-mail *sthoyer@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** The 6,516 acre Eden Ridge planning area is located approximately four (4) air miles southeast of the city of Powers, Oregon at the closest point, with a legal description of: Township 31 South, Range 10 West, Sections 9, 15, 16, 17, 18, 19, 20, 21, 29 and 30; and Township 31 South, Range 11 West, Sections 24, 25, 26, and 27; Willamette Meridian; Coos County, Oregon. The planning area falls within the South Fork Coquille River and the Middle Fork Coquille River 5th-Field watersheds, and the Lower Rock Creek, Myrtle Creek, Headwaters South Fork Coquille River, Coal Creek, and Mill Creek 6th field watersheds. Watershed Analyses have been conducted within these drainages and contain a synthesis of scientific knowledge about watershed trends and conditions at 5th field watershed scales as well as by smaller 6th field sub-watersheds. Elevations range from 2,500 to 3,500 feet. The planning area does not include any designated Wilderness, Research Natural Areas, Botanical Areas, or Inventoried Roadless Areas. Special wildlife areas (MA 9) do exist within the planning area but are excluded from proposed treatments.

## Purpose and Need for Action

The overall Purpose of this project is to implement direction from the 1989 Land and Resource Management Plan for the Siskiyou National Forest, as amended by the 1994 Northwest Forest Plan. The majority of the Eden Ridge Timber Sales proposal is located on lands allocated to Matrix which emphasizes obtaining a full yield of timber within the capability of the land. Most scheduled timber harvest and other silvicultural activities would be conducted in that portion of the Matrix with suitable forest lands (NW Forest Plan, page C–39). Specifically for the Eden Ridge Timber Sales project, Needs include: Improvement of Overall Forest Vigor and Resiliency—There is a need to reduce stand densities so that individual tree growth would improve and maintain vigor. Trees would be allowed to grow at a faster rate than if left to natural succession processes. The residual trees would have less competition for sunlight, water and soil nutrients. Maintain or improve forest diversity by retaining any larger open-grown and legacy trees, minor tree species (including all hardwoods), existing snags and coarse woody debris. Such vigor and diversity would create a more resilient forest that would be capable to survive or recover more quickly from natural disturbances such as drought, wind, insects, disease or fire. Contribution of Commercial Timber to the Probable Sale Quantity—The proposed project is primarily located on lands allocated to Matrix and therefore considered as part of the overall Rogue River-Siskiyou National Forest Probable Sale Quantity (PSQ). PSQ is the estimated output of commercial timber and other commodities assigned to the Forest under the Northwest Forest Plan.

Specific stand management objectives associated with the Purpose and Need for this proposal include:

- Maintenance or improvement of forest health and diversity within Matrix and Riparian Reserve land allocations. This typically means individual tree and overall stand diameter growth, crown development, vigor and overall stand health, improved root strength on residual trees;
- Improve habitat conditions for wildlife and fish. This means increasing vegetative and structural diversity and species; maintained or improved shading capability of streams; improved large wood retention and large wood recruitment, and providing suitable amounts of snags and/or replacement habitat for dependent species;
- Reduce the risk of effects from insect and disease infestations;
- Minimize or reduce the potential for high severity, stand replacement wildfires;
- Increase riparian vegetation quality, health and vigor including Port-Orford-cedar, where it occurs as a substantial portion of riparian vegetation; and
- Contribute to a predictable and sustainable level of timber commodities and human and economic dimensions.

In enacting treatments in stands to attain these objectives, the project and/or its activities would be designed to:

- Minimize soil impacts (erosion, compaction and/or displacement);
- Minimize damage to residual trees during treatment;
- Maintain aquatic conditions in terms of attainment of the Aquatic Conservation Strategy Objectives;
- Minimize adverse effects, including cumulative effects, on all other resources;
- Provide wood products for local and regional markets (including firewood); and
- Be an operational and economically sustainable project.

Responsible Official: W. Carl Linderman, Powers District Ranger, Rogue River-Siskiyou National Forest, is the responsible official for this project.

## Nature of Decision To Be Made

The Powers District Ranger will decide whether to implement the action as proposed, whether to take no action at this time, or whether to implement any alternatives that are proposed.

## Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental

impact statement. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement.

**Comment Requested**

The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts [*City of Angoon* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS of the merits of the alternatives formulated and discussed in the statement, Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments received during the comment period for the draft EIS.

The Eden Ridge Timber Sales decision and the reasons for the decision will be documented in a record of decision. That decision will be subject to Forest Service Appeal Regulations (35 CFR Part 215).

Dated: April 13, 2010.

**W. Carl Linderman,**

*District Ranger.*

[FR Doc. 2010–9437 Filed 4–23–10; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Announcement of Grant Application Deadlines and Funding Levels

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of funds availability.

**SUMMARY:** The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture, announces the Public Television Digital Transition Grant Program application window for fiscal year FY 2010. The FY 2010 funding for the Public Television Station Digital Transition Grant Program is $4.5 million.

**DATES:** You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must carry proof of shipping *no later* than June 25, 2010 to be eligible for FY 2010 grant funding. Late applications are not eligible for FY 2010 grant funding.
- Electronic copies must be received by June 25, 2010 to be eligible for FY 2010 grant funding. Late applications are not eligible for FY 2010 grant funding.

**ADDRESSES:** You may obtain the application guide and materials for the Public Television Station Digital Transition Grant Program at the following sources:

1. The Internet at *http://www.usda.gov/rus/telecom/public-tv.htm.*
2. You may also request the application guide and materials from RUS by contacting the appropriate individual listed in Section VII of the **SUPPLEMENTARY INFORMATION** section of this notice.

*Completed applications may be submitted the following ways:*

1. *Paper:* Submit completed paper applications for grants to the Telecommunications Program, Rural Utilities Service, 1400 Independence Ave., SW., Room 2844, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Acting Director, Advanced Services Division."
2. *Electronic:* Submit electronic grant applications to Grants.gov at the following Web address: *http://www.grants.gov/* (Grants.gov), and follow the instructions you find on that Web site.

**FOR FURTHER INFORMATION CONTACT:** Gary B. Allan, Chief, Universal Services Branch, Advanced Services Division, Telecommunications Program, Rural Utilities Service, telephone: 202–690–4493, fax: 202–720–1051.

**SUPPLEMENTARY INFORMATION:**

**Overview**

*Federal Agency:* Rural Utilities Service (RUS).

*Funding Opportunity Title:* Public Television Station Digital Transition Grant Program.

*Announcement Type:* Initial announcement.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 10.861.

*Dates:* Deadline for completed grant applications submitted electronically or on paper.

*Items in Supplementary Information:*

I. Funding Opportunity: Brief introduction to the Public Television Station Digital Transition Grant Program.

II. Award Information: Maximum amounts.

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.

VI. Award Administration Information: Award notice information, award recipient reporting requirements.

VII. Agency Contacts: Web, phone, fax, e-mail, contact name.

**I. Funding Opportunity**

As part of the nation's transition to digital television, the Federal Communications Commission (FCC) required all television broadcasters to have converted their transmitters to broadcast digital signals by June 12, 2009. While stations must broadcast their main transmitter signal in digital, many rural stations have yet to complete a full digital transition of their stations across all equipment. Rural stations often have translators serving small or isolated areas and some of these have not completed the transition to digital. Because the FCC deadline did not apply to translators, they are allowed to continue broadcasting in analog. Some rural stations also have not fully converted their production and studio equipment to digital, which has impaired their ability to provide the same quality local programming that

they provided in analog. The digital transition has also created some service gaps where households that received an analog signal are now unable to receive a digital signal. For rural households the digital transition has meant in some cases diminished over-the-air public television service. These rural households are the focus of the Agency's Public Television Station Digital Transition Grant Program.

Most applications to the Public Television Station Digital Transition Grant Program have sought assistance towards the goal of replicating analog coverage areas through transmitter and translator transitions. The first priority has been to initiate digital broadcasting from their main transmitters. As many stations have completed the digital transition of their transmitters, the focus has shifted to power upgrades and translators, as well as digital program production equipment and multicasting/datacasting equipment. There are some rural stations that may need to install translators to provide fill-in service to areas that previously received analog but are now unable to receive digital. In FY 2009, 10 awards were made for the following: Translators, transmitter and translator power upgrades, studio and production equipment, and microwave equipment. When compared with the first few years of the program, as the digital transition progresses, more applications were received for translators and master control and production equipment, than for transmitters. Some stations may not have achieved full analog parity in program management and creation even after the June 12, 2009 deadline. Continuation of reliable public television service to all current patrons understandably is still the focus for many broadcasters.

It is important for public television stations to be able to tailor their programs and services (*e.g.,* education services, public health, homeland security, and local culture) to the needs of their rural constituents. If public television programming is lost, many school systems may be left without educational programming they count on for curriculum compliance.

This notice has been formatted to conform to a policy directive issued by the Office of Federal Financial Management (OFFM) of the Office of Management and Budget (OMB), published in the **Federal Register** on June 23, 2003 (68 FR 37370). This Notice does not change the Public Television Station Digital Transition Grant Program regulation (7 CFR part 1740).

## II. Award Information

### *A. Available Funds for Grants*

1. The amount available for grants for FY 2010 is $4.5 million. The maximum amount for grants under this program is $750,000 per public television station per year.

2. *Assistance instrument:* Grant documents appropriate to the project will be executed with successful applicants prior to any advance of funds.

B. Public Television Station Digital Transition grants cannot be renewed. Award documents specify the term of each award, and due to uncertainties in regulatory approvals of digital television broadcast facilities, the Agency will consider a one-time request to extend the period during which grant funding is available.

## III. Eligibility Information

### *A. Who is eligible for grants? (See 7 CFR 1740.3)*

1. Public television stations which serve rural areas are eligible for Public Television Station Digital Transition Grants. A public television station is a noncommercial educational television broadcast station that is qualified for Community Service Grants by the Corporation for Public Broadcasting under section 396(k) of the Communications Act of 1934.

2. Individuals are not eligible for Public Television Station Digital Transition Grant Program financial assistance directly.

### *B. What are the basic eligibility requirements for a project?*

1. Grants shall be made to perform digital transitions of television broadcasting serving rural areas. Grant funds may be used to acquire, lease, and/or install facilities and software necessary to the digital transition. Specific purposes include:

a. Digital transmitters, translators, and repeaters, including all facilities required to initiate DTV broadcasting. All broadcast facilities acquired with grant funds shall be capable of delivering DTV programming and HDTV programming, at both the interim and final channel and power authorizations. There is no limit to the number of transmitters or translators that may be included in an application;

b. Power upgrades of existing DTV transmitter equipment, including replacement of existing low-power digital transmitters with digital transmitters capable of delivering the final authorized power level;

c. Studio-to-transmitter links;

d. Equipment to allow local control over digital content and programming, including master control equipment;

e. Digital program production equipment, including cameras, editing, mixing and storage equipment;

f. Multicasting and datacasting equipment;

g. Cost of the lease of facilities, if any, for up to three years; and,

h. Associated engineering and environmental studies necessary to implementation.

2. Matching contributions: There is no requirement for matching funds in this program (see 7 CFR 1740.5).

3. The following are not eligible for grant funding (see 7 CFR 1740.7):

a. Funding for ongoing operations or for facilities that will not be owned by the applicant, except for leased facilities as provided above;

b. Costs of salaries, wages, and employee benefits of public television station personnel unless they are for construction or installation of eligible facilities;

c. Portions of a project that have been funded by any other source;

d. Items bought or built prior to the application deadline specified in this Notice of Funds Availability.

### *C. Summary Discussion of a Completed Application*

See paragraph IV.B of this notice for a summary discussion of the items that make up a completed application. You will find more complete information in the FY 2010 Public Television Digital Transition Grant Program Application Guide. You may also refer to 7 CFR 1740.9 for completed grant application items.

## IV. Application and Submission Information

### *A. Where To Get Application Information*

The application guide, copies of necessary forms and samples, and the Public Television Station Digital Transition Grant Program regulation are available from these sources:

1. The Internet: *http://www.usda.gov/rus/telecom/public-tv.htm*, or *http://www.grants.gov.*

2. The RUS Advanced Services Division, for paper copies of these materials: (202) 690–4493.

### *B. What constitutes a completed application?*

1. Detailed information on each item required can be found in the Public Television Station Digital Transition Grant Program regulation and application guide. Applicants are

strongly encouraged to read and apply both the regulation and the application guide. This Notice does not change the requirements for a completed application specified in the program regulation. The program regulation and application guide provide specific guidance on each of the items listed and the application guide provides all necessary forms and sample worksheets.

2. A completed application must include the following documentation, studies, reports and information in form satisfactory to RUS. Applications should be prepared in conformance with the provisions in 7 CFR part 1740, subpart A, and applicable USDA regulations including 7 CFR parts 3015, 3016, and 3019. Applicants must use the application guide for this program containing instructions and all necessary forms, as well as other important information, in preparing their application. Completed applications must include the following:

a. An application for Federal assistance, Standard Form 424.

b. An executive summary, not to exceed two pages, describing the public television station, its service area and offerings, its current digital transition status, and the proposed project.

c. Evidence of the applicant's eligibility to apply under this Notice, demonstrating that the applicant is a Public Television Station as defined in this Notice, and that it is required by the FCC to perform the digital transition.

d. A spreadsheet showing the total project cost, with a breakdown of items sufficient to enable RUS to determine individual item eligibility.

e. A coverage contour map showing the digital television coverage area of the application project. This map must show the counties (or county) comprising the Core Coverage Area, as defined in the program regulation, by shading and by name. Partial counties included in the applicant's Core Coverage Area must be identified as partial and must contain an attachment with the applicant's estimate of the percentage that its coverage contour comprises of the total area of the county (In the Application Guide, see Section D. Scoring Documentation). If the application is for a translator, the coverage area may be estimated by the applicant through computer modeling or some other reasonable method, and this estimate is subject to acceptance by RUS.

f. The applicant's estimate of its Rurality score, supported by a worksheet showing the population of its Core Coverage Area, and the urban and rural populations within the Core Coverage Area. The data source for the urban and rural components of that population must be identified. If the application includes computations made by a consultant or other organization outside the public television station, the application shall state the details of that collaboration.

g. The applicant's estimate of its Economic Need score, supported by a worksheet showing the National School Lunch Program (NSLP) eligibility levels for all school districts within the Core Coverage Area and averaging these eligibility percentages. The application must include a statement from the state or local organization that administers the NSLP program certifying that the school district scores used in the computations are accurate. Applicants are to use the most recent data available. Some official NSLP data is posted on state and/or local government Web sites, in which case a printout of the data may be provided as long as it documents the Web site source.

h. A presentation not to exceed five pages demonstrating the Critical Need for the project.

i. Evidence that the FCC has authorized the initiation of digital broadcasting at the project sites. In the event that an FCC construction permit has not been issued for one or more sites, RUS may include those sites in the grant, and make advance of funds for that site conditional upon the submission of a construction permit.

j. Compliance with other Federal statutes. The applicant must provide evidence or certification that it is in compliance with all applicable Federal statutes and regulations, including, but not limited to the following (Sample certifications are provided in the application guide.):

(1) Equal Opportunity and Nondiscrimination;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) Debarment, Suspension; and Other Responsibility Matters—Primary Covered Transactions;

(7) Lobbying for Contracts, Grants, Loans, and Cooperative Agreements Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

k. Environmental impact and historic preservation. The applicant must provide details of the digital transition's impact on the environment and historic preservation, and comply with 7 CFR part 1794, which contains the Agency's policies and procedures for implementing a variety of federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment. This must be contained in a separate section entitled "Environmental Impact of the Digital Transition," and must include the Environmental Questionnaire/Certification, available from RUS, describing the impact of its digital transition. Submission of the Environmental Questionnaire/Certification alone does not constitute compliance with 7 CFR part 1794.

3. DUNS Number. As required by the OMB, all applicants for grants must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying. The Standard Form 424 (SF–424) contains a field for you to use when supplying your DUNS number. Obtaining a DUNS number costs nothing and requires a short telephone call to Dun and Bradstreet. Please see the Public Television Station Digital Transmitter Grant Program Web site or Grants.gov for more information on how to obtain a DUNS number or how to verify your organization's number.

*C. How many copies of an application are required?*

1. Applications submitted on paper: Submit the original application and two (2) copies to RUS.

2. Electronically submitted applications: The additional paper copies for RUS are not necessary if you submit the application electronically through Grants.gov.

*D. How and where to submit an application?*

Grant applications may be submitted on paper or electronically.

1. Submitting applications on paper.

a. Address paper applications for grants to the Telecommunications Program, RUS, 1400 Independence Ave., SW., Room 2844, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Acting Director, Advanced Services Division."

b. Paper applications must show proof of mailing or shipping consisting of one of the following:

(i) A legibly dated postmark applied by the U. S. Postal Service;

(ii) A legible mail receipt with the date of mailing stamped by the USPS; or

(iii) A dated shipping label, invoice, or receipt from a commercial carrier.

c. Non-USPS-applied postage dating, i.e. dated postage meter stamps, do not constitute proof of the date of mailing.

d. Due to screening procedures at the Department of Agriculture, packages

arriving via the USPS are irradiated, which can damage the contents. RUS encourages applicants to consider the impact of this procedure in selecting their application delivery method.

2. Electronically submitted applications.

a. Applications will not be accepted via facsimile machine transmission or electronic mail.

b. Electronic applications for grants will be accepted if submitted through the Federal government's Grants.gov initiative at *http://www.grants.gov.*

c. How to use Grants.gov:

(i) Navigate your Web browser to *http://www.grants.gov.*

(ii) Follow the instructions on that Web site to find grant information.

(iii) Download a copy of the application package.

(iv) Complete the package off-line.

(v) Upload and submit the application via the Grants.gov Web site.

d. Grants.gov contains full instructions on all required passwords, credentialing and software.

e. RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadline. Difficulties encountered by applicants filing through Grants.gov will not justify filing deadline extensions.

f. If a system problem occurs or you have technical difficulties with an electronic application, please use the customer support resources available at the Grants.gov Web site.

*E. Deadlines*

1. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than June 25, 2010 to be eligible for FY 2010 grant funding. Late applications are not eligible for FY 2010 grant funding.

2. Electronic grant applications must be received by June 25, 2010 to be eligible for FY 2010 funding. Late applications are not eligible for FY 2010 grant funding.

## V. Application Review Information

*A. Criteria*

1. Grant applications are scored competitively and subject to the criteria listed below.

2. Grant application scoring criteria are detailed in 7 CFR 1740.8. There are 100 points available, broken down as follows:

a. The Rurality of the Project (up to 50 points);

b. The Economic Need of the Project's Service Area (up to 25 points); and

c. The Critical Need for the project, and of the applicant, including the benefits derived from the proposed service (up to 25 points).

*B. Review Standards*

1. All applications for grants must be delivered to RUS at the address and by the date specified in this notice to be eligible for funding. RUS will review each application for conformance with the provisions of this part. RUS may contact the applicant for additional information or clarification.

2. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will not be considered for FY 2010 funding.

3. Applications conforming with this part will be evaluated competitively by a panel of RUS employees selected by the Administrator of RUS, and will be awarded points as described in the scoring criteria in 7 CFR 1740.8. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

4. Regardless of the score an application receives, if the RUS determines that the Project is technically or financially infeasible, the Agency will notify the applicant, in writing, and the application will be returned and will not be considered for FY 2010 funding.

*C. Scoring Guidelines*

1. The applicant's estimated scores in Rurality and Economic Need will be checked and, if necessary, corrected by RUS.

2. The Critical Need score will be determined by RUS based on information presented in the application. The Critical Need score is a subjective score based on the reviewer's assessment of the supporting arguments made in the application. The score aims to assess how the specific digital transition purpose fits with the unique need of the television station as it moves all of its equipment through the digital transition. This score is intended to capture from the rural public's standpoint the necessity and usefulness of the proposed project.

This scoring category will also recognize that some transition purposes are more essential than others and that as the transition progresses, what are essential changes. For example, during the transition from analog to digital transmitters, which concluded on June 12, 2009, a first time transition of a primary transmitter was the most essential project that could be undertaken for most stations and would have been scored accordingly. Now that all transmitters have completed the transition to digital, the focus may shift to some of the other eligible purposes such as translators, studio and production equipment, and master control equipment. But what equipment specifically is most essential may vary from station to station. Just to name one example, local production equipment can be a high priority especially if it produces an areas' only local news or if the station has been historically active in producing local programming. In addition to being a subjective score, the Critical Need score is also relative in the sense that each application is scored in comparison to other applications in the competition. These various factors explain why a similar application may receive a different critical need score in different years of this program.

## VI. Award Administration Information

*A. Award Notices*

RUS recognizes that each funded project is unique, and therefore may attach conditions to different projects' award documents. The Agency generally notifies applicants whose projects are selected for awards by faxing an award letter. The Agency follows the award letter with a grant agreement that contains all the terms and conditions for the grant. An applicant must execute and return the grant agreement, accompanied by any additional items required by the grant agreement.

*B. Administrative and National Policy Requirements*

The items listed in the program regulation at 7 CFR 1740.9(j) implement the appropriate administrative and national policy requirements.

*C. Performance Reporting*

All recipients of Public Television Station Digital Transition Grant Program financial assistance must provide semiannual performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required; the final report may serve as the last semiannual report. The final report must include an evaluation of the success of the project.

## VII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/.* The Web site maintains up-to-date resources and contact information for the Public Television Station Digital Transition Grant Program.

B. *Phone:* 202–690–4493.

C. *Fax:* 202–720–1051.

D. *Main point of contact:* Gary B. Allan, Chief, Universal Services Branch,

Advanced Services Division, Telecommunications Program, RUS, telephone: 202–690–4493, fax: 202–720–1051.

Dated: April 5, 2010.

**Jonathan Adelstein,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2010–9452 Filed 4–23–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Modoc County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Modoc County Resource Advisory Committee will meet in Alturas, CA. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review Resource Advisory Committee Project Applications.

**DATES:** The meeting will be held May 3, 2010, 6 p.m.

**ADDRESSES:** The meeting will be held at Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas.

**FOR FURTHER INFORMATION CONTACT:** Tom Hudson, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Resource Advisory Coordinator, Stephen Riley at (530) 233–8771.

**SUPPLEMENTARY INFORMATION:** The business meeting on February 2, March 9 and May 4, 2009 will begin at 4 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California 96101. Agenda topics will include election of Chairperson, review of Charter and Guidelines, and discussion of the process for receiving project proposals that meet the intent of Public Law 110–343. Time will also be set aside for public comments at the beginning of the meeting.

**Tom Hudson,**

*Forest Supervisor.*

[FR Doc. 2010–9600 Filed 4–23–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Siskiyou County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California to discuss routine business associated with requesting proposals consistent with the Secure Rural Schools and Community Self-Determination Act.

**DATES:** The Siskiyou RAC will meet on May 17, June 21, and July 19, 2010 from 4 p.m. until completion.

**ADDRESSES:** The meetings will be held at the Yreka High School Library, Preece Way, Yreka, CA 96097.

**FOR FURTHER INFORMATION CONTACT:** Kerry Greene, Forest RAC Coordinator, Klamath National Forest, (530) 841–4484 or electronically at *kggreene@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:** Public comment periods will be provided and individuals will have the opportunity to address the Committee.

Dated: March 19, 2010.

**Patricia A. Grantham,**

*Forest Supervisor, Klamath National Forest.*

[FR Doc. 2010–9440 Filed 4–23–10; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Wrangell-Petersburg Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Wrangell-Petersburg Resource Advisory Committee will meet in Wrangell, Alaska. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review project proposals and make project funding recommendations.

**DATES:** The meeting will be held Friday, May 7th from 9 a.m. to 5 p.m., and on Saturday, May 8th from 9 a.m. to 2 p.m.

**ADDRESSES:** The meeting will be held at the James and Elsie Nolan Center in Wrangell, Alaska. Written comments should be sent to Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, or Robert Dalrymple, Wrangell District Ranger, P.O. Box 50, Wrangell, AK 99929. Comments may also be sent via e-mail to *csavage@fs.fed.us,* or via facsimile to 907–772–5995.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Petersburg Ranger District office at 12 North Nordic Drive or the Wrangell Ranger District office at 525 Bennett Street during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

**FOR FURTHER INFORMATION CONTACT:** Christopher Savage, Petersburg District Ranger, P.O. Box 1328, Petersburg, Alaska 99833, phone (907) 772–3871, e-mail *csavage@fs.fed.us,* or Robert Dalrymple, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *rdalrymple@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: Evaluation of project proposals and recommendation of projects for funding. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided beginning at 9 a.m. on May 8th. Individuals who made written requests by April 30th will have the opportunity to address the Committee at those sessions.

Dated: April 16, 2010.

**Christopher S. Savage,**

*District Ranger.*

[FR Doc. 2010–9583 Filed 4–23–10; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Proposed New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

**AGENCY:** Manti-La Sal National Forest, USDA Forest Service.

**ACTION:** Notice of proposed new fee site.

**SUMMARY:** The Manti-La Sal National Forest is proposing to charge fees at the

thirty-unit Pioneer Campground and at the Buckeye Group Site within the Buckeye Recreation Area Paradox, Colorado. The proposed fee for the Pioneer Campground units is $10 per site per night. The proposed fee for the Buckeye Group Site that holds up to 50 people is $50 per night. There are 19 other single units, 4 double units and a 5 unit day use area also located within the Buckeye Recreation Area that will be free to the public and on a first come basis. Fees are assessed based on the level of amenities and services provided, cost of operations and maintenance, market assessment and public comment. The fees are proposed and will be determined upon further analysis and public comment. Funds from fees would be used for the continued operation and maintenance and improvements of Pioneer Campground and the Buckeye Group Site.

Improvements planned include fire rings, picnic tables, serving tables, utility tables, information bulletins, fencing, improved roads and a host site. These actions address sanitation and safety concerns and improve deteriorating vegetation and conditions at the campgrounds. Finally, these actions improve the recreation experience.

An analysis of the campground shows that the proposed fees are reasonable and typical of similar sites in the area.

**DATES:** Comments will be accepted through October 31, 2010. New fees would begin May 2011.

**ADDRESSES:** Pamela Brown, Forest Supervisor, Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

**FOR FURTHER INFORMATION CONTACT:** Brian Murdock, Moab/Monticello Recreation Fee Coordinator, 435–636–3367. Information about proposed fee changes can also be found on the Intermountain Region Web site: *http://www.fs.fed.us/r4/recreation/rac/index.shtml.*

**SUPPLEMENTARY INFORMATION:** The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six-month advance notice in the **Federal Register** whenever new recreation fee areas are established. Once public involvement is complete, these new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: April 19, 2010.

**Rod Player,**

*Acting Forest Supervisor.*

[FR Doc. 2010–9445 Filed 4–23–10; 8:45 am]

**BILLING CODE 3410–11–M**

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## DEPARTMENT OF AGRICULTURE

### Rural Business—Cooperative Service

### Notice of Solicitation of Applications (NOSA) for Inviting Applications for Renewable Energy Systems and Energy Efficiency Improvements Grants and Guaranteed Loans Under the Rural Energy for America Program

**AGENCY:** Rural Business—Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Energy for America Program, formerly section 9006 under the 2002 Farm Bill, is composed of several types of grants and guaranteed loan programs. These are: Guaranteed loans and grants for the development/construction of renewable energy systems and for energy efficiency improvement projects; grants for conducting energy audits; grants for conducting renewable energy development assistance; and grants for conducting renewable energy feasibility studies.

The Agency is implementing the Rural Energy for America Program (REAP) for Fiscal Year 2010 through the publication of three REAP notices:

- Renewable energy system and energy efficiency improvement grants and guaranteed loans;
- Energy audit and renewable energy development assistance grants; and
- Renewable energy feasibility study grants.

This REAP notice announces that Rural Business—Cooperative Service is accepting applications for fiscal year (FY) 2010 for the purchase of renewable energy systems and the making of energy efficiency improvements for agriculture producers and rural small businesses in eligible rural areas. The amount of funds available for renewable energy systems and energy efficiency improvements in FY 2010 will be approximately 88 percent of mandatory and discretionary funding. Funding will be available in the form of grants and loan guarantees. In addition to grants and loan guarantees, applicants may apply for combination loan guarantee and grant funding (combination package).

Lastly, the Agency intends to publish a proposed rule that will revise the current program at 7 CFR part 4280, subpart B to include renewable energy feasibility study grants, and that will add a new subpart C to address energy audit and renewable energy development assistance grants. Together, these two subparts will represent the Rural Energy for America Program as authorized under section 9007 of the Farm Security and Rural Investment Act of 2002 as amended by section 9001 of the Food, Energy, and Conservation Act of 2008. The Agency anticipates publishing final regulations to operate the Rural Energy for America Program in fiscal year 2011.

**DATES:** Complete applications under this Notice must be received by the appropriate USDA Rural Development State Office no later than 4:30 local time June 30, 2010. Neither complete nor incomplete applications received after this date and time will be considered for funding in FY 2010, regardless of the postmark on the application.

**ADDRESSES:** Application materials may be obtained by contacting one of Rural Development's Energy Coordinators or by downloading through *http://www.grants.gov.*

Submit electronic applications at *http://www.grants.gov,* following the instructions found on this Web site. To use Grants.gov, all applicants (unless the applicant is an individual) must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Submit completed paper applications to the Rural Development State Office in the State in which the applicant's proposed project is located.

### Rural Development Energy Coordinators

**Note:** Telephone numbers listed are not toll-free.

**Alabama**

Quinton Harris, USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3623, *Quinton.Harris@al.usda.gov*

**Alaska**

Dean Stewart, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7722, *dean.stewart@ak.usda.gov*

**American Samoa (See Hawaii)**

**Arizona**

Alan Watt, USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8769, *Alan.Watt@az.usda.gov*

**Arkansas**

Tim Smith, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280, *Tim.Smith@ar.usda.gov*

**California**

Philip Brown, USDA Rural Development, 430 G Street, #4169, Davis, CA 95616, (530) 792–5811, *Phil.brown@ca.usda.gov*

**Colorado**

April Dahlager, USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2909, *april.dahlager@co.usda.gov*

**Commonwealth of the Northern Marianas Islands—CNMI (See Hawaii)**

**Connecticut (See Massachusetts)**

**Delaware/Maryland**

Bruce Weaver, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3626, *Bruce.Weaver@de.usda.gov*

**Federated States of Micronesia (See Hawaii)**

**Florida/Virgin Islands**

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3482, *joe.mueller@fl.usda.gov*

**Georgia**

J. Craig Scroggs, USDA Rural Development, 111 E. Spring St., Suite B, Monroe, GA 30655, Phone 770–267–1413 ext. 113, *craig.scroggs@ga.usda.gov*

**Guam (See Hawaii)**

**Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/America Samoa/ Commonwealth of the Northern Marianas Islands—CNMI**

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313, *Tim.Oconnell@hi.usda.gov*

**Idaho**

Brian Buch, USDA Rural Development, 9173 W. Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5623, *Brian.Buch@id.usda.gov*

**Illinois**

Molly Hammond, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6210, *Molly.Hammond@il.usda.gov*

**Indiana**

Jerry Hay, USDA Rural Development, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (812) 873–1100, *Jerry.Hay@in.usda.gov*

**Iowa**

Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4447, *teresa.bomhoff@ia.usda.gov*

**Kansas**

David Kramer, USDA Rural Development, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, *david.kramer@ks.usda.gov*

**Kentucky**

Scott Maas, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435, *scott.maas@ky.usda.gov*

**Louisiana**

Kevin Boone, USDA Rural Development, 905 Jefferson Street, Suite 320, Lafayette, LA 70501, (337) 262–6601, Ext. 133, *Kevin.Boone@la.usda.gov*

**Maine**

John F. Sheehan, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168, *john.sheehan@me.usda.gov*

**Maryland (See Delaware)**

**Massachusetts/Rhode Island/Connecticut**

Charles W. Dubuc, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002, (401) 826–0842 X 306, *Charles.Dubuc@ma.usda.gov*

**Michigan**

Traci J. Smith, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5157, *Traci.Smith@mi.usda.gov*

**Minnesota**

Lisa L. Noty, USDA Rural Development, 1400 West Main Street, Albert Lea, MN 56007, (507) 373–7960 Ext. 120, *lisa.noty@mn.usda.gov*

**Mississippi**

G. Gary Jones, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457, *george.jones@ms.usda.gov*

**Missouri**

Matt Moore, USDA Rural Development, 601 Business Loop 70 West Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9321, *matt.moore@mo.usda.gov*

**Montana**

John Guthmiller, USDA Rural Development, 900 Technology Blvd., Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2540, *John.Guthmiller@mt.usda.gov*

**Nebraska**

Debra Yocum, USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508, (402) 437–5554, *Debra.Yocum@ne.usda.gov*

**Nevada**

Herb Shedd, USDA Rural Development, 1390 South Curry Street, Carson City, NV 89703, (775) 887–1222, *herb.shedd@nv.usda.gov*

**New Hampshire (See Vermont)**

**New Jersey**

Victoria Fekete, USDA Rural Development, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7752, *Victoria.Fekete@nj.usda.gov*

**New Mexico**

Jesse Bopp, USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4952, *Jesse.bopp@nm.usda.gov*

**New York**

Scott Collins, USDA Rural Development, 9025 River Road, Marcy, NY 13403, (315) 736–3316 Ext. 4, *scott.collins@ny.usda.gov*

**North Carolina**

David Thigpen, USDA Rural Development, 4405 Bland Rd. Suite 260, Raleigh, NC 27609, 919–873–2065, *David.Thigpen@nc.usda.gov*

**North Dakota**

Dennis Rodin, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2068, *Dennis.Rodin@nd.usda.gov*

**Ohio**

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2424, *Randy.Monhemius@oh.usda.gov*

**Oklahoma**

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036, *Jody.harris@ok.usda.gov*

**Oregon**

Don Hollis, USDA Rural Development, 200 SE Hailey Ave, Suite 105, Pendleton, OR 97801, (541) 278–8049, Ext. 129, *Don.Hollis@or.usda.gov*

**Pennsylvania**

Bernard Linn, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2182, *Bernard.Linn@pa.usda.gov*

**Puerto Rico**

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251, *Luis.Garcia@pr.usda.gov*

**Republic of Palau (See Hawaii)**

**Republic of the Marshall Islands (See Hawaii)**

**Rhode Island (See Massachusetts)**

**South Carolina**

Shannon Legree, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3150, *Shannon.Legree@sc.usda.gov*

**South Dakota**

Douglas Roehl, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1145, *doug.roehl@sd.usda.gov*

**Tennessee**

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300,

Nashville, TN 37203–1084, (615) 783–1350, *will.dodson@tn.usda.gov*

**Texas**

Daniel Torres, USDA Rural Development, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9756, *Daniel.Torres@tx.usda.gov*

**Utah**

Roger Koon, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4301, *Roger.Koon@ut.usda.gov*

**Vermont/New Hampshire**

Cheryl Ducharme, USDA Rural Development, 89 Main Street, 3rd Floor, Montpelier, VT 05602, 802–828–6083, *cheryl.ducharme@vt.usda.gov*

**Virginia**

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594, *Laurette.Tucker@va.usda.gov*

**Virgin Islands (See Florida)**

**Washington**

Mary Traxler, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7762, *Mary.Traxler@wa.usda.gov*

**West Virginia**

Richard E. Satterfield, USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4874, *Richard.Satterfield@wv.usda.gov*

**Wisconsin**

Brenda Heinen, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615, Ext. 139, *Brenda.Heinen@wi.usda.gov*

**Wyoming**

Jon Crabtree, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602, (307) 233–6719, *Jon.Crabtree@wy.usda.gov*

**FOR FURTHER INFORMATION CONTACT:** For information about this Notice, please contact the USDA Rural Development-Energy Division, Program Branch, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–1400.

For assistance on this program, please contact the applicable Rural Development Energy Coordinator, as provided in the **ADDRESSES** section of this notice.

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with renewable energy system and energy efficiency improvement grants and guaranteed loans, as covered in this REAP notice, has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0050.

The information collection requirements associated with energy audit and renewable energy development assistance grants and with renewable energy feasibility study grants, which will be addressed in their respective REAP notices, have also been approved by OMB under OMB Control Number 0570–0059 and OMB Control Number 0570–0061, respectively. When the Agency publishes the proposed rule for REAP, it will consolidate the information collection requirements associated with this REAP notice and the other two REAP notices into a single information collection package for OMB approval.

## Overview Information

*Federal Agency Name.* Rural Business-Cooperative Service.

*Funding Opportunity Title.* Renewable Energy Systems and Energy Efficiency Improvements Grants and Guaranteed Loans under the Rural Energy for America Program.

*Announcement Type.* Initial announcement.

*Catalog of Federal Domestic Assistance (CFDA) Number.* This program is listed in the Catalog of Federal Domestic Assistance under Number 10.868.

*Dates.* All applications must be completed and received in the appropriate United States Department of Agriculture (USDA) State Rural Development Office no later than 4:30 p.m. local time June 30, 2010, in order to be considered for funding in FY 2010. Applications received after 4:30 p.m. local time June 30, 2010, regardless of the application's postmark, will not be considered for funding in FY 2010.

*Availability of Notice.* This Notice is available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/rbs/farmbill/index.html*.

## I. Funding Opportunity Description

A. *Purpose.* This Notice is issued pursuant to section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), which amends Title IX of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) and establishes the Rural Energy for America Program under section 9007 thereof. The program is designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the Nation's critical energy needs. The 2008 Farm Bill mandates the maximum percentages of funding that USDA Rural Development will provide. Within the maximum funding amounts specified in this Notice, funding approved for guaranteed loan only requests and for combination guaranteed loan and grant requests will not exceed 75 percent of eligible project costs, with the grant portion not to exceed 25 percent of eligible project costs, whether the grant is part of a combination request or is a stand-alone grant.

B. *Statutory Authority.* This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

C. *Definition of Terms.* The following terms and the terms defined in 7 CFR part 4280 are applicable to this Notice. If this Notice and 7 CFR part 4280 both define the same term, that term shall have the meaning provided in this Notice.

*Administrator.* The Administrator of Rural Business—Cooperative Service within the Rural Development Mission Area of the U.S. Department of Agriculture.

*Departmental regulations.* The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

*EEI.* Energy efficiency improvement.

*Hydroelectric energy.* Electrical energy created by use of various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

*Hydropower.* Energy created by hydroelectric or ocean energy.

*Ocean Energy.* Energy created by use of various types of moving water including, but not limited to, tidal, wave, current, and thermal changes.

*Rated power.* The amount of energy that can be created at any given time.

*Renewable biomass.*

(i) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S. C. 1702)) that:

(A) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(B) Would not otherwise be used for higher-value products; and

(C) Are harvested in accordance with applicable law and land management plans and the requirements for old-

growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of subsection (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S. C. 6512); or

(ii) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(B) Waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

*Renewable energy.* Energy derived from:

(i) A wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric source; or

(ii) Hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric energy sources.

*RES.* Renewable energy system.

*Small hydropower.* A hydropower project for which the rated power of the system is 30 megawatts or less.

*State.* Any of the 50 states of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

## II. Funding Information

A. *Available Funds.* The amount of funds available for renewable energy systems and energy efficiency improvements in FY 2010 will be approximately 88 percent of mandatory and discretionary funding made available for this REAP notice under the Rural Energy for America Program.

Based on the quality of the applications received under this REAP notice, the Agency reserves the right, at its discretion, to move funds from this notice to fund applications received under the other two REAP notices. Conversely, the Agency may, at its discretion, move money for the other two REAP notices to fund applications received under this REAP notice. The Agency's ability to move funds is subject to the limitation contained in section 9007(c)(3)(B) of 2002 Farm Bill, which limits funding for feasibility studies to not exceed more than 10 percent of the funds made available to carry out the total amount made available under this REAP notice and the feasibility study REAP notice.

B. *Number of Awards.* The number of awards will depend on the number of eligible applicants participating in this program.

C. *Grant Funding Limitations.* For the purposes of this Notice, the maximum amount of grant assistance to one individual or entity will not exceed $750,000 for FY 2010 based on the total amount of renewable energy system, energy efficiency improvement, and renewable energy feasibility study grants awarded to the individual or entity under the Rural Energy for America Program. In order to ensure that small projects have a fair opportunity to compete for the funding and consistent with the priorities set forth in the statute, the Agency will not use less than 20 percent of the funds allocated for grants of $20,000 or less.

D. *Types of Instrument.* Grant, guaranteed loan, and grant/guaranteed loan combinations.

## III. Application Submission Information

Applicants seeking to participate in this program must submit applications in accordance with this Notice and 7 CFR part 4280, subpart B, as applicable. Applicants must submit complete applications in order to be considered. Note that for the Agency to consider an application, the application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1940 subpart G.

### *A. Where To Obtain Applications*

Applicants may obtain applications from the applicable Rural Development Energy Coordinator, as provided in the **ADDRESSES** section of this Notice. In addition, for grant applications, applicants may access the electronic grant application for the Rural Energy for America Program at *http://www.Grants.gov.* To locate the downloadable application package for this program, the applicant must use the program's CFDA Number (i.e., 10.868) or FedGrants Funding Opportunity Number, which can be found at *http://www.Grants.gov.* To use Grants.gov, all applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number (unless the applicant is an individual), which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.*

### *B. When To Submit*

Submit applications to the appropriate USDA Rural Development State Office. All applications must be received at the appropriate State Office by 4:30 p.m. local time on June 30, 2010 to be considered for funding in FY 2010. Applications are competed and funded periodically at times determined by each State Office. Applicants are encouraged to contact the appropriate Energy Coordinator to determine when their State intends to make awards. Applications received at the appropriate State Office after 4:30 p.m. local time on June 30, 2010 will not be considered for funding in FY 2010. Applications received after the deadline date will compete in FY 2011.

### *C. Where To Submit*

All applications are to be submitted to the Rural Development Energy Coordinator in the State in which the applicant's proposed project is located. A list of Rural Development Energy Coordinators is provided in the **ADDRESSES** section of this Notice. Alternatively, for grants, applicants may submit applications to the Agency via the Grants.gov Web site.

### *D. How To Submit*

Applicants may submit applications either as hard copy or electronically as specified in the following paragraphs. When submitting an application as hard copy, applicants must submit one original and one copy of the complete application.

(1) *Grant applications.* Grant applications may be submitted either as hard copy to the appropriate Rural Development Energy Coordinator or electronically using the government-wide Grants.gov Web site. Users of Grants.gov who download a copy of the application package may complete it off line and then upload and submit the application via the Grants.gov site, including all information typically included on the application, and all necessary assurances and certifications. After electronically submitting an application through the Web site, the applicant will receive an automated acknowledgement from Grants.gov that contains a Grants.gov tracking number.

(2) *Guaranteed loan applications.* Guaranteed loan only applications (*i.e.,* those that are not part of a guaranteed loan/grant combination request) must be submitted as hard copy.

(3) *Guaranteed loan/grant combination applications.* Applications for guaranteed loans/grants (combination applications) must be submitted as hard copy.

*E. Other Submission Requirements and Information*

(1) *Application restrictions.* Applicants can apply for only one renewable energy system project and one energy efficiency improvement project in FY 2010. A renewable energy system application cannot be submitted in FY 2010 if a Rural Energy for America Program feasibility study grant application has also been submitted in FY 2010 for the same renewable energy system project.

(2) *Eligibility considerations.* Eligibility is limited to projects that:

(i) have completed the environmental review process according to 7 CFR 4280.114(d);

(ii) have demonstrated project eligibility according to 7 CFR 4280.108;

(iii) have demonstrated technical feasibility; and

(iv) have submitted complete applications.

(3) *Grants.gov.* When you enter the Grants.gov site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that applicants do not wait until the application deadline date to begin the application process through Grants.gov.

(4) *Original signatures.* USDA Rural Development may request that the applicant provide original signatures on forms submitted through Grants.gov at a later date.

(5) *Intergovernmental review.* The Rural Energy for America Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

(6) *Award considerations.* In determining the amount of a loan guarantee or grant provided, the Agency shall take into consideration the following six criteria:

(i) The type of renewable energy system to be purchased;

(ii) The estimated quantity of energy to be generated by the renewable energy system;

(iii) The expected environmental benefits of the renewable energy system;

(iv) The quantity of energy savings expected to be derived from the activity, as demonstrated by an energy audit;

(v) The estimated period of time for the energy savings generated by the activity to equal the cost of the activity; and

(vi) The expected energy efficiency of the renewable energy system.

*F. Hydropower Eligibility*

For the purposes of this Notice, only hydropower projects with a rated power of 30 megawatts or less are eligible. The Agency refers to these hydropower sources as "small hydropower," which includes hydropower projects commonly referred to as "micro-hydropower" and "mini-hydropower."

**IV. Program Provisions**

This section of the Notice identifies what information renewable energy system and energy efficiency improvement (RES/EEI) applications are to contain, funding limitations, and other submission requirements and award information. Except as provided in this Notice, RES/EEI applications are to follow the provisions specified in 7 CFR part 4280, subpart B.

*A. Project Eligibility*

(1) The project eligibility requirements specified in 7 CFR 4280.108 apply to applications submitted under this Notice. The Agency notes that energy efficiency improvements to existing renewable energy systems are eligible energy efficiency improvement projects.

(2) In addition to the requirements specified in 7 CFR 4280.108, no renewable energy system or energy efficiency improvement, or portion thereof, can be used for any residential purpose, including any residential portion of a rural small business, farm, ranch, or agricultural facility. However, an applicant may apply for funding for the installation of a second meter or provide certification in the application that any excess power generated by the renewable energy system will be sold to the grid and will not be used by the applicant for residential purposes.

*B. Applications*

In addition to the requirements found in 7 CFR 4280, subpart B, the following also applies to applications submitted under this Notice.

(1) *One funding type applications.* Only one type of funding application (grant-only, guaranteed loan-only, or guaranteed loan/grant combination) for each project can be submitted.

(2) *Environmental information.* Each application must include all environmental review documents with supporting documentation in accordance with 7 CFR part 1940 subpart G.

(3) *Foreign technology.* As stated in 7 CFR 4280.108, projects must be for a pre-commercial or commercially available technology. The definition of "pre-commercial" and "commercial" are at 7 CFR 4280.103. The Agency's position is that if the system is currently commercially available only outside the United States (U.S.), then applicants must provide authoritative evidence of the foreign operating history, performance, and reliability in order to address the proven operating history identified in the definition. "Commercial" applicants must provide evidence that professional service providers, trades, large construction equipment providers and labor are readily available domestically and familiar with installation procedures and practices, and spare parts and service are readily available in the U.S. to properly maintain and operate the system. All warranties must be valid in the U.S.

(4) *Commercial application demonstration of pre-commercial technologies.* In accordance with the definition of "pre-commercial" technology found in 7 CFR 4280.103, technical and economic potential for commercial application must be demonstrated to the Agency. In order to demonstrate the system has emerged through research and development as well as the demonstration process, applicants must provide authoritative evidence of the operating history, performance, and reliability past completion of start-up, shake-down, and commissioning. Typically, and in line with financial and operating performance evaluation protocol, the documented operating history, which may be established domestically or outside the U.S., should provide performance data for a minimum of 12 months. The time period will address the economic and technical performance potential of the pre-commercial technology, as defined in 7 CFR 4280.103. Lastly, in accordance with demonstrating the potential for commercial application, applicants must provide evidence that professional service providers, trades, large construction equipment providers, and labor are readily available domestically and sufficiently familiar with installation procedures and practices, and spare parts and service are available in the U.S. to properly maintain and operate the system. Any warranties have to be valid in the U.S.

(5) *Format.* To ensure that projects are accurately scored by the Agency, applicants are requested to tab and number each evaluation criteria and include, in that section, its corresponding supporting documentation and calculations according to 7 CFR 4280.112.

(6) *Technical report appendices.* Technical reports for hydropower projects shall conform to Appendix A of this Notice. Technical reports for other renewable energy projects shall continue to conform to Appendix A or B, as applicable, to 7 CFR part 4280, subpart B.

*C. Funding Limitations*

(1) *Grant-only applications.* For renewable energy system grants, the minimum grant is $2,500 and the maximum is $500,000. For energy efficiency improvement grants, the minimum grant is $1,500 and the maximum grant is $250,000.

(2) *Loan guarantee-only applications.* For loan guarantees, the minimum guaranteed loan amount is $5,000 and the maximum amount of a guarantee to be provided to a borrower is $25 million. The maximum loan guarantee for a guaranteed loan in excess of $10 million is 60 percent. For FY 2010, the guarantee fee amount is 1 percent of the guaranteed portion of the loan and the annual renewal fee is 0.250 percent (one-quarter of one percent) of the guaranteed portion of the loan.

(3) *Guaranteed loan and grant combination applications.* Funding for grant and loan combination packages are subject to the funding limitations specified in paragraphs (1) and (2) of this section. For grant and loan combination packages, the minimum grant portion of the combined funding request is $1,500 for energy efficiency improvement projects and $2,500 for renewable energy system projects.

*D. Award Process*

In addition to the process for awarding funding under 7 CFR part 4280, subpart B, the Agency will make awards using the following considerations:

(1) *Application period.* Applications may be submitted at any time during FY 2010. Complete applications must be received by the appropriate State Office by 4:30 pm local time June 30, 2010, to be considered for funding in FY 2010. Applications received after that time and date will be retained by the State Office for consideration for funding in FY 2011.

(2) *Resubmittal of FY 2009 applications.* If an applicant submitted an application for funding in FY 2009 and that application was determined eligible but was not funded, the Agency will consider that FY 2009 application for funding in FY 2010 as provided below.

(i) An applicant for the program in FY 2009 must submit a written request for the Agency to reconsider its FY 2009 application in FY 2010. Guarantee Loan and Grant Combination applications will require a written request from both the lender and grant applicant to maintain the application request.

(ii) If the applicant will be revising its FY 2009 application, a new application must be submitted. If the applicant will not be revising its FY 2009 application, a new application is not required.

(iii) The submission date of record of each FY 2009 application requesting consideration for FY 2010 will remain unchanged from its original FY 2009 submittal date.

(iv) For all applicable applications, current financial statements that meet program requirements as outlined in 7 CFR 4280.111(b)(4) must be submitted with the written request. The submission of financial statements will not require a new application to be submitted, unless the financial information results in a change to the application's score.

(v) Except as provided elsewhere in this section, applications for grants of $20,000 or less do not have to submit a new application because the Agency has decided not to assign ten (10) additional priority points to those grants under this Notice. The Agency will update the application score without requiring submittal of a new application.

(vi) Request for funding consideration of FY 2009 applications in FY 2010 must be received no later than 4:30 pm local time June 30, 2010, in order to be considered. Request for funding consideration of FY 2009 applications received after 4:30 pm local time June 30, 2010, regardless of the request's postmark, will not be considered further.

(3) *Demonstrated financial need.* As required in 7 CFR 4280.107(a)(5), 4280.109(b)(2), and 4280.193(a), the applicant for a grant or combination guaranteed loan and grant, must demonstrate financial need. Only those packages that demonstrate financial need will be considered for funding.

(4) *Funding awards.* Considering the availability of funds, State Offices will fund those applications that score the highest; that is, the score an application receives will be compared to the scores of other applications, with higher scoring applications receiving first consideration for funding.

(5) *Grant-only applications of $20,000 or less.* To ensure that small projects have a fair opportunity to compete for the funding and consistent with the priorities set forth in the statute, the Agency will use not less than 20 percent of the funds allocated to the Rural Energy for America Program for grants of $20,000 or less.

(6) *Combination applications.* Applicants whose combination applications are approved for funding must utilize both the loan guarantee and the grant. The Agency reserves the right to reduce the total loan guarantee and grant award as appropriate.

(7) *Application withdrawal.* During the period between the submission of an application and the execution of documents, the applicant must notify the Agency, in writing, if the project is no longer viable or the applicant is no longer requesting financial assistance for the project. When the applicant notifies the Agency, the selection will be rescinded or the application withdrawn.

(8) *Change of contractor or vendor.* After an award has been made, the recipient of the award can request to change a contractor or vendor if the technical merit score for the project remains the same or is higher. Prior to changing a contractor or vendor, the recipient must submit to the Agency a written request providing information that allows the Agency to rescore the project's technical merit. If the Agency determines that the project achieves the same or higher technical merit score, the recipient may make the change. No additional funding will be available from the Agency if costs for the project have increased. If the Agency determines that the project does not achieve the same or higher technical merit score, the change will not be approved.

(9) *Evaluation criteria.* Agency personnel will score each application based on the evaluation criteria specified in 7 CFR 4280.112(e).

(10) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's selection of the application, the Agency will rescind the selection and will provide the applicant with a written notice to that effect.

## V. Administrative Information Applicable to This Notice

*A. Notifications*

(1) *Eligibility.* If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant in writing. If an applicant is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as to the reason(s) the applicant was rejected. Such applicant will have appeal rights as specified in this Notice.

(2) *Award.* Each applicant will be notified of the Agency's decision on their application.

*B. Administrative and National Policy Requirements*

(1) *Review or appeal rights.* A person may seek a review of an Agency decision under this Notice from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title. If the review or appeal involves a combination funding request, both the lender and borrower must request the review or appeal.

(2) *Notification.* If at any time prior to application approval it is decided that favorable action will not be taken on an application, the Agency will notify the applicant in writing of the decision and of the reasons why the request was not favorably considered. The notification will inform applicants of their rights to informal review, mediation, and appeal of the decision in accordance with 7 CFR part 11 and 7 CFR part 1900, subpart B.

*C. Exception Authority*

This notice incorporates the exception authority found in 7 CFR 4280.104.

*D. Member or Delegate Clause*

No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

## VI. Agency Contacts

*Notice Contact.* For further information about this Notice, please contact the USDA Rural Development-Energy Division, Program Branch, STOP 3225, Room 6867, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–1400.

If you have any questions concerning this Notice, contact one of Rural Development's Energy Coordinators, as provided in the Addresses section of this Notice.

## VII. Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), or (202) 720–6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

## VIII. Civil Rights Compliance Requirements

All grants and guaranteed loans made under this Notice are subject to title VI of the Civil Rights Act of 1964 and part 1901, subpart E of this title.

Dated: April 20, 2010.

**Judith A. Canales,**

*Administrator, Rural Business-Cooperative Service.*

## Appendix A—Technical Reports for Hydropower Projects

The technical requirements specified in this appendix apply to all hydropower projects. Hydropower projects are those projects that create hydroelectric or ocean energy.

The Technical Report for hydropower projects must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original Technical Report plus one copy to the Rural Development State Office. Hydropower projects with total eligible project costs greater than $400,000 require the services of a licensed professional engineer (PE) or team of PEs. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed PE or a team of licensed PEs may be required for smaller projects.

(a) *Qualifications of project team.* The hydropower project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in hydropower development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the hydropower equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing hydropower systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining hydropower projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (6).

(1) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits. This list should include all local, state, and federal permits required, estimated timeline for each permit and current status of acquiring each permit.

(2) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(3) Identify available component warranties for the specific project location and size.

(4) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(5) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD

1940–20, "Request for Environmental Information," and in compliance with 7 CFR part 1940, subpart G, of this title. (**Note:** The environmental review process, including all required publications, must be completed prior to approval of any Rural Development funding.) The applicant may want to work with all federal organizations involved with the project, to promulgate a single environmental review document.

(6) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes, regulations, and permits.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a qualified consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, conversion system component selection, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the hydropower project, including location of the project, resource characteristics, system specifications, electric power system interconnection equipment and project monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the proposed project. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a description of planned contingency fees or reserve funds to be used for unexpected large component replacement or repairs and for low productivity periods. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Hydropower systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that "open and free" competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes, barges or other devices, needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing;

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(6) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

[FR Doc. 2010–9580 Filed 4–23–10; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration (ITA).

*Title:* ITA Environmental Technologies Non-Tariff Barriers Survey.

*OMB Control Number:* 0625–0241.

*Form Number(s):* ITA–4150P.

*Type of Request:* Regular submission.

*Burden Hours:* 33.

*Number of Respondents:* 200.

*Average Hours per Response:* 10 minutes.

*Needs and Uses:* The environmental technologies industry has consistently cited the proliferation of non-tariff barriers as a factor that is making increased U.S. exports in this sector more difficult. This factor has been cited across all subsectors of environmental technologies products and all global geographic regions. The collection of information related to the experience of U.S. exporters with regard to these non-tariff measures is essential to the mission of the U.S. Department of Commerce Office of Energy and Environmental Industries. It also allows accurate market analysis as well as support to industry in its export efforts

and to the U.S. government in its trade negotiation efforts.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–7285 or via the Internet at *Wendy_L._Liberante@omb.eop.gov*.

Dated: April 21, 2010.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–9570 Filed 4–23–10; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Natural Resource Damage Assessment Restoration Project Information Sheet

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before June 25, 2010.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Lisa Vandiver, (301) 713–0174 or *Lisa.Vandiver@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The purpose of the collection of this information is to assist state and federal Natural Resource Trustees in more efficiently carrying out the restoration planning phase of Natural Resource Damage Assessments (NRDA), in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370d; 40 CFR 1500–1500 and other federal and local statutes and regulations as applicable. The NRDA Restoration Project Information Sheet is designed to facilitate the collection of information on existing, planned, or proposed restoration projects. This information will be used by the Natural Resource Trustees to develop potential restoration alternatives for natural resource injuries and service losses requiring restoration during the restoration planning phase of the NRDA process.

### II. Method of Collection

The Restoration Project Information Sheet can be submitted on paper through the mail or faxed, or can be submitted electronically via the Internet or e-mail.

### III. Data

*OMB Number:* 0648–0497.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* State, local, or tribal governments; individuals or households; business or other for-profits organizations; not-for-profit institutions; farms; and the Federal government.

*Estimated Number of Respondents:* 66.

*Estimated Time per Response:* 20 minutes including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

*Estimated Total Annual Burden Hours:* 55.

*Estimated Total Annual Cost to Public:* $0.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–9596 Filed 4–23–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; Business and Professional Classification Report

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before June 25, 2010.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott Handmaker, Chief, Economic Classifications Operations Branch, U.S. Census Bureau, 8K149, Washington, DC 20233, Telephone: 301–763–7107; E-mail: *Scott.P.Handmaker@census.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The Business and Professional Classification Report survey (SQ–

CLASS(00)) collects information on new businesses to obtain proper industry classification for use in economic surveys conducted by the U.S. Census Bureau. The survey, conducted quarterly, samples businesses with newly assigned Employer Identification Numbers (EINs) from the Internal Revenue Service (IRS). Businesses can only be selected once for the survey. The SQ–CLASS(00) form collects minimum data about a business in such areas as: primary business activity, company structure, size, and business operations. This information is used to update the sampling frame for current business surveys, which ensures high quality economic estimates. Additionally by ensuring proper industry classification, this survey reduces respondent burden for the five-year Economic Census as businesses will be mailed five-year Economic Census forms specifically tailored to their industry.

There are a few changes since the last request was submitted for an OMB clearance request in 2007. An inquiry will be added to the form to determine not-for-profit status. This inquiry will be used to properly classify not-for-profit businesses. It will ensure that the proper current survey form is sent to the business if it is selected into a survey. Minimal changes will be made to the wording and organization of existing questions and instructions. Additionally, respondents will have the option to respond electronically via the Internet.

**II. Method of Collection**

Information is collected by Internet, mail, fax, and telephone follow-up.

**III. Data**

*OMB Number:* 0607–0189.
*Form Number:* SQ–CLASS(00).
*Type of Review:* Regular.
*Affected Public:* Businesses and other organizations in the United States.
*Estimated Number of Respondents:* 67,000 business firms.
*Estimated Time per Response:* 13 minutes.
*Estimated Total Annual Burden Hours:* 14,519 hours.
*Estimated Total Annual Cost:* $414,808.
*Respondent's Obligation:* Mandatory.
*Legal Authority:* Title 13 U.S.C. 182 and 193.

**IV. Request for Comments**

Comments are invited on: (a) *Whether* the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 21, 2010.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–9567 Filed 4–23–10; 8:45 am]

BILLING CODE 3510–07–P

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## DEPARTMENT OF COMMERCE

## U.S. Census Bureau

## Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 8 of the 2008 Panel

**AGENCY:** U.S. Census Bureau, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before June 25, 2010.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Census Bureau conducts the SIPP, which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members' participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2008 panel is currently scheduled for 4 years and will include 13 waves of interviewing beginning September 2008. Approximately 65,300 households were selected for the 2008 panel, of which 42,032 households were interviewed. We estimate that each household contains 2.1 people, yielding 88,267 person-level interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Three waves will occur in the 2008 SIPP Panel during FY 2011. The total annual burden for 2008 Panel SIPP interviews would be 132,400 hours in FY 2011.

*The topical modules for the 2008 Panel Wave 8 collect information about:*

- Annual Income and Retirement Accounts
- Taxes
- Child Care
- Work Schedule

Wave 8 interviews will be conducted from January 1, 2011 through April 30, 2011.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews require an additional 1,553 burden hours in FY 2011.

**II. Method of Collection**

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2008 panel, respondents are interviewed a total of 13 times (13 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

**III. Data**

*OMB Control Number:* 0607–0944.
*Form Number:* SIPP/CAPI Automated Instrument.
*Type of Review:* Regular submission.
*Affected Public:* Individuals or Households.
*Estimated Number of Respondents:* 88,267 people per wave.
*Estimated Time per Response:* 30 minutes per person on average.
*Estimated Total Annual Burden Hours:* 133,953[1].
*Estimated Total Annual Cost:* $0.
*Respondent's Obligation:* Voluntary.
*Legal Authority:* Title 13, United States Code, Section 182.

**IV. Request for Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

[1] (88,267 × .5 hr × 3 waves + 3,100 × .167 hr × 3 waves).

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 20, 2010.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2010–9536 Filed 4–23–10; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Docket 26–2010]**

## Foreign-Trade Zone 126—Reno, NV, Application for Reorganization/Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Economic Development Authority of Western Nevada, grantee of FTZ 126, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09; correction 74 FR 3987, 1/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 19, 2010.

FTZ 126 was approved by the Board on April 4, 1986 (Board Order 328, 51 FR 12904, 04/16/1986) and expanded on February 25, 1997 (Board Order 872, 62 FR 10520, 03/07/1997), on December 15, 1999 (Board Order 1066, 64 FR 72642, 12/28/1999), and, on March 12, 2007 (Board Order 1506, 72 FR 13080, 03/20/2007).

The current zone project includes the following sites: *Site 1* (13.9 acres)—728 Spice Island Drive, Sparks; *Site 2* (9 acres)—450–475 Lillard Drive, Sparks; *Site 3* (26 acres)—205 Parr Boulevard, 345 and 365 Parr Circle, Reno; *Site 4* (200 acres, sunset 03/31/12)—within the 5,000-acre Crossroads Commerce Center at Nevada Pacific Parkway and East Newlands Drive, Fernly; *Site 5* (20 acres, sunset 03/31/12)—within the 110-acre Fernly Industrial Park at Lyon Drive and Industrial Drive, Fernly; *Site 6* (622 acres, sunset 03/31/12)—within the Tahoe Industrial Center southwest of Denmark and USA Parkway, Patrick; *Site 7* (38 acres, sunset 03/31/12)—Reno Stead Airport, 14551 Industry Circle and 4895 Texas Avenue, Reno; *Site 8* (53 acres, sunset 03/31/12)—within the Sage Point Business Park at Lear Boulevard and Military Road, Reno; *Site 9* (25 acres, sunset 03/31/12)—within the Dermody Business Park at 5360 Capital Court and 1312 and 1316 Capital Boulevard, Reno; *Site 10* (10 acres, sunset 03/31/12)—within the 180-acre Dermody Aircenter at 4879 Aircenter Circle and 4750 Longley Lane, Reno; *Site 11* (18 acres, sunset 03/31/12)—45 Vista Boulevard, Sparks; *Site 12* (100 acres, sunset 03/31/12)—within the South Meadows Business Park at 1150, 1160, 1170, 1175, 1190 and 1195 Trademark Drive, Reno; *Site 13* (10 acres, sunset 03/31/12)—within the Reno Tahoe International Airport at 700 South Rock Boulevard, Reno; *Site 14* (0.4 acres)—1095 Spice Island Drive, Sparks; *Site 15* (0.7 acres)—1415 Greg Street, Sparks; *Site 16* (4 acres)—800 Stillwell Road, Reno; and, *Site 17* (146 acres, sunset 03/31/12)—within the Patrick Business Park on Waltham Way, Patrick.

The grantee's proposed service area under the ASF would be all of Carson City, Douglas and Storey Counties as well as portions of Churchill, Lyon and Washoe Counties, Nevada, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Reno, Nevada Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include thirteen of the existing sites as "magnet" sites (sites 1, 4–14, 17) and four of the existing sites as "usage-driven" sites (sites 2, 3, 15, 16). The ASF allows for the possible exemption of one magnet site from the "sunset" time limits that generally apply to sites under the ASF, and the applicant proposes that Site 6 be so exempted. The applicant is also requesting to expand the zone to include the following "usage-driven" sites: *Proposed Site 18* (12.68 acres)—Eastman Kodak Company, 12035 Moya Boulevard, Reno (Washoe County); and, *Proposed Site 19* (6.64 acres)—Randa Logistics, 201 Ireland Drive, McCarran (Storey County). Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application

would have no impact on FTZ 126's authorized subzones.

In accordance with the Board's regulations, Christopher Kemp 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 25, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 12, 2010.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: April 19, 2010.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2010–9621 Filed 4–23–10; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Beauty and Cosmetics Trade Mission to India

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

### Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing a Beauty and Cosmetics Trade Mission to India (New Delhi, Mumbai and Bangalore), November 15–19, 2010. Led by a senior Department of Commerce official, the mission will assist U.S. beauty and cosmetics companies to identify prospective representatives, distributors, partners, and end-users in the vibrant Indian market. The cosmetics/beauty industry is one of the booming retail sectors in India with very strong potential for new-to-market (NTM) U.S. companies. U.S products are perceived to be very high quality in India and are in high demand. Mission participants will have a first-hand opportunity to assess market potential in India and to meet key decision makers. Trade mission participants will have customized meeting schedules to meet with potential partners, professional end-users, major retailers and key government and regulatory officials.

### Commercial Setting

The emergence of a young urban elite population with increasing disposable income in cities, including an increase in the number of working women increase looking for lifestyle-oriented and luxury products is the main driver of demand for imported cosmetics products. Indian consumers tend to look towards international brands as lifestyle enhancement products.

The total size of the Indian retail beauty and cosmetics market is currently estimated at $950 million. The overall beauty and wellness market, which includes beauty services, is $2.68 billion. The cosmetics market in India is growing at 15–20% annually, twice as fast as that of the United States and European market. Premium global brands are gaining sales as Indian consumers gain exposure to the global media and move from functional items to advanced and specialized cosmetic products. With the beauty service industry growing rapidly in India, the spa segment in India is also attracting a lot of attention. The spa industry over the last five years has shown tremendous growth, not only in the number of spas, but also in the diversity of spas and products available. The spa and body treatment segment is estimated to be approximately $772 million over the next five to eight years.

Now is the time for U.S. beauty and cosmetics firms to enter the Indian market. European competitors have already been very aggressive. U.S. products viewed as high quality but awareness levels are low for smaller U.S. brands. Even with a good growth rate, penetration of cosmetic and toiletries is very low in India. With a 15–20% growth rate in this sector, this translates into tremendous potential for U.S. companies.

Recruitment efforts for the trade mission will focus on the dynamic growth opportunity areas such as color cosmetics, fragrances (fragrance is the most popular import purchase), specialized skin care and hair care products, professional salon products, nail care products, and spa equipment and products.

Additionally, the trade mission will allow the participating U.S. companies to learn about potential regulatory changes that would require all foreign cosmetics companies to register their products before being allowed to sell (Note: Indian companies are already required to register; so far foreign companies have been exempted from this requirement). If this proposed change to the Indian Drugs and Cosmetics Act of 1940 passes, foreign companies importing products would receive certificates with three years' validity, whereas companies manufacturing in India would have certificates valid for five years. Moreover, the trade mission participants will learn about India's labeling requirements. While not especially onerous, the labeling requirements must be adhered to in order for U.S. companies to sell in India.

### Mission Goals

The goals of the Beauty and Cosmetics Trade Mission to India are to: (1) Introduce U.S. mission participants to the vibrant Indian market, especially in the three large metropolitan cities of Mumbai, New Delhi, and Bangalore, to assess business opportunities; (2) establish valuable contacts with prospective agents, distributors and retailers; and (3) meet with Government regulators to understand the policy and regulatory framework and to explain American industry experience and best practices.

### Mission Scenario

Participants will visit three of the India's key metropolitan centers. The mission will have access to major countrywide markets, as well as Indian government officials and U.S. Embassy staff for regulatory and business climate briefings.

*New Delhi*—the capital city of India where participants can meet with government officials to learn about policies and regulations, particularly current labeling requirements and potential registration issues, which would impact all U.S. beauty/cosmetics companies.

*Mumbai*—the business and financial capital of India were there will be meetings with appropriate customs and government officials, industry associations, networking reception and site visits.

*Bangalore*—a booming city with an organized retail market and the first destination of many global consumer brands, especially luxury labels.

*During the trade mission participants will receive:* (A) Briefings on beauty and cosmetic markets in India; (B) one-on-

one meetings tailored to each firm's interests; (C) introductions to potential agents/distributors, facility administrators, and purchasing managers through group events; (D) site visits if applicable; and (E) meetings with local business representatives and government officials, as appropriate.

PROPOSED TIME TABLE *

| Day of week | Date | Activity |
|---|---|---|
| Sunday | November 14, New Delhi | Arrive in New Delhi.<br>Informal no-host dinner and greeting by U.S. Commercial Service staff. |
| Monday | Nov. 15, New Delhi | Mission meetings officially start.<br>Morning—Embassy Briefing.<br>Afternoon—One-on-one meetings.<br>Networking reception hosted by the Minister Consular for Commercial Affairs. |
| Tuesday | Nov. 16, New Delhi/Mumbai | On regulations—Meetings with GOI/consultant.<br>One-on-one meetings.<br>Networking lunch.<br>Site visit to a Spa/Retail outlet.<br>Late evening depart for Mumbai. |
| Wednesday | Nov. 17, Mumbai | Breakfast briefing.<br>One-on-one meeting.<br>Network lunch hosted by Chamber of Commerce/Industry Association.<br>One-on-one meetings.<br>Networking reception hosted by the Consul General. |
| Thursday | Nov. 18, Mumbai/Bangalore | Mall/Retail tour/Trade fair visit.<br>Evening depart for Bangalore. |
| Friday | Nov. 19, Bangalore | One-on-one meetings followed by.<br>Networking lunch.<br>Afternoon—Site visit to a Mall/Retail Tour/Spa, or<br>U.S. Cosmetics Trade Day in association with a major local retailer (TBD).<br>Trade Mission Officially Ends. |

* **Note:** The final schedule and potential site visits will depend on the availability of local government and business officials, specific goals of mission participants, and air travel schedules.

**Participation Requirements**

All persons interested in participating in the beauty and cosmetics trade mission to India 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 10 and a maximum of 20 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in India as well as U.S. companies seeking to enter the region for the first time are encouraged to apply.

*Fees and Expenses*

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $4,600 for large firms and $3,900 for a small or medium-sized enterprise (SME),* which includes one principal representative. The fee for each additional firm representative (large firm or SME) is $750. Expenses for lodging, some meals, incidentals, and travel 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 U.S. 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*

Selection will be based on the following criteria:

- Consistency of the applicant's goals and objectives with the stated scope of the trade mission.
- The suitability of the company's products or services to the Indian cosmetics and beauty market.
- Applicant's potential for business in India, including likelihood of exports resulting from the mission.

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.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 India will work in conjunction with the U.S. Export Assistance Centers, 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 Friday September 10, 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 September 10, 2010. Applications received after the deadline will be considered only if space and scheduling constraints permit.

**Contacts**

*U.S.—Ontario, CA U.S. Export Assistance Center:*

Tony Michalski, Senior International Trade Specialist, Ontario, CA, Phone: 909–466–4137, E-mail: *tony.michalski@mail.doc.gov*.

*U.S. Commercial Service in India:*

Aliasgar.Motiwala, Commercial Specialist, Mumbai, Tel: (91–22) 2265 2511, E-mail: *Aliasgar.Motiwala@mail.doc.gov*.

Manjushree Phookan, Commercial Specialist, Bangalore, Tel: (91–80) 2220 6404, E-Mail: *Manjushree.Phookan@mail.doc.gov*.

Srimoti Mukherji, Commercial Specialist, New Delhi, Tel: (91–11) 2347 2226, E-Mail: *Srimoti.Mukherji@mail.doc.gov*.

* 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/contracting opportunities/sizestandardstopics/ index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/ march2008/initiatives.html*).

**Lisa Huot,**

*Global Trade Programs, Commercial Service Trade Missions Program.*

[FR Doc. 2010–9534 Filed 4–23–10; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Business Development Trade Mission to Baghdad, Iraq

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**Mission Description**

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (US&FCS) is organizing a trade mission to Baghdad, Iraq. This mission is scheduled for October 2010* and has been created to assist U.S. firms find business partners and sell equipment and services in the promising Iraqi market. This mission will be led by a Senior Commerce Department official*. Nearly two thirds of Iraq's 112 billion dollar economy relies on our target export industries such as petrochemical technology and machinery. Therefore, our targeted sectors include, but are not limited to: oil and gas (including oil field and upstream equipment, technology, and services); construction (including engineering, architecture, transportation, and infrastructure); and information and communications technology. The mission's goal is to provide U.S. participants with first-hand market information, access to government decision makers as appropriate from the Government of Iraq (GOI), as well as one-on-one meetings with business contacts, including potential agents, distributors, and partners, to position themselves to enter or expand their presence in these sectors.

**Commercial Setting**

The unprecedented interest of the United States-Iraq Business and Investment Conference (USIBIC) and the successful talks from the United States-Iraq Business Dialogue (USIBD), both held in mid-October 2009, have opened a unique economic and investment window of opportunity in the region. The mission will also follow Iraq's successful national elections, held on March 7, 2010.

Iraq continues to improve its security and to build an environment that is more conducive to trade and economic development. In November 2009, the Iraq Parliament passed an amendment to Investment Law No. 13 that would allow foreigners to own land for housing projects. It is designed to help streamline regulations and applications for foreign business and investment. Iraq's government has budgeted over $80 billion for infrastructure development, focusing on a number of large projects relating to construction, highways, railways, telecommunications, and security and defense.

Baghdad is the capital of Iraq. With a municipal population of 6.5 million (out of 29 million total in Iraq), it is the largest city in Iraq and the second largest in the region. Iraq's gross domestic product (GDP) grew from $57 billion in 2006 to $112 billion in 2009. GDP per capita has surpassed $3,000 and is forecast to exceed $4,500 by 2014. The U.S. is Iraq's 3rd largest trading partner, directly behind Syria and Turkey.

Iraq has a business culture in which deals are made on the strength of personal contacts. This trade mission offers U.S. company representatives an excellent introduction to a broad range of Iraq officials as well as an opportunity to begin identifying appropriate business partners.

**Mission Goals**

The goal of the trade mission is to provide U.S. participants with first-hand market information, access to government decision makers as appropriate and one-on-one meetings with business contacts, including potential agents, distributors, and partners, so that they can position themselves to enter or expand their presence in Iraq. Thus, the mission will:

- Improve U.S. industries' understanding of commercial opportunities in Iraq.
- Facilitate business meetings between U.S. and Iraqi businesses to expand U.S. exports to Iraq and U.S. commercial opportunities in Iraq.
- Introduce U.S. industry to the Baghdad business community and government leaders.

**Mission Scenario**

The Trade mission will take place in Baghdad, Iraq. Participants will meet with new business contacts, learn about the market by participating in Embassy briefings, and explore additional opportunities at networking receptions. Activities will include one-on-one meetings with pre-screened business prospects in both countries. (Note that the regular workweek in Iraq is Sunday through Thursday.)

**Proposed Mission Timetable***

Day 1—Participants arrive in pre-arranged departure city and assemble on the preferred flight.

Day 2—Security Briefing.
Market Briefing.
One-on-One Business Appointments.
Hosted Dinner.

Day 3—Market Briefing.
Industry Sector Briefing.
Meetings with Government and Industry Officials.
One-on-One Business Appointments.
Hosted Dinner.

Day 4—Meetings with Government and Industry Officials.
Depart for the United States.

**Participation Requirements**

This trade mission is designed for a minimum of 15 and a maximum of 20 qualified companies. All parties interested in participating in the trade mission to Baghdad, Iraq, must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and to

best satisfy the selection criteria as outlined below. U.S. companies already doing business in the target sectors as well as U.S. companies seeking to enter these markets for the first time are encouraged to apply.

*Fees and Expenses*

After a company has been selected to participate in the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee will be $5,200 for a single participant for a small- or medium-sized enterprise (SME)* and $6,000 for a single participant for a large firm. Participants per company will be limited, due to space constraints. The additional participant fee will be $3,600 per individual, (this includes the individual person's security fee of $3,000). Applicants are encouraged to provide justification for each additional applicant in their application documents. Interpretation services for official activities are included in the fee. Expenses for travel, lodging, some meals, and incidentals will be the responsibility of each mission participant. Delegation members will be able to take advantage of Embassy-negotiated rates for hotel rooms.

*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 U.S. 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 application.
- 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 fifty-one percent U.S. content.

**Selection Criteria for Participation**

Selection will be based on the following criteria:

- Suitability of the company's products or services to Iraq's market.
- Applicant's potential for business in Iraq, including likelihood of exports resulting from the mission.
- Consistency of the applicant's goals and objectives with the stated scope of the mission.

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 will not be considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including posting on the U.S. Department of Commerce trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet Web sites, publication in domestic trade publications and association newsletters, direct outreach to the Department's clients and distribution lists, posting in the **Federal Register**, and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than July 19, 2010, by the close of business. Applications received after July 19, 2010, will be considered only if space and scheduling constraints permit.

**Disclaimer, Security, and Transportation**

Trade mission members participate in the trade mission and undertake related travel at their own risk and are advised to obtain insurance accordingly. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. Companies should consult the State Department's travel warning for Iraq: *http://travel.state.gov/travel/cis_pa_tw/tw/tw_921.html.*

The U.S. Government does not make any representations or guarantees as to the commercial success of businesses which participate in this trade mission. ITA will coordinate with the U.S. Embassy in Baghdad to arrange for transportation of the mission participants to and from the airport and hotel. The hotel that will be the primary venue for the mission has strong security measures in place. Security will be furnished by the U.S. Embassy in Baghdad and private hotel security. The U.S. Government does not make any representations or guarantees as to the commercial success of businesses which participate in this trade mission.

**FOR MORE INFORMATION AND AN APPLICATION PACKET CONTACT:**

*U.S. Commercial Service Domestic Contacts:*

Jessica Arnold, International Trade Specialist, U.S. Commercial Service, Washington, DC, Tel.: 202–482–2026, *Iraqmission2010@trade.gov.*

Joshua Leibowitz, International Trade Specialist, U.S. Commercial Service, Washington, DC, Tel.: 202–482–4437, *Iraqmission2010@trade.gov.*

*U.S. Commercial Service Iraq Contact:*

Brian McCleary, Senior Commercial Officer, U.S. Commercial Service, Baghdad, *Brian.mccleary@mail.doc.gov.*

**Jessica Arnold,**

*Global Trade Programs, Commercial Service Trade Missions Program.*

[FR Doc. 2010–9590 Filed 4–23–10; 8:45 am]

BILLING CODE 3510–FP–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Energy and Infrastructure Mission to Saudi Arabia

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**Mission Description**

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing an energy and infrastructure trade mission to the Kingdom of Saudi Arabia, December 6–8, 2010. Led by a senior Department of Commerce official, the mission to Saudi Arabia is intended to include representatives from a variety of U.S. energy and infrastructure industry suppliers and service providers. The mission will introduce mission participants to end-users and prospective partners whose needs and capabilities are targeted to the respective U.S. participant's strengths. Participating in an official U.S. industry delegation, rather than traveling to Saudi Arabia independently, will enhance the companies' ability to secure meetings in Saudi Arabia, especially in light of discussions on this topic between the Government of Saudi Arabia and the U.S. Ambassador to Saudi Arabia. The mission will include appointments, briefings and receptions

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as small business under SBA regulations (*see http://www.sba.gov/services/contracting opportunities/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 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

in Riyadh and Dhahran, Saudi Arabia's primary energy and infrastructure industry hubs. Trade mission participants will have the opportunity to interact with Commercial Service (CS) specialists covering the energy and infrastructure industries to discuss industry developments, opportunities, and sales strategies.

**Commercial Setting**

The Saudi Arabian energy and infrastructure sectors rank among the world's most dynamic. Government contracts worth approximately $140 billion have been awarded so far this year, of which around $110 billion were for non-oil projects. U.S. goods exports to Saudi Arabia in 2008 were $12.5 billion, up 20 percent from the previous year.

**The Oil and Gas Sector**

Being the largest producer and exporter of crude oil, Saudi Aramco, the national oil company, is augmenting capacity to maintain a surplus production of 1.5–2.0 million barrels per day. The company is also expanding its Master Gas System, building an NGL recovery plant, a new grass-roots gas plant, and enhancing capacity at an existing plant. While the global recession that began in 2008 has presented new economic challenges, Saudi Arabia is pushing forward with many of its development projects in the oil and gas sector. In March 2009, the Saudi Arabian Ministry of Petroleum and Mineral Resources announced plans to spend approximately $60 billion on upstream and downstream operations through 2014. The budget includes allocations for 144 projects, including 17 mega-projects (those valued at more than $1 billion), 30 large projects, 17 medium-sized projects, and 80 small schemes.

**Petrochemicals**

Industry sources believe that more than $70 billion in petrochemical projects are under development and Saudi Arabia Basic Industries Corporation has $48 billion projects planned for 2011–2020. The development of downstream, value added industry is a cornerstone of the government's efforts to diversify the economy away from oil and gas. The Saudi Government aims at consolidating the country's position as the leading bulk petrochemicals commodities producer of the 21st century; as such, a new wave of specialty petrochemical products is being developed, including polycarbonates, phenols, engineering plastics and thermoplastic olefins. Recent projects to produce specialty chemicals include the Saudi Kayan Petrochemical Company complex, which will produce the region's first polycarbonates and phenols; the mega Ras Tanura refinery upgrade and integrated petrochemicals complex, which will produce more than 300 different products, and the third-phase Saudi International Petrochemical Company (Sipchem) complex, which will produce synthetic fibers. The planned expansion at Jubail Industrial City II with around 20 petrochemical and infrastructure projects worth more than $21.6 billion dollars will also bring various opportunities for U.S. petrochemical and engineering companies, as well as to American U.S. manufacturers/suppliers of equipment, parts, supplies, and services related to the petrochemical industry.

**Construction**

At a time when some Middle Eastern countries are facing financial difficulties, Saudi Arabia's star is clearly rising. With tens of billions of dollars of projects awarded, the Saudi construction sector is rolling forward. Saudi Arabia's ambitious rail plans are fueling activity in the infrastructure sector, with $30 billion worth of contracts under way or at the bidding stage. Likewise, the Saudi real estate market is set to grow significantly over the next four years. Saudi Arabia has the largest real estate market in the Gulf Cooperation Council (GCC), with more commercial (office, retail and residential) floor space than all of the other GCC countries combined. This impressive growth is being driven by a combination of a large and growing economy and strong demographic fundamentals. Among Saudi Arabia's super-projects are as many as six "economic cities," to be completed by the year 2020 at an initial cost of US$ 87.8 billion, as part of a public-private partnership strategy led by the Saudi Arabian General Investment Authority (SAGIA). The "cities" are expected to contribute $150 billion to GDP, and to collectively create over 1.5 million jobs by 2020, as well as living space for more than 2.5 million residents. Around $6 billion is being poured into Saudi Arabia's housing sector, to accommodate the population increase. Roughly $2 billion is being spent on schools and universities.

Billions more are going toward ultra-modern mega-commerce and tourism projects, and the country's strongly-competitive industrial sector. Hundreds of new factories are to be constructed. All of this fast-paced construction sector activity is creating a wealth of investment opportunity for American architecture, engineering, design and construction firms.

Saudi Arabia's transport sector—including road infrastructure, airports and seaports—is also part of an ambitious investor-friendly expansion plan. Not surprisingly, these forward-looking plans are fuelling strong demand for a broad variety of cutting-edge construction materials and products from leading international suppliers.

**Mission Goals**

The short term goals of the energy and infrastructure trade mission to Saudi Arabia are to (1) introduce U.S. companies to potential joint-venture partners and other industry representatives, and (2) introduce U.S. companies to industry and government officials in Saudi Arabia to learn about various program opportunities in those industries.

**Mission Scenario**

In Riyadh, the U.S. mission members will be presented with a briefing by the U.S. Embassy's Counselor for Commercial Affairs, the Senior Commercial Specialist for the energy and infrastructure sectors and other key U.S. Government and corporate officials. Participants will also take part in business matchmaking appointments with Saudi private-sector organizations. In addition, they will attend a networking event with multipliers. In Dhahran, participants will receive a market briefing by the Senior Commercial Specialist for the energy and infrastructure sectors at the U.S. Consulate, and they will participate in one-on-one business matchmaking appointments, and networking activities. Energy participants will also receive a briefing on market opportunities by Saudi Aramco, the world's largest oil corporation.

Matchmaking efforts will involve multipliers such as Council of Saudi Chambers. U.S. participants will be counseled before and after the mission by domestic mission coordinator. Participation in the mission will include the following:

- Pre-travel briefings/webinar on subjects ranging from business practices in Saudi Arabia to security;
- Pre-scheduled meetings with potential partners, distributors, end users, or local industry contacts in Riyadh and Dhahran;
- Transportation to airports in Riyadh and Dhahran;
- Meetings with Saudi Government officials;
- Participation in industry receptions in Riyadh and Dhahran;

• Meetings with CS Saudi Arabia's energy and infrastructure industry specialists in Riyadh and Dhahran; and

• Networking receptions in two cities of the trade mission.

**Proposed Mission Timetable**

Mission participants will be encouraged to arrive December 5, 2010 and the mission program will proceed from December 6 through December 8, 2010.

| | |
|---|---|
| December 6 | Riyadh<br>Market briefings by U.S. Embassy Riyadh officials.<br>One-on-one business matchmaking appointments.<br>Networking reception. |
| December 7 | Dhahran<br>Travel to Dhahran.<br>Market briefing by U.S. Consulate Dhahran officials.<br>Networking reception. |
| December 8 | Dhahran<br>Meeting at Saudi Aramco.<br>One-on-one business matchmaking appointments. |

**Participation Requirements**

All parties interested in participating in the Energy and Infrastructure Trade Mission to Saudi Arabia must complete and submit an application 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 10 and a maximum of 15 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Saudi Arabia as well as U.S. companies seeking to enter the market for the first time are encouraged to apply.

**Fees and Expenses**

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $3,680 for large firms and $2,925 for a small or medium-sized enterprise (SME) [1] or small organization, which will cover one representative. The fee for each additional firm representative (large firm or SME) is $500. Expenses for travel, lodging, 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 U.S. 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 fifty-one percent U.S. content.

**Selection Criteria for Participation**

Selection will be based on the following criteria:

• Suitability of a company's products or services to the mission's goals.

• Applicant's potential for business in Saudi Arabia, including likelihood of exports resulting from the trade mission.

• Consistency of the applicant's goals and objectives with the stated scope of the trade mission (as an example—be in the energy and/or infrastructure sectors indicated in the mission description).

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.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.

Recruitment for the mission will begin immediately and conclude no later than September 15, 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 September 15, 2010.

Applications received after that date will be considered only if space and scheduling constraints permit.

**Contacts**

*U.S. Commercial Service Domestic Contact*

Sean Timmins, 202–482–1841, *Sean.Timmins@trade.gov*.

*U.S. Commercial Service Saudi Arabia Contacts*

Mr. Habeeb Saeed, U.S. Commercial Service Riyadh, *Tel:* 966–1–488–3800, *Habeeb.Saeed@mail.doc.gov*.

Mr. Ishtiaq Hussain, U.S. Commercial Service Dhahran, *Tel:* 966–3–330–3200, *Ishtiaq.Hussain@mail.doc.gov*.

**Sean Timmins,**

*Global Trade Programs, Commercial Service Trade Missions Program.*

[FR Doc. 2010–9597 Filed 4–23–10; 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/contracting opportunities/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

### National Oceanic and Atmospheric Administration

**RIN 0648–XW07**

### Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska; King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands; Scallop and Salmon Fisheries Off the Coast of Alaska

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

**ACTION:** Notification of a call for proposals for Habitat Areas of Particular Concern (HAPCs) and associated fishery management measures.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and NMFS are soliciting proposals for candidate sites that could be identified as HAPCs and managed within Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council has identified skate nurseries as a priority for consideration during this call for proposals, and proposals must meet the identified priority.

**DATES:** Proposals must be submitted by August 16, 2010.

**ADDRESSES:** Proposals should be submitted to the North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Diana Evans or Sarah Melton, (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** HAPC designations provide an opportunity for Councils to highlight especially valuable and/or vulnerable areas within EFH that warrant priority consideration for conservation and management. The regulatory guidelines for implementing the EFH provisions of the Magnuson-Stevens Act encourage Fishery Management Councils to identify specific types or areas of habitat within EFH as HAPCs based on the following considerations: (1) the importance of the ecological function provided by the habitat, (2) the extent to which the habitat is sensitive to human-induced environmental degradation, (3) whether, and to what extent, development activities are, or will be, stressing the habitat type, and (4) the rarity of the habitat type (50 CFR 600.815(a)(8)). In the North Pacific, specific sites will be considered for HAPC if they (a) meet the rarity consideration above, and (b) meet at least one other of the HAPC considerations.

The Council and NMFS are soliciting proposals for specific candidate sites to be considered as HAPCs. Proposals must meet the Council's identified priority for this proposal cycle, which is skate nurseries. Proposal applications are available on the Council website, *www.alaskafisheries.noaa.gov/npfmc*. The review process for proposals is identified in the proposal package, available on the website, and will involve screening to determine how responsive proposals are to the Council's priority and HAPC consideration. Following review, the Council will decide whether to proceed with a fishery management plan amendment to identify HAPCs and any associated management measures. NMFS will promulgate any resulting regulations, supported by appropriate analyses.

Proposals should include the following information:

1. Proposer information (name, address, affiliation)
2. Title of proposal
3. Summary of proposal (single, brief paragraph describing the proposed action)
4. Identification of what habitat and FMP species the proposed area is intended to protect
5. Geographic delineation of the proposed HAPC (including latitude and longitude reference points and delineation on an appropriately-scaled NOAA chart)
6. Responsiveness to HAPC considerations and Council priorities (identify how the proposed HAPC addresses the four considerations set out in the EFH guidelines, and the Council's priority habitat type for the 2010 proposal process)
7. Purpose and need for proposal
8. Specific objectives for proposal, and methods to measure progress toward those objectives
9. Proposed management measures, if appropriate, to meet objectives
10. Expected benefits of the proposed HAPC to FMP species
11. Identification of fisheries, sectors, stakeholders, and communities who would be affected by the establishment of the proposed HAPC
12. Supporting information (please provide the best available information and/or sources of information to support the objectives of the proposed HAPC and discussion of the expected effects of implementing the proposal, including socioeconomic costs if possible.)

Dated: April 21, 2010.

**Tracey Thompson,**

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

[FR Doc. 2010–9569 Filed 4–23–10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XV94**

### Endangered Species; File No. 14604

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Harold Brundage, Environmental Research and Consulting, Inc, 126 Bancroft Road, Kennett Square, PA 19348, has been issued a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and
- Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Kate Swails, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** On November 19, 2009, notice was published in the **Federal Register** (74 FR 59961) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant is authorized to conduct a five-year scientific study of shortnose sturgeon in the Delaware River where primary study objectives are to characterize habitat use, relative abundance, reproduction, juvenile recruitment, temporal and spatial distributions, and reproductive health of the shortnose sturgeon population in the Delaware River and Estuary. The permit authorizes non-lethal sampling methods on up to 1,000 adult and juvenile shortnose sturgeon annually. Research activities will include: capturing via gill net, trammel net, and trawl net; measuring and weighing; tagging with external identifier PIT and Floy T-bar tags; and sampling tissue for genetic analysis. A subset of 30 adults and 30 juveniles per year will be tagged with acoustic transmitters and tracked. Another subset of 24 adults will be annually examined internally using laparoscopic techniques, with each potentially having gonad biopsy and blood samples taken for analyses. Another subset of 20 adults per year will be included in hydroacoustic gear testing. Additionally, lethal takes of up to 300 eggs or larvae each year will be collected during seasonal spawning activity with gear such as artificial substrate, D-frame ichthyoplankton net, and/or epibenthic sled. Finally, up to one unintentional mortality or serious injury is permitted annually, with no more than three mortalities over the five year permit. Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 20, 2010.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010–9620 Filed 4–23–10; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Online Safety and Technology Working Group Meeting

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the Online Safety and Technology Working Group (OSTWG).

**DATES:** The meeting will be held on May 19, 2010, from 1:30 p.m. to 5 p.m., Eastern Daylight Time.

**ADDRESSES:** The meeting will be held at the United States Department of Commerce, 1401 Constitution Ave., NW., Room 4830, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Joe Gattuso at (202) 482–0977 or *jgattuso@ntia.doc.gov;* and/or visit NTIA's Web site at *http://www.ntia.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The National Telecommunications and Information Administration (NTIA) established the OSTWG pursuant to Section 214 of the Protecting Children in the 21st Century Act (Act). The OSTWG is composed of representatives of relevant sectors of the business community, public interest groups, and other appropriate groups and Federal agencies. The members were selected for their expertise and experience in online safety issues, as well as their ability to represent the views of the various industry stakeholders.

According to the Act, the OSTWG is tasked with evaluating industry efforts to promote a safe online environment for children. The Act requires the OSTWG to report its findings and recommendations to the Assistant Secretary for Communications and Information and to Congress within one (1) year after its first meeting.

*Matters to Be Considered:* The OSTWG will review proposed recommendations to be included in its report and the status of the drafting of that report.

*Time and Date:* The meeting will be held on May 19, 2010, from 1:30 p.m. to 5 p.m., Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting may be webcast. Please refer to NTIA's Web site, *http://www.ntia.doc.gov/ostwg,* for the most up-to-date meeting agenda and webcast information.

*Place:* The meeting will be held at the United States Department of Commerce, 1401 Constitution Ave., NW., Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. Attendees should bring a photo ID and arrive early to clear security. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso at (202) 482–0977 or *jgattuso@ntia.doc.gov,* at least five (5) business days before the meeting.

Dated: April 21, 2010.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2010–9563 Filed 4–23–10; 8:45 am]

**BILLING CODE 3510–60–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Commerce Spectrum Management Advisory Committee Meeting

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management matters.

**DATES:** The meeting will be held on May 19, 2010, from 9:30 a.m. to 1 p.m., Eastern Daylight Time.

**ADDRESSES:** The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue, NW., Room 4725, Washington, DC 20230 or e-mailed to *spectrumadvisory@ntia.doc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joe Gattuso, Designated Federal Officer, at (202) 482–0977 or *jgattuso@ntia.doc.gov;* and/or visit NTIA's Web site at *www.ntia.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management to enable the introduction of new spectrum-dependent technologies and services, including long-range spectrum planning and policy reforms for expediting the American public's access to broadband services, public safety, and digital television. This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Organization Act, 47 U.S.C. 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee, visit: *http://www.ntia.doc.gov/advisory/spectrum.*

*Matters to be Considered:* The Committee will consider draft reports from one or more of its subcommittees and will review work plans of two new subcommittees. NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. There also will be an opportunity for public comment at the meeting.

*Time and Date:* The meeting will be held on May 19, 2010, from 9:30 a.m. to 1 p.m. Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting may be webcast. Please refer to NTIA's Web site, *http://www.ntia.doc.gov,* for the most up-to-date meeting agenda.

*Place:* The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Gattuso, at (202) 482–0977 or *jgattuso@ntia.doc.gov,* at least five (5) business days before the meeting.

*Status:* Interested parties are invited to attend and to submit written comments with the Committee at any

time before or after a meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should send them to the above-listed address and must be received by close of business on May 14, 2010, to provide sufficient time for review. Comments received after May 14, 2010, will be distributed to the Committee but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@ntia.doc.gov.* Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

*Records:* NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's office at the address above. Documents including the Committee's charter, membership list, agendas, minutes, and any reports are available on NTIA's Committee Web page at *http://www.ntia.doc.gov/advisory/spectrum.*

Dated: April 21, 2010.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2010–9561 Filed 4–23–10; 8:45 am]

BILLING CODE 3560–60–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 Pilot for Volunteer Management ROI Measurement System, 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, Margie Legowski at (202) 606–6910. 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 November 23, 2009. This comment period ended January 22, 2010. We received one public comment, asking for a draft version of the data collection instrument and background material about the project. These were sent to the requestor on November 23, 2009.

*Description:* The Corporation is seeking approval of a pilot version of a tool designed to measure the return on investment for recruiting and managing community volunteers. The Corporation has entered into a cooperative agreement with the National Council on Aging (NCOA) to adapt its SMART (Strategic Metrics and Results Tracking) system for use by Corporation grantees and subgrantees. The goal is to develop and pilot a system that all Corporation projects can use to calculate the return on investment for the time and resources they devote to recruiting and managing volunteers.

*Type of Review:* New.

*Agency:* Corporation for National and Community Service.

*Title:* Pilot for Volunteer Management ROI Measurement System.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Selected recipients of CNCS program grants and subgrants.

*Total Respondents:* 50.

*Frequency:* Twice annually.

*Average Time per Response:* 4 hours.

*Estimated Total Burden Hours:* 400 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Dated: April 21, 2010.

**Susan Schechter,**

*Associate Director, Office of Leadership Development and Training.*

[FR Doc. 2010–9643 Filed 4–23–10; 8:45 am]

BILLING CODE 6050–$$–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Renewal of Department of Defense Federal Advisory Committee; Missouri River (North Dakota) Task Force

**AGENCY:** Department of Defense (DoD).

**ACTION:** Renewal of Federal advisory committee.

**SUMMARY:** Under the provisions of section 705(a) of title VII, the Missouri River Protection and Improvement Act of 2000, Public Law 106–541, 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, as amended), and 41 CFR 102–3.50, the Department of Defense gives notice that it is renewing the charter for the Missouri River (North Dakota) Task Force (hereafter referred to as the Task Force).

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

**SUPPLEMENTARY INFORMATION:** The Task Force is a non-discretionary Federal advisory committee and shall provide independent advice and recommendations to the Secretary of the Army on plans and projects to reduce siltation of the Missouri River in the State of North Dakota and to meet the

objectives of the Pick-Sloan Program. Specifically, the Task Force shall:

a. Prepare and approve, by a majority of the members, a plan for the use of the funds made available under Public Law 106–541 to promote conservation practices in the Missouri River watershed, control and remove the sediment from the Missouri River, protect recreation on the Missouri River from sedimentation, and protect Indian and non-Indian historical and cultural sites along the Missouri River from erosion;

b. Develop and recommend to the Secretary of the Army for implementation critical restoration projects meeting the goals of the plan; and

c. Determine if these projects primarily benefit the Federal Government.

The Secretary of the Army may act upon the Task Force's advice and recommendations.

As prescribed by Public Law 106–541, the Task Force shall be composed of not more than twenty members. Specifically, the Task Force membership shall be composed of:

a. Secretary of the Army or designee, who shall serve as Chairperson;

b. Secretary of Agriculture or designee;

c. Secretary of Energy or designee;

d. Secretary of the Interior or designee; and

e. The Trust. The Trust is composed of sixteen members to be appointed by the Secretary of the Army, including;

i. Twelve members recommended by the Governor or North Dakota that represent equally the various interest of the public. Included in these twelve members, there shall be recommendations of representatives of the North Dakota Department of Health, the North Dakota Parks and Recreation Department, the North Dakota Department of Game and Fish, the North Dakota State Water Commission, the North Dakota Indian Affairs Commission, agricultural groups, environmental or conservations groups, the hydroelectric power industry, recreations user groups, local governments, and other appropriate interests.

ii. The Trust also shall include one member recommended by each of the four Indian Tribes in the State of North Dakota.

These individuals recommended for The Trust shall be appointed by the Secretary of the Army as representative members of the Task Force.

All Task force members shall be appointed for two-year terms and generally will serve no more than four years total on the Task Force, or as determined by the Secretary of the Army or designee. In addition, all Task Force members shall, with the exception of travel and per diem for official travel, serve without compensation.

With DoD approval, the Task Force 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 Task Force, and shall report all their recommendations and advice to the Task Force for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Task Force; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Task Force members.

Subcommittee members, who are not Task Force members, shall be appointed in the same manner as the Task Force members.

The Task Force shall meet at the call of the Task Force's Designated Federal Officer, in consultation with the Chairperson. The estimated number of Task Force 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 Missouri River (North Dakota) Task Force mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Missouri River (North Dakota) Task Force.

All written statements shall be submitted to the Designated Federal Officer for the Missouri River (North Dakota) Task Force, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Missouri River (North Dakota) Task Force 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 Missouri River (North Dakota) Task Force. 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: April 20, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–9539 Filed 4–23–10; 8:45 am]

**BILLING CODE 5001–06–P**

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Renewal of Department of Defense Federal Advisory Committee; Advisory Council on Dependents' Education

**AGENCY:** Department of Defense (DoD).

**ACTION:** Renewal of Federal advisory committee.

**SUMMARY:** Under the provisions of 20 U.S.C. 929, 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, the Department of Defense gives notice that it is renewing the charter for the Advisory Council on Dependents' Education (hereafter referred to as the Council).

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Deputy Committee Management Officer for the Department of Defense, 703–601–6128.

**SUPPLEMENTARY INFORMATION:** The Council is a non-discretionary Federal advisory committee established to provide independent advice and recommendations on the Department of Defense (DoD) dependents' education system to the Director, Department of Defense Education Activity on the following:

a. General policies for operation of the DoD dependents' education system with respect to curriculum selection, administration and operation of the system;

b. Information from other Federal agencies concerned with primary and secondary education with respect to education programs and practices which such agencies have found to be effective and which should be considered for inclusion in the DoD dependents' education system;

c. The design of the study and the selection of the contractor referred to in 20 U.S.C. 930(a)(2); and

d. Other tasks as may be required by the Secretary of Defense.

The Director, Department of Defense Education Activity may act upon the Council's advice and recommendations.

The Council, pursuant to 20 U.S.C. 929(a), shall be comprised of no more than 16 members who have demonstrated an interest in the field of primary or secondary education and who shall include:

a. The Secretary of Defense and the Secretary of Education or their respective designees;

b. Twelve individuals appointed who shall be individuals who demonstrated an interest in the field of primary or secondary education and who shall include representatives of professional employee organizations, school administrators, and parents of students enrolled in the DoD dependents' education system, and one student enrolled in such system; and

c. A representative of the Secretary of Defense and of the Secretary of Education.

The twelve Council members appointed under the authority of 20 U.S.C. 929(a)(1)(B), shall be appointed jointly by the Secretary of Defense and the Secretary of Education, who must renew the appointments on an annual basis.

Members appointed to the Council from professional employee organizations, pursuant to 20 U.S.C. 929(a)(2), shall be individuals designated by those organizations. Individuals appointed pursuant to 20 U.S.C. 929(a)(2) shall serve a three-year term, and no individual appointed under 20 U.S.C. 929(a)(2) shall serve more than two full terms on the Council.

Council members who are not full-time or permanent part-time Federal officers or employees, shall be appointed by the Secretary of Defense as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees.

With the exception of those individuals appointed pursuant to 20 U.S.C. 929(a)(1) and (2), all Council member appointments shall be renewed on an annual basis by the Secretary of Defense.

Pursuant to 20 U.S.C. 929(d), members of the Council who are not full-time or permanent part-time employees of the Federal government shall, while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to compensation at the daily equivalent of the rate specified at the time of such service for level IV of the Executive Services under 5 U.S.C. 5315. All Council members, while on official travel, shall be entitled to compensation for travel and per diem.

The Secretary of Defense and the Secretary of Education or their designated representatives, shall serve as the Council's co-chairs.

The Director, Department of Defense Education Activity shall be the Executive Secretary to the Council, but shall not vote on matters before the Council.

With DoD approval, the Council 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 Council, and shall report all their recommendations and advice to the Council for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Council nor can they report directly to the Department of Defense or any Federal officers or employees who are not Council members.

Subcommittee members, who are not Council members, shall be appointed in the same manner as the Council members.

The Council shall meet at the call of the Council's Designated Federal Officer, in consultation with the Council's co-chairs. The estimated number of Council meetings is at least 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 Advisory Council on Dependents' Education membership about the Council's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Advisory Council on Dependents' Education.

All written statements shall be submitted to the Designated Federal Officer for the Advisory Council on Dependents' Education, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Advisory Council on Dependents' Education 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 Advisory Council on Dependents' Education. 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: April 20, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010–9540 Filed 4–23–10; 8:45 am]

BILLING CODE 5001–06–P

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Sunshine Act Notice

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public hearing and meeting described below. The Board will conduct a public hearing and meeting pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

**TIME AND DATE OF MEETING:** 9 a.m., May 12, 2010.

**PLACE:** Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*http://www.dnfsb.gov*).

**STATUS:** Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

**MATTERS TO BE CONSIDERED:** This is the second in a series of public meetings to examine the Department of Energy's (DOE) implementation of Recommendation 2004–1, *Oversight of Complex, High-Hazard Nuclear Operations.* The Board is reviewing DOE's and the National Nuclear Security Administration's (NNSA) current oversight and safety management of the contracts and contractors they rely upon to accomplish the mission assigned to DOE and NNSA under the Atomic Energy Act of 1954, as amended, at defense nuclear facilities. We will focus on what impact DOE's and NNSA's new initiatives, including changes to DOE directives, contractor oversight, and governance, may have upon assuring adequate protection of the health and safety of the public and workers at DOE's defense nuclear facilities. Over the next several months, we will conduct a series of public meetings to collect information needed to understand and address any health or safety concerns that may require Board Action.

In the May 12th meeting, the Board will explore in more depth federal safety management and oversight policies being developed by DOE and NNSA for defense nuclear facilities. DOE and NNSA senior leaders will articulate their views on the role of line and independent oversight to safely accomplish their work at defense nuclear facilities. The Board will examine DOE's and NNSA's new approach to federal oversight and its relationship to contractor assurance systems. The public hearing portion of this proceeding is authorized by 42 U.S.C. 2286b.

**CONTACT PERSON FOR MORE INFORMATION:** Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** Requests to speak at the hearing may be submitted in writing or by telephone. The Board asks that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on May 11, 2010, will be scheduled for time slots, beginning at approximately 12 p.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Public Hearing Room at the start of the 9 a.m. hearing and meeting. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Board's Washington, DC, office. The Board will hold the record open until June 12, 2010, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: April 22, 2010.

**Peter S. Winokur,**

*Chairman.*

[FR Doc. 2010–9720 Filed 4–22–10; 4:15 pm]

BILLING CODE 3670–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Training—National Clearinghouse of Rehabilitation Training Materials; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.275A.

*Dates:*

*Applications Available:* April 26, 2010.

*Deadline for Transmittal of Applications:* June 10, 2010.

*Deadline for Intergovernmental Review:* August 9, 2010.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The Rehabilitation Training program supports projects to ensure skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs, through supported employment programs, through independent living programs, and through client assistance programs. The program supports projects to maintain and upgrade basic skills and knowledge of personnel employed to provide state-of-the-art service delivery systems and rehabilitation technology services.

*Priority:* This priority is from the notice of final priorities for this program, published in the **Federal Register** on December 5, 1994 (59 FR 62502).

*Absolute 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 an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority. This priority is: *National Clearinghouse of Rehabilitation Materials.*

The project must—

(1) Demonstrate experience and capacity to provide for a national clearinghouse of rehabilitation training materials;

(2) Identify and gather rehabilitation information and training materials for use in preparing pre-service and in-service education and training for rehabilitation personnel;

(3) Disseminate, in a cost-effective manner, rehabilitation information and state-of-the-art training materials and methods to rehabilitation personnel to assist them in achieving improved outcomes in vocational rehabilitation, supported employment, and independent living; and

(4) Provide linkages and policies for the exchange of information and referral of inquiries with other existing clearinghouses and information centers supported by the U.S. Department of Education, including the Education Resources Information Center and the National Rehabilitation Information Center.

*Program Authority:* 29 U.S.C. 772.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 86. (b) The regulations for this program in 34 CFR part 385.

**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:* $300,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $300,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 36 months.

## III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training—National Clearinghouse of Rehabilitation Training Materials program (Section 302(a)(1) of the Rehabilitation Act of 1973, as amended).

**Note:** Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.275A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the equivalent of no more than 45 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, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 26, 2010.

Deadline for Transmittal of Applications: June 10, 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.

Deadline for Intergovernmental Review: August 9, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Short-Term Training program, CFDA number 84.275A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on

the application deadline date. E–Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of e-Application Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent 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: Theresa DeVaughn, U.S. Department of Education, 400 Maryland Avenue, SW., room 5045, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7321.

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 84.275A,
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 84.275A,
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 program are from 34 CFR 75.210 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 under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goals of the Rehabilitation Services Administration's (RSA) Rehabilitation Training—National Clearinghouse of Rehabilitation Training Materials projects are to:

(1) Identify and gather rehabilitation information and training materials for use in preparing pre-service and in-service education and training for rehabilitation personnel;

(2) Disseminate, in a cost-effective manner, rehabilitation information and state-of-the-art training materials and methods to rehabilitation personnel to assist them in achieving improved outcomes in vocational rehabilitation, supported employment, and independent living; and

(3) Provide linkages and policies for the exchange of information and referral of inquiries with other existing clearinghouses and information centers supported by the U.S. Department of Education, including the Education Resources Information Center and the National Rehabilitation Information Center.

In order to measure the success of the grantee in meeting this goal, the grantee is required to submit annual performance reports detailing its activities and providing quantitative and qualitative evidence that its performance met or exceeded the goals and objectives set forth in its application. The report must include, at a minimum, the following information:

(1) The number of requests for information received and fulfilled;

(2) The average time to respond to a request;

(3) The number of visits to the Clearinghouse Web site on a monthly and annual basis;

(4) The number of new publications, materials and other materials received and disseminated on an annual basis and who submitted the information;

(5) A quantitative analysis of any customer satisfaction survey findings including information derived from questions about product quality, relevance, and utility. A copy of the survey instrument must be approved by RSA prior to its use and must be used during each year of the grant.

## VII. Agency Contact

*For Further Information Contact:* Theresa DeVaughn, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., room 5045, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7321 or by e-mail: *Theresa.DeVaughn@ed.gov.*

If you use 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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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**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: April 21, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–9626 Filed 4–23–10; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Overview Information: State Vocational Rehabilitation Unit In-Service Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.265A and 84.265B.

*Dates: Applications Available:* April 26, 2010.

*Deadline for Transmittal of Applications:* June 25, 2010.

*Deadline for Intergovernmental Review:* August 24, 2010.

**I. Funding Opportunity Description**

*Purpose of Program:* This program is designed to support projects for training State vocational rehabilitation (VR) unit personnel in program areas essential to the effective management of the unit's program of VR services and in skill areas that will enable personnel to improve their ability to provide VR services leading to employment outcomes for individuals with disabilities. The State VR Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development (CSPD) of the State plan to address recruitment and retention of qualified rehabilitation professionals, to provide for succession planning, and to provide for leadership development and capacity building.

*Priorities:* In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 388.22). Under 34 CFR 388.21(b), the Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the selection criteria described in 34 CFR 388.20.

*Absolute Priorities:* For FY 2010 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) and 34 CFR 388.21(b), we consider for quality awards only applications that meet one or more of the following absolute priorities.

Priority 1—Development and Dissemination of Model In-Service Training Materials and Practices: The proposed project demonstrates an effective plan to develop and disseminate information on its State VR In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State VR units.

Priority 2—Distance Education: The proposed project demonstrates innovative strategies for training State VR unit personnel through accessible distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

Priority 3—Enhanced Employment Outcomes for Specific Populations: The proposed project supports specialized training in the provision of VR or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

*Program Authority:* 29 U.S.C. 721 and 772.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 388.

**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:* The total amount of funding available for these awards in FY 2010 is $5,664,900, including $4,531,920 for basic awards (CFDA Number 84.265A) and $1,132,980 for quality awards (CFDA Number 84.265B). Basic awards are calculated annually and distributed according to staffing levels of the State agencies obtained from data on the Annual Vocational Rehabilitation Program/Cost Report (RSA–2). The total amount of basic awards is not more than 80 percent of the total available for State VR Unit In-Service Training. The minimum level of a basic award is one-third of one percent of the funds available. For FY 2010 that amount is $18,883 (34 CFR 388.21(a)(3)). Applicants must apply for the basic award and for the quality award separately.

**Note:** (1) The actual funding amounts for basic awards will be calculated based on the FY 2009 RSA–2 data submitted by State VR Units. (2) The Department is not bound by any estimates in this notice.

*Estimated Range of Awards:* $18,883–$295,000 for basic awards and $15,000–$85,000 for quality awards.

*Estimated Average Size of Awards:* $70,811 for basic awards and $56,649 for quality awards.

*Estimated Number of Awards:* 80 basic awards and 20 quality awards.

*Project Period:* Up to 60 months.

The following chart lists, by State agency, the estimated available funds for basic awards based on the FY 2010 funding level and the RSA–2 data for the most recent reporting period (FY 2009).

| State | Estimated available funds for basic awards |
|---|---|
| Alabama | $94,020 |
| Alaska | 18,883 |
| American Samoa | 18,883 |
| Arizona | 76,780 |
| Arkansas (Blind) | 18,883 |
| Arkansas (General) | 80,690 |
| California | 287,571 |
| Colorado | 39,457 |
| Connecticut (Blind) | 18,883 |
| Connecticut (General) | 23,461 |
| Delaware (Blind) | 18,883 |
| Delaware (General) | 18,883 |
| District of Columbia | 19,551 |
| Florida (Blind) | 44,078 |
| Florida (General) | 153,383 |
| Georgia | 152,317 |
| Guam | 18,883 |
| Hawaii | 18,883 |
| Idaho (Blind) | 18,883 |
| Idaho (General) | 24,527 |
| Illinois | 96,331 |
| Indiana | 55,452 |
| Iowa (Blind) | 18,883 |
| Iowa (General) | 44,611 |
| Kansas | 34,480 |
| Kentucky (Blind) | 18,883 |
| Kentucky (General) | 71,271 |
| Louisiana | 61,673 |
| Maine (Blind) | 18,883 |
| Maine (General) | 19,551 |
| Maryland | 73,048 |
| Massachusetts (Blind) | 21,150 |
| Massachusetts (General) | 75,181 |
| Michigan (Blind) | 18,883 |
| Michigan (General) | 95,975 |
| Minnesota (Blind) | 18,883 |
| Minnesota (General) | 72,693 |
| Mississippi | 91,532 |
| Missouri (Blind) | 18,883 |
| Missouri (General) | 48,699 |
| Montana | 18,883 |
| Nebraska (Blind) | 18,883 |
| Nebraska (General) | 33,769 |
| Nevada | 19,551 |
| New Hampshire | 18,883 |
| New Jersey (Blind) | 18,883 |
| New Jersey (general) | 44,966 |
| New Mexico (Blind) | 18,883 |
| New Mexico (General) | 25,949 |
| New York (Blind) | 24,705 |
| New York (General) | 134,366 |
| North Carolina (Blind) | 32,170 |
| North Carolina (General) | 152,850 |
| North Dakota | 18,883 |
| Northern Mariana | 18,883 |
| Ohio | 106,106 |
| Oklahoma | 59,363 |
| Oregon (Blind) | 18,883 |
| Oregon (General) | 37,502 |
| Pennsylvania | 199,949 |
| Puerto Rico | 221,632 |
| Rhode Island | 18,883 |
| South Carolina (Blind) | 18,883 |
| South Carolina (General) | 191,951 |

| State | Estimated available funds for basic awards |
|---|---|
| South Dakota (Blind) | 18,883 |
| South Dakota (General) | 18,883 |
| Tennessee | 99,708 |
| Texas (Blind) | 88,511 |
| Texas (General) | 245,626 |
| Utah | 47,632 |
| Vermont (Blind) | 18,883 |
| Vermont (General) | 19,906 |
| Virgin Islands | 18,883 |
| Virginia (Blind) | 30,037 |
| Virginia (General) | 115,348 |
| Washington (Blind) | 18,883 |
| Washington (General) | 53,142 |
| West Virginia | 53,142 |
| Wisconsin | 51,187 |
| Wyoming | 18,883 |
| Total | $4,531,920 |

## III. Eligibility Information

1. *Eligible Applicants:* State agencies designated under a State plan for VR services under section 101(a) of the Rehabilitation Act of 1973, as amended (Act). Each designated State agency (DSA) is eligible to receive an award under the basic award program.

2. *Cost Sharing or Matching:* Grantees under the State VR Unit In-Service Training program must provide at least 10 percent of the total cost of the project (34 CFR 388.30(a)), except that under 34 CFR 388.30(b), grantees designated to receive a minimum share of one third of one percent of the sums made available for the fiscal year are required to provide at least four percent of the total costs of the project.

3. *Other:* Under the VR State Grants program, each State is required in its State plan to establish detailed procedures for a CSPD, including how the State will address the current and projected personnel training needs (34 CFR 361.18).

**Note:** Under 34 CFR 75.562(c)(1) and (4), an indirect cost reimbursement for grantees under this program is limited to the grantee's actual indirect costs, as determined by its negotiated indirect cost rate agreement.

## IV. Application and Submission Information

1. *Applications for Basic and Quality Awards:* You must apply for the basic award and for the quality award separately, *i.e.,* you need to complete and submit separate forms for each award, including the Application for Federal Education Assistance (SF 424), Budget Information—Non–Construction Program (ED 524), and all necessary assurances and certifications.

2. *Address to Request Application Package:*

ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: 84.265A for a basic award and 84.265B for a quality award.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 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, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section in Part III.

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

*Applications Available:* April 26, 2010.

*Deadline for Transmittal of Applications:* June 25, 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.

Deadline for Intergovernmental Review: August 24, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:*

Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under State Vocational Rehabilitation Unit In-Service Training—CFDA Number 84.265A for basic award and 84.265B for quality award 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.

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

**Please note the following:** (1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of e-Application Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *FOR FURTHER INFORMATION CONTACT* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system 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: Douglas Zhu, U.S. Department of Education, 400 Maryland Avenue, SW., room 5029, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Fax: (202) 245–6824.

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 any 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 84.265A or 84.265B), 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 84.265A or 84.265B), 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 the suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and 34 CFR 388.20. The selection criteria for this competition are in the application package.

2. *Review and Selection Process:* The procedures used for reviewing and selecting applications for an award are in 34 CFR 75.210 and 34 CFR 388.20. Additional factors we consider in selecting an application for an award include: (a) the geographical distribution of projects; and (b) the past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and attainment of established project objectives (34 CFR 385.33(a) and (b)).

## 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 specified by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 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. The primary objective of the State VR Unit In-Service Training program is to maintain and upgrade the knowledge and skills of personnel currently employed by State VR agencies. Grantees must provide training that responds to the needs identified in the CSPD as required by section 101(a)(7) of the Act.

In order to measure the success of the State VR Unit In-Service Training program grantees in meeting this objective, State VR agencies are required to submit performance data through the in-service annual performance report and their State plans. At a minimum, the annual performance report must include data on the percentage of currently employed State VR agency counselors who meet their States' CSPD standards.

## VII. Agency Contact

*For Further Information Contact:* Douglas Zhu, U.S. Department of Education, 400 Maryland Avenue, SW., room 5029, PCP, Washington, DC 20202–2800. Telephone: (202) 245–6037 or via Internet: *douglas.zhu@ed.gov.*

If you use a TDD, call the Federal Relay Services (FRS), toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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Dated: April 21, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–9644 Filed 4–23–10; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Investing in Innovation Fund

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.396A (Scale-up grants), 84.396B (Validation grants), and 84.396C (Development grants).

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2010; correction.

**SUMMARY:** On March 12, 2010, the Department of Education published in the **Federal Register** (75 FR 12072) a notice inviting applications for new awards for FY 2010 (NIA) for the Investing in Innovation Fund. This notice makes a correction to the March 12 NIA.

**FOR FURTHER INFORMATION CONTACT:** Margo Anderson. Telephone: (202) 453–7122; or by e-mail: *i3@ed.gov;* or by mail: (Attention: Investing in Innovation), U.S. Department of Education, 400 Maryland Avenue, SW., room 4W302, Washington, DC 20202.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact listed in this section.

**SUPPLEMENTARY INFORMATION:**

### Correction

On pages 12072 and 12078 of the March 12 NIA, we indicated that the Deadline for Transmittal of Applications was May 11, 2010; however, the correct deadline is May 12, 2010. To correct this error, the Department makes the following correction to the March 12 NIA:

On page 12072, first column, the Deadline for Transmittal of Applications is corrected to read "May 12, 2010".

On page 12078, third column, the Deadline for Transmittal of Applications is corrected to read "May 12, 2010".

**Program Authority:** Section 14007 of division A of the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5, as amended by section 307 of division D of the Consolidated Appropriations Act, 2010, Pub. L. 111–117.

### Electronic Access to This Document

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**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: April 21, 2010.

**James H. Shelton III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2010–9649 Filed 4–23–10; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Short-Term Training Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.246K.

*Dates:* Applications Available: April 26, 2010.

*Deadline for Transmittal of Applications:* June 10, 2010.

*Deadline for Intergovernmental Review:* August 9, 2010.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The Rehabilitation Short-Term Training program supports special seminars, institutes, workshops, and other short-term courses in technical matters relating to vocational, medical, social, and psychological rehabilitation programs; independent living service programs; and client assistance programs (CAPs).

*Priority:* This priority is from the notice of final priority for this program, published in the **Federal Register** on February 15, 2000 (65 FR 7678).

*Absolute Priority:* For FY 2010 and any subsequent year in which we make awards from the list of approved but unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*Client Assistance Program.*

A project must—

- Provide training to Client Assistance Program (CAP) personnel on an as-needed basis, including—

(1) Management training on skills needed for strategic and operational planning and direction of CAP services;

(2) Advocacy training on skills and knowledge needed by CAP staff to assist persons with disabilities to gain access to and use the services and benefits available under the Rehabilitation Act of 1973, as amended, with particular emphasis on new statutory and regulatory requirements;

(3) Systemic advocacy training on skills and knowledge needed by CAP staff to address programmatic issues of concern;

(4) Training and technical assistance on CAP best practices; and

(5) Training on skills and knowledge needed by CAP staff to perform additional responsibilities required by the Workforce Investment Act of 1998, as amended.

- Coordinate training efforts with other training supported by the Rehabilitation Services Administration (RSA), as well as with training supported by the Center for Mental Health Services and the Administration on Developmental Disabilities on common areas such as protection and advocacy, financial management, and trial advocacy.
- Include both national and regional training seminars in each project year.

*Program Authority:* 29 U.S.C. 772.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 390. (c) The notice of final priority for this program, published in the **Federal Register** on February 15, 2000 (65 FR 7678).

**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:* $200,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 1.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Short-Term Training program (34 CFR 390.40).

**Note:** Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

## IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Ed Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, (toll free): 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.246K.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the equivalent of no more than 45 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, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: April 26, 2010.

Deadline for Transmittal of Applications: June 10, 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.

Deadline for Intergovernmental Review: August 9, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Short-Term Training program, CFDA number 84.246K, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and

6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of e-Application Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system 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 prevent 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: Traci DiMartini, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7591.

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 84.246K), 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 84.246K) 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 program are from 34 CFR 75.210 and 34 CFR 390.30 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 under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the RSA Rehabilitation Short-Term Training program is to upgrade the skills of staff currently employed by CAPs, to educate CAP staff on new program developments, and to develop staff skills in strategic and operational planning and direction of CAP services. In order to measure the success of the grantee in meeting this goal, the CAP training grantee is required to conduct an evaluation of the training activities provided. In annual performance reports, the grantee is required to provide specific information on:

- The number of training activities;
- The topics of each training program;
- The number of participants served;
- The target groups represented by participants; and
- Summary data from participant evaluations.

In addition to the required quantitative data that must be collected and submitted each year, the grantee must also provide as part of the grantee's annual report to RSA a qualitative analysis of each year's training activities that assesses the activities in relation to the goal of enhancing the skills and knowledge of personnel currently employed by CAPs.

## VII. Agency Contact

*For Further Information Contact:* Traci DiMartini, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., Room 5027, PCP, Washington, DC 20202–2800. Telephone: (202) 245–6425 or by e-mail: *traci.dimartini@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1—800—877—8339.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**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: April 21, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–9646 Filed 4–23–10; 8:45 am]

BILLING CODE 4000–01–P

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## DEPARTMENT OF EDUCATION

## Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Capacity Building for Traditionally Underserved Populations—Rehabilitation Capacity Building; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

*Catalog of Federal Domestic Assistance (CFDA) Numbers:* 84.315C and 84.315D.

*Dates:*

*Applications Available:* April 26, 2010.

*Deadline for Transmittal of Applications:* June 10, 2010.

*Deadline for Intergovernmental Review:* August 9, 2010.

## I. Funding Opportunity Description

*Purpose of Program:* The Rehabilitation Capacity Building for Traditionally Underserved Populations program provides financial assistance for projects that provide training, research, technical assistance, or related activities to improve services provided under the Rehabilitation Act of 1973, as amended (Act), especially services provided to individuals from minority backgrounds. Section 21 of the Act underscores the importance of increasing the participation of minority entities, as defined under section 21(b)(5) of the Act, in activities funded under the Act and enhancing their capacity to carry out these activities (29 U.S.C. 718).

*Priorities:* These priorities are from the notice of final priorities for this program, published in the **Federal Register** on May 9, 2002 (67 FR 31700). For the purposes of these priorities, a "minority entity" includes a Hispanic-serving institution whose Hispanic student enrollment is 25 percent or more of the institution's student population.

*Absolute Priority:* For FY 2010 and any subsequent year in which we make awards from the list of approved but

unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

These priorities are:

*Priority 1—Establishing New Rehabilitation Training Programs (CFDA Number 84.315C)*

Projects funded must meet the requirements in section 21(b)(2)(B) of the Rehabilitation Act.

Projects must—

(1) Enhance and increase the capacity of minority institutions of higher education to prepare more individuals for careers in the public vocational rehabilitation (VR) program, including individuals from minority backgrounds;

(2) Be located at minority institutions of higher education, including community colleges whose minority student enrollment is at least 50 percent, that are interested in establishing new first-time rehabilitation training programs at the associate degree, undergraduate degree, and graduate degree levels;

(3) Include an evaluation component based upon clear, specific performance and outcome measures; and

(4) Report the results of the evaluation in its annual performance report.

*Priority 2—Capacity Building for Minority Entities (CFDA Number 84.315D)*

Projects funded must meet the requirements in section 21(b)(2)(C) of the Rehabilitation Act.

Projects must—

(1) Provide outreach, capacity building, and technical assistance to minority entities and Indian Tribes to promote their participation in activities funded under the Act, including assistance to carry out those activities;

(2) Provide a variety of training and technical assistance activities, including grant writing workshops that focus on Rehabilitation Services Administration (RSA) and National Institute on Disability and Rehabilitation Research (NIDRR) discretionary grant programs, the peer review process, selection criteria, training on disability legislation (*i.e.,* Americans with Disabilities Act, Rehabilitation Act of 1973, as amended, *etc.*), and technical assistance to minority entities that are first-time recipients of grants funded under the Act in order to increase their ability to carry out their grants;

(3) Include an evaluation component based upon clear, specific performance and outcome measures; and

(4) Report the results of the evaluation in its annual performance report.

**Program Authority:** 29 U.S.C. 718(b).

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 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:* $2,400,000.

*Estimated Range of Awards:* $150,000–$200,000 for 315C; $250,000–$300,000 for 315D.

*Estimated Average Size of Awards:* $240,000.

*Maximum Award:* We will reject any application that proposes a budget exceeding $200,000 for a single budget period of 12 months for 84.315C or exceeds $300,000 for a single budget period of 12 months for 84.315D. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards*

*Priority 1—CFDA Number 84.315C:* 5.

*Priority 2—CFDA Number 84.315D:* 5.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* For priority 1, minority entities as defined under section 21(b)(5) of the Act. Under the Act, the term minority entity means an entity that is a historically black college or university, a Hispanic-serving institution of higher education, an American Indian Tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

For priority 2, a State or a public or private nonprofit agency or organization, such as an institution of higher education or an Indian Tribe.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

**Note:** Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of this limit may not be charged directly, used to satisfy matching or cost sharing requirements, or charged to another Federal award.

## IV. Application and Submission Information

*1. Address To Request Application Package*

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.315C or D.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

*2. Content and Form of Application Submission Requirements Concerning the Content of an Application, Together With the Forms You Must Submit, Are in the Application Package for This Competition*

*Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to the equivalent of no more than 45 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, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier

New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

*3. Submission Dates and Times*

*Applications Available:* April 26, 2010.

*Deadline for Transmittal of Applications:* June 10, 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.

*Deadline for Intergovernmental Review:* August 9, 2010.

*4. Intergovernmental Review*

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

*5. Funding Restrictions*

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

*6. Other Submission Requirements*

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Rehabilitation Capacity Building for Traditionally Underserved Populations program, CFDA Number 84.315C and D must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

*Application Deadline Date Extension in Case of e-Application Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington,

DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5019, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7591.

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 84.315C or D), 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 84.315C or D), 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 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 under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 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. The purpose of the Rehabilitation Capacity Building for Traditionally Underserved Populations program is to enhance the capacity and increase the participation of minority institutions in programs that are funded under the Act, as well as to improve the delivery of VR services to people with disabilities, especially people with disabilities from minority backgrounds.

In order to measure the success of capacity building grantees in meeting this goal, each grantee is required to evaluate its activities based upon clear, specific performance and outcome measures and report the results of the evaluation in its annual performance report. At a minimum, the annual performance reports must include the following:

For priority 1, grantees must report on—(1) The number and type of new degree-granting programs established as a result of participation in this program and the number of students enrolled; (2) the number of undergraduate and graduate students who graduate from programs participating in this program and the number who go to work for the public VR program or related rehabilitation agencies; and (3) the number of institutions receiving Council on Rehabilitation Education (CORE) accreditation as a result of participation in this program.

For priority 2, grantees must report on—(1) The number of minority entities and Indian Tribes that have received training and technical assistance; (2) the number of applications submitted by first-time and repeat applicants to RSA and NIDRR for funding; (3) the number of applications by first-time and repeat applicants recommended for funding by RSA and NIDRR; (4) the number of applications by first-time and repeat applicants funded by RSA and NIDRR; and (5) the number of funded programs by first-time and repeat applicants that have been implemented and are operational.

**VII. Agency Contact**

*For Further Information Contact:* Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue SW., room 5019, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7300 or by e-mail: *ellen.chesley@ed.gov.*

If you use TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**VIII. Other Information**

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

**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: April 21, 2010.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2010–9635 Filed 4–23–10; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### National Assessment Governing Board; Meeting

**AGENCY:** Department of Education, National Assessment Governing Board.

**ACTION:** Notice of Open Meeting and Partially Closed Sessions.

**SUMMARY:** The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than April 30, 2010. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

**DATES:**

**May 13–15, 2010**

*Times:*

May 13: Committee Meetings:

Assessment Development Committee: Closed Session—9 a.m. to 3 p.m.

Executive Committee: Open Session—4:30 p.m. to 5:30 p.m.; Closed Session—5:30 p.m. to 6 p.m.

May 14:

Full Board: Open Session—8:15 a.m. to 9:45 a.m.; Closed Session—12:45 p.m. to 2:45 p.m.; Open Session—3 p.m. to 5 p.m.

Committee Meetings:

Assessment Development Committee: Open Session—9 a.m. to 11:30 a.m.; Closed Session—11:30 a.m. to 12:30 p.m.

Committee on Standards, Design and Methodology: Open Session—10 a.m. to 11:30 a.m.; Closed Session—11:30 a.m. to 12:20 p.m.

Reporting and Dissemination Committee: Open Session—10 a.m. to 12:30 p.m.

May 15:

Nominations Committee: Closed Session—7:45 a.m. to 8:15 a.m.

Full Board: Open Session—8:30 a.m. to 10:30 a.m.

*Location:* Pfister Hotel, 424 East Wisconsin Avenue, Milwaukee, WI 53201.

**FOR FURTHER INFORMATION CONTACT:** Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, Telephone: (202) 357–6938.

**SUPPLEMENTARY INFORMATION:** The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment specifications and frameworks, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On May 13, from 9 a.m. to 3 p.m., the Assessment Development Committee will meet in closed session to review NAEP mathematics items for grades 4 and 8 for the 2011 operational assessment and the 2013 pilot. The Board will be provided with embargoed test items that cannot be discussed in an

open meeting. Premature disclosure of data would significantly impede implementation of the NAEP assessments, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 13, from 4:30 p.m. to 5:30 p.m., the Executive Committee will meet in open session and thereafter in closed session from 5:30 p.m. to 6 p.m. During the closed session on May 13, the Executive Committee will receive a briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering assessment years beyond 2010–2011. The discussion of contract options and costs will address the Congressionally mandated goals and Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would significantly impede implementation of the NAEP contracts, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 14, the full Board will meet in open session from 8:15 a.m. to 9:45 a.m. The Board will review and approve the meeting agenda and meeting minutes from the March 2010 Board meeting. This session will be followed by welcome remarks from Milwaukee speakers. The Executive Director of the Governing Board will then provide a report to the Board, followed by updates to the Board from the Director of the Institute of Education Sciences and the Deputy Commissioner of the National Center for Education Statistics. These sessions will be followed by an update on Common Core Standards by the Executive Director of the Council of Chief State School Officers.

The Board will recess for Committee meetings on May 14 from 10 a.m. to 12:30 p.m. The Reporting and Dissemination Committee will meet in open session from 10 a.m. to 12:30 p.m. The Assessment Development Committee will meet in open session from 10 a.m. to 11:30 a.m. and thereafter in closed session from 11:30 a.m. to 12:30 p.m. During the closed session, the Committee will receive a briefing with embargoed data regarding student response rates and performance results for 12th grade NAEP mathematics items administered in 2009. The Committee will also get an update on scoring the 2010 pilot of the NAEP writing computer-based assessment. The Board will be provided with embargoed data that cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NAEP assessments, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The Committee on Standards, Design and Methodology (COSDAM) will meet in open session from 10 a.m. to 11:30 a.m., followed by a closed session from 11:30 a.m. to 12:20 p.m. During the closed session, Board members will review and discuss data on science achievement levels and external validity data collected for evaluating the achievement levels. COSDAM is scheduled to take action for setting the 2009 Science NAEP achievement levels for grades 4, 8, and 12 at the May 2010 meeting. The data provided for evaluation of the cut scores at the May 2010 COSDAM meeting must be discussed in closed session because the cut scores and performance relative to the cut scores are embargoed until the release of the Nation's Report Card. The secure data on achievement levels cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NAEP assessment, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Following the Committee meetings, on May 14, from 12:45 p.m. to 1:45 p.m. the full Board will meet in closed session to receive a briefing on the 2009 National Assessment of Educational Progress (NAEP) Trial Urban District Assessments Reading Report Card. The Board will be provided with embargoed results that cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NAEP assessment, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

Following this session, the full Board will continue to meet in closed session from 1:45 p.m. to 2:45 p.m. to discuss the science achievement levels. The Governing Board is scheduled to take action for setting the 2009 Science NAEP achievement levels for grades 4, 8, and 12 at the May 2010 meeting. The data provided for evaluation of the cut scores at the May 2010 COSDAM meeting must be discussed in closed session because the cut scores and performance relative to the cut scores are embargoed until the release of the Nation's Report Card. The secure achievement levels results cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NAEP assessments, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 3 p.m. to 4 p.m. the Board will meet in open session to discuss the Mathematics Achievement Levels Descriptions for Grade 12 and the Technology and Engineering Literacy Specifications. From 4 p.m. to 5 p.m., the Board will receive a briefing in open session on TUDA research from the Executive Director of the Council of the Great City Schools. The May 14, 2010 Board meeting is scheduled to conclude at 5 p.m.

On May 15, the Nominations Committee will meet in closed session from 7:45 a.m. to 8:15 a.m. to discuss the status of final candidates being proposed for appointment terms beginning October 1, 2010. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on May 15 from 8:30 a.m. to 9:30 a.m. for an open discussion on topics of interest. From 9:30 a.m. to 10:30 a.m. the Board will receive Committee reports and take action on Committee recommendations. The May 15, 2010 session of the Board meeting is scheduled to adjourn at 10:30 a.m.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington DC, from 9 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

*Electronic Access to This Document:* You may 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/index.html*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO),

toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: *April 20, 2010.*

**Cornelia S. Orr,**

*Executive Director, National Assessment Governing Board, U.S. Department of Education.*

[FR Doc. 2010–9576 Filed 4–23–10; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. IC10–6–001 and IC10–6Q–001]**

### Commission Information Collection Activities (FERC Form Nos. 6 and 6–Q); Comment Request; Submitted for OMB Review

April 19, 2010.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collections described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (75FR5061, 2/1/2010) requesting public comments. FERC received one comment on the FERC Form No. 6 and FERC Form No. 6Q and has made this notation in its submissions to OMB.

**DATES:** Comments on the collections of information are due by May 26, 2010.

**ADDRESSES:** Address comments on the collections of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Numbers 1902–0022 (for FERC Form No. 6) and 1902–0206 (for FERC Form No. 6Q) as points of reference. For comments that pertain to only one of the collections, specify the appropriate collection and OMB Control Number. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket Nos. IC10–6–001 and IC10–6Q–001. (If comments apply to only one of the collections, indicate the corresponding docket and collection number.) Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket Nos. IC10–6–001 and IC10–6Q–001 (or the appropriate docket number, if the comments pertain only to one of the collections).

Users interested in receiving automatic notification of activity in FERC Docket Number IC10–6 may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp*. However, due to a system issue, Docket Number IC10–6Q is not available at this time for eSubscription. All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *DataClearance@FERC.gov.*

**SUPPLEMENTARY INFORMATION:** For the purpose of publishing this notice and seeking public comment, FERC requests comments on the following information collections:

- FERC Form No. 6 ("FERC–6"), "Annual Report of Oil Pipeline Companies," implemented in 18 CFR Sections 357.1, 357.2, and 385.2011; OMB Control No. 1902–0022, and
- FERC Form No. 6–Q ("FERC–6Q" or "FERC–6–Q"), "Quarterly Financial Report of Oil Pipeline Companies," implemented in 18 CFR Section 357.4; OMB Control No. 1902–0206.

The associated regulations, information collections, burdens, and OMB clearance numbers will continue to remain separate and distinct.

Under the Interstate Commerce Act (ICA) (49 U.S.C. 1, 20, 54 Stat. 916), the Commission is authorized and empowered to make investigations and to collect and record data to the extent FERC may consider to be necessary or useful for the purpose of carrying out the provisions of the ICA. FERC must ensure just and reasonable rates for transportation of crude oil and petroleum products by pipelines in interstate commerce.

The information collected by FERC Form Nos. 6 and 6–Q are used by the Commission to carry out its responsibilities in implementing the statutory provisions of the ICA, including the authority to prescribe rules and regulations concerning accounts, records and memoranda, as necessary or appropriate. Financial accounting and reporting provides needed information concerning a company's past performance and its future prospects. Without reliable financial statements prepared in accordance with the Commission's Uniform System of Accounts and related regulations, the Commission would be unable to accurately determine the costs that relate to a particular time period, service or line of business.

*FERC uses data from the FERC Form Nos. 6 and 6–Q to assist in:* (1) Implementation of its financial audits and programs, (2) continuous review of the financial condition of regulated companies, (3) assessment of energy markets, (4) rate proceedings and economic analyses, and (5) research for use in litigation.

Financial information reported on the annual FERC Form 6 and quarterly FERC Form 6–Q provides FERC, as well as customers, investors and others, an important tool to help identify emerging trends and issues affecting jurisdictional entities within the energy industry. It also provides timely disclosures of the impacts that new accounting standards, or changes in existing standards, have on jurisdictional entities, as well as the

economic effects of significant transactions, events, and circumstances. The reporting of this information by jurisdictional entities assists the Commission in its analysis of profitability, efficiency, risk and in its overall monitoring.

A summary of the comment received (from the 60-day Notice) and FERC's response follow.

Comment: The Commission received comments from only one commenter, the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. BEA endorsed the continued use of the information contained in the FERC Form Nos. 6 and 6Q, stating that:

"BEA uses FERC tabulations FERC forms 6 and 6Q indirectly. They are used to estimate the U.S. Census Bureau's Construction Value Put-In Place (VPIP) for oil pipeline utilities. Census VPIP serves as a major source data input to the National Income and Product Account (NIPA) for structures investment estimates. NIPA estimates for electric, gas, and pipeline structures rely upon the VPIP source data * * *. The FERC Form 6 is used indirectly as well to derive annual pipeline transportation output in the Industry Accounts program. Data obtained by the Industry Accounts from the Association of Oil Pipelines "Shifts in Petroleum Transportation" report is based, in part, on this survey. BEA currently uses this FERC information indirectly through the VPIP program and the trade association, and it is considered an indispensable data source to the NIPA estimates and Industry Accounts estimates."

FERC's response: The Commission is appreciative of BEA's continued support for the Commission's information collection programs.

*ACTION:* The Commission is requesting a three-year extension of the current FERC Form No. 6 and FERC Form No. 6Q requirements, with no changes.

*Burden Statement:* The estimated annual public reporting burdens and the associated public costs follow.[1] [2]

| FERC data collection | Projected number of respondents (1) | Number of annual responses per respondent (2) | Projected average burden hours per response (3) | Total annual burden hours [1] (1) × (2) × (3) |
|---|---|---|---|---|
| FERC–6 (Complete form) [2] | 142 | 1 | 186 | 26,412 |
| FERC–6 (Pages 1, 301, and 700 only) [2] | 1 | 1 | 15 | 15 |
| FERC–6 (Pages 1 and 700 only) [2] | 23 | 1 | 10 | 230 |
| FERC–6Q | 142 | 3 | 150 | 63,900 |

The total annual cost to respondents [1] [2] [3] is estimated as follows.

| FERC data collection | Total annual burden hours (1) | Estimated hourly cost [3] ($) (2) | Estimated total annual cost to respondents ($) [1] (2) × (1) |
|---|---|---|---|
| FERC–6 (Complete form) [2] | 26,412 | $66.29 | $1,750,851 |
| FERC–6 (Pages 1, 301, and 700 only) [2] | 15 | 66.29 | 994 |
| FERC–6 (Pages 1 and 700 only) [2] | 230 | 66.29 | 15,247 |
| FERC–6Q | 63,900 | 66.29 | 4,235,931 |

*The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including:* (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

*Comments are invited on:* (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;

[1] These figures may not be exact, due to rounding and/or truncating.

[2] Order 620 in Docket No. RM99–10 (issued 12/13/2000, available at *http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=8370177*) established filing thresholds. The filing thresholds for filing all or part of the FERC–6 are based on the filer's annual jurisdictional operating revenues, for each of the three previous calendar years:

- File complete Form 6: Revenues $500,000 or more
- File only Pages 1, 301, and 700: Revenues more than $350,000 but less than $500,000
- File only Pages 1 and 700: Revenues of $350,000 or less.

See the instructions at *http://www.ferc.gov/docs-filing/forms/form-6/form-6.pdf* for more information.

The estimated annual totals for all filers completing all or part of the FERC–6 are: 166 filers and 26,657 hours, for a cost of $1,767,092.

[3] Using 2,080 hours/year, the estimated cost for 1 full-time employee is $137,874/year. The estimated hourly cost is $66.29 (or $137,874/2,080).

(2) the accuracy of the agency's estimates of the burden of the proposed collections 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2010–9529 Filed 4–23–10; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL #10–014; FRL–9141–9]**

## Notice of Availability of the Draft National Pollutant Discharge Elimination System (NPDES) General Permits MAG910000 and NHG910000 for Remediation Facility Discharges in the Commonwealth of Massachusetts (Including Both Commonwealth and Indian Country Lands) and the State of New Hampshire: The Remediation General Permits (RGP)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability of draft NPDES general permits MAG910000 and NHG910000.

**SUMMARY:** The Director of the Office of Ecosystem Protection, Environmental Protection Agency—Region I (EPA New England), is providing this notice of availability of the draft National Pollutant Discharge Elimination System (NPDES) general permits for remediation facility discharges to certain waters of the Commonwealth of Massachusetts (including both Commonwealth and Indian country lands) and the State of New Hampshire. EPA is proposing to issue two nearly identical general permits for the two states. Throughout this document the terms "Remediation General Permit," "RGP," and "permit" will refer to the two general permits.

The Remediation General Permit (RGP) replaces the existing RGP, which will expire on September 9, 2010. The draft RGP establishes Notice of Intent (NOI) requirements, effluent limitations, standards, prohibitions, and management practices for facilities with discharges from remediation activities. Owners and/or operators of these facilities, including those currently authorized to discharge under the expiring RGP, will be required to submit a NOI to be covered by the RGP to EPA New England and the appropriate state agency. After EPA and the State have reviewed the NOI, the facility will receive a written notification from EPA of permit coverage and authorization to discharge under the RGP. The purpose of this document is to solicit public comments on the proposed RGP. This action is being taken in accordance with the provisions of the Federal Clean Water Act (CWA), as amended (33 U.S.C. 1251 *et seq.*).

**DATES:** Interested persons may submit written comment on the draft RGP to EPA-Region I at the address listed below. Within the comment period, interested persons may also request in writing that EPA hold a public hearing pursuant to 40 CFR 124.12, concerning the draft RGP. Such requests shall state the nature of the issues proposed to be raised at the hearing. A public hearing may be held at least thirty days (30) after public notice whenever the Regional Administrator finds that the response to the notice indicates significant public interest. In reaching a final decision on this draft RGP, the Regional Administrator will respond to all significant comments and make responses available to the public at the EPA New England office. All comments and requests for a public hearing must be postmarked or delivered before midnight May 26, 2010, the close of the public comment period, and must be submitted to the address below.

**ADDRESSES:** Written comments on the draft RGP may be hand delivered or mailed to Mr. Victor Alvarez, EPA-Region 1, Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Mail Code OEP–06–4, Boston, MA 02109–3912, or sent via email to *alvarez.victor@epa.gov*. No facsimiles (faxes) will be accepted. The draft RGP is based on an administrative record available for public review at EPA-Region I, Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, Monday–Friday from 9 a.m. to 5 p.m. The draft RGP, appendices, and fact sheet may also be reviewed over the Internet at: *http://www.epa.gov/ne/npdes/rgp.html*. To obtain a paper copy of the documents, please contact Mr. Alvarez using the contact information provided above. A reasonable fee may be charged for copying requests.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alvarez at 617–918–1572, between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays.

Dated: April 19, 2010.

**Ira Leighton,**

*Acting EPA Regional Administrator, Region 1.*

[FR Doc. 2010–9628 Filed 4–23–10; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–8989–9]**

## Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements Filed 04/12/2010 through 04/16/2010.

Pursuant to 40 CFR 1506.9.

### Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA has met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register.** Since February 2008, EPA has been including its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, after March 31, 2010, EPA will discontinue the publication of this notice of availability of EPA comments in the **Federal Register.**

EIS No. 20100133, Final EIS, FHWA, 00, TIER 1—FEIS Trans-Texas Corridor—35 (TTC–35) System, Improvement to International, Interstate and Intrastate Movement of Goods and People, Oklahoma-Mexico/Gulf Coast Element, Wait Period Ends: 05/24/2010, Contact: Brett Jackson 512–536–5946.

EIS No. 20100134, Final EIS, FHWA, TN, US 127/TN 28 Improvements, from 1–40 at Crossville to TN 62 at Clarkrange, Funding, U.S. Army COE Section 10 and 404 Permits, Cumberland and Fentress Counties, TN, Wait Period Ends: 05/24/2010, Contact: Pamela M. Kordenbrock 615–781–5770.

EIS No. 20100135, Final EIS, BLM, NV, Round Mountain Expansion Project,

Proposed to Construct and Operate and Expand the Existing Open-Pit Gold Mining and Processing Operations, north of the town of Tonopah in Nye County, NV, Wait Period Ends: 05/24/2010, Contact: Christopher Worthington 775–635–4000.

EIS No. 20100136, Final EIS, USFS, 00, Nebraska National Forests and Grassland Travel Management Project, Proposes to Designate Routes and Areas Open to Motorized Travel, Buffalo Gap National Grassland, Oglala National Grassland, Samuel R. McKelvie National Forest, and the Pine Ridge and Bessey Units of the Nebraska National Forest, Fall River, Custer, Pennington, Jackson Counties; SD and Sioux, Dawes, Cherry, Thomas and Blaine Counties, NE, Wait Period Ends: 05/24/2010, Contact: Mike McNeill 308–432–0336.

EIS No. 20100137, Draft EIS, USFS, ID, Robo Elk Project, Proposes Watershed Improvement, Timber Harvest, Fuel Treatments, and Recreation Activities, Palouse Ranger District, Clearwater National Forest, Clearwater County, ID, Comment Period Ends: 06/07/2010, Contact: George Harbaugh 208–935–4260.

EIS No. 20100138, Final EIS, BR, CA, Lake Casitas Resource Management Plan (RMP), Implementation, Cities of Los Angeles and Ventura, Western Ventura County, CA, Wait Period Ends: 05/24/2010, Contact: Jack Collins 559–349–4544.

EIS No. 20100139, Draft EIS, USFS, CA, Kelsey Peak Timber Sale and Fuelbreak Project, Proposing to Harvest Commercial Timber and Create Fuelbreak, Upper Mad River Watershed, Mad River Ranger District, Six Rivers National Forest, Trinity County, CA, Comment Period Ends: 06/07/2010, Contact: Keith Menasco 928–774–0594.

EIS No. 20100140, Final EIS, FSA, 00, PROGRAMMATIC—Biomass Crop Assistance Program (BCAP), To Establish and Administer the Program Areas Program Component of BCAP as mandated in Title IX of the 2008 Farm Bill in the United States, Wait Period Ends: 05/24/2010, Contact: Matthew T. Ponish 202–720–6853.

EIS No. 20100141, Final EIS, BLM, UT, Mona to Oquirrh Transmission Corridor Project and Draft Pony Express Resource Management Plan Amendment, Construction, Operation, Maintenance and Decommissioning a Double-Circuit 500/345 Kilovolt (Kv) Transmission Line, Right-of-Way Grant, Rocky Mountain Power, Juab, Salt Lake, Tooele and Utah Counties, UT, Wait Period Ends: 05/24/2010, Contact: Mike Nelson 801–977–4300.

EIS No. 20100142, Draft EIS, USFS, UT, Kitty Hawk Administrative Site Master Development Plan, Implementation, Cedar City Ranger District, Dixie National Forest, Cedar City, Iron County, UT, Comment Period Ends: 06/07/2010, Contact: Georgina Lampman 435–865–3794.

EIS No. 20100143, Final EIS, FHWA, NC, NC–24 Transportation Improvements, from west of I–95 to I–40, Funding, U.S. Army COE 4040 Permit, Cumberland, Sampson, and Duplin Counties, NC, Wait Period Ends: 05/24/2010, Contact: John F. Sullivan 919–865–4346.

EIS No. 20100144, Draft EIS, NRC, SC, Virgil C. Summer Nuclear Station Units 2 and 3, Application for Combined License to Construct and Operate a New Nuclear Reactors, Fairfield County, SC, Comment Period Ends: 07/06/2010, Contact: Patricia Vokoun 301–415–3470.

EIS No. 20100145, Draft EIS, NRC, MD, Calvert Cliffs Nuclear Power Plant Unit 3, Application for Combined License for Construct and Operate a New Nuclear Unit, NUREG 1936, Calvert County, MD, Comment Period Ends: 07/06/2010, Contact: Laura Quinn 301–415–2220.

Dated: April 20, 2010.

**Ken Mittelholtz,**

*Deputy Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2010–9462 Filed 4–23–10; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION.

### Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 20, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 25, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Cathy Williams on (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060–1100.

Title: Section 15.117, TV Broadcast Receivers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,000 respondents; 5,000 responses.

Frequency of Response: Third party disclosure requirement.

Estimated Time per Response: 0.25 (15 minutes).

Total Annual Burden: 1,250 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Obligation to Respond: Mandatory. The statutory authority for this information collection is contained in Sections 1, 2(a), 3(33), 3(52), 4(i), 4(j), 7, 301, 303(r), 303(s), 309, 336, 337 and 624 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: No need for confidentiality required with this collection of information.

Needs and Uses: As of the June 12, 2009 statutory digital television (DTV) transition deadline, all full-power television stations stopped broadcasting in analog and are broadcasting only digital signals. Section 15.117(k) of the Commission's rules requires sellers of TV sets (and other TV receiver equipment) that do not contain a digital tuner to disclose to consumers at the point-of-sale that such devices include only an analog tuner and, therefore, are not able to receive over-the-air TV broadcasts. (Consumers with analog-only television equipment are not able to receive an over-the-air broadcast signal unless they get a digital TV or a box to convert the digital signals to analog or subscribe to pay TV service, such as cable or satellite.) The Commission adopted this labeling (disclosure) requirement in 2007 to protect consumers by ensuring that they are made aware at the point-of-sale about the limitations of analog-only television receivers. Note that, while the Commission's rules prohibit the manufacture or import of television receivers that do not contain a digital tuner, the rules do not prohibit the sale of analog-only television equipment from inventory. For this reason, the Commission decided it was necessary to impose this requirement. Although the DTV transition deadline has passed, analog-only TV equipment remains available in the marketplace and this disclosure requirement, therefore, remains necessary to continue to protect consumers. Accordingly, the Commission is seeking an extension of this information collection.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–9566 Filed 4–23–10; 8:45 am]

**BILLING CODE: 6712–01–S**

## FEDERAL COMMUNICATIONS COMMISSION

**[AU Docket No. 09–205; DA 10–588]**

## Auction of Lower and Upper Paging Bands Licenses Rescheduled for June 15, 2010; Status of Short-Form Applications to Participate in Auction 87

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the revised schedule and deadlines for the upcoming auction of 9,603 licenses for lower and upper paging bands designated Auction 87.

**DATES:** Upfront payments are due by 6 p.m. Eastern Time (ET) on April 30, 2010. Auction applicants with incomplete short-form applications must resubmit their applications, having corrected the deficiencies indicated, prior to 6 p.m. ET on April 30, 2010. Bidding for licenses in Auction 87 is scheduled to begin on June 15, 2010.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For legal questions: Scott Mackoul at (202) 418–0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 87 Status Public Notice,* which was released on April 13, 2010. The complete text of the *Auction 87 Status Public Notice,* including attachments, as well as related Commission documents, are available for public inspection and copying from 8 a.m. to 4:30 p.m. ET Monday through Thursday and from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 87 Status Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or Web site: *http://www.BCPIWEB.com,* using document number DA 10–588 for the *Auction 87 Status Public Notice.* The *Auction 87 Status Public Notice* and related documents are also available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/87/.*

1. The Wireless Telecommunications Bureau (Bureau) announces a revised schedule for the upcoming auction of 9,603 licenses for lower and upper paging bands spectrum. This auction, which is designated as Auction 87, was initially scheduled to begin on Tuesday, May 25, 2010, but because of necessary scheduling changes, the auction will begin on Tuesday, June 15, 2010. The Bureau also announces a new deadline for submitting an upfront payment (6 p.m. ET on April 30, 2010) and a new date for the mock auction (June 11, 2010).

2. The initial schedule of bidding rounds will be announced by public notice at least one week before the start of the auction. With the exception of these and any other changes set forth in this Public Notice, the procedures, terms and conditions previously announced in the *Auction 87 Procedures Public Notice* will apply in Auction 87.

3. The Bureau also announces, in the *Auction 87 Status Public Notice,* the status of the 89 short-form applications submitted by parties wishing to participate in Auction 87. The *Auction 87 Status Public Notice* lists 34 applications as complete and 55 applications as incomplete. Applicants with incomplete short-form applications must resubmit their applications, having corrected the deficiencies indicated, prior to 6 p.m. ET on Friday, April 30, 2010. The Bureau also reminds auction applicants that they must maintain the accuracy of their short-form applications as required by 47 CFR 1.65 and 1.2105.

4. Approximately three weeks after the upfront payment deadline, following Commission review of resubmitted short-form applications, and the correlation of payments and applications, a public notice listing all applicants qualified to bid in Auction 87 will be released. The same public notice will also include bidding schedules for both the mock auction and the first day of bidding.

Federal Communications Commission.

**William W. Huber,**

*Associate Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. 2010–9623 Filed 4–23–10; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notices

**AGENCY:** Federal Election Commission

**DATE & TIME:** Tuesday, April 27, 2010, at 10 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** THIS meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. 37g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Darlene Harris,**

*Acting Secretary of the Commission.*

[FR Doc. 2010–9535 Filed 4–23–10; 8:45 am]

**BILLING CODE 6715–01–M**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 11, 2010.

**A. Federal Reserve Bank of New York** (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. GAP V Bankvest, LLC; Greenfield Acquisition Company V, LLC; Greenfield Acquisition Partners V, LP; GAP V Management, LLC; Greenfield Partners, LLC, all of South Norwalk, Connecticut; and Eugene A. Gorab*, Fairfield, Connecticut; to gain control of Alcar LLC, New York, New York, and thereby indirectly acquire control of Darien Rowayton Bank, Darien, Connecticut.

**B. Federal Reserve Bank of Philadelphia** (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

*1. Patriot Financial Partners, GP, L.P.; Patriot Financial Partners, L.P.; Patriot Financial Partners Parallel, L.P.; Patriot Financial Partners, GP, LLC; Patriot Financial Managers, L.P.; and Ira M. Lubert; W. Kirk Wycoff; and James J. Lynch*, all of Philadelphia, Pennsylvania, to acquire voting shares of Florida Business Bancgroup, Inc., and thereby indirectly acquire voting shares of Bay Cities Bank, both of Tampa, Florida.

**C. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

*1. Irving Schwarzbaum, West Orange, New Jersey, individually and as a member of a group comprised of Elisa Schwarzbaum, West Orange, New Jersey; Michelle Schwarzbaum, West Orange, New Jersey; Shelly Schwarzbaum, Rehovot, Israel; David Schwarzbaum, Rehovot, Israel; Arye Schwarzbaum, Rehovot, Israel; Yair Schwarzbaum, Rehovot, Israel; Henry Schwarzbaum, Rehovot, Israel; and Leonard Schwarzbaum, Scarsdale, New York*, acting in concert, to acquire voting shares of First Mariner Bancorp, and thereby indirectly acquire voting shares of First Mariner Bank, both of Baltimore, Maryland.

Board of Governors of the Federal Reserve System, April 21, 2010.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2010–9593 Filed 4–23–10; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology

### HIT Standards Committee Advisory Meeting; Notice of Meeting

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS

**ACTION:** Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

*Name of Committee:* HIT Standards Committee.

*General Function of the Committee:* to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

*Date and Time:* The meeting will be held on May 26, 2010, from 9 a.m. to 1 p.m./Eastern Time.

*Location:* The May 26th meeting will be conducted virtually only. Dial into the meeting: 1–877–705–6006; webcast: *http://altarum.adobeconnect.com/HITstandards*.

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov*. Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The committee will hear reports from its workgroups, including the Clinical Operations, Clinical Quality, Privacy & Security, and Implementation Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posed on ONC's Web site after the meeting, at *http://healthit.hhs.gov*.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 20, 2010. Oral comments from the public will be scheduled between approximately 12 p.m. and 1 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 16, 2010.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2010–9575 Filed 4–23–10; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology;

### HIT Standards Committee's Workgroup Meetings; Notice of Meetings

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

*Name of Committees:* HIT Standards Committee's Workgroups: Clinical Operations Vocabulary, Clinical Quality, Implementation, and Privacy & Security workgroups.

*General Function of the Committee:* To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

*Date and Time:* The HIT Standards Committee Workgroups will hold the following public meetings during May 2010: May 4th Clinical Operations Workgroup/Vocabulary Task Force, 1 p.m. to 4 p.m./ET; May 12th Clinical Operations Workgroup/Vocabulary Task Force, 10 a.m. to 11 a.m./ET; May 14th Privacy & Security Workgroup, 10 a.m. to 12 p.m./ET (dial in only); May 21st Clinical Quality Workgroup, 10 a.m. to 12 p.m./ET; and May 25th Clinical Operations Workgroup/Vocabulary Task Force, 9 a.m. to 11 a.m./ET.

*Location:* All workgroup meetings will be available via webcast; visit *http://healthit.hhs.gov* for instructions on how to listen via telephone or Web. Please check the ONC Web site for additional information as it becomes available.

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The workgroups will be discussing issues related to their specific subject matter, *e.g.,* clinical operations vocabulary standards, clinical quality measure, implementation opportunities and challenges, and privacy and security standards activities. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov*.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 16, 2010.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2010–9577 Filed 4–23–10; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology

### HIT Policy Committee Advisory Meeting; Notice of Meeting

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

*Name of Committee:* HIT Policy Committee.

*General Function of the Committee:* to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

*Date and Time:* The meeting will be held on May 19, 2010, from 10 a.m. to 4 p.m./Eastern Time.

*Location:* TBD. Please check ONC Web site for information on location.

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Certification/Adoption Workgroup, the NHIN Workgroup, the Privacy & Security Policy Workgroup, and the Strategic Plan Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 13, 2010. Oral comments from the public will be scheduled between approximately 3 p.m. to 4 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 16, 2010.

**Judith Sparrow,**

*Office of Programs and Coordination Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2010–9578 Filed 4–23–10; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the National Coordinator for Health Information Technology; HIT Policy Committee's Workgroup Meetings; Notice of Meetings

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meetings.

This notice announces forthcoming subcommittee meetings of a Federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

*Name of Committees:* HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Policy, Strategic Plan, Adoption/Certification, and Nationwide Health Information Infrastructure (NHIN) workgroups.

*General Function of the Committee:* To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

*Date and Time:* The HIT Policy Committee Workgroups will hold the following public meetings during May 2010: May 4th Meaningful Use Workgroup, 10 a.m. to 12 p.m./ET; May 7th Privacy & Security Policy Workgroup, 2 p.m. to 4 p.m./ET; May 10th NHIN Workgroup, 10 a.m. to 1 p.m./ET; and May 11th Strategic Plan Workgroup, 9 a.m. to 11 a.m./ET.

*Location:* All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit *http://healthit.hhs.gov.* Please check the ONC Web site for additional information as it becomes available.

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The workgroups will be discussing issues related to their specific subject matter, *e.g.,* meaningful use, the NHIN, privacy and security policy, adoption/certification, or strategic planning. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at *http://healthit.hhs.gov.*

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroups' meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: April 16, 2010.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2010–9579 Filed 4–23–10; 8:45 am]

**BILLING CODE 4150–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–10–09BC]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Exploring HIV Prevention Communication Among Black Men Who Have Sex with Men In New York City: Project BROTHA—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and Tuberculosis Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC is requesting OMB approval to administer a survey, conduct interviews and offer HIV rapid testing in Black Men who have sex with Men (BMSM) and other Men who have Sex with Men (MSM) in New York City. The purpose of the proposed study is to assess how interpersonal communication within BMSM social networks may be related to risk for HIV infection and attitudes towards HIV testing.

Data collection will occur over the course of 2–3 years. After screening for eligibility, a total of 300 BMSM and other MSM in their social networks will be enrolled in 2 phases: (1) 350 BMSM will be recruited and screened to find 100 eligible BMSM participants, and (2) the 100 first phase participants will then recruit 200 other MSM within their social networks to participate in the second phase. Quantitative surveys will be administered by computers and personal interviews will be conducted to collect qualitative data (at baseline and 3-month follow-up). Participants in both phases will be offered rapid HIV testing, and declining an HIV test will not negatively impact their study participation. The research questions being explored are relevant for understanding how interpersonal communication with members of one's social networks are related to risk for contracting HIV infection and attitudes towards HIV testing.

This study will provide important epidemiologic information useful for the development of HIV prevention

interventions for BMSM. Men will complete a 5-minute eligibility screening interview. The baseline computer-based survey will take 45 minutes. The qualitative interview will take approximately 75 minutes. The number of respondents who will accept HIV testing is estimated to be 200 (accounting for those who did not test at baseline and those who do not consent to test at follow-up). HIV counseling and rapid testing will take 45 minutes. The 3-month follow-up survey will take approximately 30 minutes; the follow-up qualitative interview will take approximately 45 minutes. There is no cost to the respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

| Respondents | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|---|
| BMSM respondents only | Screening interview | 750 | 1 | 5/60 | 63 |
| BMSM and other MSM respondents: Baseline. | ACASI survey interview | 300 | 1 | 45/60 | 225 |
| | Qualitative interview | 300 | 1 | 1.25 | 375 |
| | HIV testing & counseling | 200 | 1 | 45/60 | 150 |
| BMSM and other MSM respondents: 3 month follow-up. | ACASI survey interview | 300 | 1 | 30/60 | 150 |
| | Qualitative interview | 300 | 1 | 45/60 | 225 |
| | HIV testing & counseling | 200 | 1 | 45/60 | 150 |
| | Total Burden Hours | | | | 1338 |

Dated: April 19, 2010.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2010–9606 Filed 4–23–10; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0070]**

### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Agreement for Shipment of Devices for Sterilization

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Fax written comments on the collection of information by May 26, 2010.

**ADDRESSES:** To ensure that comments on the 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, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0131. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Agreement for Shipment of Devices for Sterilization—21 CFR 801.150(e) (OMB Control Number 0910–0131)—Extension

Under sections 501(c) and 502(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(e) (21 CFR 801.150(e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment, a practice that facilitates the processing of devices and is economically necessary for some firms. Under § 801.150(e)(1), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment; (2) acknowledgment that the devices that are nonsterile are being shipped for further processing; and (3) specifications for sterilization processing. This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices (§ 801.150(a)(2)). The respondents to this collection of information are device manufacturers and contact sterilizers. FDA's estimate of the reporting burden is based on actual data obtained from industry over the past several years where there are approximately 90 firms subject to this requirement. It is estimated that each of these firms on the average prepares 20 written agreements each year. This estimate varies greatly, from 1 to 100, because some firms provide sterilization services on a part time basis for only one customer while others are large facilities with many customers. The average time required to prepare each written agreement is estimated to be 4 hours. This estimate varies depending on whether the agreement is the initial agreement or an annual renewal, on the format each firm elects to use, and on the length of time required to reach agreement. The estimate applies only to those portions of the written agreement that pertain to the requirements imposed by this regulation. The written agreement generally also includes contractual agreements that are a customary and usual business practice. On the average, the total annual recordkeeping burden is 7,200 hours (90 firms x 20 agreements x 4 hours). The

recordkeeping requirements of § 801.150(a)(2) consist of making copies and maintaining the actual reporting requests which were required under the reporting section of this collection. To fulfill this requirement, FDA estimates it will take about 30 minutes to copy each package, for a total of 900 recordkeeping hours and includes $55,800 operating and maintenance costs.

In the **Federal Register** of February 18, 2010 (75 FR 7276), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

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 |
|---|---|---|---|---|---|
| 801.150(e) | 90 | 20 | 1,800 | 4 | 7,200 |

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

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

| 21 CFR Section | No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours |
|---|---|---|---|---|---|
| 801.150(a)(2) | 90 | 20 | 1,800 | 0.5 | 900 |

[1] There are no capital costs associated with this collection of information.

Due to a clerical error, the operating and maintenance costs that appeared in a document published in the **Federal Register** of February 18, 2010, were incorrect. There are actually no operating and maintenance costs associated.

Dated: April 21, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–9555 Filed 4–23–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–D–0194]**

### Draft Guidance for Industry and Food and Drug Administration Staff; Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled "Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions." The recommendations in this guidance are intended to improve the safety and effectiveness of these devices. This draft guidance is not final nor is it in effect at this time. Elsewhere in this issue of the **Federal Register**, FDA is announcing a public meeting regarding external infusion pumps.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by July 26, 2010. Submit written or electronic comments on the collection of information by June 25, 2010.

**ADDRESSES:** Submit written requests for single copies of the draft guidance document entitled "Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Alan Stevens, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 2561, Silver Spring, MD 20993–0002, 301–796–6294.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA has seen an increase in the number and severity of infusion pump recalls. Analyses of medical device reports (MDRs) revealed device problems that appear to be a result of faulty design. Between January 1, 2005, and December 31, 2009, FDA received over 56,000 MDRs associated with the use of infusion pumps. Of these reports, approximately 1 percent were reported as deaths, 32 percent were reported as serious injuries, and 64 percent were reported as malfunctions.

The most frequently reported infusion pump device problems are: Software error messages, human factors (which include but are not limited to use error), broken components, battery failure, alarm failure, over infusion, and under infusion. In some reports, the manufacturer was unable to determine or identify the problem and reported the problem as "unknown." Subsequent root cause analyses revealed that many of these design problems were foreseeable and, therefore, preventable.

After evaluating a broad spectrum of infusion pumps across manufacturers, FDA has concluded there are numerous, systemic problems with device design, manufacturing, and adverse event reporting. The agency believes that the draft guidance provides recommendations that will help mitigate current risks and reduce future risks associated with infusion pumps.

### II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will

represent the agency's current thinking on infusion pumps. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. To receive "Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1694 to identify the guidance you are requesting. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*.

## IV. Paperwork Reduction Act of 1995 (the PRA)

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these 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.

### Draft Guidance for Industry and FDA Staff; Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions

This draft guidance is intended to assist industry in preparing premarket notification submissions for infusion pumps and to identify device features that manufactures should address throughout the total product life cycle. The premarket notification procedures discussed in the draft guidance (21 CFR 807, subpart E) have been approved under OMB control number 0910–0120. The proposed information collection seeks to add clinical or scientific data demonstrating that new or changed infusion pumps are as safe and effective as those legally marketed and do not raise different questions of safety and effectiveness than predicate devices in this generic device type. In this way manufacturers of infusion pumps may demonstrate substantial equivalence and receive premarket clearance for their devices.

*Description of Respondents*: The respondents to this collection of information are infusion pump manufacturers subject to FDA's laws and regulations. The agency estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| Guidance Title: Infusion Pumps—Premarket Notification 510(k) Submissions | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Guidance Section 6—Assurance Case Report | 31 | 1 | 31 | 56 | 1,736 |

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

FDA estimates it will receive 31 infusion pump submissions annually. The agency reached this estimate by averaging the number of premarket notifications for infusion pumps submitted to FDA over the past 5 years. The draft guidance identifies 56 potential hazards FDA recommends addressing if applicable to a particular device. Although there may be additional hazards identified by a manufacturer, the agency believes these hazards may offset FDA identified hazards not applicable to a particular device. FDA estimates it will take infusion pump manufactures approximately 56 hours (approximately one hour per hazard) to complete the case assurance report described in section 6 of the draft guidance. FDA reached this estimate based on its expectation of the amount of information that will be contained in the report.

Before the proposed information collection provisions contained in this draft guidance become effective, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions. 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.

This draft guidance also refers to previously approved information collections found in FDA regulations. The collections of information in 21 CFR part 803 are approved under OMB control number 0910–0437; the collections of information in 21 CFR part 801 are approved under OMB control number 0910–0485; the collections of information in 21 CFR part 812 are approved under OMB control number 0910–0078; the collections of information in 21 CFR part 814, subparts B and E are approved under OMB control number 0910–0231; the collections of information in 21 CFR part 820 are approved under OMB control number 0910–0073; the collections of information in 21 CFR part 822 are under OMB control number 0910–0449; and the collections of information in 21 CFR 56.115 are approved under OMB control number 0910–0130.

**V. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–9209 Filed 4–23–10; 8:45 am]

**BILLING CODE 4160–01–S**

## 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.

**Peroxidase and Peroxidase Substrate Peptides (PSPs) for Treatment of Inflammatory Disorders and Allergies**

*Description of Invention:* NIH investigators have identified an unexpected and previously unrecognized function of the peroxidase/dual oxidase system in protecting the mucosal surfaces, such as in the gastrointestinal and respiratory tracts. Specifically, NIH investigators have shown that a peroxidase and a dual oxidase (Duox) form a dityrosine network that decreases gut permeability to immune elicitors and prevents activation of epithelial immunity in *An. gambiae* mosquitoes. This technology provides for novel compositions that enhance the formation of a dityrosine network on epithelial cells, such as those found in the gastrointestinal and respiratory tract mucosa of vertebrates, by forming a mucosal barrier on the epithelial surface preventing or inhibiting epithelial cell-mediated inflammatory responses (such as those associated with an inflammatory disease or an allergic reaction). Exemplary compositions include a mammalian or plant heme peroxidase and a peroxidase substrate peptide (PSP).

The compositions of this technology can be useful as therapeutics for several diseases or disorders involving epithelial cell-mediated inflammatory responses (*e.g.,* inflammatory bowel diseases such as Crohn's, and allergic disorders).

*Development Status:* Early stage.

*Applications:*

- Therapeutics for autoimmune diseases.
- Therapeutics for food allergies.

*Inventors:* Carolina Barillas-Mury, Sanjeev Kumar, and Alvara Molina-Cruz (NIAID).

*Related Publication:* Kumar S, Molina-Cruz A, Gupta L, Rodrigues J, Barillas-Mury C. A peroxidase/dual oxidase system modulates midgut epithelial immunity in *Anopheles gambiae.* Science. 2010 Mar 26;327(5973):1644–1648. [PubMed: 20223948]

*Patent Status:* U.S. Provisional Application No. 61/308,249 filed 25 Feb 2010 (HHS Reference No. E–073–2010/0–US–01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Suryanarayana (Sury) Vepa, PhD, J.D.; 301–435–5020; *vepas@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Institute of Allergy and Infectious Diseases, Office of Technology Development, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize *Peroxidase and Peroxidase Substrate Peptides (PSPs) for Treatment of Inflammatory Disorders and Allergies.* Please contact Dana Hsu at 301–496–2644 for more information.

**Reversible SNAP–Tag and CLIP–Tag Ligands for Live Cell Imaging**

*Description of Invention:* Recently-developed protein tags enable the specific covalent attachment of synthetic ligands, incorporating fluorophores or other substituted groups, to fusion proteins containing these tags. For example, SNAP and CLIP tags bind $O^6$-benzylguanine-containing and O2-benzylcytosine containing ligands respectively, which can be derivatized with a wide variety of labels, including fluorescent dyes, affinity probes, and cross-linkers. This system provides a powerful tool to study a variety of highly dynamic processes within cells, including protein trafficking, turnover, and complex formation. However, a substantial limitation to this approach is that labeling is irreversible, due to the formation of a covalent bond between the probe and the protein tag.

The inventors have developed ligands that incorporate a disulfide linkage between the $O^6$-benzylguanine moiety and the label, allowing selective release of the label from the tagged protein when treated with a reducing agent. The inventors have shown that use of these ligands in conjunction with cell-impermeable reducing agents allows visualization of internalization and trafficking in live cells; these ligands may also be used in other applications in which a cleavable label would be desirable, such as protein purification. This strategy is also applicable to other covalent protein tags, such as the ACP/MCP protein tag system.

*Applications:*

- Visualization of dynamic processes within cells, including protein trafficking, turnover, and complex formation.
- Live cell imaging.
- Protein purification.

*Advantages:*

- Allows for selective release of label.
- Accommodates intra- or extra-cellular labeling, and dual labeling.
- Ligands may be derivatized with a wide variety of labels, including fluorescent dyes, affinity probes, and cross-linkers.
- Lower background fluorescence and higher contrast than other systems, such as FlAsH.

*Inventors:* Nelson B. Cole and Julie G. Donaldson (NHLBI).

*Related Publication:* In preparation.

*Patent Status:* U.S. Provisional Application No. 61/312,814 filed 11 Mar 2010 (HHS Reference No. E–057–2010/0–US–01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Tara Kirby, PhD; 301–435–4426; *tarak@mail.nih.gov*.

**Composite Probes and Use Thereof in Super Resolution Microscopy**

*Description of Invention:* The technology offered for licensing and for further development is in the field of fluorescence microscopy. More specifically, the invention describes and claims the composite probes for super resolution optical techniques using super resolution via transiently activated quenchers (STAQ). The composite probes include a donor moiety and an acceptor moiety joined by a linker. The acceptor moiety, when excited by incident radiation, is excited to a state which, for example, absorbs in the donor emission region, such that the acceptor moiety in its excited state quenches at least a portion of the donor moiety emission. Other transiently activated quenching mechanisms and moieties could accomplish the same task by reducing donor population. Also disclosed are methods for irradiating a selected region of a target material including the composite probe, wherein the composite probe enables improved resolution by point spread function modification.

*Applications:*

- Ultrafine imaging for biomolecules, vesicles and organelles, particularly of living biological samples, in biomedical research.
- Potential applications in clinical diagnostics.
- Nanoscopic Lithography—STAQ composites could, in principle, control polymerization of photoresist masks to make feature sizes below 20nm.

*Advantages:* Fluorescence microscopy is an important tool in the biomedical sciences allowing for the imaging of biological cells and tissues. One limit of fluorescence microscopy is that the optics of a microscope cannot create illuminated spots smaller than the diffraction limit, thus limiting the usefulness of such techniques to image biological samples at high resolution, generally below about 200 nm for visible light. The technology presented here allows for improved ultrafine imaging:

- Imaging objects as small as 10 nm.
- Narrow the point spread function.
- STAQ uses less power, making live cell study practical at theoretically high resolution.

*Development Status:*

- The invention is fully developed.
- Need to build multicolor palette that can be integrated into a commercial microscope.
- May need to make certain protein chimeras and photoinitiators for validation.

*Inventors:* Jay R. Knutson and Gary L. Griffiths (NHLBI).

*Relevant Publications:*

1. Doose S, Neuweiler H, Barsch H, Sauer M. Probing polyproline structure and dynamics by photoinduced electron transfer provides evidence for deviations from a regular polyproline type II helix. Proc Natl Acad Sci USA. 2007 Oct 30;104(44):17400–17405. [PubMed: 17956989]

2. Schuler B, Lipman EA, Steinbach PJ, Kumke M, Eaton WA. Polyproline and the "spectroscopic ruler" revisited with single-molecule fluorescence. Proc Natl Acad Sci USA. 2005 Feb 22;102(8):2754–2759. [PubMed: 15699337]

3. Best RB, Merchant KA, Gopich IV, Schuler B, Bax A, Eaton WA. Effect of flexibility and cis residues in single-molecule FRET studies of polyproline. Proc Natl Acad Sci USA. 2007 Nov 27;104(48):18964–18969. [PubMed: 18029448]

4. Sahoo H, Roccatano D, Hennig A, Nau WM. A 10–A spectroscopic ruler applied to short polyprolines. J Am Chem Soc. 2007 Aug 8;129(31):9762–9772. [PubMed: 17629273]

5. Li L, Gattass RR, Gershgoren E, Hwang H, Fourkas JT. Achieving lambda/20 resolution by one-color initiation and deactivation of polymerization. Science. 2009 May 15;324(5929):892–893. [PubMed: 19359543]

6. Hell SW. Far-field optical nanoscopy. Science. 2007 May 25;316(5828):1153–1158. [PubMed: 19525330]

7. Masia F, Langbein W, Watson P, Borri P. Resonant four-wave mixing of gold nanoparticles for three-dimensional cell microscopy. Opt Lett. 2009 Jun 15;34(12):1816–1818. [PubMed: 19529713]

8. Schmidt R, Wurm CA, Punge A, Egner A, Jakobs S, Hell SW. Mitochondrial cristae revealed with focused light. Nano Lett. 2009 Jun;9(6):2508–2510. [PubMed: 19459703]

*Patent Status:* U.S. Provisional Application No. 61/290,282 filed 28 Dec 2009 (HHS Reference No. E–253–2009/0–US–01).

*Licensing Status:* Available for licensing.

*Licensing Contacts*: Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov* or Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Heart, Lung and Blood Institute (NHLBI) Laboratory of Molecular Biophysics (LMB) is also seeking statements of capability or interest from parties interested in collaborative partnerships to further develop, evaluate, or commercialize this technology. Please contact Brian Bailey, PhD at *bbailey@mail.nih.gov* for more information.

**Substituted Triazine and Purine Compounds for the Treatment of Chagas Disease and African Trypanosomiasis**

*Description of Invention:* Parasitic protozoa are responsible for a wide variety of infections in both humans and animals. Trypanosomiasis poses health risks to millions of people across multiple countries in Africa and North and South America. Visitors to these regions, such as business travelers and tourists, are also at risk for contracting parasitic diseases. There are two types of African trypanosomiasis, also known as sleeping sickness. One type is caused by the parasite *Trypanosoma brucei gambiense,* and the other is caused by the parasite *Trypanosoma brucei rhodesiensi.* If left untreated, African sleeping sickness results in death. Chagas disease, caused by *Trypanosoma cruzi (T. cruzi),* affects millions of people in Mexico and South and Central America. Untreated, Chagas disease causes decreased life expectancy and can also result in death.

The subject invention covers novel triazine and purine compounds that are inhibitors of key proteases (cruzain and Rhodesian) of the parasites *Trypanosoma brucei rhodesiensi* and *Trypanosoma cruzi,* respectively.

*Applications:* Prophylactic and therapeutic treatment of African trypanosomiasis and Chagas disease

*Advantages:*

- Novel compounds against the cysteine proteases, cruzain and rhodesain.
- Compounds possess low nanomolar inhibitory potential against cruzain and rhodesain.

*Development Status: In vitro* and *in vivo* data are available upon request and upon execution of an appropriate confidentiality agreement.

*Inventors:* Craig J. Thomas *et al.* (NHGRI).

*Related Publication:* BT Mott *et al.* Identification and optimization of inhibitors of Trypanosomal cysteine proteases: cruzain, rhodesain, and TbCatB. J Med Chem. 2010 Jan 14;53(1):52–60. [PubMed: 19908842]

*Patent Status:* PCT Application No. PCT/US2009/063078 filed 03 Nov 2009 (HHS Reference No. E–267–2008/0–PCT–02)

*Licensing Status:* Available for licensing.

*Licensing Contact:* Kevin W. Chang, PhD; 301–435–5018; *changke@mail.nih.gov*.

*Collaborative Research Opportunity:* The NIH Chemical Genomics Center (NCGC) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize appropriate lead compounds described in the patent application. Please contact Dr. Craig J. Thomas (*craigt@nhgri.nih.gov*) or Claire Driscoll (*cdriscol@mail.nih.gov*), Director of the NHGRI Technology Transfer Office, for more information.

**Topical Formulation of Histone Deacetylase (HDAC) Inhibitors: Treatments for Cancer and Immunological Skin Disorders**

*Description of Invention:* This technology relates to topical formulations of Histone Deacetylase (HDAC) inhibitors (HDIs) that can be used to treat cancers such as cutaneous T-cell lymphoma (CTCL) and skin disorders such as lupus, contact dermatitis, and drug eruptions which are associated with malignant or autoreactive lymphocytes from the immune system. HDIs, such as depsipeptide, have been demonstrated to be effective against CTCL when administered internally but a topical preparation may be more useful for treatment at earlier stages of the disease.

HDIs are molecules that inhibit the activity of a group of enzymes that remove small chemical groups called acetyl groups from many different proteins, including proteins that regulate gene expression. By altering the acetylation of these proteins, HDAC inhibitors can induce tumor cell differentiation, cell cycle arrest, and cell death. A variety of chemically distinct molecules exhibit HDAC inhibitory activity and their potential as therapeutics for cancer and other indications is being investigated. The HDI depsipeptide is a cyclical peptide derived from a bacterium and is indicated as a second line treatment for CTCL through intravenous administration. Development of a topical preparation of depsipeptide and/or other HDAC inhibitors may help reduce their toxicity and increase their effectiveness in treating CTCL, other cancers, as well as other diseases.

*Applications*:

- Use as a topical therapeutic for treatment of skin lymphomas.
- Use as a topical therapeutic for treatment of immunological skin disorders.

*Advantages*:

- HDIs such as vorinostat and depsipeptide have received regulatory approval for clinical use in systemic treatment of CTCL.
- Localized topical treatment reduces potential for adverse reactions, compared to systemic treatments.
- Clinical data illustrating the effectiveness of the topical formulation of depsipeptide are available.

*Development Status:* In early stage of clinical development.

*Market:* There is a need for effective low toxicity therapies to treat skin disorders due to activity of aberrant lymphocytes. CTCL is a rare form (800–1,000 new cases per year) of lymphoma in which the advanced disease can lead to disfigurement and pain. Patient mortality usually results from infections arising from eventual breach of the skin. An autoimmune disease, cutaneous lupus erythematosus accounts for about 10% of all lupus cases (1.4 million people in U.S.) and produces persistent skin lesions that may lead to scarring and hair loss. In the U.S., skin eruptions caused by prescribed medications are estimated to occur in approximately 2–5% of hospital patients. Most drug eruptions are delayed-type immune reactions with lymphocyte-mediated hypersensitivity which result in contact dermatitis, exanthematous reactions, and photoallergic reactions. A topical formulation of HDIs has potential of ameliorating the symptoms of these conditions.

*Inventors:* Susan Bates *et al.* (NCI).

*Publication:* Piekarz RL *et al.* Phase II multi-institutional trial of the histone deacetylase inhibitor romidepsin as monotherapy for patients with cutaneous T-cell lymphoma. J Clin Oncol. 2009 Nov 10;27(32):5410–5417. [PubMed: 19826128]

*Patent Status:* U.S. Patent Application No. 12/064,220 filed 19 Feb 2008 (HHS Reference No. E–238–2005/0–US–07) and foreign counterparts in Europe, Canada, Australia and Japan.

*Licensing Status:* Available for licensing.

*Licensing Contact:* Sabarni Chatterjee, PhD; 301–435–5587; *chatterjeesa@mail.nih.gov*.

*Collaborative Research Opportunity:* The Center for Cancer Research, Medical Oncology Branch and Affiliates, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize topical therapy using HDIs. Please contact John Hewes, PhD at 301–435–3131 or *hewesj@mail.nih.gov* for more information.

**Variable Curve Catheter**

*Description of Invention:* The invention provides a deflectable tip guiding device, such as a catheter, that enables the operator to vary the radius of curvature of the tip of the catheter. This is a novel variation on the classic "fixed fulcrum" tip deflectors used in minimally invasive procedures in open surgical treatments. The described device permits a more comprehensive ability to navigate complex geometric pathways in patient's body and enables better access to target structures (*e.g.,* to all endomyocardial walls from a transaortic approach). The guiding device can be made compatible with imaging methods like MRI. The described technology can be used as a platform for a variety of interventional devices for delivery of drugs, cells, energy, or sutures through complex trajectories of the body.

*Inventors:* Robert J. Lederman and Parag V. Karmarkar (NHLBI).

*Patent Status:* U.S. Patent Application No. 10/534,362 filed 07 Nov 2005 (HHS Reference No. E–035–2003/0–US–03).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Jeffrey A. James; 301–435–5474; *jeffreyja@mail.nih.gov*.

*Collaborative Research Opportunity:* The NHLBI Translational Medicine Branch Cardiovascular Intervention Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize technology for image-guided cardiovascular interventions. Please contact Peg Koelble at *koelblep@nhlbi.nih.gov* for more information.

Dated: April 20, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–9640 Filed 4–23–10; 8:45 am]

BILLING CODE 4140–01–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.

**Thermostable Y-Family Polymerases From Fungi for Use in Forensic DNA Services and Analysis of Damaged or Ancient DNA**

*Description of Invention:* Y-family polymerases are able to bypass lesions in DNA that would otherwise block replication by high fidelity DNA polymerases and are key to the effective study of ancient DNA and for use in forensic medicine. These enzymes are ubiquitous and are found in all kingdoms of life: Bacteria, archaea and eukaryotes. The number of proteins related to the Y-family polymerases is well over 200 orthologs and despite being closely related at the phylogenetic level, the few polymerases now characterized, each show a unique set of properties including processivity, fidelity, and the ability to bypass certain types of DNA. Y-family polymerases from thermostable organisms are of particular interest because the enzymes isolated from such species tend to be more stable, easy to work with and may have more utility in assays at higher temperatures, such as Polymerase Chain Reaction (PCR). For example, the thermostable archeal *Sulfolobus solfataricus* DinB-like polymerase Dpo4 can bypass lesions by generally inserting the correct complementary nucleotide opposite a variety of damaged bases and can, under appropriate conditions substitute for Taq polymerase in PCR applications [Nucleic Acids Res. 2001 Nov 15;29(22):4607–4616; HHS Ref. No. E–232–2001/0]. Additionally, functional and structural organization of this family of polymerases permits domain swapping designed to optimize specific properties of use in novel applications [J Biol Chem. 2004 Jul 30;279(31):32932–32940].

Dr. Woodgate's group at the National Institute of Child Health and Development have expanded their earlier work (HHS Ref. Nos. E–166–2004/0,/1, &/2) and have now cloned and expressed full length Y-family polymerases *Thermoascus auranticus* Pol eta, *Thermomyces lanuginosus* Pol eta, *Thermomyces lanuginosus* Pol iota, *Thermomyces lanuginosus* Pol kappa, *Thermomyces lanuginosus* REV1, *Sporotrichum thermophile* Pol eta, *Sporotrichum thermophile* Pol iota, *Sporotrichum thermophile* Pol kappa, and *Sporotrichum thermophile* REV1. These full length enzymes may be a good substitute for Taq polymerase in applications utilizing fluorescent nucleoside triphosphate derivatives. These lesion-bypassing polymerases could also be included along with a conventional thermostable polymerase in a PCR protocol designed to amplify old or damaged DNA samples which could greatly increase recoverability, accuracy and length of products. Other applications could include labelling or tagging DNA, real-time PCR, detection of SNPs, mismatches or DNA lesions, mutagenic PCR, directed-evolution methods and expanding the "DNA alphabet" utilizing non-natural nucleotides.

Available for licensing are several full length novel Y-family polymerases. These enzymes and methods should be of interest to forensic DNA service companies as well as to research reagent companies pursuing novel thermophilic enzymes for use in ancient and damaged DNA analysis and for novel applications with modified nucleotides.

*Inventors:* Roger Woodgate and John P. McDonald (NICHD).

*Patent Status:* U.S. Provisional Application No. 61/289,901 filed 23 Dec 2009 (HHS Reference No. E–254–2009/0–US–01).

*Related Patents and Technologies:* HHS Reference No. E–166–2004/2—

- U.S. Patent Application No. 11/596,783 filed 17 Nov 2006.
- Australian Patent Application No. 2005245966 filed 20 May 2005.
- Canadian Patent Application No. 2567563 filed 20 May 2005.
- South African Patent Application No. 2006/10533 filed 20 May 2005.

*Licensing Status:* Available for licensing.

*Licensing Contact:* Suryanarayana (Sury) Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Institute of Child Health and Human Development, Laboratory of Genomic Integrity, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the aforementioned thermostable fungal Y-family DNA polymerases. Please contact Joseph Conrad, Ph.D. at 301–435–3107 or *jmconrad@mail.nih.gov* for more information.

**Compositions and Methods for Immunotherapy**

*Description of Invention:* Granulysin is a cytolytic and proinflammatory molecule expressed by activated human cytotoxic T lymphocytes (CTLs) and natural killer (NK) cells. It has been implicated in many of diseases including infection, cancer, transplantation, autoimmunity, skin and reproductive maladies. Small synthetic forms of granulysin are being developed as novel antibiotics and studies suggest that granulysin may be a useful diagnostic biomarker and/or therapeutic for a wide variety of diseases.

The invention relates to methods of stimulating or enhancing an immune response using 15 kD granulysin. Investigators at the NIH have discovered that 15 kD granulysin (but not 9 kD granulysin) activates monocytes and induces them to differentiate into mature dendritic cells and activates allospecific T cells. This activation and subsequent differentiation induced by 15 kD granulysin may prove important in inducing or regulating immune responses in a host. Consequently, this invention could be used treat tumors and infections, particularly as an adjuvant for vaccines and immunotherapies. Further, this technology could be used to treat autoimmune disorders and organ transplant rejection.

*Applications:*

- Stimulating immunity to vaccinations, tumors or infections.
- Blocking the induction of an immune response in an autoimmune disease or organ transplant rejection.

*Advantages:*

- An immune response activator with broad applicability to the treatment of several diseases, including cancer, atherosclerosis, diabetes, autoimmune disorders, allergies, and infections.
- Co-administering 15kD granulysin could increase the efficacy of vaccines and immunotherapeutics.

*Development Status:*

- Pre-clinical stage.
- Animal data available.

*Inventors:* Alan M. Krensky and Carol Clayberger (NCI).

*Publications:*

1. Stenger S, Hanson DA, Teitlebaum R, Dewan P, Niazi KR, Froelich CJ, Ganz T, Thoma-Uszynski S, Melián A, Bogdan C, Porcelli SA, Bloom BR,

Krensky AM, Modlin RL. An antimicrobial activity of cytolytic T cells mediated by granulysin. Science 1998 Oct 2;282(5386):121–125. [PubMed: 9756476]

2. Krensky AM and Clayberger C. Biology and clinical relevance of granulysin. Tissue Antigens 2009 Mar;73(3):193–198. [PubMed: 19254247]

*Patent Status:* U.S. Provisional Application No. 61/250,601 filed 12 Oct 2009 (HHS Reference No. E–158–2009/0–US–01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Whitney Hastings, M.S.; 301–451–7337; *hastingw@mail.nih.gov.*

*Collaborative Research Opportunity:* The Center for Cancer Research, Laboratory of Cellular and Molecular Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, Ph.D. at 301–435–3131 or *hewesj@mail.nih.gov* for more information.

**Fully-Human Monoclonal Antibodies Against Human EphrinB2 and EphB4 for Use in the Study of Cancer Pathogenesis**

*Description of Invention:* Ephrin receptor tyrosine kinases and their ephrin ligands have been implicated in cancer pathogenesis. Ephrin receptors and ligands affect tumor growth, invasiveness, angiogenesis, and metastasis. Ephrin signaling activities in cancer are complex and are only now beginning to be uncovered.

Researchers at the National Cancer Institute-Frederick, NIH, have developed a set of five fully-human monoclonal antibodies against human Ephrin-B2 and Ephrin type-B receptor 4 ("EphB4"). The antibodies were identified by screening a naïve human antibody phage display library against Ephrin-B2 and EphB4. These human monoclonal antibodies have high affinity and specificity for Ephrin-B2 and EphB4.

*Applications:*

- Research reagents for *in vitro/in vivo* investigation of Ephrin receptor and ligand interactions.
- Targeting reagents for *in vivo* imaging.
- Research reagents for protein co-crystallization.

*Advantages:*

- High affinity and antigen specificity.
- Bind both soluble ectodomains and cell surface-expressed molecules.

*Inventors:* Dimiter S. Dimitrov *et al.* (NCI).

*Patent Status:* HHS Reference No. E–331–2008/0 & E–331–2008/1—Research Material. Patent protection is not being pursued for this technology.

*Licensing Status:* Available for licensing.

*Licensing Contact:* Patrick P. McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov.*

*Collaborative Research Opportunity:* The Center for Cancer Research Nanobiology Program is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, Ph.D. at 301–435–3131 or *hewesj@mail.nih.gov* for more information.

Dated: April 20, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–9642 Filed 4–23–10; 8:45 am]

BILLING CODE 4140–01–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.

**New Mouse Strain With Conditional Deletion of SMAD7: Analysis of Disease Processes Involving Immunological, Fibrotic or Cardiovascular Indications**

*Description of Invention:* SMAD7 conditional knockout mice are available for licensing. SMAD7 can be knocked out by breeding with CRE-recombinase transgenic mice with a variety of promoters to yield tissue or cell type-specific deletions of SMAD7. SMAD7 has been shown to play a role in bone morphogenesis, cardiovascular tissue generation, immune regulation and fibrosis. Therefore, these mice provide a unique model to examine the role of the SMAD7 gene in disease processes that involve immunological, fibrotic, or cardiovascular components. Specifically, these mice may represent a novel model of Scleroderma, a disease with both an immunological and fibrotic component.

*Applications:*

- Mouse model of Scleroderma.
- Means of studying bone morphogenesis and cardiovascular tissue generation.
- Means of studying the role of SMAD7 in immune regulation.

*Inventors:* Marilyn Diaz (NIEHS).

*Related Publication:* Dong C, Zhu S, Wang T, Yoon W, Li Z, Alvarez RJ, Dijke P, White B, Wigley FM, Godschmidt-Clermont PJ. Deficient Smad7 expression: A putative molecular defect in scleroderma. Proc Natl Acad Sci USA. 2002 Mar 19;99(6):3908–3913. [PubMed: 11904440]

*Patent Status:* HHS Reference No. E–040–2010/0—Research Material. 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:* Steve Standley, Ph.D.; 301–435–4074; *sstand@od.nih.gov.*

*Collaborative Research Opportunity:* The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Dr. Elizabeth M. Denholm, *denholme@niehs.nih.gov,* for more information.

**A Method of Reducing Cholesterol Biosynthesis With Specific MicroRNAs**

*Description of Invention:* This technology is directed to the discovery of specific microRNAs that target and downregulate enzymes within the cholesterol biosynthetic pathway and is currently being tested in vivo.

Briefly, microRNAs regulate the translation of messenger RNAs (mRNAs)

into protein. The inventors have discovered a set of specific microRNAs that downregulate the expression of multiple enzymes in the cholesterol biosynthetic pathway. Importantly, this technology may provide the benefits of cholesterol lowering therapies to patients that are not suited for statin-based treatments. Statins block the cholesterol biosynthetic pathway at a single enzymatic step and may result in the deleterious build-up of a metabolic intermediate. In contrast, this technology simultaneously targets the expression of multiple enzymes required for cholesterol biosynthesis and thus may avoid the build-up of metabolic intermediates. The reduction of cholesterol biosynthesis has been indicated for improved cardiovascular health and lowers the risk for heart disease, heart attack, and stroke.

*Potential Applications and Advantages:*

- A method of reducing cellular cholesterol biosynthesis.
- A method of reducing systemic cholesterol in a subject.
- May be effective for patients not suited for statin-based treatment.
- Targets multiple enzymes in the cholesterol biosynthetic pathway simultaneously.

*Development Status:* Early stage.

*Market:* According to the Centers for Disease Control (CDC), approximately one in every six adults has high cholesterol and individuals with high total cholesterol have approximately twice the risk of heart disease in comparison to individuals with optimal levels.

*Inventors:* Kasey Vickers and Alan Remaley (NHLBI).

*Publication:* Vickers KC and Remaley AT. MicroRNAs in atherosclerosis and lipoprotein metabolism. Curr Opin Endocrinol Diabetes Obesity. 2010 Apr;17(2):150–155; DOI 10.1097/MED.0b013e32833727a1. [PubMed: 20150807]

*Patent Status:* U.S. Provisional Application No. 61/280,170 filed 30 Oct 2009 (HHS Reference No. E–142–2009/0–US–01).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Fatima Sayyid, MHPM; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov*.

*Collaborative Research Opportunity:* The National Heart, Lung and Blood Institute, Pulmonary Vascular Medicine Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize microRNA regulation of the cholesterol biosynthetic pathway. Please contact Dr. Denise M. Crooks at 301–435–0103, *crooksd@nhlbi.nih.gov* for more information.

### *Moraxella Catarrhalis* Lipooligosaccharide Based Conjugate Vaccines for the Prevention of Otitis Media and Respiratory Infections

*Description of Invention: Moraxella catarrhalis* is one of the three leading causative agents of otitis media in children. This is due in part to the current immunizations of children with *Streptococcus pneumoniae* polysaccharide and conjugate vaccines to prevent otitis media. The proportion of otitis media caused by pneumococcal strains covered by the vaccines have decreased while those caused by *Moraxella catarrhalis* and nontypeable *Haemophilus influenzae* have significantly increased. At some point during early childhood, otitis media affects more than 80% of children under 6 years of age. Otitis media can lead to deafness and language or learning deficits. In adults, *Moraxella catarrhalis* is a major cause of bronchopneumonia and exacerbation of existing chronic obstructive pulmonary disease for chronic heavy smokers or elderly patients with chronic pulmonary disease. *Moraxella catarrhalis* infections can be treated with antimicrobial agents; however, the emergence of antibiotic resistance makes vaccines against *Moraxella catarrhalis* an attractive alternative to antimicrobial drugs. There are currently no *Moraxella catarrhalis* vaccines on the market.

The subject technologies are conjugate vaccines against *Moraxella catarrhalis.* The vaccines are comprised of isolated lipooligosaccharides (LOS) from which esterified fatty acids have been removed to produce detoxified LOS or from which lipid A has been removed to produce a detoxified oligosaccharide (OS) covalently linked to an immunogenic carrier such as tetanus toxoid, and adjuvants such as alum. The vaccines can potentially be used as a vaccine component in a combination vaccine containing other pediatric vaccine components.

*Applications:* Vaccines for the prevention of respiratory infections and otitis media caused by *Moraxella catarrhalis.*

*Advantages:*

- Novel vaccine candidates.
- LOS is a conserved antigen.

*Development Status: In vitro* and *in vivo* (mouse animal model) data is available and can be provided upon request.

*Market:*

- Pediatric vaccines.
- Preventative vaccines.

*Inventors:* Xin-Xing Gu (NIDCD) and John Robbins (NICHD).

*Related Publications:* Manuscripts in preparation, available upon request under a confidential disclosure agreement.

*Patent Status:*

- U.S. Patent 6,685,949 issued 03 Feb 2004 (HHS Ref. No. E–264–1997/0–US–13).
- U.S. Patent 7,641,906 issued 05 Jan 2010 (HHS Ref. No. E–217–2001/0–US–06).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Institute on Deafness and Other Communication Disorders, Vaccine Research Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the subject technology. Please contact Brian W. Bailey, Ph.D. at 301–594–4094 or *bbailey@mail.nih.gov* for more information.

### Nontypeable *Haemophilus Influenzae* Lipooligosaccharide Based Conjugate Vaccines for the Prevention of Otitis Media and Respiratory Infections

*Description of Invention:* Nontypeable *Haemophilus influenzae* is one of the leading causative agents of otitis media in children and accounts for 11% of pneumonia cases in children. This is due in part to the current immunizations of children with *Streptococcus pneumoniae* polysaccharide and conjugate vaccines to prevent otitis media. The proportion of otitis media caused by pneumococcal strains covered by the vaccines have decreased while those caused by nontypeable *Haemophilus influenzae* have significantly increased. At some point during early childhood, otitis media affects more than 80% of children under 6 years of age. Otitis media can lead to deafness and language or learning deficits. In adults, nontypeable *Haemophilus influenzae* causes respiratory tract infections primarily in persons with chronic obstructive pulmonary disease, one of the most common lung diseases. Exacerbation of chronic obstructive pulmonary disease in the elderly is the fourth leading cause of death in the United States. Otitis media can be treated with antibiotics; however, the emergence of antibiotic resistance makes vaccines against nontypeable *Haemophilus influenzae* an attractive alternative to those classes of drugs. The

current *Haemophilus influenzae* type b conjugate vaccines have no protective effect against nontypeable strains.

The technologies described herein are conjugate vaccines against nontypeable *Haemophilus influenzae.* The vaccines are comprised of lipooligosaccharides (LOS) from which esterified fatty acids have been removed from lipid A to form detoxified LOS conjugated to an immunogenic carrier such as tetanus toxoid, and an adjuvant such as alum. *In vivo* data in the *Chinchilla* animal model are available. The vaccines can be potentially used as a component in a combination vaccine with other pediatric vaccine components.

*Applications:* Vaccines for the prevention of respiratory infections and otitis media caused by nontypeable *Haemophilus influenzae.*

*Advantages:*

- Novel vaccine candidates.
- Conserved antigen.

*Development Status: In vitro* and *in vivo* data can be provided upon request. Data is also available from a phase I clinical trial with a representative vaccine showing safety and immunogenicity in adults.

*Market*:

- Pediatric vaccines.
- Preventative vaccines.

*Inventors:* Xin-xing Gu (NIDCD), John Robbins (NICHD), *et al.*

*Related Publication:* W Hong *et al.* Protection against nontypeable Haemophilus influenzae challenges by mucosal vaccination with a detoxified lipooligosaccharide conjugate in two chinchilla models. Microbes Infect. 2010 Jan;12(1):11–18. [PubMed: 19782149]

*Patent Status:*

- U.S. Patent 6,207,157 issued 27 Mar 2001 (HHS Ref. No. E–228–1995/1–US–01).
- U.S. Patent 6,607,725 issued 19 Aug 2003 (HHS Ref. No. E–228–1995/1–US–02).
- U.S. Patent 7,641,906 issued 05 Jan 2010 (HHS Ref. No. E–217–2001/0–US–06).

*Licensing Status:* Available for licensing.

*Licensing Contact:* Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Institute on Deafness and Other Communication Disorders, Vaccine Research Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the subject technology. Please contact Brian W. Bailey, Ph.D. at 301–594–4094 or *bbailey@mail.nih.gov* for more information.

Dated: April 20, 2010.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2010–9641 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; 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:* National Cancer Institute Special Emphasis Panel, T32 Review.

*Date:* May 11, 2010.

*Time:* 5 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Crystal City, 2399 Jefferson Davis Hwy, Arlington, VA 22202.

*Contact Person:* Robert Bird, PhD, Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Epidemiology, Prevention, Control and Population Sciences.

*Date:* May 26–27, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Washington DC/Rockville, Rockville, MD 20852.

*Contact Person:* Wlodek Lopaczynski, M.D., PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Cellular & Tissue Biology P01.

*Date:* May 26–28, 2010.

*Time:* 5 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Shakeel Ahmad, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8139, Bethesda, MD 20892–8328, (301) 594–0114, *ahmads@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, State and Community Tobacco Control Policy and Media Research.

*Date:* May 26–27, 2010.

*Time:* 7 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Legacy Hotel and Conference Center, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Gerald G. Lovinger, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8101, Bethesda, MD 20892–8329, 301/496–7987, *lovingeg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9636 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; 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 application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center on Minority Health and Health Disparities.
*Date:* May 10–12, 2010.
*Time:* 6 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications and or proposals.
*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.
*Contact Person:* Prabha L. Atreya, PhD, Chief, Office of Scientific Review, National Center on Minority Health and Health Disparities, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–8696, *atreyapr@mail.nih.gov.*

Dated: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9638 Filed 4–23–10; 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; OBT IRG Member Conflict.
*Date:* May 17, 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:* Angela Y. Ng, MBA, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804 (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Healthcare Delivery and Methodologies Competitive Supplements.
*Date:* May 18, 2010.
*Time:* 11:30 a.m. to 1 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Sheraton Sand Key Hotel, 1160 Gulf Boulevard, Clearwater Beach, FL 33767.
*Contact Person:* Jacinta Bronte-Tinkew, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *brontetinkewjm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Genetics and Epidemiology.
*Date:* May 19, 2010.
*Time:* 12 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Tata Communications, 2355 Dulles Corner Boulevard, 7th Floor, Herndon, VA 20171 (Virtual Meeting).
*Contact Person:* Fungai Chanetsa, MPH, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.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: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9652 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2010–N–0204]**

### Infusion Pumps; Public Meeting; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a public meeting regarding external infusion pumps. The purpose of the meeting is to inform the public about current problems associated with external infusion pump use, to help the agency identify quality assurance strategies to mitigate these problems, and to solicit comments and input regarding how to bring more effective external infusion pumps to market. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a draft guidnace document entitled "Total Product Life Cycle: Infusion Pump—Premarket Notification (510(k)) Submissions."

*Date and Time*: The public meeting will be held on May 25 and 26, 2010, from 8 a.m. to 5 p.m. Persons interested in attending the meeting must register by 5 p.m. on May 18, 2010.

*Location*: The public meeting will be held at the Hilton Silver Spring hotel, 8727 Colesville Rd., Silver Spring, MD 20910. Seating is limited and available only on a first-come, first-served basis.

*Contact Person*: Victoria Wagman, Food and Drug Administration, Center for Devices and Radiological Health (CDRH), 10903 New Hampshire Ave., Bldg. 66, rm. 5449, Silver Spring, MD 20993–0002, 301–796–6851, e-mail: *victoria.wagman@fda.hhs.gov*.

*Registration*: Register online for webinar or onsite attendance at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm203299.htm* (select the appropriate meeting from the list). Please provide complete contact information for each attendee, including name, title, affiliation, address, e-mail, and telephone number. Registration requests should be received by May 18, 2010. For those without Internet access, please call 301–796–6861 to register. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited and therefore FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public meeting will be provided beginning at 7 a.m. Persons needing a sign language interpreter or other special accommodations should notify Victoria Wagman (see *Contact Person*) at least 7 days in advance. Additional information is also available at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm181140.htm*.

*Comments*: Regardless of attendance at the public meeting, interested persons may submit written or electronic comments. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. 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. Please also indicate the specific question(s) addressed. (See section II 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.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA has seen an increase in the number and severity of external infusion pump incident reports and recalls. During the period from January 1, 2005, to December 31, 2009, FDA received over 56,000 medical device reports associated with the use of external infusion pumps. Of these reports, approximately 1 percent reported deaths, 34 percent reported serious injuries, and 62 percent reported malfunctions. The most frequently reported external infusion pump device problems across all of the adverse reports recieved included software error messages, human factors (which include but are not limited to use error), broken components, battery failure, alarm failure, over infusion, and under infusion. In some reports, the manufacturer was unable to determine or identify the problem, however, subsequent analyses revealed that many of the problems were preventable.

FDA has evaluated a broad spectrum of infusion pumps across manufacturers and has concluded there are numerous, systemic problems with device design, manufacturing, and adverse event reporting. To address these problems, the agency determined that manufacturers may need to conduct additional assessments of new products or make changes to products currently being marketed.

## II. Topics for Discussion at the Public Meeting

At the meeting, CDRH will discuss how to improve the safety and efficacy of external infusion pumps and hear input on these issues from a broad range of stakeholders. The agency encourages individuals, patient advocates, industry, consumer groups, health care professionals, researchers, and other interested persons to attend the public meeting. To help focus the agency's strategies, CDRH requests feedback on the following questions, which will serve as the basis for discussion at the public meeting:

- What problems with external infusion pump have you observed in the clinical or home setting?
- How can FDA, academia, users, patients, and industry work together to improve the safety and efficacy of infusion pumps?
- What factors or criteria should be considered when designing an external infusion pump for the clinical or home environment and the user populations in those environments?
- Why is it important? What is the best way for FDA to receive timely, accurate, and complete adverse events reports?
- When changes to CDRH's pre- or postmarket regulation of external infusion pumps are warranted, how should the center apply them to devices currently under review?
- How could CDRH better communicate external infusion pump issues or concerns to its stakeholders?

During the meeting, there will be a facilitated discussion between CDRH staff and invited experts from the private and public sectors about the questions presented in this document, as well as periodic open sessions allowing all attendees the opportunity to provide comment and feedback. Information gathered from the public meeting will help the agency in developing topics for further consideration.

## III. Transcripts

Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857, approximately 15 working days after the public meeting at a cost of 10 cents per page. A link to the transcripts will also be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* approximately 45 days after the meeting.

Dated: April 16, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–9208 Filed 4–23–10; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of 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 Scientific Management Review Board.

The NIH Reform Act of 2006 (Pub. L. 109–482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the Scientific Management Review Board (also referred to as SMRB or Board) is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

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:* Scientific Management Review Board.

*Date:* May 18–19, 2010.

*Time:* May 18, 2010, 8 a.m. to 5 p.m.

*Agenda:* Presentation and discussion will include updates from two SMRB Working Groups, the Substance Use, Abuse and Addiction group and the Intramural Research Program group. Participants will include both scientific experts and community stakeholders. Additional time will be allotted for presentation and discussion of each Working Group's draft recommendations to date. Any supporting documentation for this meeting, including the agenda, will be available at *http://smrb.od.nih.gov*. Sign up for public comment will begin at approximately 7 a.m. on both May 18 and 19 and will be restricted to one sign in per person. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments using the contact person's address below.

*Place:* National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Time:* May 19, 2010, 8 a.m. to 5 p.m.

*Agenda:* Continuation of May 18th meeting.

*Place:* National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Lyric Jorgenson, Health Sciences Policy Analyst, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, Building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892, *smrb@mail.nih.gov,* (301) 496–6837.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

The meeting will also be Webcast. The draft meeting agenda and other information about the SMRB, including information about access to the Webcast, will be available at *http://smrb.od.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, hotel, and airport shuttles will be inspected before being allowed on

campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: April 21, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9618 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of 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 open to the public as indicated below, 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.

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 materials, 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 Advisory Neurological Disorders and Stroke Council.

*Date:* May 27, 2010.

*Closed:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

*Open:* 1 p.m. to 5:30 p.m.

*Agenda:* Report by the Director, NINDS; Report by the Associate Director for Extramural Research; Other Administrative and Program Developments; and an Overview of the NINDS Intramural Program.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9616 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; 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:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; P30 Core Research Center Review.

*Date:* May 21, 2010.

*Time:* 12 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:* Susan Sullivan, PhD, Scientific Review Officer, National Institute of Deafness and Other Communication Disorders, 6120 Executive Blvd., Ste. 400C, Rockville, MD 20852, 301–496–8683, *sullivas@mail.nih.gov.*

*Name of Committee:* Communication Disorders Review Committee.

*Date:* June 10–11, 2010.

*Time:* June 10, 2010, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Time:* June 11, 2010, 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Christopher A. Moore, PhD, Scientific Review Officer, National Institute of Health, NIDCD, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892, 301–496–8683, *moorechristopher@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9615 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; 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 Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

*Date:* May 11–12, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202.

*Contact Person:* Lynn M. Amende, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9653 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; 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:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Lung Tissue Research Consortium (LTRC): Clinical Centers.

*Date:* May 13, 2010.

*Time:* 8:30 a.m. to 10 a.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Lung Tissue Research Consortium (LTRC): Data Coordinating Center.

*Date:* May 13, 2010.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Lung Tissue Research Consortium (LTRC): Tissue Repository.

*Date:* May 13, 2010.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Lung Tissue Research Consortium (LTRC): Radiology Center.

*Date:* May 13, 2010.

*Time:* 12 p.m. to 1 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

*Contact Person:* Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Resource Related Research Project.

*Date:* May 18, 2010.

*Time:* 1 p.m. to 2 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:* Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Women's Health Initiative Field.

*Date:* May 19, 2010.

*Time:* 8 a.m. to 3 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Tony L. Creazzo, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzot@mail.nih.gov.*

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Program Project in Lung Alveolar Stability.

*Date:* May 21, 2010.

*Time:* 10 a.m. to 2 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:* William J. Johnson, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7178, Bethesda, MD 20892–7924, 301–435–0725, *johnsonwj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9651 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; 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 Cancer Institute Initial Review Group; Subcommittee I—Career Development.

*Date:* May 11–12, 2010.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hilton Crystal City, 2399 Jefferson Davis Hwy, Arlington, VA 22202.
*Contact Person:* Robert E Bird, PhD, Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 19, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9639 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; 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 Cancer Institute Initial Review Group; Subcommittee G—Education.
*Date:* June 15, 2010.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
*Contact Person:* Jeannette F. Korczak, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9637 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; 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:* National Cancer Institute Special Emphasis Panel, Multifunctional Therapeutics Based on Nanotechnology, Phase II.
*Date:* June 1, 2010.
*Time:* 1 p.m. to 3:30 p.m.
*Agenda:* To review and evaluate contract proposals.
*Place:* National Institutes of Health, 6116 Executive Boulevard Room 706, Rockville, MD 20852. (Telephone Conference Call).
*Contact Person:* Jeffrey E. DeClue, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904, *decluej@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Cancer Prevention Research Small Grant Program (R03).
*Date:* June 10–11, 2010.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.
*Contact Person:* Irina Gordienko, PhD, Scientific Review Officer, Scientific Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm. 7073, Bethesda, MD 20892, 301–594–1566, *gordienkoiv@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Quantitative Imaging for Evaluation of Responses to Cancer Therapies.
*Date:* June 14, 2010.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.
*Contact Person:* Kenneth L. Bielat, PhD, Scientific Review Officer, Special Review Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301–496–7576, *bielatk@mail.nih.gov.*

*Name of Committee:* National Cancer Institute Special Emphasis Panel, NCI Clinical Studies.
*Date:* June 16–18, 2010.
*Time:* 3 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
*Contact Person:* Majed M. Hamawy, M.B.A., PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8135, Bethesda, MD 20852, 301–594–5659, *mh101v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 20, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–9634 Filed 4–23–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Secretary's Advisory Committee on Heritable Disorders in Newborns and Children

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Request for public comment on a Secretary's Advisory Committee on Heritable Disorders in Newborns and Children's commissioned report: *Considerations and Recommendations*

*for National Guidance Regarding the Retention and Use of Residual Dried Blood Spot Specimens after Newborn Screening.*

**SUMMARY:** The Secretary's Advisory Committee on Heritable Disorders in Newborns and Children (SACHDNC) was established under Section 1111 of the Public Health Service (PHS) Act, 42 U.S.C. 300b–10, as amended in the Newborn Screening Saves Lives Act of 2008 (Act). The SACHDNC is governed by the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees. The SACHDNC provides advice to the Secretary about aspects of newborn and childhood screening and technical information for the development of policies and priorities that will enhance the ability of the State and local health agencies to provide for newborn and child screening, counseling and health care services for newborns and children having or at risk for heritable disorders.

The changing dynamics of emerging technology and the complexity of genetics require an assessment of the state of the art in newborn screening and a perspective on the future directions such programs should take. Newborn screening is a highly successful public health program that identifies rare genetic, congenital and functional disorders, ensures early management and endeavors to ensure follow-up for those affected. Each State has a law that either requires or allows newborn screening and States are responsible for oversight and implementation of their respective newborn screening program. State newborn screening policies are usually developed with input from multi-disciplinary advisory committees that include consumers, health care and public health professionals and other interested stakeholders. While State administration of newborn screening programs fosters local control and accountability, it also gives rise to wide variation in practices across the country, including disparate policies on the retention and use of dried blood spot specimens after newborn screening has been finished. Given the tremendous potential to advance science and clinical care for newborns, children and their families through the use of residual newborn screening blood specimens, the SACHDNC calls upon policymakers, the public health community, health care providers and families to work together to protect this valuable resource for the public good.

This notice is designed to review the issues facing State newborn screening programs related to the retention and use of residual newborn screening specimens. It will lay the foundation for developing national guidance to States in this area, and encourage an approach to future policymaking that enables residual specimens use to advance science and clinical care for newborns, children and their families. The core principles of protecting patient privacy, confidentiality and ensuring public trust are at the core of these recommendations.

Because newborn screening is the only public health screening program that reaches the entire population of newborns in the U.S., it is unique, and the processes surrounding it must be thoughtfully approached. Residual blood specimens provide an excellent opportunity for storage in a biobank for approved research uses after screening and validating are complete. However, at the present time, research is a secondary purpose that may not be adequately addressed in some existing State laws or policies. Newborn screening programs should approach the use of residual specimens carefully, anticipating both the potential benefits and risks.

The SACHDNC believes that national guidance on the retention and use of residual newborn screening specimens for research would help States to navigate these complex issues. To assist in this process, the SACHDNC makes the following recommendations to the Secretary of the Department of Health and Human Services (HHS) and requests action by the Secretary where applicable:

(1) All State newborn screening programs should have a policy in place that has been reviewed by the State attorney general or other appropriate legal authority addressing the disposition of dried blood specimens remaining after newborn screening. Policymakers should consider the value of the specimens as a promising resource for research, the importance of protecting the privacy and confidentiality of families and the necessity of ensuring the public's trust.

- The policy should specify appropriate use and storage after the completion of newborn screen testing and verification according to laboratory Quality Assurance (QA) procedures. Parties responsible for drafting the policy should consider whether consent or dissent from families is necessary for uses other than newborn screening and, if so, under what circumstances. Multidisciplinary input, including from consumers, should be solicited and thoughtfully considered in developing such a policy. The specimen disposition policy should include the length of time for which specimens will be stored and storage conditions. Compliance with storage processes included in NCCLS/CLSI Standard LA4–A5 or its current edition is recommended (Clinical and Laboratory Standards Institute (CLSI). Blood collection on filter paper for newborn screening programs; approved standard—fifth edition. CLSI document LA4–A5. Wayne, PA: Clinical and Laboratory Standards Institute; 2007.) Any data linkages should be carefully addressed, and privacy and confidentiality should be ensured.

(2) All State newborn screening programs should have a policy in place that has been reviewed by the State attorney general or other appropriate legal authority that specifies who may access and use dried blood specimens once they arrive at the State-designated newborn screening laboratory, including further access after newborn screening tests are completed.

- Multidisciplinary input, including from consumers, should be solicited and thoughtfully considered in developing such a policy. The specimen access policy should address any uses prior to and after the newborn screening laboratory testing and validation process. Policies that permit the approved use of dried blood spot specimens for purposes other than newborn screening should address handling and disposition of the specimen and measures to protect the privacy and confidentiality of any associated patient information.

(3) All State newborn screening programs should develop a well-defined strategy to educate health care professionals who provide patients with pre- and post-natal care about newborn screening and the potential use of residual dried blood specimens for research.

- The strategy should include steps to inform and train health care professionals about the newborn screening system, the State's policy on the potential use of residual newborn screening specimens, and their educational responsibilities with respect to expectant parents and parents of newborns. Educational programs should take steps to educate professionals treating new parents who did not have ready access to prenatal care, and, therefore, did not receive information about the newborn screening system at that time.

(4) All State newborn screening programs should work proactively to ensure that all families of newborns are

educated about newborn screening as a part of prenatal and postnatal care.

• As part of the educational process, all State newborn screening programs should maintain and distribute educationally and culturally appropriate information that includes basic information about the use or potential use of the residual newborn screening specimens. Processes should be in place to evaluate the extent, timing and understanding of parental education with an eye towards educational program improvement. While prenatal care should serve as the primary target of educational programs, they also should be designed to reach parents that do not have access to those services and require postnatal education about newborn screening. Educational materials should address potential uses of residual newborn screening specimens, long-term storage policies, procedures for withdrawal of consent, opting-out of future research use, requesting the destruction of samples, limitations with regard to consent once samples have been distributed for research, and information on stewardship of specimens.

(5) If residual blood specimens are to be available for any purpose other than the legally required newborn screening process for which they were obtained, an indication of the parents' awareness and willingness to participate should exist in compliance with federal research requirements, if applicable (45 CFR 46).

• Depending on the purposes for which specimens will be used, a parental consent (opt-in) or a dissent (opt-out) process may meet this requirement, if necessary, or a waiver of consent may be appropriate. The State attorney general or other appropriate legal authority should review this process. The use of residual newborn screening specimens for program evaluation (*e.g.,* repeat testing as a quality check) or process improvement (*e.g.,* non-commercial, internal program new test development or refinement) are valid components of the public health newborn screening program, and, therefore, should not require additional consent. However, once the use of a residual newborn screening specimens moves beyond the State mandated uses of program evaluation and quality assurance, treatment efficacy and test refinement, each State should consider whether separate or blanket consent/dissent processes for approved studies is required from parents, legal guardians or individuals screened upon the age of majority for the use of residual newborn screening specimens.

(6) Provide administrative support and funding to SACHDNC to:

• Facilitate a national dialogue among federal and State stakeholders about policies for the retention and use of residual newborn screening specimens, including model consent and dissent processes;

• Develop national guidance for consent or dissent for the secondary use of specimens and mechanisms to ensure privacy and confidentiality, including methods for opting in or out of repositories; and

• Collect and analyze national data on the utility of any additional consent or dissent processes implemented relative to potential research uses of residual newborn screening specimens;

(7) Provide administrative support and funding to the Health Resources and Services Administration Maternal and Child Health Bureau to award grants to States to:

• Develop model educational programs for the general public on the importance of newborn screening and the potential uses of residual newborn screening specimens to generate population-based knowledge about health and disease; and

• Create educational materials directed to health care professionals and consumers with facts about potential uses of residual newborn screening specimens and other related issues, including those outlined in recommendation (Jinks DC, Minter M, Tarver DA, Vanderford M, Hejtmancik JF, McCabe ER. Molecular genetic diagnosis of sickle cell disease using dried blood specimens on blotters used for newborn screening. Hum Genet. 1989 Mar; 81(4):363–).

SACHDNC is now seeking public comments on the report and its recommendations.

**DATES:** The public is encouraged to submit written comments on the report and its recommendations by June 25, 2010.

**ADDRESSES:** The following mailing address should be used: Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, 18A–19, Rockville, MD 20857. HRSA/MCHB's facsimile number is 301–480–1312. Comments can also be sent via e-mail to *screening@hrsa.hhs.gov.* All public comments received will be available for public inspection at MCHB/HRSA's office between the hours of 8:30 a.m. and 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Questions about this request for public comment can be directed to Michele Lloyd-Puryear, MD, PhD, by e-mail *(screening@hrsa.hhs.gov).* The report will be posted on SACHDNC's Web site at *http://www.hrsa.gov/heritabledisorderscommittee/.*

Dated: April 20, 2010.

**Mary K. Wakefield,**

*Administrator.*

[FR Doc. 2010–9625 Filed 4–23–10; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5409–N–01]**

## Notice of Web Availability: Notice of Fiscal Year (FY) 2010 Opportunity To Register and Other Important Information for Electronic Application Submission for Continuum of Care Homeless Assistance Programs

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** Through today's Notice, HUD announces the availability on its Web site of its Notice of FY2010 Opportunity to Register and Other Important Information for Electronic Application Submission for the Continuum of Care Homeless Assistance Program (CoC Registration Notice). The CoC Registration Notice provides instructions to potential Continuums of Care (CoCs) applying for the approximately $1.68 billion of funding under HUD's Continuum of Care Homeless Assistance Competition in FY2010. The CoC competition uses an electronic system outside of grants.gov for CoC registration as well as for submission of the CoC application called *e-snaps.* The CoC Registration Notice provides information to assist applicants understand the CoC registration and electronic application submission process through *e-snaps,* which is located at *http://www.hud.gov/esnaps.* Notification of the availability of the 2010 CoC application will be released via HUD's Homeless Assistance listserv. To join HUD's listserv, go to *http://www.hud.gov/subscribe/mailinglist.cfm* and click on "Homeless Assistance Program."

The CoC Registration Notice providing this information is available on the HUD Web site at *http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/grants/fundavail#avail* and *http://www.hudhre.info/documents/FY2010CoCNOFA_Registration.pdf.*

**FOR FURTHER INFORMATION CONTACT:** CoCs may contact the HUD Field Office

serving their area, at the telephone number shown at *http://portal.hud.gov/portal/page/portal/HUD/localoffices*. In addition, applicants are strongly encouraged to send questions regarding this Notice to HUD via the Virtual Help Desk at *http://www.hudhre.info/index.cfm?do=viewFaqs*. Applicants that do not have Internet access and need to obtain a copy of a NOFA can contact HUD's NOFA Information Center toll free, at 800–HUD–8929. Persons with hearing or speech impairments may access this number, toll free, via TTY by calling the Federal Information Relay Service at 800–877–8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

Dated: April 20, 2010.

**Mercedes Márquez,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 2010–9617 Filed 4–23–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

**[Docket No. MMS–2010–OMM–0020]**

### MMS Information Collection Activity: 1010–0106, Oil Spill Financial Responsibility for Offshore Facilities, Extension of a Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of an information collection (1010–0106).

**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 Part 253, Oil Spill Financial Responsibility for Offshore Facilities."

**DATES:** Submit written comments by June 25, 2010.

**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–0020 then click search. Under the tab "View By Docket Folder" you can submit public comments and view supporting and related materials available for this collection of information. 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 Information Collection 1010–0106 in your comment and include your name and address.

**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.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities.

*Forms:* MMS–1016, 1017, 1018, 1019, 1020, 1021, and 1022.

*OMB Control Number:* 1010–0106.

*Abstract:* This information collection request addresses the regulations at 30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities, including any supplementary Notices to Lessees and Operators (NTLs) that provide clarification, description, or explanation of these regulations, and forms MMS–1016 through MMS–1022.

The MMS will use the information collected under 30 CFR Part 253 to verify compliance with section 1016 of Oil Pollution Act. The information is necessary to confirm that applicants can pay for clean-up and damages from oil-spill discharges from Covered Offshore Facilities (COFs).

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 or for limited inspection." No items of a sensitive nature are collected. Responses are mandatory.

*Frequency:* On an annual basis, except for changes to existing COF listings that could occur throughout the term of the Oil Spill Financial Responsibility (OSFR) Certification.

*Description of Respondents:* Holders of leases, permits, and rights of use and easement in the OCS and in State coastal waters who will appoint designated applicants. Other respondents will be the designated applicants' insurance agents and brokers, bonding companies, and indemnitors. Some respondents may also be claimants.

*Estimated Reporting and Recordkeeping "Hour" Burden:* The currently approved annual reporting burden for this collection is 21,319 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 253 | Reporting requirement | Hour burden |
|---|---|---|
| Various sections | The burdens for all general references to submitting evidence of OSFR are covered under the forms below. | 0 |
| | **Applicability and Amount of OSFR** | |
| 11(a)(1); 40; 41 | Form MMS–1016—Designated Applicant Information Certification | 1 |
| 11(a)(1); 40; 41 | Form MMS–1017—Designation of Applicant | 9 |
| 12 | Request for determination of OSFR applicability | 2 |
| 15 | Notify MMS of change in ability to comply | 1 |
| 15(f) | Provide claimant written explanation of denial | 1 |
| | **Methods for Demonstrating OSFR** | |
| 21; 22; 23; 24; 26; 27; 30; 40; 41; 43. | Form MMS–1018—Self-Insurance or Indemnity Information | 1 |
| 29; 40; 41; 43 | Form MMS–1019—Insurance Certificate | 120 |
| 31; 40; 41; 43 | Form MMS–1020—Surety Bond | 24 |

| Citation 30 CFR 253 | Reporting requirement | Hour burden |
|---|---|---|
| 32 | Proposal for alternative method to evidence OSFR (anticipate no proposals, but the regulations provide the opportunity). | 120 |
| **Requirements for Submitting OSFR Information** | | |
| 40; 41 | Form MMS–1021—Covered Offshore Facilities | 3 |
| 40; 41; 42 | Form MMS–1022—Covered Offshore Facility Changes | 1 |
| **Claims for Oil-Spill Removal Costs and Damages** | | |
| Subpart F | Claims: MMS will not be involved in the claims process. Assessment of burden for claims against the Oil Spill Liability Trust Fund (33 CFR Parts 135, 136, 137) should be responsibility of the U.S. Coast Guard. | 0 |
| 60(d) | Claimant request to determine whether a guarantor may be liable for a claim | 2 |

*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 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: April 14, 2010.

**William S. Hauser,**

*Acting Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2010–9622 Filed 4–23–10; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2010–N064; 20124–1113–0000–C2]**

## Endangered and Threatened Wildlife and Plants; Attwater's Prairie-Chicken (Tympanuchus cupido attwateri) Recovery Plan, Second Revision

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability: revised recovery plan.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the Attwater's Prairie-Chicken (*Tympanuchus cupido attwateri*) Recovery Plan, Second Revision. A recovery plan was originally completed for the Attwater's prairie-chicken in 1983 and revised in 1993.

**ADDRESSES:** An electronic copy of the recovery plan can be obtained from our website at *http://www.fws.gov/southwest/es/Library/*. Copies of the recovery plan are also available by request. To obtain a copy, contact Terry Rossignol by U.S. mail at Attwater Prairie Chicken National Wildlife Refuge, P.O. Box 519, Eagle Lake, TX 77434; by phone at (979) 234–3021; or by e-mail at *Terry_Rossignol@fws.gov*.

**FOR FURTHER INFORMATION CONTACT:** Terry Rossignol (*see* **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

### Background

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Recovery plans help guide the recovery effort by describing actions considered necessary for the conservation of the species, and estimating time and costs for implementing the measures needed

for recovery. A recovery plan was originally completed for the Attwater's prairie-chicken in 1983 and revised in 1993, but the recommendations contained in those plans are outdated.

Section 4(f) of the Act requires that we provide public notice and an opportunity for public review and comment during recovery plan development. In fulfillment of this requirement, we made the draft second revision of the recovery plan for Attwater's prairie-chicken available for public comment from November 19, 2007, through January 18, 2008 (November 19, 2007; 72 FR 65058). We also conducted peer review at this time. Based on this input, we revised and finalized the recovery plan, and summarized public comments in an appendix.

The Attwater's prairie-chicken was listed as endangered with risk of extinction in 1967 (March 11, 1967; 32 FR 4001). This listing was "grandfathered" into the Endangered Species Act of 1973. The Attwater's prairie-chicken represents the southernmost subspecies of *Tympanuchus cupido* and currently occurs in the wild at only three locations: The Attwater Prairie Chicken National Wildlife Refuge (Colorado County, Texas), the Texas City Prairie Preserve (Galveston County, Texas), and a private ranch in Goliad County, Texas. Annual counts are conducted every spring on the prairie-chicken's booming grounds, and approximately 90 birds remained in these 3 populations as of March 2009. Counts for 2010 will be conducted in April. In addition, approximately 157 individuals were held in captivity at the Abilene Zoo (Abilene, Texas), Caldwell Zoo (Tyler, Texas), Fossil Rim Wildlife Center (Glen Rose, Texas), Houston Zoo (Houston, Texas), San Antonio Zoo (San Antonio, Texas), Sea World of Texas (San Antonio, Texas), and Texas A&M University (College Station, Texas) as of December 31, 2009.

Habitat destruction and degradation are the primary factors contributing to historic population declines. Current threats include extremely small populations, habitat and population fragmentation resulting in genetic isolation, diseases and parasites in both wild and captive settings, inability of captive breeding facilities to produce large numbers of captive-reared birds that are capable of survival and reproduction in wild habitats, and poor brood survival in wild populations. Attwater's prairie-chicken recovery must be focused on three primary areas: (1) Habitat management, (2) captive and wild population management, and (3) public outreach.

**Authority:** The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 17, 2010.

**Benjamin N. Tuggle,**

*Regional Director, Region 2.*

[FR Doc. 2010–9605 Filed 4–23–10; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## Coral Reef Restoration Plan, Draft Programmatic Environmental Impact Statement, Biscayne National Park, FL

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of Availability of the Draft Programmatic Environmental Impact Statement for the Coral Reef Restoration Plan, Biscayne National Park.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Draft Programmatic Environmental Impact Statement (DEIS) for the Coral Reef Restoration Plan for Biscayne National Park, Florida. The DEIS provides a systematic approach to addressing injuries to coral reefs caused by vessel groundings within Biscayne National Park.

**DATES:** The NPS will accept comments on the DEIS from the public for 60 days after the date the Environmental Protection Agency notices the availability of the DEIS in its regular Friday **Federal Register** listing. A public meeting will be held during the review period to facilitate submission of public comment. Once scheduled, the meeting date will be announced via the Biscayne National Park website (*http://www.nps.gov/bisc/*), the NPS's Planning Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/bisc*), and a press release to area media.

**ADDRESSES:** The DEIS for the Coral Reef Restoration Plan will be available for public review online at the NPS's PEPC Web site (*http://parkplanning.nps.gov/bisc*), and in the office of Mark Lewis, Superintendent of Biscayne National Park, 9700 SW. 328th Street, Homestead, Florida 33033, 305–230–1144.

**SUPPLEMENTARY INFORMATION:** Many vessel groundings occur annually in Biscayne National Park, causing injuries to submerged resources. The goal of coral reef restoration actions in Biscayne National Park is to create a stable, self-sustaining reef environment of similar topography and surface complexity to that which existed prior to injury, such that natural recovery processes, enhanced through mitigation, if needed, will lead to a fully functioning coral reef community with near natural complexity, structure, and make-up of organisms. The DEIS provides a systematic approach to addressing injuries to coral reefs caused by vessel groundings within Biscayne National Park. It analyzes two alternatives, the No Action alternative (Alternative 1) and Restoration Using a Programmatic Approach (Alternative 2).

Alternative 1 would not change the existing approach to coral reef restoration planning and implementation, including NEPA compliance. Currently, Biscayne National Park resource managers evaluate the impacts of coral reef restoration actions and specific restoration methods when planning and implementing restoration at each grounding incident. In contrast, to address each coral injury under Alternative 2, the most appropriate restoration actions and specific restoration methods would be selected from a "toolbox" of methods that already have had their impacts evaluated programmatically. Under Alternative 2, 11 reasonable and common coral reef restoration actions were identified and evaluated for inclusion in the toolbox.

Alternative 2 (Restoration Using a Programmatic Approach) was identified as the NPS's preferred alternative. The time required to evaluate environmental impacts of restoration actions after site-specific injuries would be minimized substantially under Alternative 2, resulting in fewer adverse effects and/or more beneficial effects to park resources.

If you wish to comment, you may submit your comments by any one of several methods. You may comment via the Internet at *http://parkplanning.nps.gov/bisc.* You may also mail comments to Coral Reef Restoration Plan, Biscayne National Park, 9700 SW. 328th Street, Homestead, FL 33033. Finally, you may hand-deliver comments to Biscayne National Park, 9700 SW. 328th Street, Homestead, FL 33033. 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.

**FOR FURTHER INFORMATION CONTACT:** Biscayne National Park, 9700 SW. 328th Street, Homestead, FL 33033; Telephone 305–230–1144.

Dated: February 18, 2010.

**David Vela,**

*Regional Director, Southeast Region, National Park Service.*

[FR Doc. 2010–9548 Filed 4–23–10; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Final Environmental Impact Statement; Prisoners Harbor Coastal Wetland Restoration Plan, Channel Islands National Park, Santa Barbara County, CA; Notice of Availability

**SUMMARY:** Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, Department of the Interior, has prepared a Final Environmental Impact Statement (EIS) assessing the potential impacts of restoring the coastal wetland and lower riparian corridor at Prisoners Harbor on Santa Cruz Island, Channel Island National Park. The Final EIS analyzes the effects of implementing proposed actions that accomplish the following objectives: (1) Recreate a more natural topography and hydrology by reconnecting the Canada del Puerto stream with its floodplain and removing non-native eucalyptus trees and other vegetation which have proliferated in the lower drainage; (2) increase biological diversity and productivity by removing fill and restoring the historic wetland; (3) provide an enhanced visitor experience by installing additional interpretive displays; and (4) protect significant cultural and historic resources.

*Range of Alternatives:* After identifying foreseeable environmental issues with the proposed restoration activities, conducting a site visit, and undertaking public scoping, the Park began developing alternatives for the area of potential effect. The Park assessed feasible extents of area of restored wetlands and considered several project scenarios.

*Alternative A* (no action) and two action alternatives were identified and analyzed.

*Alternative B* (⅔ Wetland Restoration with Partial Berm Removal) (agency-preferred alternative) involves removing approximately 15,000 cubic yards of fill from the former wetland and restoring 3.1 acres of wetland, removing all cattle corrals, removing a portion of the berm and replanting the site with native plants, protecting the archeological site, removing eucalyptus from the riparian corridor, controlling other invasive plant species, and improving the visitor experience. Under supervision of park cultural resource specialists and after further consultation with the State Historic Preservation Office, the scale house would be partially dismantled, lifted off its current foundation, and reassembled and stabilized on a new foundation in its pre-1960's location. To mitigate the loss of the existing cattle corral complex and other associated features, the Park will build a corral structure similar to the sheep corrals in photos dated c. 1900. The corrals will be adjacent to the warehouse, extending toward the pier and parallel to the row of eucalyptus trees at the base of the cliff, and enclosing the relocated scale house. Design and materials will be determined by NPS cultural resource specialists during the design phase of the project.

*Alternative C* (⅓ Wetland Restoration with Partial Berm Removal) involves removing fill to restore 2.1 acres of wetland, removing six of eight cattle corrals, keeping the scale house in its present location, removing a portion of the berm, protecting the archeological site, removing eucalyptus from the riparian corridor, controlling other invasive plant species, and improving the visitor experience.

In general, the wetland restoration activities would begin with aggressively removing and disposing of known non-native invasive plants such as kikuyu grass, fennel, and eucalyptus. Removal and disposal techniques may include: Hand pulling or excavating by hand or mechanically; chain sawing; applying least-toxic herbicides; and/or burning or chipping plant residues. Next, old concrete foundations, corrals, posts, troughs, and other old features would be dismantled (and removed or reused where feasible). The Park then would remove approximately 250 feet of the low berm that severed the hydraulic connection between lower Canada del Puerto and its floodplain, excavate sand and rock fill to restore a portion of the buried wetlands, and replant the restored area with native wetland species. Work will be initiated in the late spring and completed in late summer or early fall when the wetland restoration area is in its driest condition, so that late-fall rains will initiate plant germination and growth after work is completed.

Riparian restoration in Canada del Puerto would take place in a two-pronged, step-wise approach. In an area of approximately 20 acres eucalyptus trees would be removed (1) from downstream to upstream, and (2) from the hillside toward the stream bank. Woody native vegetation including established oaks, island cherry, and coffee berry would remain. The eucalyptus would be replaced with native species typical of chaparral and island riparian woodland including oak, cottonwood, willow, and maple.

The Park proposes to protect high-value archeological resources at Prisoners Harbor from continuing (though lessened) exposure to stream flow erosion in Canada del Puerto by placement of a small earth, log, and cobble berm planted with native plants, thereby deflecting potential flood waters away from the culturally important area. The island gateway experience for visitors arriving at Prisoners Harbor will be enhanced by constructing temporary wayside exhibits, a wetland viewing bench, and/or interpretive signs.

**SUPPLEMENTARY INFORMATION:** A Notice of Intent to prepare an EIS was published in the **Federal Register** on June 11, 2008. The Draft EIS was made available on May 15, 2009. Nine written comments from interested individuals, agencies, and organizations including The Santa Cruz Island Foundation, The Nature Conservancy, Santa Barbara Channel Keepers, and the National Marine Sanctuary were received. Four individuals attending a June 23, 2009, open house at the Park Visitor Center provided oral commentary. Comment topics included visitor experience, historical resources, marine resources, vegetation removal, flood flows, and best management practices. All issues raised were duly considered in preparing the Final EIS.

The Final EIS is now available for public review. Printed and CD copies will be distributed, and are also available at park headquarters. Printed copies will be made available at E.P. Foster Library in Ventura and Central Library in Santa Barbara. A digital version will be available online at the Park Web site *http://www.nps.gov/chis* or the NPS Park Planning Web site at *http://parkplanning.nps.gov*. Inquiries regarding the Final EIS should be directed to: Superintendent, Channel Islands National Park, 1901 Spinnaker Drive, Ventura, CA 93001; or by telephone at (805) 658–5700.

*Decision Process:* A minimum 30-day no-action period begins with the Environmental Protection Agency's announcement of the publication and

availability of the Final EIS, after which a Record of Decision may be prepared. As a delegated EIS, the Regional Director, Pacific West Region, is responsible for the final decision; subsequently the Superintendent, Channel Islands National Park, would be responsible for plan implementation and monitoring activities.

Dated: March 12, 2010.

**Patricia L. Neubacher,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 2010–9547 Filed 4–23–10; 8:45 am]

**BILLING CODE 4310–F6–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 27th, 2010. Pursuant to section 60.13 of 36 CFR Part 60 written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments are also being accepted on the following properties being considered for removal pursuant to 36 CFR 60.15. Comments 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 May 11, 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.*

**ARIZONA**

**Cochise County**

Bisbee Residential Historic District, Roughly bounded by the City of Bisbee city limits N. of Lavender Put Mine, excluding existing Bisbee Historic District, Bisbee, 10000233

**Maricopa County**

Northfield Historic District, Bounded by W. State Ave (S), N. 59th Ave (E), W. Orangewood Ave (N), and N. 59th Lane (W), Glendale, 10000234

Thunderbird Estates and The McDonald Addition Historic District, Bounded by W. Northern Ave (S), N. 59th Ave (W), and W. Royal Palm Rd (N), and including lots facing both sides of N. 57 Glendale, 10000235

Village Grove 1–6 Historic District, Bounded by the canal at 66th St. to the W, 69th to the E, Oak St to the N, Almeria Rd to the S, Scottsdale, 10000236

**COLORADO**

**Montrose County**

Rio Grande Southern Railroad Derrick Car, (Firehouses in Washington DC MPS) 82800Q 83rd Rd, Cimarron Visitor Center, Curecanti National Recreation Area, Cimarron, 10000237

**DISTRICT OF COLUMBIA**

**District of Columbia**

Engine Company 19 (Firehouses in Washington DC MPS), 2813 Pennsylvania Ave., SE, Washington, DC, 10000238

Euclid Apartments (Apartment Buildings in Washington, DC, MPS), 1740 Euclid St, NW, Washington, DC, 10000239

Janney Elementary School (Tenleytown in Washington, DC: 1770–1941, MPS), 4130 Albemarle St, NW, Washington, DC, 10000241

Jesse Reno School (Public School Buildings of Washington, DC MPS), 4820 Howard St, NW, Washington, DC, 10000242

Woodrow Wilson High School (Public School Buildings of Washington, DC MPS), 3950 Chesapeake St, NW, Washington, DC, 10000243

**MASSACHUSETTS**

Norfolk County Wilber, Charles R., School, 75–85 S Main St, Sharon, 10000244

**MISSOURI**

**Greene County**

Rail Haven Motel (Route 66 in Missouri MPS), 203 S, Glenstone Ave, Springfield, 10000245

**St. Louis County**

Murphy, Joseph and Ann, Residence, 7901 Stanford Ave, University City, 10000246

**SOUTH CAROLINA**

**Hampton County**

Gravel Hill Plantation, 3954 Augusta Stage Coach Rd, Hampton, 10000240

**TEXAS**

**Collin County**

Fairview H&TC Railroad Historic District, About ¼ mi. W of St HWY 5 on Sloan Creek & the former Houston & Texas Central Railroad tracks, Fairview, 10000247

**Dallas County**

Parkland Hospital, 3819 Maple Ave, Dallas, 10000249

**Houston County**

Houston County Courthouse, 401 E Houston Ave, Crockett, 10000248

**Kleberg County**

Kleberg County Courthouse, 700 E Kleberg Ave, Kingsville, 10000250

**Matagorda County**

Luther Hotel, 408 S Bay Blvd, Palacios, 10000251

**Orange County**

Cow Bayou Swing Bridge (Historic Bridges of Texas MPS), SH 73/87 1.13 mi NE of jct with FM 1442, Bridge City, 10000252

**Tarrant County**

Heritage Park Plaza, W Bluff St at Main St, Fort Worth, 10000253

**WASHINGTON**

**Kitsap County**

Masonic Hall-Port Orchard, 202 Sidney Ave, Port Orchard, 10000254

**Mason County**

Schafer State Park, 1365 W Schafer Park Rd, Elma, 10000255

Request for REMOVAL has been made for the following resources:

**WASHINGTON**

**Island County**

Central Whidbey Island Historic District, 704 S Main St, Coupeville, 73001869

In the interest of preservation the comment period for the following resource has been waived or shortened to (3) three days:

**DISTRICT OF COLUMBIA**

Euclid Apartments (Apartment Buildings in Washington, DC, MPS), 1740 Euclid St, NW, Washington, DC, 10000239

[FR Doc. 2010–9589 Filed 4–23–10; 8:45 am]

**BILLING CODE 4312–51–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

**[Docket No. MMS–2010–OMM–0017]**

## Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Delaware—Request for Interest (RFI)

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** RFI in renewable energy leasing offshore Delaware, and invitation of comments from interested and affected parties.

**SUMMARY:** The Minerals Management Service (MMS) invites submissions describing interest in obtaining one or more commercial leases for the construction of a wind energy project(s) on the OCS offshore Delaware. The MMS will use responses to this RFI to enable MMS to gauge specific interest in commercial development of OCS wind resources in the area described, as required by 43 U.S.C. 1337(p)(3). Parties wishing to obtain a commercial lease for a wind energy project should submit detailed and specific information as described below in the section entitled, "Required Indication of Interest Information." Also, with this announcement the MMS invites all interested and affected parties to comment and provide information—including information on environmental issues and concerns—that will be useful in the consideration of the area of interest for commercial wind energy leases.

This RFI is published pursuant to subsection 8(p) of the OCS Lands Act, as amended by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)) and the implementing regulations at 30 CFR Part 285.

The area of interest rests between the incoming and outgoing shipping routes for Delaware Bay. The geographic extent was selected based on preliminary indications of interest from developers in response to Delmarva Power's Request for Proposals (RFP) in 2006 and through consultation with the MMS Delaware OCS Renewable Energy Task Force. A detailed description of the area of interest is found later in this notice.

**DATES:** The MMS must receive your submission indicating your interest in this potential commercial leasing area no later than June 25, 2010 for your submission to be considered. The MMS requests comments or other submissions of information by this same date. We will consider only the submissions we receive by that time.

*Submission Procedures:* You may submit your indications of interest, comments, and information by one of two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Under the tab "More Search Options," click "Advanced Docket Search," then select "Minerals Management Service" from the agency drop-down menu, then click "submit." In the Docket ID column, select MMS–2010–OMM–0017 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link;

2. By mail, sending your indications of interest, comments, and information to the following address: Minerals Management Service, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, VA 20170.

**FOR FURTHER INFORMATION CONTACT:** Erin C. Trager, Projects and Coordination Branch, Minerals Management Service, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, Virginia 20170–4817; telephone (703) 787–1223.

**SUPPLEMENTARY INFORMATION:**

### Purpose of the Request for Interest

The OCS Lands Act requires MMS to award leases competitively, unless MMS makes a determination that there is no competitive interest (43 U.S.C. 1337(p)(3)). This RFI is a preliminary step in the leasing process and the responses to it will assist MMS in determining if there is competitive interest in the area described herein on the OCS off the coast of Delaware. If, following this RFI, MMS determines that there is no competitive interest in this area off the coast of Delaware, MMS may proceed with the noncompetitive lease process pursuant to 30 CFR 285.230 through 285.232 of the Renewable Energy and Alternate Uses of Existing Facilities on the Outer Continental Shelf (REAU) rulemaking. If, following this RFI, MMS determines that there is competitive interest in the area of interest, MMS may proceed with the competitive lease process set forth under 30 CFR 285.211 through 285.225. Whether the leasing process is competitive or noncompetitive, it will include opportunities for the public to provide input as well as a thorough environmental review, and will be conducted in conformance with all applicable laws.

Parties other than those interested in obtaining a commercial lease are welcome to submit comments in response to this RFI. Additionally, MMS has formed a Delaware OCS Renewable Energy Task Force for coordination with affected Federal agencies and State, local, and Tribal governments throughout the leasing process. Task Force members and meeting materials are available on the MMS Web site at: *http://www.mms.gov/offshore/RenewableEnergy/stateactivities.htm#Delaware*.

### Background

*Energy Policy Act of 2005*

The EPAct amended the OCS Lands Act by adding subsection 8(p) that authorizes the Secretary of the Interior to grant a lease, easement, or right-of-way (ROW) on the OCS for activities that are not otherwise authorized by law and that produce or support the production, transportation, or transmission of energy from sources other than oil or gas. The EPAct also required the issuance of regulations to carry out the new authority pertaining to renewable energy on the OCS. The Secretary delegated the authority to issue leases, easements, and ROWs and to promulgate regulations to the Director of MMS.

*Interim Policy*

After the passage of EPAct, the MMS created and published an Interim Policy (IP) to allow the issuance of leases to assess the renewable energy resource potential on the OCS and evaluate new technology. The IP governed the issuance of leases for the installation of offshore data collection and technology testing facilities on the OCS until the effective date of the REAU rule. Leases issued under the IP have terms of five years and confer no preferential right to acquire, develop, or operate commercially any renewable energy project on the OCS.

The IP lease issuance process began on November 6, 2007, when MMS published in the **Federal Register** a Request for Information and Nominations for IP leases. Subsequently, MMS published a listing of the locations described in the responses to the Request for Information and Nominations in the **Federal Register** to determine if there was competitive interest in leasing the proposed areas pursuant to the IP. After considering responses to the second **Federal Register** notice, MMS determined that there was no

competitive interest in any of the sites and decided to proceed with a noncompetitive leasing process. A single area on the OCS 14 miles offshore was nominated off the coast of Delaware by one developer. The MMS received an application for the construction of meteorological towers and other site assessment activities on the OCS for this area from Bluewater Wind Delaware LLC. The MMS executed an IP lease on November 1, 2009, with the installation of meteorological towers anticipated to begin in the summer of 2010.

*Renewable Energy and Alternate Use Rulemaking*

The MMS began the REAU rulemaking process by issuing an Advance Notice of Proposed Rulemaking on December 30, 2005, (70 FR 250 December 30, 2005). The MMS began the preparation of a Programmatic Environmental Impact Statement (PEIS), analyzing the environmental consequences of establishing a REAU program, with a Notice of Intent issued on May 5, 2006, (71 FR 87 May 5, 2006). Subsequently, MMS held scoping meetings, issued a draft PEIS for comment on March 21, 2007, and held hearings on the draft PEIS in the Spring of 2007. The MMS issued the final PEIS on November 6, 2007, and the related Record of Decision on January 10, 2008. In July 2008, MMS published a Notice of Proposed Rulemaking for the REAU rule (73 FR 132 July 9, 2008) and the comment period closed on September 8, 2008. After considering all comments submitted, MMS published the final REAU rule on April 29, 2009, (74 FR 81 April 29, 2009).

*Relevant Actions Taken by the State of Delaware*

In 2006, the Delaware General Assembly passed a bill directing the State's largest utility, Delmarva Power, to contract with providers of new power resources that will guarantee stable prices for electricity. The Delaware legislature also passed a Renewable Portfolio Standard (RPS) requiring that 20 percent of Delaware's electricity come from renewable sources by the year 2019. In November 2006, Delmarva Power issued a RFP for the construction of a new power plant to serve Delaware. Proposals were evaluated by Delmarva Power along with four State agencies: the Delaware Public Service Commission (PSC), the Delaware Energy Office, the Office of Management and Budget, and the Office of the Controller General. Bluewater Wind Delaware LLC submitted the winning proposal. In June 2008, Bluewater Wind Delaware LLC announced that it signed a 25-year power purchase agreement with Delmarva Power to sell up to 200 megawatts (MW) of power to the utility from an offshore wind facility proposed on the OCS, about 12.5 miles off of Rehoboth Beach. The agreement with Delmarva Power was ratified by the Delaware legislature on July 31, 2008.

**Determination of Competitive Interest**

The first step in determining whether there is competitive interest in an area on the OCS for wind energy projects offshore of Delaware will be the evaluation of submissions indicating whether parties are willing to nominate particular areas of interest as suitable for renewable energy projects in response to this RFI. At the conclusion of the comment period for this RFI, the MMS will review information submitted and make a determination of whether competitive interest exists. Factors MMS may consider when evaluating the submittals include, but are not limited to: site locations; the timing and type of proposed activities; infrastructure; anticipated power production and likely purchasers; environmental and resource data and information; and the qualifications of a bidder to hold a lease on the OCS.

Specifically, MMS will first determine whether there is any geographic overlap of the areas of interest. If two areas of interest fully or partially overlap, the competitive process will begin as outlined in 30 CFR 285.211 through 285.225 and discussed below.

Situations may arise in which several parties nominate project areas that do not overlap. Under these circumstances, MMS could choose to employ an allocation system of leases that involves competition across tracts. This system is referred to as intertract competition and will also trigger the competitive process outlined in 30 CFR 285.211 through 285.225 and discussed below.

**Competitive Process**

If MMS determines that competitive interest exists for this area, it would proceed with the following defined process, as described in 30 CFR 285.211 through 285.225:

(1) *Call for Information and Nominations (Call).* The MMS would publish in the **Federal Register** a notice of a Call for Information and Nominations for leasing in specified areas. The comment period following the notice of a Call would be 45 days. In the notice, MMS may request comments seeking information on areas that should receive special consideration and analysis; on geological conditions (including bottom hazards); on archaeological sites on the seabed or nearshore; on possible multiple uses of the proposed leasing area (including navigation, recreation, and fisheries); and on other socioeconomic, biological, and environmental matters.

In response to the Call, the MMS would require potential lessees to submit the following information: the area of interest for a possible lease; a general description of the potential lessee's objectives and the facilities that the potential lessee would use to achieve those objectives; a general schedule of proposed activities, including those leading to commercial operations; and data and information concerning renewable energy and environmental conditions in the area of interest, including the energy and resource data and information that was used to evaluate the area of interest. However, an applicant would not be required to resubmit information already submitted in response to this RFI.

(2) *Area Identification.* The MMS would identify areas for environmental analysis and consideration for leasing in discussion with appropriate Federal agencies, States, local governments, Indian Tribes, and other interested parties based on the information submitted in this RFI and the Call.

(3) *Proposed Sale Notice.* The MMS would then publish a Proposed Sale Notice (PSN) in the **Federal Register** and send the PSN to the Governor of any affected State and the executive of any local government that might be affected. The PSN would describe the areas offered for leasing and the proposed terms and conditions of a lease sale, including the proposed auction format, lease form, and lease provisions. Additionally, the PSN would describe the criteria and process for evaluating bids. Generally, the PSN would be issued after completion of the final National Environmental Policy Act (NEPA) documentation, preparation of the Consistency Determination as required by the Coastal Zone Management Act (CZMA) and its implementing regulations, and preparation of various analyses of proposed lease sale economic terms and conditions. The comment period following issuance of a PSN would be 60 days.

Should MMS proceed with a competitive lease award process, MMS will use one of the following four auction formats to select the winner as described at 30 CFR § 285.220: multiple-factor bidding; sealed bidding; ascending bidding; or two-stage bidding (a combination of ascending bidding and sealed bidding). The multi-factor

auction format may consider factors such as: (1) Documentation that you have entered into a purchase power agreement with a utility based in the State of Delaware for the purchase of power from a wind power project on the OCS and/or (2) documentation of your receipt of, and progress under, a limited lease under MMS' IP for the installation of offshore data collection or technology testing facilities on the OCS offshore Delaware.

(4) *Final Sale Notice.* The MMS would then publish the Final Sale Notice (FSN) in the **Federal Register** at least 30 days before the date of the sale. The MMS would publish the criteria for winning bid determinations in the FSN.

(5) *Bid Evaluation.* Following publication of the FSN in the **Federal Register**, qualified bidders may submit their bids to MMS in accordance with procedures specified for the auction format to be used. The bids, including the bid deposits, if applicable, would be checked for technical and legal adequacy. The MMS would evaluate the bids to determine if the bidder has complied with all applicable regulations. The MMS reserves the right to reject any or all bids and the right to withdraw an offer to lease an area from the sale.

If MMS were to use a multiple-factor auction format, the evaluation of bids would be made by a panel composed of members selected by MMS.

Factors that likely would be considered for inclusion in this auction process are: Cash bonus; operating fees; rentals; technical merit, including site assessment efforts, project planning, and engineering studies; project experience; credit and security; the existence of power purchase arrangements; timeliness; financing and economics; environmental considerations; public benefits; and compatibility with State and local needs.

The MMS would coordinate with States and other stakeholders, as appropriate, to establish procedures designed to assure the selection of the most worthy proposal that would provide a fair return to the United States.

(6) *Issuance of a Lease.* Following the selection of a winning bid by the MMS, the submitter would be immediately notified of the decision and provided a set of official lease forms for execution. The successful bidder would have to pay the remaining 80 percent of the bonus bid, or other amount as specified in the Final Sale Notice, and file the required financial assurance within 10 days. Upon receipt of the required payments and properly executed lease forms, a lease would be issued to the successful bidder. The MMS leases would become effective on the first day of the month following the date the lease is signed by an MMS official unless MMS approves a written request that it become effective on the first day of the month in which it is signed. Within 45 days after receipt of the copies of the signed lease, payment of the first 6 months' rent is due.

**Noncompetitive Process**

If, after evaluating the responses to this RFI, MMS determines that there is no competitive interest in a proposed lease, a lease may be issued noncompetitively pursuant to the process described in 30 CFR 285.232, which is summarized below.

Based on responses to this RFI, MMS would publish a notice of the proposed lease in the **Federal Register**. If, after publishing this notice, MMS receives no responses indicating competitive interest in the proposed lease, MMS would issue a determination that there is no competitive interest in the proposed lease.

Within 60 days of the date of this determination, the lease applicant would be required to submit a Site Assessment Plan (SAP), as described in 30 CFR 285.231(d)(2)(i) and submit an acquisition fee pursuant to 30 CFR 285.502(a). Leases issued noncompetitively need to comply with the requirements of NEPA, CZMA, the Endangered Species Act (ESA), and other applicable Federal statutes. In accordance with 30 CFR 285.231(e), MMS would coordinate and consult, as appropriate, with affected Federal agencies, State and local governments, and affected Indian Tribes in issuing a noncompetitive lease and developing lease terms and conditions.

If, in response to the second **Federal Register** notice, MMS receives additional indications of interest in the proposed lease, MMS may determine that there is competitive interest and would follow the competitive process outlined above.

**Other Process Issues**

In the event that there is geographically overlapping interest (or intertract competition) for some areas but not for others, MMS may defer announcement of the determination of competitive interest for leases involving the overlapping (or intertract) areas. In such a circumstance, MMS may first publish a notice of its determination of the proposed lease(s) for area(s) in which there is no competitive interest. Next, MMS would provide notice identifying the leases that were proposed for all areas for which there is competitive interest. All lease areas for which there is competitive interest would be processed under the competitive leasing procedures set forth in 30 CFR 285.211 through 30 CFR 285.225. All lease(s) area(s) for which there is no competitive interest would be processed individually under the applicable provisions of 30 CFR 285.231.

**Environmental Review**

The following describes MMS' environmental review process, which would be coordinated, to the extent possible, with any Federal and State agencies having jurisdiction over activities associated with OCS commercial wind energy leases. Other Federal and State agencies may have additional and separate environmental review, consultation, and permitting processes and requirements.

After evaluating the responses to the RFI, but before publishing the PSN for a competitive lease sale or issuing a lease noncompetitively, MMS would prepare a NEPA analysis for public review and conduct required consultations with Federal and State agencies.

Several consultations would be conducted and integrated into the NEPA process described below. These consultations include, but are not limited to, those required by the CZMA, ESA, Magnuson-Stevens Fishery Conservation and Management Act, National Historic Preservation Act, and Executive Order 13175—"Consultation and Coordination with Tribal Governments." These consultations would be completed prior to the issuance of any leases.

Should MMS determine that lease issuance would significantly affect the quality of the human environment, MMS would begin the process of preparing an Environmental Impact Statement (EIS) to analyze the effects of issuing the lease(s) through either a noncompetitive or competitive process. This would include a public scoping period, including a minimum 30-day comment period and one or more public meetings, would be conducted to solicit input on the alternatives and issues to be addressed in a draft EIS. This review would describe the technology expected to be used or deemed necessary for site assessment, construction, operations, and decommissioning in the area proposed for leasing, and any potential direct, indirect, and cumulative impacts to biological and physical resources, as well as socioeconomic consequences. During this process, MMS would review pertinent published and unpublished studies from academic and other

institutions and organizations and from other Federal and State agencies. Upon completion of a draft EIS, MMS would file the draft EIS with the Environmental Protection Agency (EPA) and would publish a Notice of Availability in the **Federal Register**. The draft EIS would be made available and distributed for public review and comment during a minimum 45-day public comment period.

The MMS would hold one or more public hearings in the vicinity of the proposed lease area for the purpose of receiving comments on the draft EIS. The MMS would announce the time and location in the **Federal Register** at least 30 days before the public hearings.

The MMS would analyze the comments and information received during public review process, including those from public hearings, along with any newly acquired information and, where appropriate, would incorporate this information into the final EIS. Based on the NEPA analysis, results of the consultations, and comments received, the MMS would develop lease terms or stipulations to protect sensitive areas and/or biological and cultural resources. After the public hearings, MMS would develop a final EIS. The MMS would file the final EIS with EPA and publish a Notice of Availability in the **Federal Register**.

In a competitive leasing process, MMS would issue the final EIS with the PSN. In a noncompetitive leasing process, MMS would issue the final EIS at least 30 days prior to issuance of the lease.

**Description of the Area**

The area of interest rests between the incoming and outgoing shipping routes for Delaware Bay. The geographic extent of the area was selected based on preliminary indications of interest from developers in response to Delmarva Power's RFP in 2006, and through consultation with the MMS Delaware OCS Renewable Energy Task Force. The following full OCS lease blocks are included within the area of interest: Salisbury NJ18–05 Blocks 6324, 6325, 6326, 6327, 6375, 6376, 6377, 6426, 6427, 6477, and 6527. In addition, the following partial OCS lease blocks are included within the area of interest: Salisbury NJ18–05 Blocks 6272, 6273, 6274, 6275, 6276, 6277, 6278, 6322, 6323, 6328, 6373, 6374, 6378, 6424, 6425, 6428, 6475, 6476, 6478, 6526, 6528, 6577, and 6578.

This area is bounded by four coordinate pairs (listed below in a clockwise direction) and its closest point to shore is approximately 7.5 miles due east from Rehoboth Beach Delaware.

Coordinates are provided in X, Y (eastings, northings) UTM Zone 18N, NAD 83 and geographic (longitude, latitude), NAD83. Coordinate pairs start and end on the same location (Point No. 1).

| Point No. | X (easting) | Y (northing) | Longitude | Latitude |
|---|---|---|---|---|
| 1 | 505537.918949 | 4289342.054910 | −74.936267 | 38.752755 |
| 2 | 537257.896672 | 4287622.083370 | −74.571316 | 38.736486 |
| 3 | 535159.620824 | 4262175.494230 | −74.596744 | 38.507255 |
| 4 | 530399.822669 | 4259687.322270 | −74.651442 | 38.485007 |
| 1 | 505537.918949 | 4289342.054910 | −74.936267 | 38.752755 |

*Obstruction Area*

At this time, the MMS has identified at least one obstruction area within the area of interest, although more may be identified during a future project review process. Within this area lies a fish haven/artificial reef site identified on National Oceanic and Atmospheric Administration (NOAA) nautical charts. The obstruction area's coordinates are listed below.

| Point No. | X (easting) | Y (northing) | Longitude | Latitude |
|---|---|---|---|---|
| 1 | 523043.216256 | 4281282.246340 | −74.735077 | 38.679839 |
| 2 | 525024.306894 | 4281183.549880 | −74.712304 | 38.678896 |
| 3 | 524708.429395 | 4279986.367770 | −74.715978 | 38.668116 |
| 4 | 524599.514352 | 4279572.346900 | −74.717245 | 38.664388 |
| 5 | 524255.539477 | 4279604.189130 | −74.721198 | 38.664684 |
| 6 | 522091.708618 | 4279798.266490 | −74.746063 | 38.666490 |
| 7 | 522393.836728 | 4281025.207860 | −74.742551 | 38.677539 |
| 8 | 522464.137335 | 4281311.495710 | −74.741733 | 38.680118 |
| 1 | 523043.216256 | 4281282.246340 | −74.735077 | 38.679839 |

*Traffic Separation Scheme (TSS) Buffer*

The U.S. Coast Guard will require an initial buffer from the edge of a traffic lane of 500 meters. Because proposed project characteristics will be unique to each individual project, the specific buffer may be adjusted as more information is collected. In addition, it is important to note that two-way routes, fairways, and TSSs are various forms of routing measures, and that distances from them will vary because of many factors, one of which is vessel traffic and rules-of-the-road protocol.

*Map of Area of Interest*

A map of the area of interest can be found at the following URL: *http://www.mms.gov/offshore/RenewableEnergy/stateactivities.htm#Delaware*

A large-scale map of the RFI area showing boundaries of the RFI area with numbered blocks is available from MMS at the following address: Minerals Management Service, Office of Offshore Alternative Energy Programs, 381 Elden Street, Mail Stop 4090, Herndon, VA 20170, Phone: (703) 787–1300, Fax: (703) 787–1708.

**Required Indication of Interest Information**

If you intend to submit an indication of interest in a commercial lease from MMS for the development of wind resources in the area(s) identified in this RFI, you must provide the following:

(1) A description of the specific whole or partial OCS blocks or areas within the RFI area that are of interest for commercial development, including any required buffer area. Note that any indications of interest identifying areas greater than what would be reasonably necessary to develop a proposed

commercial wind facility will not be considered as valid indications of interest. In addition, MMS will not consider any areas outside of the RFI area in this process;

(2) A description of your objectives and the facilities that you would use to achieve those objectives;

(3) A schedule of proposed activities, including those leading to commercial operations;

(4) Available and pertinent data and information concerning renewable energy and environmental conditions in the area of interest, including energy and resource data and information used to evaluate the area of interest;

(5) Documentation demonstrating that you are qualified to hold a lease as set forth in 30 CFR 285.107, including documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining, and decommissioning the facilities described in (2) above. Documentation of financial qualification may include information establishing access to sufficient capital to carry out development. Examples of documentation of technical qualification may include evidence of international or domestic experience with renewable energy projects or other types of electric-energy-related projects.

**Protection of Privileged or Confidential Information**

The MMS will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that the MMS treat it as confidential. The MMS will not disclose such information, subject to the requirements of FOIA. However, the MMS will not treat as confidential any aggregate summaries of such information or comments not containing such information. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

Dated: March 31, 2010.

**S. Elizabeth Birnbaum,**

*Director, Minerals Management Service.*

[FR Doc. 2010–9610 Filed 4–23–10; 8:45 am]

BILLING CODE 4310–MR–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1058 (Review)]**

## Wooden Bedroom Furniture From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of a full five-year review concerning the antidumping duty order on wooden bedroom furniture from China.

**SUMMARY:** The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on wooden bedroom furniture from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* April 19, 2010.

**FOR FURTHER INFORMATION CONTACT:** Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** *Background.*—On March 8, 2010, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act (75 FR 14469, March 25, 2010). The Commission found that the domestic interested party group response to its notice of institution (74 FR 62817, December 1, 2009) was adequate and that the respondent interested party group response was inadequate.[11] The Commission also found that other circumstances warranted conducting a full review. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the review and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the review will be placed in the nonpublic record on September 15, 2010, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on October 5, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 28, 2010. A nonparty who has testimony

[11] Vice Chairman Daniel R. Pearson and Commissioner Charlotte R. Lane found that the respondent party group response was adequate.

that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 28, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is September 24, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 15, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before October 15, 2010. On November 10, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 16, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: April 20, 2010.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–9537 Filed 4–23–10; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–961 (Final) (Second Remand)]**

## Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of remand proceedings.

**SUMMARY:** The U.S. International Trade Commission ("Commission") hereby gives notice of the court-ordered second remand of its final determination in the antidumping duty Investigation No. 731–TA–961 concerning carbon and certain alloy steel wire rod ("wire rod") from Trinidad and Tobago. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

**DATES:** *Effective Date:* April 20, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer, Office of Investigations, telephone 202–205–3193, or Marc A. Bernstein, Office of General Counsel, telephone 202–205–3087, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov).* The public record of Investigation No. 731–TA–961 may be viewed on the Commission's electronic docket ("EDIS") at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—In October 2002, the Commission determined that a domestic industry was materially injured by reason of imports of wire rod from Trinidad and Tobago that were sold in the United States at less than fair value. Caribbean Ispat Ltd., a Trinidadian producer and exporter of wire rod now known as Mittal Steel Point Lisas, Ltd., initiated a judicial action to review the Commission's determination. The Court of International Trade affirmed the Commission's determination. *Caribbean Ispat Ltd.* v. *United States,* 366 F. Supp. 1300 (Ct. Int'l Trade 2005). The United States Court of Appeals for the Federal Circuit vacated and remanded. *Caribbean Ispat Ltd.* v. *United States,* 450 F.3d 1336 (Fed. Cir. 2006). It ruled: (1) That the Commission acted contrary to law by failing to consider in its causation analysis concerning subject imports from Trinidad and Tobago the impact of imports from other subject countries which the Commission was statutorily precluded from cumulating with the Trinidadian imports; and (2) that the Commission's causation analysis did not satisfy the requirements the Federal Circuit previously articulated in *Bratsk Aluminum Smelter* v. *United States,* 444 F.3d 1369 (Fed. Cir. 2006). The Federal Circuit remanded the matter for further consideration in light of its opinion. Accordingly, the Court of International Trade remanded the matter to the Commission.

In January 2007, the Commission reached a negative determination on remand. The Court of International Trade affirmed the remand determination. *Mittal Steel Point Lisas, Ltd.* v. *United States,* 495 F. Supp.2d 1374 (Ct. Int'l Trade 2007). The Federal Circuit vacated and remanded in a decision issued in September 2008. *Mittal Steel Point Lisas, Ltd.* v. *United States,* 542 F.3d 867 (Fed. Cir. 2008). It found three deficiencies in the Commission opinion on remand. These

concerned: (1) The Commission's construction and application of the causation standard articulated in *Bratsk* and *Caribbean Ispat* with respect to its analysis of material injury by reason of subject imports; (2) the Commission's analysis of whether wire rod was a "commodity product" for purposes of performing the type of "replacement/benefit" analysis that the Federal Circuit endorsed in *Bratsk;* and (3) the Commission's construction and application of the causation standard with respect to its analysis of threat of material injury by reason of subject imports. The matter was consequently remanded to the Court of International Trade. On March 29, 2010, the Court of International Trade remanded the matter to the Commission, directing the Commission "to attempt to comply with the [Federal Circuit's] reasoning, as set forth in its foregoing, more recent opinion, and to report to this court any results of this mandated remand."

*Participation in the proceeding.*—Only those persons who were interested parties to the original investigation (*i.e.,* persons listed on the Commission Secretary's service list) and were parties to the underlying *Mittal* litigation may participate in the remand proceeding. Such persons need not re-file their appearance notices or protective order applications to participate in the remand proceeding. Business proprietary information ("BPI") referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the original investigation.

*Written submissions.*—The Commission is not reopening the record in this remand proceeding. The Commission will permit the parties to file written comments. Comments should be limited to no more than twenty-five (25) double-spaced and single-sided pages of textual material, may not contain new factual information, and may address only the following issues within the scope of the remand: (1) whether the information in the record would support a determination of material injury or threat of material injury by reason of subject imports under the causation standard the Federal Circuit articulated in sections II.B. and C. of the *Mittal* opinion; and (2) whether wire rod is a "commodity product" pursuant to the standards the Federal Circuit has authorized the Commission to apply pursuant to section II.A. of the *Mittal* opinion. Any such comments must be filed with the Commission no later than May 7, 2010.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: April 20, 2010.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 2010–9538 Filed 4–23–10; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[USITC SE–10–012]**

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** April 29, 2010 at 9:30 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436. *Telephone:* (202) 205–2000.

**STATUS:** Open to the public.

**Matters to be considered:**

1. *Agenda for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–437 and 731–TA–1060–1061 (Review) (Carbazole Violet Pigment 23 from China and India)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before May 10, 2010.)
5. *Outstanding action jackets:* None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 22, 2010.

By order of the Commission.

**William R. Bishop,**

*Hearings and Meetings Coordinator.*

[FR Doc. 2010–9770 Filed 4–22–10; 4:15 pm]

BILLING CODE 7020–02–P

## INTERNATIONAL BOUNDARY AND WATER COMMIISSION UNITED STATES AND MEXICO; UNITED STATES SECTION

### Notice of Availability of a Draft Environmental Assessment and Finding of No Significant Impact for Arroyo Colorado South Levee Rehabilitation Project in Cameron and Hidalgo Counties, TX

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

**ACTION:** Notice of Availability of Draft Environmental Assessment (EA) and Draft Finding of No Significant Impact (FONSI).

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Final Regulations (40 CFR Parts 1500 through 1508), and the United States Section's Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice of availability of the Draft Environmental Assessment and FONSI for Arroyo Colorado South Levee Rehabilitation Project located in Cameron and Hidalgo Counties, Texas are available. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30 days from the date of this Notice.

**FOR FURTHER INFORMATION CONTACT:** Lisa Santana, Environmental Protection Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4707; e-mail: *lisa.santana@ibwc.gov.*

**DATES:** Comments on the Draft EA and Draft FONSI will be accepted through May 26, 2010.

*Availability:* Single hard copies of the Draft Environmental Assessment and

Finding of No Significant Impact are available by request at the above address. Electronic copies are available from the USIBWC homepage at *http://www.ibwc.gov/Organization/Environmental/EIS_EA_Public_Comment.html.*

Dated: April 19, 2010.

**Pamela L. Barber,**

*Attorney/Advisor.*

[FR Doc. 2010–9426 Filed 4–23–10; 8:45 am]

**BILLING CODE 7010–01–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Residential Lead-Based Paint Hazard Reduction Act

Notice is hereby given that on April 19, 2010 a proposed Consent Decree in *United States* v. *Kogan Realty Enterprises, LLC,* Civil Action No. 1:10–cv–249 was lodged with the United States District Court for the Southern District of Ohio.

The consent decree settles claims against the owner of 128 housing units in twenty-two separate properties located in or near Cincinnati, Ohio. The claims were brought on behalf of the Environmental Protection Agency ("U.S. EPA") and the Department of Housing and Urban Development ("HUD") under the Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 4851 *et seq.* ("Lead Hazard Reduction Act"). The United States alleged in the complaint that the Defendant failed to make one or more of the disclosures or to complete one or more of the disclosure activities required by the Lead Hazard Reduction Act.

Under the Consent Decree, the Defendant will certify that it is complying with residential lead paint notification requirements. The Defendant will submit a plan for window replacement work and will replace all windows known to or believed to contain lead-based paint in all residential properties owned by Defendant that are not certified lead-based paint free. In addition, Defendant will abate lead-based paint hazards on friction and impact surfaces, stabilize other lead-based paint hazards, and pay an administrative penalty of $5,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Kogan Realty Enterprises, LLC,* D.J. Ref. #90–5–1–1–09574.

The Proposed Consent Decree may be examined at the Department of Housing and Urban Development, Office of General Counsel, 451 7th St. NW, Room 9262, Washington, DC 20410; at the office of the United States Attorney for the Southern District of Ohio, 303 Marconi Blvd., Suite 200, Columbus, Ohio 43215 (Attn. Assistant United States Attorney Andrew M. Malek); and at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2010–9524 Filed 4–23–10; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on November 10, 2009, Mylan Pharmaceuticals Inc., 781 Chestnut Ridge Road, Morgantown, West Virginia 26505, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

| Drug | Schedule |
|---|---|
| Methylphenidate (1724) | II |
| Fentanyl (9801) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 26, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 20, 2010.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2010–9564 Filed 4–23–10; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under 21 U.S.C. 952(a)(2), authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations § 1301.34(a), this is notice that on March 4, 2010, Almac Clinical Services Inc. (ACSI), 2661 Audubon Road, Audubon, Pennsylvania 19403, has made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule II:

| Drug | Schedule |
|---|---|
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Fentanyl (9801) | II |

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than May 26, 2010.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import the basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: April 20, 2010.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2010–9562 Filed 4–23–10; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 5, 2010, Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

| Drug | Schedule |
|---|---|
| Cocaine (9041) | II |
| Benzoylecgonine (9180) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than June 25, 2010.

Dated: April 20, 2010.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 2010–9559 Filed 4–23–10; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

### Meeting of the CJIS Advisory Policy Board

**AGENCY:** Federal Bureau of Investigation (FBI), Department of Justice.

**ACTION:** Meeting notice.

**SUMMARY:** The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is a federal advisory committee established pursuant to the Federal Advisory Committee Act (FACA). This meeting announcement is being published as required by Section 10 of the FACA.

The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, Interstate Identification Index, Law Enforcement Online, National Crime Information Center, National Instant Criminal Background Check System, National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division's programs or wishing to address this session should notify Senior CJIS Advisor Roy G. Weise at (304) 625–2730 at least 24 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

**DATES AND TIMES:** The APB will meet in open session from 8:30 a.m. until 5 p.m., on June 9–10, 2010.

**ADDRESSES:** The meeting will take place at The Renaissance, A Columbus Hotel, 50 North Third Street, Columbus, Ohio 43215, telephone (614) 233–7519.

**FOR FURTHER INFORMATION CONTACT:** Inquiries may be addressed to Mrs. Margery E. Broadwater; Management and Program Analyst; Advisory Groups Management Unit, Law Enforcement Support Section; FBI CJIS Division; Module C3, 1000 Custer Hollow Road,

Clarksburg, West Virginia 26306–0149; telephone (304) 625–2446, facsimile (304) 625–5090.

Dated: April 9, 2010.

**Roy G. Weise,**

*Senior CJIS Advisor, Criminal Justice Information, Services Division, Federal Bureau of Investigation.*

[FR Doc. 2010–9444 Filed 4–23–10; 8:45 am]

**BILLING CODE 4410–02–M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0043]**

### Access to Employee Exposure and Medical Records; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in its Regulation on Access to Employee Exposure and Medical Records (29 CFR 1910.1020).

**DATES:** Comments must be submitted (postmarked or received) by June 25, 2010.

**ADDRESSES:**

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2009–0043, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350, (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., *e.t.*

*Instructions:* All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA–2009–0043). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the "Public Participation" heading in the section of this notice titled "Supplementary Information."

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Todd Owen at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Jamaa N. Hill, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of the 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Under the authority granted by the Act, OSHA published a health regulation governing access to worker exposure monitoring data and medical records. This regulation does not require employers to collect any information or to establish any new systems of records. Rather, it requires that employers provide workers, their designated representatives, and OSHA with access to worker exposure monitoring and medical records, and any analyses resulting from these records that employers must maintain under OSHA's toxic chemical and harmful physical agent standards. In this regard, the regulation specifies requirements for record access, record retention, worker information, trade secret management, and record transfer. Accordingly, the Agency attributes the burden hours and costs associated with exposure monitoring and measurement, medical surveillance, and the other activities required to generate the data governed by the regulation to the health standards that specify these activities; therefore, OSHA did not include these burden hours and costs in the ICR.

Access to exposure and medical information enables workers and their designated representatives to become directly involved in identifying and controlling occupational health hazards, as well as managing and preventing occupationally-related health impairment and disease. Providing the Agency with access to the records permits it to ascertain whether or not employers are complying with the regulation, as well as the recordkeeping requirements of its other health standards; therefore, OSHA access provides additional assurance that workers and their designated representative are able to obtain the data they need to conduct their analyses.

### II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirement, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for

example, by using automated or other technological information collection and transmission techniques.

### III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements specified by the Regulation on Access to Employee Exposure and Medical Records (29 CFR 1910.1020). The Agency is requesting to decrease its current burden hour total from 720,187 hours to 664,993, a total decrease of 55,194 hours. This decrease is the result of the Agency using the latest NAICS codes covered by the Regulation to update the number of establishments. The number of establishments decreased from 5,108,244 to 4,790,859. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

*Type of Review:* Extension of a currently approved collection.

*Title:* Access to Employee Exposure and Medical Records (29 CFR 1910.1020).

*OMB Control Number:* 1218–0065.

*Affected Public:* Business or other for-profits; Federal government; State, local, or tribal governments.

*Number of Respondents:* 690,591.

*Frequency:* On occasion.

*Average Time per Response:* Varies from five minutes (.08 hour) for employers to provide OSHA with access to records to 10 minutes (.17 hour) to maintain worker records.

*Estimated Total Burden Hours:* 664,993 hours.

*Estimated Cost (Operation and Maintenance*): $0.

### IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this notice as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2009–0043). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

### V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31160).

Signed at Washington, DC, on April 20, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010–9544 Filed 4–23–10; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–72,483]**

### Maysteel, LLC Including On-Site Leased Workers From Staff One, Badger Tech, Boyd Hunter, Seek, QPS, and Service First, Menomonee Falls, WI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on March 12, 2010, applicable to workers of Maysteel, LLC, including on-site leased workers from Staff One, Badger Tech, Boyd Hunter, Seek, and QPS, Menomonee Falls, Wisconsin. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of metal enclosures.

The company reports that workers leased from Service First were employed on-site at the Menomonee Falls, Wisconsin location of Maysteel, LLC. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Service First working on-site at the Menomonee Falls, Wisconsin location of Maysteel, LLC.

The amended notice applicable to TA–W–72,483 is hereby issued as follows:

"All workers of Maysteel, LLC, including on-site leased workers from Staff One, Badger Tech, Boyd Hunter, Seek, QPS, and Service First, Menomonee Falls, Wisconsin, who became totally or partially separated from employment on or after September 21, 2008, through March 12, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended."

Signed in Washington, DC, this 13th day of April 2010.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 2010–9571 Filed 4–23–10; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0025]**

### Underwriters Laboratories Inc.; Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces (1) the application of Underwriters Laboratories, Inc. (UL), for expansion of its recognition, (2) the Agency's preliminary finding to grant this request, and (3) UL's voluntary modification of its NRTL scope of recognition. This notice also announces that, because the standards-development organization withdrew UL 486A from its list of published standards, OSHA is deleting this test standard from the scopes of NRTLs previously recognized to use this test standard. Finally, this notice requests comments on OSHA's proposed deletion of an additional five test standards from the scopes of NRTLs currently recognized for these test standards.

**DATES:** Submit information and comments regarding the UL expansion application and the proposed deletion of five test standards from NRTLs' scopes of recognition, as well as requests for an extension of the comment period, on or before May 11, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

The voluntary modification of UL's NRTL scope of recognition and the deletion of UL 486A is effective April 26, 2010. Do not submit comments or other responses regarding these actions.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* Submit comments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Fax:* If submissions, including attachments, are no longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, or messenger or courier service:* Submit one copy of the comments to the OSHA Docket Office, Docket No. OSHA–2009–0025, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, and messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., *e.t.*

*Instructions:* All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA–2009–0025). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be made available online at *http://www.regulations.gov*.

*Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

*Extension of comment period:* Submit requests for an extension of the comment period on or before May 11, 2010 to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110. For information about the NRTL Program, go to *http://www.osha.gov*, and select "N" in the site index.

**SUPPLEMENTARY INFORMATION:**

### Notice of Expansion Application

The Occupational Safety and Health Administration (OSHA) is providing notice that Underwriters Laboratories, Inc. (UL), applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion request covers the use of additional test standards.

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding, and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from the Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html*. Each NRTL's scope of recognition has three elements: (1) Type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have the technical capability to perform the testing and certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

### General Background on the Application

UL submitted an application, dated February 20, 2008, as an amendment to its application for renewal of recognition. (Ex. 2—UL expansion application dated 2/20/2008.) This amendment requested an expansion of recognition to add 98 standards [1] to UL's scope and to delete several test standards from its scope. The NRTL Program staff determined that 49 of the requested standards are "appropriate test standards" within the meaning of 29 CFR 1910.7(c). UL later modified its request to reduce the number of the appropriate standards to 35. (Ex. 3—UL amended expansion application dated 2/16/2010.)

In connection with this request, NRTL Program staff did not perform any onsite review of UL's recognized sites. The staff only performed a comparability

[1] UL requested recognition for ANSI/AAMI ES60601–1:2005, but OSHA has not yet determined whether this standard may be used by NRTLs. OSHA will request public comment on the suitability of this standard in an upcoming **Federal Register** notice.

analysis,[2] which determined that UL has the capabilities to perform the testing to the 35 standards, (see the list below). As a result, the Agency would approve these 35 test standards for the expansion.

UL seeks expansion of its recognition for testing and certification of products to the following test standards: [3]

IEEE C37.20.4 Indoor AC Switches (1 kV-38 kV) for Use in Metal-Enclosed Switchgear [a]
IEEE C37.20.6 4.76 kV to 38 kV Rated Grounding and Testing Devices Used in Enclosures [a]
IEEE C37.23 Metal-Enclosed Bus [a]
IEEE C37.41 High-Voltage Fuses, Distribution Enclosed Single-Pole Air Switches, Fuse Disconnecting Switches, and Accessories [a]
IEEE C37.74 Subsurface, Vault, and Pad-Mounted Load-Interrupter Switchgear and Fused Load-Interrupter Switchgear for Alternating Current Systems Up to 38 KV Switchgear [a]
IEEE C57.12.44 Secondary Network Protectors [a]
ISA 12.12.01 Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations
UL 5C Surface Raceways and Fittings for Use with Data, Signal, and Control Circuits
UL 283 Air Fresheners and Deodorizers
UL 458 Power Converters/Inverters and Power Converter/Inverter Systems for Land Vehicles and Marine Crafts [b]
NFPA 496 Purged and Pressurized Enclosures for Electrical Equipment
UL 852 Metallic Sprinkler Pipe for Fire Protection Service
UL 962 Household and Commercial Furnishings [c]
UL 1340 Hoists
UL 1626 Residential Sprinklers for Fire Protection Service
UL 2225 Cables and Cable Fittings for Use in Hazardous (Classified) Locations
UL 2443 Flexible Sprinkler Hose With Fittings for Fire Protection Service
UL 5085–2 Low Voltage Transformers—Part 2: General Purpose Transformers
UL 60730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves, Including Mechanical Requirements
UL 60745–2–1 Particular Requirements for Drills and Impact Drills
UL 60745–2–3 Particular Requirements for Grinders, Polishers and Disk-Type Sanders
UL 60745–2–11 Particular Requirements for Reciprocating Saws
UL 60745–2–12 Particular Requirements for Concrete Vibrators
UL 60745–2–14 Particular Requirements for Planers
UL 60745–2–17 Particular Requirements for Routers and Trimmers
UL 60745–2–18 Particular Requirements for Strapping Tools
UL 60745–2–19 Particular Requirements for Jointers
UL 60745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 60745–2–20 Particular Requirements for Band Saws
UL 60745–2–21 Particular Requirements for Drain Cleaners
UL 60745–2–4 Particular Requirements for Sanders and Polishers Other Than Disk Type
UL 60745–2–5 Particular Requirements for Circular Saws
UL 60745–2–6 Particular Requirements for Hammers
UL 60745–2–8 Particular Requirements for Shears and Nibblers
UL 60745–2–9 Particular Requirements for Tappers

**Notes:** [a] Recognition for this standard does not apply to testing and certification of equipment or materials used in installations that are excluded from the provisions of subpart S in 29 CFR 1910 by section 1910.302(a)(2).

[b] Recognition for this standard is limited to testing and certification of products used within recreational vehicles and mobile homes.

[c] Recognition of this standard is limited to testing and certification of the electrical devices falling within the standard's scope.

OSHA's recognition of UL, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.,* products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product.

The test standards listed above may be approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy, any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI approved.

**Voluntary Modification of Scope**

UL also requested to modify its scope of recognition by deleting the following two test standards:

ANSI/IEEE C37.60 Overhead, Pad-Mounted, Dry-Vault, and Submersible Automatic Circuit Reclosers and Interrupters for AC Systems
ANSI/UL 632 Electrically Actuated Transmitters

UL originally applied for UL 486A ("Wire Connectors and Soldering Lugs for Use With Copper Conductors") (see Ex. 2), but then excluded this standard when it later modified its request (see Ex. 3). However, as of the date of this **Federal Register** notice, UL 486A has been withdrawn from the list of published standards by the standards-developing organization. As a result, OSHA is deleting this standard from UL's NRTL scope, as well as the scopes of NRTLs recognized previously by OSHA for it. OSHA periodically publishes notices to make such deletions (see, for example, 74 FR 47026, September 14, 2009).

**Issue Regarding NFPA Standards**

UL requested that OSHA include the following four standards, issued by the National Fire Protection Association (NFPA), in UL's recognition-expansion application:

NFPA 16 Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems
NFPA 17A Standard for Wet Chemical Extinguishing Systems
NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems
NFPA 2010 Standard for Fixed Aerosol Fire-Extinguishing Systems

However, these test standards are not appropriate for recognition because the standards primarily cover installation, use, and maintenance of a system or its elements, instead of product-safety testing. Therefore, OSHA is not including these test standards in UL's expanded scope of recognition.

OSHA also notes that it currently recognizes several NRTLs for NFPA 16, as well as for four similar NFPA

[2] This analysis involves determining whether the testing and evaluation requirements of test standards already in an NRTL's scope are comparable to the requirements in the standards requested by the NRTL.

[3] The designations and titles of these test standards were current at the time of the preparation of this notice.

standards, none of which appears to cover primarily product-safety testing. These four standards are:

ANSI/NFPA 11 Low-, Medium-, and High-Expansion Foam
ANSI/NFPA 12 Carbon Dioxide Extinguishing Systems
ANSI/NFPA 12A Halon 1301 Fire Extinguishing Systems
ANSI/NFPA 17 Dry Chemical Extinguishing Systems

Accordingly, OSHA is proposing to remove NFPA 16 and the four similar test standards from these NRTLs' scopes of recognition. Before doing so, OSHA requests comment on whether this action would have adverse impact on the requirements for NRTL certification specified for products under its standards (such as preventing NRTLs from certifying fire-extinguishing agents or products). If commenters believe that adverse impact would occur, OSHA requests that they comment on whether the Agency should continue allowing NRTLs to use these test standards until it identifies appropriate standards for certifying the affected products.[4] If no adverse impacts would occur, OSHA is proposing to delete NFPA 16 and the four similar test standards from the scopes of the affected NRTLs. OSHA will issue its decision regarding these test standards in the subsequent **Federal Register** notice announcing the results of UL's expansion request.

**Preliminary Finding on the Application**

UL submitted an acceptable request for expansion of its recognition as an NRTL. OSHA's review of the application file and other pertinent documents indicates that UL can meet the requirements, as prescribed by 29 CFR 1910.7, for an expansion of its recognition to include the additional test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request, in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 15 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of UL's request and other pertinent documents, and all submitted comments, as received, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2009–0025.

The NRTL Program staff will review all timely comments and, after addressing the issues raised by these comments, will recommend whether to grant UL's expansion request. The Assistant Secretary will make the final decision on granting the request, and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register.**

**Authority and Signature**

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on April 20, 2010.

**David Michaels,**

*Assistant Secretary for Occupational Safety and Health.*

[FR Doc. 2010–9545 Filed 4–23–10; 8:45 am]

BILLING CODE 4510–26–P

[4] If OSHA determines that adverse impact would occur, OSHA may add NFPA 16 to UL's scope of recognition until it identifies an appropriate substitute test standard.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2006–0042]**

### Canadian Standards Association; Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the application of the Canadian Standards Association for expansion of its recognition and presents the Agency's preliminary finding to grant this request. OSHA also is seeking comment on the equivalency of the ANSI/AAMI ES60601–1:2005 and UL 60601–1 product-safety test standards.

**DATES:** Submit information or comments, or any request for extension of the time to comment, on or before May 11, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* Submit comments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Fax:* If submissions, including attachments, are no longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, or messenger or courier service:* Submit one copy of the comments to the OSHA Docket Office, Docket No. OSHA–2006–0042, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, and messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA–2006–0042). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and these submissions will be made available online at *http://www.regulations.gov*.

*Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

*Extension of comment period:* Submit requests for an extension of the comment period on or before May 11, 2010 to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational

Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210; telephone: (202) 693–2110. For information about the NRTL Program, go to *http://www.osha.gov,* and select "N" in the site index.

**SUPPLEMENTARY INFORMATION:**

## Notice of Expansion Application

The Occupational Safety and Health Administration (OSHA) is providing notice that the Canadian Standards Association (CSA) applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion request covers the use of additional test standards.

OSHA recognition of an NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, employers may use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition, or for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding, and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL that details its scope of recognition. These pages can be accessed from the Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.* Each NRTL's scope of recognition has three elements: (1) The type of products the NRTL may test, with each type specified by its applicable test standard; (2) the recognized site(s) that has/have the technical capability to perform the testing and certification activities for test standards within the NRTL's scope; and (3) the supplemental program(s) that the NRTL may use, each of which allows the NRTL to rely on other parties to perform activities necessary for product testing and certification.

## General Background on the Application

CSA submitted an application, dated June 25, 2008, to expand its recognition to include five additional test standards. (Ex. 2—CSA expansion application dated 6/25/2008.) The NRTL Program staff determined that four of these standards are "appropriate test standards" within the meaning of 29 CFR 1910.7(c). In connection with this request, NRTL Program staff did not perform an onsite review of CSA's recognized sites. The staff only performed a comparability analysis,[1] which determined that CSA has the capabilities to perform the testing to the four standards, which are listed below. As a result, the Agency would approve these four test standards for the expansion.

CSA seeks expansion of its recognition for testing and certification of products to the following test standards:[2]

UL 498A Current Taps and Adapters.

UL 515 Electrical Resistance Heat Tracing for Commercial and Industrial Applications.

UL 1673 Electric Space Heating Cables.

UL 1977 Component Connectors for Use in Data, Signal, Control and Power Applications.

CSA amended its application on October 20, 2009 (see Ex. 3—CSA amendment dated 10/20/2009), to request recognition for the following additional test standard based on its present recognition for UL 60601–1:

ANSI/AAMI ES60601–1:2005 Medical Electrical Equipment—Part 1: General Requirements for Basic Safety and Essential Performance.

In its request, CSA explained that the AAMI standard will be replacing UL 60601–1, and that all NRTLs recognized for UL 60601–1 should have the AAMI standard added to their scope. OSHA requests comments on the equivalency of these two standards. If the comments or other information demonstrate that the standards are substantially equivalent, then OSHA will contact each NRTL that is currently recognized for UL 60601–1 to determine whether to add the AAMI standard to its scope.

OSHA's recognition of CSA, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.,* products) for which OSHA standards require third-party testing and certification before use in the workplace. Consequently, if a test standard also covers any product for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product.

The test standards listed above may be approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy, any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI approved.

## Preliminary Finding on the Application

CSA submitted an acceptable request for expansion of its recognition as an NRTL. OSHA's review of the application file and other pertinent documents indicates that CSA can meet the requirements, as prescribed by 29 CFR 1910.7, for an expansion of its recognition to include the additional test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether CSA meets the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 15 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of CSA's request and other pertinent documents, and all submitted comments, as received, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0042.

The NRTL Program staff will review all timely comments and, after addressing the issues raised by these comments, will recommend whether to

[1] This analysis involves determining whether the testing and evaluation requirements of test standards already in an NRTL's scope are comparable to the requirements in the standards requested by the NRTL.

[2] The designations and titles of these test standards were current at the time of the preparation of this notice.

grant CSA's expansion request. The Assistant Secretary will make the final decision on granting the request, and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register.**

### Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on April 20, 2010.

**David Michaels,**

*Assistant Secretary for Occupational Safety and Health.*

[FR Doc. 2010–9546 Filed 4–23–10; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

## Employee Benefits Security Administration

### [Prohibited Transaction Exemption 2010–12; Exemption Application No. L–11566]

## Grant of Individual Exemption Involving Chrysler LLC, Located in Auburn Hills, MI

**AGENCY:** Employee Benefits Security Administration, U.S. Department of Labor.

**ACTION:** Grant of individual exemption.

This document contains an individual exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act or ERISA). The transactions involve the New Chrysler VEBA Plan and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust) (collectively the VEBA).[1]

**DATES:** *Effective Date:* This exemption is effective as of June 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Warren Blinder, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8553. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On October 5, 2009, the Department published a notice of proposed individual exemption from the restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a) of the Act (the Notice, or proposed exemption).[2] The proposed exemption was requested in an application filed by New Chrysler, the successor to the assets of Chrysler LLC, pursuant to section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury Department to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is being issued solely by the Department.

### Background

On March 30, 2008, Chrysler LLC and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the UAW), along with respective class representatives (Class Counsel) of plaintiff class members in *UAW* v. *Chrysler LLC* (the English Case) entered into a Settlement Agreement (the English Settlement Agreement) providing, among other things, that Chrysler LLC transfer responsibility and funding for retiree health care benefits to a voluntary employees' beneficiary association (a VEBA).[3] The English Case had been brought to contest Chrysler LLC's asserted right to unilaterally modify the retiree health benefits under the Chrysler Health Care Program for Hourly Employees. Under the English Settlement Agreement, Chrysler LLC's obligation to provide post-retirement medical benefits to the "Class" and "Covered Group" would be terminated, and instead, Chrysler LLC would transfer certain assets to the VEBA Trust to provide the Class and Covered Group with post-retirement medical benefits under the New Chrysler VEBA Plan.[4]

As a result of deteriorating economic conditions and a growing liquidity crisis, on April 30, 2009, Chrysler LLC and 26 of its domestic direct and indirect subsidiaries filed a bankruptcy action under chapter 11 of Title 11 of the United States Code (the Bankruptcy Code) with the Bankruptcy Court and announced a plan for a partnership with Italian automaker Fiat S.p.A. (Fiat).[5] On June 10, 2009, Chrysler LLC completed the sale under Section 363 of the Bankruptcy Code (a Section 363 Sale) of substantially all of its assets to an entity called New Carco Acquisition LLC (later renamed Chrysler Group LLC, and hereinafter referred to as "New Chrysler"), a Delaware limited liability company formed by Fiat North America LLC, a subsidiary of Fiat.[6] As discussed in greater detail in the proposed exemption, Fiat will initially own a minority 20% stake of New Chrysler with the option of acquiring additional equity if certain milestones are met.

Through the Bankruptcy proceeding, New Chrysler acquired certain core assets from Chrysler LLC in exchange for the assumption of certain liabilities of Chrysler LLC and a cash payment to Chrysler LLC pursuant to the Master Transaction Agreement, dated as of April 30, 2009 as subsequently amended (collectively with other ancillary and supporting documents, the "MTA"). Following the Bankruptcy proceeding and the sale of the assets from Chrysler LLC to New Chrysler, initial ownership of New Chrysler will be broken into two classes of membership interests, Class A (800,000 interests) and Class B (200,000 interests). Fiat will initially own the 200,000 Class B membership interests, representing 20% of the voting and economic interest of New Chrysler; the United States Treasury Department (the Treasury Department) will own 98,461 Class A membership interests; the Canadian Government will together own 24,615 Class A membership interests, and the VEBA Trust will own 676,924 Class A membership interests (the Class A membership interests initially owned by the Trust are referred to herein as the "Shares"), in each case, subject to the applicable terms and conditions described below. In addition, after the Sale, New Chrysler became the new legal entity, Chrysler Group LLC.

The assets in the Section 363 Sale were sold free and clear of liens, claims,

[1] Because the New Chrysler VEBA Plan will not be qualified under section 401 of the Internal Revenue Code of 1986, as amended, there is no jurisdiction under Title II of the Act pursuant to section 4975 of the Code. However, there is jurisdiction under Title I of the Act.

[2] See Notice of Proposed Individual Exemption Involving Chrysler LLC, Located in Auburn Hills, MI, 74 FR 51182 (October 5, 2009).

[3] *See, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, et al.* v. *Chrysler, LLC,* Civ. Act. No. 2:07–cv–14310 (E.D. Mich, complaint filed October 11, 2007).

[4] The New Chrysler VEBA Plan provides retiree medical benefits to members of the "Class" and the "Covered Group" as defined in the Settlement Agreement and in Section VI. of this exemption.

[5] In light of the Bankruptcy Proceeding, the English Settlement Agreement is of no further force or effect.

[6] *In re Chrysler LLC, et al.,* Case No. 09B 50002 (Document 3073), slip op. (Bankr. S.D.N.Y. May 31, 2009).

interests, and encumbrances. In addition, the claims of Chrysler LLC's unsecured creditors were not assumed by New Chrysler through the Bankruptcy proceeding unless expressly provided for pursuant to the MTA. Among the claims that were not assumed by New Chrysler, was the obligation owed by Chrysler LLC to provide retiree medical benefits pursuant to the Memorandum of Understanding Post-Retirement Medical Care, dated October 12, 2007, between Chrysler LLC and the UAW and the Memorandum of Understanding of Post-Retirement Medical Care, dated April 29, 2009, between Chrysler LLC and the UAW (together, the "MOUs"), as well as the English Settlement Agreement.

The UAW asserted during the Bankruptcy proceeding, and New Chrysler denied, that New Chrysler was bound by the MOUs as a successor to Chrysler LLC and that it was, therefore, responsible for providing the retiree medical benefits contemplated. After engaging in a series of negotiations, New Chrysler and the UAW agreed to enter into an additional settlement agreement that was presented to the Bankruptcy Court for approval once notice was provided to affected parties. Pursuant to the UAW Retiree Settlement Agreement dated June 10, 2009, between Chrysler Group LLC and the UAW (the Modified Settlement Agreement), New Chrysler agreed to provide retiree medical benefits to a defined group of current UAW retirees who were formerly employed by Chrysler LLC as well as a defined group of current active employees (once retired) of New Chrysler who are covered under a collective bargaining agreement between New Chrysler and the UAW (collectively, the Covered Group).

Ultimately, the Modified Settlement Agreement was approved by the Bankruptcy Court and the initial steps towards implementing the transactions that were at the heart of this exemption began to occur as contemplated. Specifically, upon the "Implementation Date," the retiree medical benefit obligations to the Covered Group became fixed and such obligations were transferred to the New Chrysler VEBA Plan and the VEBA Trust. The VEBA Trust was established and maintained by an independent committee (the Committee). Moreover, the Modified Settlement Agreement provided that the New Chrysler VEBA Plan was to be funded exclusively through the VEBA Trust. Accordingly, the VEBA Trust would be solely responsible for the payment of post-retirement medical benefits to members of the Class and Covered Group on and after January 1, 2010.

Under the Modified Settlement Agreement, New Chrysler became obligated to contribute to the VEBA Trust, on behalf of the New Chrysler VEBA Plan, (1) the Shares, which represent sixty-seven and sixty-nine one-hundredths percent (67.69%) of the fully diluted ownership of New Chrysler as of the consummation of the Section 363 Sale; and (2) a note issued by New Chrysler with a principal amount of $4,587,000,000 and an implicit interest rate of nine percent (9%) (the Note), payable in fixed annual installments pursuant to the following schedule:

| | | |
|---|---|---|
| 1 | Payment of $315 million | July 15, 2010. |
| 2 | Payment of $300 million | July 15, 2011. |
| 3 | Payment of $400 million | July 15, 2012. |
| 4 | Payment of $600 million | July 15, 2013. |
| 5 | Payment of $650 million | July 15, 2014. |
| 6 | Payment of $650 million | July 15, 2015. |
| 7 | Payment of $650 million | July 15, 2016. |
| 8 | Payment of $650 million | July 15, 2017. |
| 9 | Payment of $823.8 million | July 15, 2018. |
| 10 | Payment of $823.8 million | July 15, 2019. |
| 11 | Payment of $823.8 million | July 15, 2020. |
| 12 | Payment of $823.8 million | July 15, 2021. |
| 13 | Payment of $823.8 million | July 15, 2022. |
| 14 | Final Payment of $827.1 million | July 15, 2023. |

The Shares and the Note (together, the "New Chrysler Securities") were contributed to the VEBA Trust on June 10, 2009, which was the closing date of the Section 363 Sale. In addition, New Chrysler was obligated, under the Modified Settlement Agreement, to cause the assets held under a pre-existing internal Chrysler LLC VEBA (the Internal VEBA), attributable to the UAW retirees covered under the Modified Settlement Agreement and valued at $1,589,500,000 as of March 31, 2009, to be transferred to the VEBA Trust within 10 days after January 1, 2010.

**Written Comments**

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the Notice on or before November 19, 2009. Due to the failure by the Applicant to notify a small number of interested persons of the Notice, the Department extended the comment period until December 23, 2009.

During the comment period, the Department received ninety-two (92) telephone inquiries and forty (40) written comments from interested persons on the proposed exemption. Of the written comments received, the majority were submitted by participants in the New Chrysler VEBA Plan. In addition, counsel for the Committee and the Independent Fiduciary submitted comments. The Department received no hearing requests during the comment period.

Several of the written comments and callers supported the adoption of the exemption. In this regard, the UAW, along with Class Counsel, reviewed New Chrysler's application for exemption and expressed support for the application and stated their belief that the transactions which are the subject of the exemption are in the best interest of the New Chrysler Plan's participants and beneficiaries. Furthermore, the Department received written comments from the Committee and the Independent Fiduciary which supported the exemption and requested certain modifications and/or clarifications regarding the exemption.

Following is a discussion of the aforementioned comments, including the responses made by the Department to address the issues raised therein.

*Participant Comments*

The telephone inquiries received by the Department from participants in the New Chrysler VEBA Plan related to the commenters' difficulty in understanding the Notice or the effect of the exemption on the commenters' benefits, including

the general concern that the Modified Settlement Agreement is too advantageous to New Chrysler and would not ensure that benefit levels for participants will remain affordable.

With respect to the written comments submitted by interested persons, the majority of commenters neither supported nor opposed the exemption but instead raised other concerns that are beyond the scope of this exemption. Many such comments related to the perceived unfair treatment of retirees within the UAW and Chrysler LLC; a lack of participation afforded to retirees in the process of approving the settlements between Chrysler LLC and the UAW; concerns about the rising costs of healthcare; and the perceived government favoritism of the car companies at retirees' expense.

Several written comments and callers supported the adoption of the exemption. In addition, New Chrysler submitted a comment in support of the application and confirmed that New Chrysler effectuated the asset transfers to the VEBA Trust in accordance with the terms of the Modified Settlement Agreement. Specifically, New Chrysler represented that, pursuant to the Modified Settlement Agreement and under the terms of the Asset and Equivalent Transfer Agreement between New Chrysler and the UAW dated January 1, 2010, New Chrysler transferred $1.97 billion in cash and marketable securities to the VEBA Trust on January 1, 2010.[7]

*The Committee's Comment*

The Committee submitted a written comment that was supportive of the proposed exemption, and suggests certain modifications to the operative language of the proposed exemption and the Summary of Facts and Representations (the "Representations," and individually, a "Representation"). The Committee's comment letter also relates to the respective roles of the Independent Fiduciary and any investment banks retained by the Independent Fiduciary with respect to the Securities held by the VEBA Trust.

*A. Modifications to Summary of Facts and Representations*

1. *Number of Investment Banks.* As illustrated in the right column on page 51187 of the proposed exemption, the Representations state that the VEBA Trust will have three separate retiree accounts (the Separate Retiree Accounts) designed to segregate payments attributable to New Chrysler, General Motors (GM), and Ford Motor Company (Ford), pursuant to the terms of each company's settlement agreement with the UAW and each respective class. As described in the middle column of page 51190 of the proposed exemption, the Committee represented that, in the event that a single Independent Fiduciary represents two or more Separate Retiree Accounts:

> A separate investment bank will be retained with respect to each of the three plans comprising the VEBA Trust. The investment bank's initial recommendations will be made solely with the goal of maximizing the returns for the single plan that owns the securities for which the investment bank is responsible.

In its initial discussions with the Department, the Committee made the argument that the arrangement for retention of separate investment banks would minimize the likelihood of an immediate transactional conflict inherent wherein one Independent Fiduciary managing more than one Separate Retiree Account would be immediately confronted by the need to dispose of the securities of each company.

The Committee has retained Brock Securities LLC (Brock) as the Independent Fiduciary with respect to the Securities, and has currently retained separate independent fiduciaries with respect to the GM and Ford Separate Retiree Accounts. As noted, however, it is conceivable that at some future date any or all three Independent Fiduciary engagements may be consolidated and the foregoing conditions would then come into play. In such event, the Committee argues that the requirement for different investment banks for each Separate Retiree Account would not be in the interest of the New Chrysler VEBA Plan and would not advance the goal of reducing potential fiduciary conflicts. The Committee contends that the need to retain multiple investment banks should be at the discretion of the Independent Fiduciary and the investment banks themselves, or that such requirement should be limited to investment banks performing a traditional underwriting role and being paid on a transactional basis, not those retained for ongoing valuation or investment consulting services.[8]

The Committee points out that, as a threshold matter, the term "investment bank" or "investment banker" is not a precise term, but refers to a range of services including investment valuation, investment consulting and advice, and brokerage or underwriting performed under the authority and supervision of one or more regulators (including, but not limited to the Federal Reserve and/or the Securities and Exchange Commission). The Committee maintains that typically, though not necessarily, an investment bank engaged to provide a regular valuation will not be the same as an investment bank engaged to assist the Independent Fiduciary in connection with a large private sale or an initial public offering, and even in the latter event, different investment banks may be employed for different markets (public versus private, international versus domestic, institutional versus retail).

The Committee suggests that, particularly in the case of an investment bank engaged only to provide valuation or investment advice, the Independent Fiduciary may conclude that there is no potential conflict in retaining a single investment bank with respect to two or more Separate Retiree Accounts. Furthermore, the Committee believes that retaining a single investment bank may in fact provide potential benefits in the form of experience, cost savings, and communication.

According to the Committee, Chrysler, Ford, and GM are at vastly different stages of marketability, are competing for capital in different markets (including public versus private), and are not competing against each other so much as they are part of a huge global automobile market with many other competitors.[9] The Committee notes that a conflict could arise in the unlikely event that the Independent Fiduciary proposes to sell large blocks of stock of two or more car companies in the same market at the exact same time. In that case, the Committee suggests that the Independent Fiduciary would probably (though not necessarily) engage separate investment bankers at that time to underwrite the sales. Furthermore, the Committee contends that it would maintain safeguards to mitigate the risk

[7] Assets held under the Internal VEBA plus the earnings thereon. These assets are in addition to the Shares and Note issued by Chrysler, which were contributed on June 10, 2009.

[8] The Committee suggests that an investment bank performing valuation or investment consulting and advisory services will often be paid a flat or asset-based fee, while an investment bank performing underwriting and brokerage services will be paid a transaction-based fee as a percentage of the overall sale. Additionally, the Committee notes that it is not anticipated that the Independent Fiduciary likely would retain a separate consulting and advisory firm for day-to-day advice (unless appropriate).

[9] According to the Committee, the most likely reason that an investment bank would propose going to market under this scenario is if the overall market itself is booming, such that there is ample appetite for the securities. In the event that a plan needs liquidity in a falling market, the Committee is more likely to explore other options, including reducing benefits or seeking alternative sources of capital such as through borrowing.

of conflicts. For example, the Committee notes that it would still appoint a conflicts monitor and perform its own monitoring of the Independent Fiduciary, and it would continue to raise any questions about potential conflicts.

Accordingly, the Committee proposes that, in the middle column on page 51190 of the proposed exemption, the aforementioned Representation should be revised, to replace the text, as follows:

In the event that a single Independent Fiduciary is retained to represent two or more plan Accounts, and it proposes to sell Securities from two or more such Accounts at the same time, a separate investment bank (if any) will be retained for each Account with respect to the marketing or underwriting of the Securities. For this purpose, an investment bank will be considered as having been retained to market or underwrite securities if it is compensated on the success of the offering and/or as a percentage of the offering or sales proceeds. The foregoing does not preclude the engagement of a single investment bank to provide valuation services or long-term investment consulting on behalf of two or more plan Accounts, provided that (1) the fees of the investment bank are not contingent upon the success or size of an offering or sale, and (2) for each plan Account, the investment bank's recommendations are made solely with the goal of maximizing the returns for such Account.

In addition, the Committee explains that there may be some confusion as to whether two different Independent Fiduciaries may retain the same investment bank. The Committee states that there should be no limitations on the number of investment banks that the Independent Fiduciary must retain other than general fiduciary principles. According to the Committee, although it is unlikely that an Independent Fiduciary would consider, or that an investment bank would accept, an engagement that might involve marketing securities of two different companies in the same market at the same time, it would not be unusual, for instance, to retain the same investment bank to make a private offering of securities in the domestic market and a public offering of different securities in a foreign market, where such investment bank is best qualified to do so.

Accordingly, the Committee suggests that, on page 51190 of the proposed exemption, the representation be modified to contain the following:

To the extent that two Accounts are represented by different Independent Fiduciaries, nothing herein shall prohibit the Independent Fiduciaries from retaining the same investment bank with respect to the Accounts which they manage if they determine that it is in the interest of their respective Accounts to do so.

The Committee also requests that the Department clarify that, in all circumstances, the restrictions applicable to investment banks would not apply in the event that the Independent Fiduciary elects to participate in a broader offering of Securities by New Chrysler and such offering is underwritten by an investment bank selected by New Chrysler (*see, e.g.,* Section 3.1(h) of the Registration Rights Agreement), rather than by the Independent Fiduciary.

The Department concurs with the Committee that, in the event that one Independent Fiduciary represents two or more (Separate Retiree) Accounts, and it proposes to sell Securities from two or more such Separate Retiree Accounts at the same time, then a separate investment bank (if any) will be retained for each Separate Retiree Account with respect to the marketing or underwriting of the Securities. Notwithstanding the above, nothing in the final exemption would preclude the Independent Fiduciary of two or more Separate Retiree Accounts from retaining the same investment banker to provide valuation services or long-term investment consulting on behalf of two or more of such Separate Retiree Accounts.[10] Furthermore, with respect to the Committee's suggestion that, to the extent that two Separate Retiree Accounts are represented by different Independent Fiduciaries, nothing herein shall prohibit the Independent Fiduciaries from retaining the same investment bank with respect to the Separate Retiree Accounts which they manage if they determine that it is in the interest of their respective Separate Retiree Accounts to do so, the Department is of the view that a separate investment bank (if any) must be retained to represent each such Separate Retiree Account with respect to the marketing or underwriting of the Securities.

Lastly, the Department concurs with the Committee that the restrictions applicable to investment banks would not apply in the event that the Independent Fiduciary elects to participate in a broader offering of Securities by New Chrysler and such offering is underwritten by an investment bank selected by New Chrysler (*see, e.g.,* Section 3.1(h) of the Registration Rights Agreement), rather than by the Independent Fiduciary. In the Department's view, the likelihood of conflicts is lower than in a situation where an offering of New Chrysler Securities is underwritten by an investment bank retained to sell the securities of one or more of the other Separate Retiree Accounts, because the interests of the New Chrysler VEBA Plan appear to align more closely with the interests of New Chrysler in the marketing and selling of the underwritten securities. Therefore, subject to the limitations above, the Department concurs with the Committee's requested clarifications.

2. *Reporting Deviations From an Investment Bank's Recommendations.* If a single Independent Fiduciary is retained with respect to more than one Separate Retiree Account, in the middle column on page 51190 of the proposed exemption, the preamble provides that the Independent Fiduciary shall report each instance in which it proposes to "deviate" from a "recommendation" of the investment bank. The Committee initially represented to the Department that such arrangement would help to minimize the likelihood of a conflict inherent in retaining one Independent Fiduciary to manage the securities of more than one Separate Retiree Account.

However, the Committee now proffers that this requirement may not be practical, in light of information gained during the process of interviewing and selecting the Independent Fiduciaries in connection with the Ford, GM, and Chrysler exemption applications. The Committee notes that, typically, an investment bank will not "recommend" a single, specific course of action, but through a dialogue with the Independent Fiduciary will present, discuss, modify and refine various options and scenarios that the Independent Fiduciary ultimately will use in making its decisions as a fiduciary. Thus, the Committee argues that it would not be feasible for the Independent Fiduciary to report back to the Committee when it proposes to deviate from a specific recommendation, given that interactions between the Independent Fiduciary and an investment bank generally lack a single, identifiable "recommendation" (either orally or in writing) that the Independent Fiduciary does or does not intend to follow.

Moreover, the Committee contends that some investment banker recommendations are unlikely ever to

[10] In reaching the Department's conclusion, it is our understanding, based on the Committee's representations, that the fees paid to a single investment bank to provide valuation services or long-term investment consulting on behalf of two or more Separate Retiree Accounts will not be contingent upon the success or size of an offering or sale, and for each Separate Retiree Account, the investment bank's recommendations are made solely with the goal of maximizing the returns for such Account.

raise conflict issues. For instance, the Committee notes that an investment bank may recommend that the VEBA Trust sell stock of New Chrysler in the market on a particular day, but the Independent Fiduciary determines that it would be more convenient to wait 24 hours. According to the Committee, it is questionable whether the Independent Fiduciary's decision constitutes a deviation. Similarly, the Committee notes that an investment bank may develop a preliminary valuation of certain New Chrysler Securities of $xx, and after thorough consideration, the Independent Fiduciary may determine that such securities are actually worth $yy. In such event, the Committee suggests that the Independent Fiduciary's valuation might be viewed as a "deviation" from the initial recommendation but is unlikely to raise any conflict vis-à-vis any Securities held by the VEBA Trust.

The Committee is also concerned that the requirement for the Committee to review the reported deviations will cause the Committee to interpose itself between the two parties before such parties have reached a consensus. In this event, the Committee explains that it may have an implied obligation to substitute its judgment for that of the Independent Fiduciary.

The Department concurs with the Committee's comment that their initial representation that the Independent Fiduciary would report any deviations from the recommendation of the investment bank raises operational issues. Nevertheless, the Department notes that the Independent Fiduciary and the Committee are not relieved from their fiduciary duties under the Act in carrying out their respective responsibilities. There may be circumstances where the Independent Fiduciary has a responsibility under the Act to inform the conflicts monitor or the Committee of a deviation from the investment bank's recommendations, and the Committee, as part of its oversight responsibility, may need to take appropriate action based on such disclosure. Subject to the caveat above, the Department takes note of these clarifications and updates to the Summary of Facts and Representations of the proposed exemption.

*B. Requests for Confirmation*

1. *Conditions Applicable in the Event That the Committee Appoints a Single Independent Fiduciary.* The Committee's comment requested confirmation that certain terms and conditions described in the Representations, in the middle column on page 51190, and incorporated into Sections II(b)(i) through (iii) on page 51192 of the proposed exemption, would apply only if and to the extent that the same Independent Fiduciary is appointed to represent two or more Separate Retiree Accounts.

Sections II(b)(i) through (iii) of the proposed exemption provide that the Committee will take certain steps to mitigate potential conflicts of interest, including the appointment of a conflicts monitor, the adoption of procedures to facilitate prompt replacement of the Independent Fiduciary due to a conflict of interest, the adoption of a written policy by the Independent Fiduciary regarding conflicts, and the periodic reporting of actual or potential conflicts. Additionally, in the middle column on page 51190 of the proposed exemption, the Representations provide that a separate investment bank will be retained with respect to each Separate Retiree Account, and in the event that the Independent Fiduciary deviates from the "initial recommendations" of an investment bank, "it would find it necessary to explain why it deviated from a recommendation."

The Department concurs with the Committee, that the terms and conditions described above will apply only if and to the extent that the same Independent Fiduciary is appointed to represent two or more Separate Retiree Accounts. Notwithstanding the above, nothing in the final exemption would preclude the Committee from adopting procedures similar to those described in Sections II(b)(i) through (iii) of the proposed exemption in furtherance of its oversight responsibilities. However, the Department believes that the requirement that the Independent Fiduciary retain separate investment banks with respect to each Separate Retiree Account, subject to the limitations described above, applies regardless of how many Separate Retiree Accounts are represented by the same Independent Fiduciary.

2. *Investment Bank's Acknowledgement that the VEBA Trust is its Ultimate Client.* On page 51193 of the proposed exemption, Section II(e) provides that "any contract between the Independent Fiduciary and an investment banker includes an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA Plan." In assisting the Department in formulating the conditions of the proposed exemption, the Committee represented to the Department that such acknowledgement would be helpful in the event that the Committee is forced to replace the Independent Fiduciary (such as in the event of an irreconcilable conflict). The Committee reasoned that this requirement would ensure that, in the event the Independent Fiduciary was replaced, the investment banker would continue to represent the plan and work with the replacement Independent Fiduciary.

After conducting interviews and consulting with numerous parties in its search for an independent fiduciary to manage the Securities received by the New Chrysler VEBA Plan, the Committee has raised concerns regarding such condition. The Committee has requested that the Department confirm that this condition will not cause the investment bank to become a fiduciary or otherwise obligate the investment bank or the Independent Fiduciary to provide to the Committee any of the investment bank's work product except upon request, nor will it obligate the Committee to request or review any such work product. The Committee contends that the Independent Fiduciary is both a named fiduciary and an investment manager, thus it should be free within the parameters of its contract to determine what information it shares with the Committee.

The Department confirms that the requirement that the investment banker acknowledge that its ultimate client is the New Chrysler VEBA Plan will not, by itself, make the investment banker a fiduciary of the New Chrysler VEBA Plan. Rather, whether an investment banker referred to in Section II of the proposed exemption becomes a fiduciary as a result of its provision of services depends on whether it meets the definition of a "fiduciary" as set forth in section 3(21) of the Act and the regulations promulgated thereunder.

3. *Obligation of the Committee to Review the Investment Banker Reports.* As described in the middle column on page 51190 of the proposed exemption, the Representations describe several safeguards that are provided to reduce the risk of conflict in the event that a single independent fiduciary is retained with respect to more than one Separate Retiree Account. Specifically, in assisting the Department to formulate these procedures, the Committee had suggested that a "conflicts monitor" would develop a process for identifying potential conflicts. As a result, the Department added Section II(b)(i)(2) of the proposed exemption, which provides that a conflicts monitor appointed by the Committee "regularly review the * * * investment banker reports * * * to identify the presence of factors that could lead to a conflict."

After conducting interviews with candidates for the Independent

Fiduciary position, the Committee has raised a concern regarding the conflicts monitor's duties. The Committee has requested confirmation that Section II(b)(i)(2) does not independently impose any obligation on the Committee to provide (or request) "investment banker reports" as a matter of course (i.e., beyond the Act's general fiduciary requirements). In its comment letter, the Committee notes that it may be appropriate for the conflicts monitor or the Committee (or any subcommittee with delegated authority) to review investment banker reports when provided to them by the Independent Fiduciary, or to request such reports under certain circumstances. However, the Committee maintains that such reports may contain information that is confidential or proprietary, or preliminary, or simply irrelevant to its responsibilities. Furthermore, according to the Committee, it is not clear what constitutes a "report," with the result that informal notes and/or emails may fall under the definition.

The Department concurs with the Committee that Section II(b)(i)(2) of the proposed exemption does not independently impose an affirmative obligation on the Committee to provide (or request) "investment banker reports" as a matter of course beyond the Act's general fiduciary requirements.

*The Independent Fiduciary's Comment*

The Independent Fiduciary, Brock, submitted a written comment that was supportive of the proposed exemption, and suggests certain modifications to the operative language of the proposed exemption and the Representations. Brock's comment relates to the effects of a potential corporate transaction involving New Chrysler, including a change in corporate structure of the company and the VEBA Trust's potential acquisition of additional employer securities pursuant to future corporate reorganizations and other ministerial changes to certain definitions in Section VI of the proposed exemption. In addition, Brock suggests certain revisions to the Representations meant to correct or clarify information presented in the proposed exemption.

A. Clarifications to the Operative Language

1. *Change in New Chrysler's Corporate Structure.* As described in the Representations, in the far right column on page 51184 of the proposed exemption, New Chrysler is a Delaware limited liability company that was formed by Fiat North America LLC, a subsidiary of Fiat, in order to receive the assets of Chrysler LLC, generally free and clear from all liens in connection with the Section 363 Sale. Brock notes that, in the event of consolidation, merger, sale, conveyance or public offering of New Chrysler, the company may no longer take the form of a Delaware limited liability company. Therefore, Brock suggests that Section VI(i), on page 51195 of the proposed exemption, should be amended to read in its entirety as follows:

> The term "New Chrysler" shall mean a Delaware Limited Liability Company formed by Fiat North America LLC, a subsidiary of Fiat S.p.A., a manufacturer of automobiles and automotive parts in Turin, Italy, and its successors and assigns. New Chrysler is the Company that acquired certain assets and liabilities from Chrysler LLC pursuant to the Section 363 Sale.

The Department concurs with Brock that in the event of a consolidation, merger, sale, conveyance or public offering of New Chrysler, the company may no longer take the form of a Delaware limited liability company. Accordingly, the Department has made changes to the Definitions in Section VI(j) of the final exemption to clarify that the term "New Chrysler" includes such entity's successors and assigns in the event of a reorganization, restructuring, recapitalization, merger, or similar corporate transaction.

2. *Effect of Corporate Transaction.* Section I(a), on page 51192 of the proposed exemption, provides exemptive relief for the acquisition, holding, and disposition by the New Chrysler VEBA Plan and the VEBA Trust of the Shares and the Note transferred by New Chrysler and deposited in the Chrysler Employer Security Sub-Account of the Chrysler Separate Retiree Account of the VEBA Trust.

Brock notes that, in the event of a consolidation, merger, sale or conveyance of New Chrysler, its corporate form may be reclassified and its equity interests may no longer fall under the current definition of "Shares" provided in Section VI(k) of the proposed exemption. In such event, the VEBA Trust may no longer hold "Shares," as defined by the proposed exemption. Furthermore, Brock notes that, pursuant to the Shareholders Agreement by and Among Fiat North America LLC, the U.S. Department of the Treasury, the VEBA Trust, 7169931 Canada Inc. (Canada), and the VEBA Holdcos Signatory Thereto (the Shareholders Rights Agreement), Brock, as the Independent Fiduciary, will have limited input in the terms and execution of any corporate transaction. Therefore, in order to continue to provide exemptive relief, Brock suggests that the definition of Shares should be modified to take into account the effect of a future change in New Chrysler's corporate form. Accordingly, Brock requests that Section VI(k) of the proposed exemption be amended in its entirety to read as follows:

> The term "Shares" means the membership interests issued by New Chrysler, including any membership interest, partnership interest, shares of stock or other equity resulting from an adjustment, substitution, conversion, or other modification of New Chrysler Shares in connection with a reorganization, restructuring, recapitalization, merger, or similar corporate transaction, provided that each holder of Shares is treated in an identical manner.

In response to the above referenced comment, the Department confirms that the proposed exemption provides exemptive relief for other equity acquired as a result of an adjustment, substitution, conversion, or other modification of Shares in connection with a restructuring, recapitalization, merger or similar corporate transaction involving New Chrysler. Accordingly, the Department has revised the definition of "Shares" in Section VI(o) of the final exemption, and takes note of the foregoing clarifications and updates to the Representations.

3. *Conforming Relief Requested.* Brock requests that, to the extent the final exemptive relief granted to the Ford or GM separate retiree accounts is equally applicable to the facts and circumstances covered by the proposed exemption for New Chrysler, any such relief be granted with respect to the exemption for New Chrysler as well.

The Department concurs with Brock's request to conform the exemptive relief granted to Ford or GM to the extent that such relief is equally applicable to the facts and circumstances covered by the proposed exemption for New Chrysler.

B. Modifications to Summary of Facts and Representations

1. *Dates of Call Option Exercise Period.* In the middle column on page 51186 of the proposed exemption, the Representations describe certain mechanisms for the VEBA Trust to sell the Shares to other parties prior to New Chrysler becoming a publicly traded company. The Representations provide that, in accordance with the Call Option Agreement, dated as of June 10, 2009, by and among Fiat, the VEBA Trust, Canada, and the Treasury Department (the Call Option Agreement), Fiat has the option to purchase from the VEBA Trust up to 40% of the VEBA Trust's equity interests in New Chrysler, between July 1, 2012 and June 1, 2016.

Brock suggests that, on page 51186 of the proposed exemption, "June 1, 2016" should be corrected to read "June 30, 2016", which is the date set forth in the definition of "Call Option Exercise Period" in the Call Option Agreement. The Department acknowledges the fact that the "Call Option Exercise Period" means that period beginning on July 1, 2012 and ending on June 30, 2016. As such, the Department takes note of the foregoing clarifications and updates to the Representations.

2. *Description of Equity Repurchase Rights.* The Representations, in the left column on page 51187 of the proposed exemption, provide that, in reference to the Treasury Department's repurchase right (a Repurchase Right) under the Equity Recapture Agreement, dated June 10, 2009 between the VEBA Trust and the Treasury Department (the Equity Recapture Agreement), "This right expires upon the earlier of its exercise and the VEBA Trust's surrender of all remaining New Chrysler interests held by the VEBA Trust to the Treasury Department."

However, Brock notes that, under Section III.B of the Equity Recapture Agreement, it is Fiat's Call Option, not the Treasury Department's, that expires "upon the earlier of the exercise of the Repurchase Right and the surrender to the Holder of all remaining VEBA Interests held by VEBA Holdco or VEBA, as applicable." To clarify the rights of the parties under the Equity Recapture Agreement, Brock proposes that the sentence from page 51187 of the proposed exemption quoted above, and the sentence preceding it, be amended to read as follows:

> In addition, the Treasury Department has the right, at any time, to purchase all outstanding Shares held by the VEBA Trust for an amount equal to the Threshold Amount less the amount of any proceeds already received by the VEBA Trust in respect of any of the Shares (the "Repurchase Right"). The Repurchase Right terminates following any payment on the December 31, 2018 interim settlement date, as described below, under the Equity Recapture Agreement, or upon the payment of the Threshold Amount Excess, if earlier. In addition, the Equity Recapture Agreement provides that the Fiat Call Option expires upon the earlier of the exercise of the Repurchase Right and the VEBA Trust's surrender of all remaining New Chrysler interests held by the VEBA Trust to the Treasury Department.

3. *Voting of Shares by the Independent Fiduciary.* On page 51189 of the proposed exemption, in the middle column, the Representations provide the following:

> Additionally, under the Shareholder Rights Agreement, the New Chrysler VEBA Plan must vote its Membership Interest in New Chrysler in accordance with the recommendations of the independent directors of New Chrysler, in proportion to those recommendations. Therefore, the Independent Fiduciary will have no responsibility for the voting of the Membership Interests.

Brock notes that Section 2.4 of the Shareholders Rights Agreement provides that the VEBA Trust will vote its interests in New Chrysler in accordance with the recommendations of the independent directors, but subject to certain exceptions with respect to major decisions set forth in the Amended and Restated Limited Liability Company Operating Agreement of Chrysler Group LLC, dated and effective as of June 10, 2009 (the New Chrysler Operating Agreement). Brock points out that Section 10.7 of the New Chrysler Operating Agreement provides that if Fiat owns more than 50% of the membership interests of New Chrysler, the Board of Directors shall not take certain major decisions without the prior written consent of each non-Fiat member affected thereby, if such non-Fiat member would be adversely affected by such major decision disproportionately to Fiat. According to Brock, non-Fiat members would include the VEBA Trust.

As such, Brock recommends that the language from page 51189 of the proposed exemption quoted above, beginning with "Therefore, the Independent Fiduciary* * *" be replaced with the following, to reflect the exception with respect to major decisions:

> Therefore, the Independent Fiduciary will have no responsibility for the voting of the membership interests; provided, however, that with respect to certain major decisions, as discussed in Section 10.7 of the Operating Agreement, under certain circumstances New Chrysler will not take such major decisions without the prior written consent of non-Fiat holders once Fiat owns more than 50% of the membership interests in New Chrysler.

Brock also notes that in two instances in the proposed exemption, "membership interests" is capitalized and should be made lower case. The Department takes note of the foregoing clarifications and updates to the Representations.

4. *Fiat's Right of Appointment of Directors.* The Representations on page 51190 of the proposed exemption, in the right column, provide that "Fiat will have the right to appoint four (4) directors once it obtains an aggregate ownership interest of thirty-five percent (35%) or more in New Chrysler and the Final Director will resign once Fiat obtains the right to appoint a fourth director." Brock notes that, according to Section 5.3 of the New Chrysler Operating Agreement, "[f]or so long as Fiat remains a Member and the Fiat Group has a Total Interest exceeding fifty percent (50%), Fiat shall have the right to designate up to five Directors to the Board of Directors to serve as Directors." Accordingly, Brock recommends adding a more complete description of Fiat's rights under Section 5.3 of the New Chrysler Operating Agreement by inserting, after the sentence from the proposed exemption reproduced above, the following:

> Furthermore, Fiat will have the right to appoint five (5) directors once it obtains an aggregate ownership interest of fifty percent (50%) or more in New Chrysler, and the remaining director appointed by the Treasury Department who is not an independent director will resign once Fiat obtains the right to appoint a fifth director.

The Department takes note of the foregoing clarifications and updates to the Representations.

The Department has carefully considered the issues expressed by the commenters in their written comments, including the issues raised by the individuals who had telephoned the Department. After consideration of the commenters' concerns and documentation provided, the Department does not believe that any material factual issues have been raised which would require the convening of a public hearing. Further, after giving full consideration to the entire record, including the comments, the Department has determined to grant the exemption, subject to the modifications and clarifications described herein.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption that was published in the **Federal Register** on October 5, 2009 at 74 FR 51182. For further information regarding the comments and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. L–11566) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, US Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The written comments may also be viewed online at *http://*

*www.regulations.gov,* at Docket ID Number: EBSA–2009–0025.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) In accordance with section 408(a) of the Act, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the New Chrysler VEBA Plan and of its participants and beneficiaries; and

(c) The exemption is protective of the rights of participants and beneficiaries participating in the New Chrysler VEBA Plan; and

(3) The exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

*Section I. Covered Transactions*

(a) The restrictions of sections 406(a)(1)(A), (B), and (E), 406(a)(2), 406(b)(1) and (2), and 407(a) of the Act shall not apply, effective June 10, 2009, to:

(1) The acquisition by the UAW Chrysler Retiree Medical Benefits Plan (New Chrysler VEBA Plan) and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust) of 676,924 New Chrysler Shares (the Shares) and a note issued by New Chrysler with a principal amount of $4,587,000,000 and an implicit interest rate of nine percent (9%) (the Note) transferred by New Chrysler and deposited in the Chrysler Employer Security Sub-Account of the Chrysler Separate Retiree Account of the VEBA Trust;

(2) The holding of the Shares and the Note by the New Chrysler VEBA Plan in the Chrysler Employer Security Sub-Account of the Chrysler Separate Retiree Account of the VEBA Trust;

(3) The disposition of the Shares and the Note; and

(4) The sale by the New Chrysler VEBA Plan to Fiat S.p.A (Fiat) of Shares pursuant to the exercise by Fiat of the Call Option Agreement and/or the First Offer Right described in the New Chrysler Operating Agreement;

(b) The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act shall not apply, effective June 10, 2009, to:

(1) The payment by New Chrysler, the Existing Internal VEBA, the New Chrysler VEBA Plan, or any affiliate of New Chrysler, of a benefit claim that was the responsibility and legal obligation, under the terms of the applicable plan documents, of one of the other parties listed in this paragraph; and

(2) The reimbursement by New Chrysler, the Existing Internal VEBA, the New Chrysler VEBA Plan, or any affiliate of New Chrysler, of a benefit claim that was paid by another party listed in this paragraph, which was not legally responsible for the payment of such claim, plus interest.

(c) The restrictions of sections 406(a)(1)(B), 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act shall not apply, effective June 10, 2009, to the return to New Chrysler of assets deposited or transferred to the New Chrysler VEBA Plan by mistake, plus interest.

*Section II. Conditions Applicable to Section I(a)*

(a) The Committee appoints a qualified Independent Fiduciary to act on behalf of the New Chrysler VEBA Plan for all purposes related to the transfer of the Shares and Note to the Plan for the duration of the Plan's holding of the Shares and Note, except for the voting of the Shares. Such Independent Fiduciary will have sole discretionary responsibility relating to the holding, disposition and ongoing management of the Shares and the Note. The Independent Fiduciary will determine, before taking any of the actions regarding the Shares and the Note, that each such action or transaction is in the interest of the New Chrysler VEBA Plan.

(b) In the event that the same Independent Fiduciary is appointed to represent the interests of one or more of the other plans comprising the VEBA Trust (*i.e.,* the UAW General Motors Retiree Medical Benefits Plan and/or the UAW Ford Retiree Medical Benefits Plan) with respect to employer securities deposited into the Trust, the Committee takes the following steps to identify, monitor and address any conflict of interest that may arise with respect to the Independent Fiduciary's performance of its responsibilities:

(i) The Committee appoints a "conflicts monitor" to: (1) Develop a process for identifying potential conflicts; (2) regularly review the Independent Fiduciary reports, investment banker reports, and public information regarding the companies, to identify the presence of factors that could lead to a conflict; and (3) further question the Independent Fiduciary when appropriate.

(ii) The Committee adopts procedures to facilitate prompt replacement of the Independent Fiduciary if the Committee in its sole discretion determines such replacement is necessary due to a conflict of interest.

(iii) The Committee requires the Independent Fiduciary to adopt a written policy regarding conflicts of interest. Such policy shall require that, as part of the Independent Fiduciary's periodic reporting to the Committee, the Independent Fiduciary includes a discussion of actual or potential conflicts identified by the Independent Fiduciary and options for avoiding or resolving the conflict.

(c) The Independent Fiduciary authorizes the Trustee of the New Chrysler VEBA Plan to dispose of the Shares and the Note only after the Independent Fiduciary determines, at the time of the transaction, that the transaction is feasible, in the interest of the New Chrysler VEBA Plan, and protective of the participants and beneficiaries of the Plan.

(d) The Independent Fiduciary negotiates and approves on behalf of the New Chrysler VEBA Plan any transactions between the New Chrysler VEBA Plan and any party in interest involving the Shares or the Note that may be necessary in connection with the subject transactions (including but not limited to the registration of the securities contributed to the New Chrysler VEBA Plan).

(e) Any contract between the Independent Fiduciary and an investment banker includes an acknowledgement by the investment banker that the investment banker's ultimate client is an ERISA plan.

(f) The Independent Fiduciary discharges its duties consistent with the terms of the New Chrysler VEBA Plan, the Trust Agreement, the Independent

Fiduciary Agreement, and any other documents governing the employer securities, such as the registration rights agreement.

(g) The New Chrysler VEBA Plan incurs no fees, costs or other charges (other than described in the VEBA Trust Agreement and the Modified Settlement Agreement) as a result of the transactions exempted herein.

(h) The terms of any transaction exempted herein are no less favorable to the New Chrysler VEBA Plan than the terms negotiated at arms' length under similar circumstances between unrelated parties.

*Section III. Conditions Applicable to Section I(b)*

(a) The Committee and the New Chrysler VEBA Plan's third party administrator will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the VEBA Trust's independent auditor. The results of this review will be made available to New Chrysler.

(b) New Chrysler and their respective plans' third party administrator(s) will review the benefits paid during the transition period and determine the dollar amount of mispayments made, subject to the review of the respective plans' independent auditor. The results of this review will be made available to the Committee.

(c) Interest on any reimbursed mispayment will accrue from the date of the mispayment to the date of the reimbursement.

(d) Interest will be determined using the applicable OPEB discount rate.[11]

(e) If there is a dispute as to the amount of a reimbursement requested, the parties will enter into an alternative dispute resolution procedure as defined in section VI.(b) of this exemption.

*Section IV. Conditions Applicable to Section I(c)*

(a) New Chrysler must make a claim to the Committee regarding the specific deposit or transfer made in error or made in an amount greater than that to which the New Chrysler VEBA Plan was entitled.

(b) The claim is made within the Verification Time Period, as defined in Section VI(s) of this exemption.

(c) Interest on any mistaken deposit or transfer will accrue from the date of the mistaken payment to the date of the repayment.

(d) Interest will be determined using the applicable OPEB discount rate.

(e) If there is a dispute as to the amount of a mistaken payment, the parties will enter into an alternative dispute resolution procedure as defined in Section VI(b) of this exemption.

*Section V. Conditions Applicable to Section I(a),(b),(c)*

(a) The Committee and the Independent Fiduciary maintain for a period of six (6) years from the date the Note or any Shares are transferred to the New Chrysler VEBA Plan the records necessary to enable the persons described in paragraph (b) below to determine whether conditions of this exemption have been met, except that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Committee and/or the Independent Fiduciary, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest other than the Committee or the Independent Fiduciary shall be subject to the civil penalty that may be assessed under section 502(i) if the records are not maintained, or are not available for examination as required by paragraph (b) below; and

(b) Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (a) above shall be unconditionally available at their customary location during normal business hours to:

(A) any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) the UAW or any duly authorized representative of the UAW;

(C) New Chrysler or any duly authorized representative of New Chrysler; and

(D) Fiat or any duly authorized representative of Fiat; and

(E) the Independent Fiduciary or any duly authorized representative of the Independent Fiduciary;

(F) the Committee or any duly authorized representative of the Committee; and

(G) any participant or beneficiary of the New Chrysler VEBA Plan, or any duly authorized representative of such participant or beneficiary.

(c) None of the persons described above in paragraphs (b)(B), (E)–(G) shall be authorized to examine trade secrets of New Chrysler, or commercial or financial information which is privileged or confidential, and should New Chrysler refuse to disclose information on the basis that such information is exempt from disclosure, New Chrysler shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

*Section VI. Definitions*

(a) The term "affiliate" means: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) Any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; or (3) Any corporation, partnership or other entity of which such other person is an officer, director or partner. (For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual).

(b) The term "Alternative Dispute Resolution Procedure" shall mean, notwithstanding anything in Section 23 of the Modified Settlement Agreement to the contrary, the following process for the resolution of any dispute or controversy arising under Section 5 of the Modified Settlement Agreement for the reimbursement of benefit claims or in Section 9 of the Modified Settlement Agreement for the mistaken deposits. Such disputes shall be resolved in the following manner:

(i) While the parties agree that each of the disputes with respect to mistaken deposits and reimbursement of benefit claims referred to in the Settlement Agreement may be submitted to arbitration, they first shall endeavor to resolve the dispute through the following procedures:

(1) the aggrieved party shall provide the other party with written notice of such dispute;

(2) the written notice shall include a description of the alleged violation and identify the Section(s) of the Settlement Agreement allegedly violated;

(3) the party receiving the notice shall respond in writing within 21 calendar days of receipt of notice; and

(4) within 21 calendar days of that response the parties shall meet in an effort to resolve the dispute.

All the time periods in this definition may be extended by agreement of the parties to the particular dispute.

(ii) Should the parties be unable to resolve the dispute within 30 calendar days from the date of the meeting set forth in this definition, either party may send written demand to the other party that the issue be resolved by arbitration.

[11] OPEB means Other Post-Employment Benefits, and typically includes retiree healthcare benefits, life insurance, tuition assistance, day care, legal services and the like. The OPEB discount rate is a rate used to discount projected future OPEB benefits payment cash flows to determine the present value of the OPEB obligation.

The failure to demand arbitration within 60 calendar days from the date of the meeting as set forth in this definition shall waive any right to such arbitration over the issue, absent mutual written agreement to the contrary by the parties. If a party fails to make a timely demand for arbitration pursuant to this definition, such party may not pursue the dispute in court, and the dispute will be resolved on the basis of the position taken by the opposing or answering party.

(iii) In the event that New Chrysler, the UAW, or the Committee proceed to arbitration in accordance with this definition, that dispute shall be submitted to an arbitrator (the Arbitrator) who will not have the authority to modify or amend the Modified Settlement Agreement, but only to apply the Modified Settlement Agreement, as written, to particular factual situations based on a preponderance of the evidence. The Arbitrator shall not have the authority to award punitive or exemplary damages. Interest shall be paid on any delayed payments as a result of the arbitration process. The interest will be calculated daily at a rate equal to the OPEB Discount Rate for each day that amounts remain outstanding. Such arbitration shall take place in Auburn Hills, Michigan unless otherwise agreed upon in writing by the parties. Any award shall be in writing and issued within 30 days from the close of the hearing, unless the parties otherwise agree. The award shall be final, conclusive and binding on New Chrysler, the UAW, and the Committee. The award may be reduced to judgment in any appropriate court having jurisdiction in accordance with the provisions of the applicable law.

(iv) In the event that a dispute arising under this definition is taken to arbitration, the Arbitrator shall be the arbitrator/umpire used by New Chrysler and the UAW for disputes arising under the then-applicable New Chrysler-UAW National Agreement; provided that, if within 15 days of receipt of the written arbitration demand referred to in (ii) above, the parties agree in writing that the dispute requires an arbitrator with actuarial expertise, then the Arbitrator shall be a person with actuarial expertise upon whom the parties mutually agree in writing, but failing such mutual agreement with 30 days of receipt of the written arbitration demand referred to in (ii) above, the arbitrator/umpire used by New Chrysler and the UAW for disputes arising under then-applicable Chrysler-UAW National Agreement shall select a person with actuarial expertise to serve as the Arbitrator.

(v) New Chrysler, the UAW, and the Committee shall cooperate in setting a hearing date for the arbitration as soon as possible following selection of the Arbitrator.

(c) The term "Class" or "Class Members" shall mean all persons who are: (i) New Chrysler-UAW Represented Employees who, as of October 29, 2007, were retired from Chrysler LLC with eligibility for Retiree Medical Benefits under the Chrysler Plan, and their eligible spouses, surviving spouses and dependents; (ii) surviving spouses and dependents of any New Chrysler-UAW Represented Employees who attained seniority and died on or prior to October 29, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from New Chrysler and/or the Chrysler Plan; (iii) former New Chrysler-UAW Represented Employees or UAW-represented employees who, as of October 29, 2007, were retired from any previously sold, closed, divested or spun-off Chrysler LLC business unit with eligibility to receive Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan by virtue of any agreement(s) between Chrysler LLC and the UAW, and their eligible spouses, surviving spouses, and dependents; and (iv) surviving spouses and dependents of any former New Chrysler LLC-UAW Represented Employee or UAW-represented employee of a previously sold, closed, divested or spun-off Chrysler LLC business unit, who attained seniority and died on or prior to October 29, 2007 under circumstances where such employee's surviving spouse and/or dependents are eligible to receive Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan.

(d) The term "Committee" shall mean the eleven individuals consisting of six independent members and five UAW appointed members who will serve as the plan administrator and named fiduciary of the New Chrysler VEBA Plan.

(e) The term "Covered Group" shall mean: (i) All New Chrysler Active Employees who had attained seniority as of September 14, 2007, and who retire after October 29, 2007 under the Chrysler LLC-UAW National Agreements, or any other agreement(s) between Chrysler LLC and the UAW or New Chrysler and the UAW, and who upon retirement are eligible for Retiree Medical Benefits under the Chrysler Plan or the New Chrysler VEBA Plan, as applicable, and their eligible spouses, surviving spouses and dependents; (ii) all former New Chrysler-UAW Represented Employees and all UAW-represented employees who, as of October 29, 2007, remained employed in a previously sold, closed, divested, or spun-off Chrysler LLC business unit, and upon retirement are eligible for Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan or the New Chrysler VEBA Plan by virtue of any other agreement(s) between Chrysler LLC and the UAW or New Chrysler and the UAW, and their eligible spouses, surviving spouses and dependents; and (iii) all eligible surviving spouses and dependents of New Chrysler Active Employees, or of former New Chrysler-UAW Represented Employees or UAW-represented employees identified in (ii) above, who attained seniority on or prior to September 14, 2007 and die after October 29, 2007 but prior to retirement under circumstances where such employee's surviving spouse and/or dependents are eligible for Retiree Medical Benefits from Chrysler LLC and/or the Chrysler Plan or the New Chrysler VEBA Plan, as applicable.

(f) The term "Existing Internal VEBA" shall mean the Chrysler VEBA Trust between Chrysler and State Street Bank and Trust Company, which has been maintained by New Chrysler as of June 10, 2009.

(g) The term "Implementation Date" shall mean the later of January 1, 2010 or (ii) the "Final Effective Date," as defined in the Modified Settlement Agreement.

(h) The term "Independent Fiduciary" means a fiduciary that is (i) independent of and unrelated to Chrysler LLC, New Chrysler, the UAW, the Committee, and their affiliates, and (ii) appointed to act on behalf of the New Chrysler VEBA Plan with respect to the holding, management and disposition of the Shares and the Note. In this regard, the fiduciary will not be deemed to be independent of and unrelated to Chrysler LLC, New Chrysler, the UAW, the Committee, and their affiliates if (1) such fiduciary directly or indirectly controls, is controlled by, or is under common control with Chrysler LLC, New Chrysler, the UAW, the Committee or their affiliates, (2) such fiduciary directly or indirectly receives any compensation or other consideration from Chrysler LLC, New Chrysler, the UAW or any Committee member in his or her individual capacity in connection with any transaction contemplated in this exemption (except that an independent fiduciary may receive compensation from the Committee or the New Chrysler VEBA Plan for services provided to the New Chrysler

VEBA Plan in connection with the transactions discussed herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision), and (3) the annual gross revenue received by the fiduciary, in any fiscal year, from Chrysler LLC, New Chrysler, the UAW or a member of the Committee in his or her individual capacity, exceeds 3% of the fiduciary's annual gross revenue from all sources (for federal income tax purposes) for its prior tax year.

(i) The term "Modified Settlement Agreement" means the UAW Retiree Settlement Agreement between Chrysler LLC and the UAW dated June 10, 2009.

(j) The term "New Chrysler" shall mean a Delaware Limited Liability Company formed by Fiat North America LLC, a subsidiary of Fiat S.p.A., a manufacturer of automobiles and automotive parts in Turin, Italy, and its successors and assigns in the event of a reorganization, restructuring, recapitalization, merger, or similar corporate transaction. New Chrysler is the Company that acquired certain assets and liabilities from Chrysler LLC pursuant to the Section 363 Sale.

(k) The term "New Chrysler VEBA Plan" refers to the newly created retiree medical employee welfare benefit plan. The plan is an employee welfare benefit plan established and maintained by the Committee, and shall provide retiree medical benefits to the Class and the Covered Group established pursuant to the Modified Settlement Agreement.

(l) The term "Note" shall mean a note issued by New Chrysler with a principal amount of $4,587 billion and an implicit interest rate of nine (9%) payable in fixed annual installments pursuant to the Indenture Agreement. Payments, consisting of accrued and unpaid interest and amortized principal shall be due on July 15 of each year, commencing July 15, 2010 and ending on July 15, 2023.

(m) The term "Registration Rights Agreement" means the Equity Registration Rights Agreement by and among New Chrysler, the Treasury Department, Canada, the VEBA Trust and Chrysler LLC, entered into on June 10, 2009.

(n) The term "Section 363 Sale" means a sale under section 363 of Title 11 of the U.S. Code, by which on June 10, 2009, New Chrysler succeeded to certain assets and liabilities of Chrysler LLC.

(o) The term "Shares" means the membership interests issued by New Chrysler, including any membership interests, partnership interests, shares of stock, or other equity acquired pursuant to an adjustment, substitution, conversion, or other modification of Shares in connection with a reorganization, restructuring, recapitalization, merger or similar corporate transaction involving New Chrysler, provided that each holder of Shares is treated in an identical manner.

(p) The term "Treasury Department" shall mean the United States Department of the Treasury.

(q) The term "UAW" means the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America.

(r) The term "VEBA" means the New Chrysler VEBA Plan and its associated UAW Retiree Medical Benefits Trust (the VEBA Trust).

(s) The term "Verification Time Period" means: (i) With respect to all Shares, the period beginning on the date of publication of the final exemption in the **Federal Register** and ending 60 calendar days thereafter; (ii) with respect to each payment pursuant to the Note, the period beginning on the date of the payment and ending 90 calendar days thereafter; and (iii) with respect to the UAW-Related Account of the Existing Internal VEBA, the period beginning on the date of publication of the final exemption in the **Federal Register** (or, if later, the date of the transfer of the UAW-Related Account to the New Chrysler VEBA Plan) and ending 180 calendar days thereafter.

Signed at Washington, DC, this 21st day of April, 2010.

**Ivan Strasfeld,**

*Director of Exemption, Determinations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2010–9607 Filed 4–23–10; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL SCIENCE FOUNDATION

### Business and Operations Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Business and Operations Advisory Committee (9556).

*Date/Time:* May 18, 2009; 1 p.m. to 5:45 p.m. (EST). May 19, 2009; 8 a.m. to 12 p.m. (EST).

*Place:* National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 1235.

*Type of Meeting:* Open.

*Contact Person:* Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230; (703) 292–8200.

*Purpose of Meeting:* To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

**Agenda**

*May 18, 2010*

Welcome/Introductions; OIRM/CIO/BFA Updates; Post Award/Policy Updates; Performance Evaluation Assessment; Open Government Initiative; NSF Workforce Management/Leadership Development.

*May 19, 2010*

NSF Strategic Plan Update—2010–2015; Future NSF–2013 Lease Expiration; Committee Discussion: Prepare for Meeting with NSF Deputy Director; Discussion with Deputy Director; Closing Committee Discussion/Wrap-Up.

Dated: April 21, 2010.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2010–9554 Filed 4–23–10; 8:45 am]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–498 and 50–499; NRC–2010–0162]**

### STP Nuclear Operating Company South Texas Project, Units 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 26.9, for Facility Operating Licenses numbered NPF–76 and NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of the South Texas Project (STP), Units 1 and 2, respectively, located in Matagorda County, Texas. In accordance with 10 CFR 51.21, the NRC prepared an environmental assessment documenting its finding. The NRC concluded that the proposed action will have no significant environmental impact.

**Environmental Assessment**

*Identification of the Proposed Action:* The proposed action would consider approval of an exemption for STP, Units 1 and 2, from some of the requirements of 10 CFR Part 26, "Fitness for Duty Rule." Specifically, the licensee requests approval of an exemption from the requirements of 10 CFR 26.205(c), "Work hours scheduling," and (d), "Work hour controls."

The licensee states that during declaration of severe weather conditions such as tropical storm or hurricane force winds, adherence to all work hour controls requirements could impede the

licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status.

The exemption would only apply when severe weather conditions involving tropical storm or hurricane force winds are predicted on site requiring the sequestering of STP storm crew.

The proposed exemption will allow the licensee not to meet the requirements of 10 CFR 26.205(c) and (d), from the time that the storm or hurricane sequestering conditions are met until severe weather exit conditions are satisfied. The exemption will only apply to individuals on the storm crew who perform duties identified in 10 CFR 26.4(a)(1) through (5). When storm crew sequestering exit conditions are met, full compliance with 10 CFR 26.205(c) and (d) will be required.

The proposed action does not involve any physical changes to the reactor, fuel, plant structures, support structures, water, or land at the STP, Units 1 and 2, site.

The proposed action is in accordance with the licensee's application dated September 21, 2009, as supplemented by letters dated October 14, 2009, and February 11, 2010.

*The Need for the Proposed Action:*

Proposed action is needed because the licensee is unable to meet the requirements of 10 CFR 26.205 (c) and (d) during declarations of severe weather conditions that could result due to prevailing tropical storm or hurricane force winds impacting the facility.

Compliance with work hour control requirements would impede the licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant reaches and maintains a safe and secure status.

*Environmental Impacts of the Proposed Action:*

The NRC staff has completed its environmental assessment of the proposed exemption. The NRC staff has concluded that the proposed exemption from the implementation of the requirements of 10 CFR 26.205(c) and (d) during declaration of severe weather conditions, would not significantly affect plant safety and would not have a significant adverse effect on the probability of occurrence of an accident.

The proposed action would not result in any increased radiological hazards beyond those previously evaluated by the NRC staff in NUREG–0781, "Safety Evaluation Report Related to Operation of South Texas Project, Units 1 and 2." There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes in or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Steven's Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC staff concludes that there are no significant environmental impacts associated with the proposed action.

The licensee currently maintains a Hurricane Plan which provides directions for activation of the storm crew. The storm crew is activated upon the directions of Emergency Operations Facility Director. The Plan provides specific entry conditions for the start of the emergency and specific conditions that will terminate the emergency. The licensee states that the impact of the exemption on personnel manning during the implementation of the site Hurricane Plan will be similar to an Emergency Plan impact. Although the proposed exemption would allow the licensee not to meet work hour controls during storm crew activation, sufficient numbers of management and supervision will be available during storm crew manning and activation to ensure that public health and safety is adequately protected.

The NRC staff's safety evaluation will be provided as part of the letter to the licensee approving the exemption to the regulation, if granted.

*Environmental Impacts of the Alternatives to the Proposed Action:*

As an alternative to the proposed action, the NRC staff considered denial of the proposed actions (*i.e.,* the "no-action" alternative). Denial of the exemption request would result in no change in current environmental impacts. If the proposed action were denied, the licensee would have to comply with the fatigue rules in 10 CFR 26.205(c) and (d). This would cause unnecessary burden on the licensee, without a significant benefit in environmental impacts. The environmental impacts of the proposed exemption and the "no-action" alternative are similar.

*Alternative Use of Resources:*

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the STP, Units 1 and 2, NUREG–1172, dated August 1986.

*Agencies and Persons Consulted:*

In accordance with its stated policy, on April 13, 2010, the NRC staff consulted with the Texas State official, Ms. Alice Rogers of the Texas State Department of Health, regarding the environmental impact of the proposed action. The Texas State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 21, 2009, as supplemented by letters dated October 14, 2009, and February 11, 2010, available in the Agencywide Documents Access and Management System (ADAMS) Accession Nos. ML092720178, ML092930172, and ML100490048, respectively. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 19th day of April 2010.

For The Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010–9585 Filed 4–23–10; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[ Docket No. 70–7016–ML; ASLBP No. 10–901–03–ML–BD01]**

## GE-Hitachi Global Laser Enrichment LLC;

### Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register,** 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

### GE-Hitachi Global Laser Enrichment LLC (GLE Commercial Facility)

This Board is being established pursuant to a Notice of Hearing and Commission Order regarding the application of GE-Hitachi Global Laser Enrichment LLC for a license to possess and use source, byproduct, and special nuclear material and to enrich natural uranium to a maximum of 8 percent U–235 by a laser-based enrichment process at a proposed plant to be known as GLE Commercial Facility that would be located in New Hanover County, North Carolina. *See* 75 FR 1819 (Jan. 13, 2010). No request for hearing or petition to intervention has been received in response to the notice in the **Federal Register.** Because GE-Hitachi is seeking authorization to construct a uranium enrichment facility, a mandatory hearing is required.

*The Board is comprised of the following administrative judges:* Paul S. Ryerson, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission. Washington, DC 20555–0001; James F. Jackson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Michael O. Garcia, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 20th day of April 2010.

**E. Roy Hawkens,**

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 2010–9581 Filed 4–23–10; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–277 and 50–278; NRC–2010–0160]**

## Exelon Generation Company, LLC; PSEG Nuclear, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License for Peach Bottom Atomic Power Station, Units 2 and 3; Opportunity for a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Order and notice of license amendment request, opportunity to comment, opportunity to request a hearing.

**DATES:** Comments must be filed by May 26, 2010. A request for a hearing must be filed by June 25, 2010.

**FOR FURTHER INFORMATION CONTACT:** John Hughey, Project Manager, Plant Licensing Branch I–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852–2738. Telephone: (301) 415–3204; fax number: (301) 415–2102; e-mail: *John.Hughey@nrc.gov.*

**ADDRESSES:** Please include Docket ID NRC–2010–0160 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

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

You may submit comments by any one of the following methods.

*Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0160. Comments may be submitted electronically through this Web site. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

*Mail comments to:* Michael T. Lesar, Chief, Rulemaking, Announcements and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

To access documents related to this notice *see* Section V, Further Information.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–44 and DPR–56, issued to Exelon Generation Company, LLC, and PSEG Nuclear, LLC, (licensee) for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York and Lancaster Counties, Pennsylvania.

The proposed amendment would revise the PBAPS, Units 2 and 3, Technical Specification Section 4.3.1.1.a concerning the spent fuel pool k-infinity value. The amendment application dated June 25, 2008, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML081820348), was supplemented by letters dated November 6, 2008, March 9, 2009, June 12, 2009, December 18, 2009, and March 26, 2010 (ADAMS Accession Nos. ML083190840, ML090690804, ML091740446, ML093521435, and ML100910075, respectively). Access to these documents is discussed in Section V, Further Information. The amendment application and each of the supplement letters include attachments that contain sensitive unclassified non-safeguards information (SUNSI), and are not available to the public. *See* Section V, Further Information, and the Order providing instructions for requesting access to the withheld information.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would

not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change is to revise the k-infinity value contained in TS 4.3.1.1.a. The k-infinity value will be revised to 1.270. This change is necessary as a result of the ongoing degradation of the Boraflex neutron absorbing material. As demonstrated through the criticality analysis, the PBAPS spent fuel storage racks satisfy the reactivity requirements for all storage conditions with GNF2 fuel having an associated in-core peak k-infinity of no greater than 1.270. This change does not involve any plant modifications or operational changes that could affect system reliability, performance, or the possibility of an operator error. The fuel storage k-effective subcriticality design limit of 0.95 will continue to be required by TS 4.3.1.1.b. Therefore, the k-infinity parameter may be revised without impacting the probability or consequences of a previously evaluated accident. Additionally, a program has been established to monitor Boraflex degradation. The PBAPS, Units 2 and 3 Boraflex monitoring program discussed in our response to Generic Letter 96–04 for PBAPS, Units 2 and 3 will ensure that the spent fuel pool racks remain capable of performing their intended safety function. This change does not affect any postulated accident precursors and does not affect the performance of any accident mitigation systems that could increase the probability or consequences of an accident. Additionally, this change does not introduce any new accident initiation mechanisms.

Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change is to revise the k-infinity value contained in TS 4.3.1.1.a. The design basis for preventing fuel criticality in fuel storage facilities is not impacted by this change. This design function of the spent fuel racks will be maintained. The criticality analysis criteria being retained in TS 4.3.1.1 and 4.3.1.2 will preserve existing criticality margins associated with the storage of new and irradiated fuel. The fuel storage k-effective subcriticality design limit of 0.95 will continue to be required by TS 4.3.1.1.b. This change does not involve any plant modifications or operational changes that could affect system reliability or performance. No new failure mechanisms, malfunctions, or accident initiators will be introduced as a result of this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change is to revise the k-infinity value contained in TS 4.3.1.1.a. The k-infinity value will be revised to 1.270. This change is necessary as a result of the ongoing degradation of the Boraflex neutron absorbing material. Since the existing in-rack k-effective criteria remains consistent with fuel storage criticality design criteria, the k-infinity parameter may be revised without impacting nuclear safety. As demonstrated through the criticality analysis, the PBAPS spent fuel storage racks satisfy the reactivity requirements for all storage conditions with GNF2 fuel having an associated in-core peak k-infinity of no greater than 1.270. The criticality analysis criteria being retained in Technical Specifications 4.3.1.1 and 4.3.1.2 will preserve required criticality margins associated with the storage of new and irradiated fuel.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. You may submit comments using any of the methods discussed under the **ADDRESSES** caption.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

## II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR Part 2, Section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov.*

## III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the AEA to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must also include a concise statement of the

alleged facts or expert opinions which support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a Presiding Officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by June 25, 2010. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian Tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by June 25, 2010.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

## IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system

time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors." Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed together with a request for hearing/petition to intervene, filed in accordance with 10 CFR 2.309. If it is determined a hearing will be held, the presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart L apply.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

## V. Further Information

Documents related to the proposed action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Search for these documents using the ADAMS accession numbers: The application for amendment dated June 25, 2008, (ML081820348); and the publically-available portions of the November 6, 2008, supplement (ML083190840); March 9, 2009, supplement (ML090690804); June 12, 2009, supplement (ML091740446); December 18, 2009, supplement (ML093521435); and March 26, 2010, supplement (ML100910075). As discussed above in Section I., the amendment application and each of the supplement letters include attachments that contain sensitive unclassified non-safeguards information (SUNSI), and are not available to the public. Instructions for requesting access to these withheld documents are contained in the following Order.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR at 11555 Rockville Pike,

Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Attorney for the licensee: Mr. J. Bradley Fewell, Associate General Counsel, Exelon Generation Company LLC, 4300 Winfield Road, Warrenville, IL 60555.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. *Review of Denials of Access.*

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. *Review of Grants of Access.* A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland this 20th day of April, 2010.

For the Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 20 | Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2010–9582 Filed 4–23–10; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL REGULATORY COMMISSION

### Sunshine Act Meetings

*Time and Date:* Wednesday, May 5, 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.
2. Report on international activities.
3. Review of active cases.
4. Review of anticipated rulemakings.
5. Report on public communications regarding the Nature of Service Inquiry (Docket No. N2010-1).
6. 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.
7. Report on recent activities of Joint Periodicals Task Force and status of anticipated report to the Congress pursuant to section 708 of the PAEA.

*Portions Closed to the Public:*

8. Discussion of pending litigation.
9. Discussion of confidential commercial information relative to Commission contracts.
10. Discussion of confidential personnel issues involving performance management, pay and benefits.

*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:* April 22, 2010.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2010–9774 Filed 4–22–E8; 4:15 pm]

BILLING CODE 7710–FW–S

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

*Summary:* In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*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 has practical utility; (b) the accuracy of the RRB's 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 related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:*

Supplement to Claim of Person Outside the United States; OMB 3220–0155.

Under the Social Security Amendments of 1983 (Pub. L. 98–21), which amends section 202(t) of the Social Security Act, the Tier I or the O/M (overall minimum) portion of an annuity and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the U.S., may be withheld effective January 1, 1985. The benefit withholding provision of Public Law 98–21 applies to divorced spouses, spouses, minor or disabled children, students, and survivors of railroad employees who (1) Initially became eligible for Tier I amounts, O/M shares, and Medicare benefits after December 31, 1984; (2) are not U.S citizens or U.S. nationals; and (3) have resided outside the U.S for more than six consecutive months starting with the annuity beginning date. The benefit withholding provision does not apply, however to a beneficiary who is exempt under either a treaty obligation of the U.S., in effect on August 1, 1956, or a totalization agreement between the U.S. and the country in which the beneficiary resides, or to an individual who is exempt under other criteria specified in Public Law 98–21.

RRB Form G–45, Supplement to Claim of Person Outside the United States, is currently used by the RRB to determine applicability of the withholding provision of Public Law 98–21. Completion of the form is required to obtain or retain a benefit. One response is requested of each respondent. The RRB estimates that 100 Form G–45's are completed annually. The completion time for Form G–45 is estimated at 10 minutes per response. The RRB proposes no changes to Form G–45.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *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 send an e-mail to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**

*Clearance Officer.*

[FR Doc. 2010–9531 Filed 4–23–10; 8:45 am]

BILLING CODE 7905–01–P

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

## NATIONAL ECONOMIC COUNCIL

### Extension of Comment Period for Commercialization of University Research Request for Information

**ACTION:** Notice; extension of comment period.

The comment period for the joint request for information issued by the Office of Science and Technology Policy and the National Economic Council, originally published in the **Federal Register** on March 25, 2010 (75 FR 14476), is extended for an additional 30 days. The comment period will now officially close on May 26, 2010 at 11:59 p.m. EST. Please follow the original instructions. Contact *nec_general@who.eop.gov* with any questions.

**Thomas Kalil,**

*Deputy Director for Policy, Office of Science and Technology.*

**Diana Farrell,**

*Deputy Assistant to the President for Economic Policy, National Economic Council.*

[FR Doc. 2010–9560 Filed 4–23–10; 8:45 am]

BILLING CODE 3170–W0–P

## 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 29, 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)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(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 29, 2010 will be:

Institution and settlement of injunctive actions; Institution and settlement 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: April 22, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2010–9745 Filed 4–22–10; 4:15 pm]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61938; File No. SR–FINRA–2010–014]**

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA Rule 9554 To Eliminate Explicitly the Inability-To-Pay Defense in the Expedited Proceedings Context

April 19, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 9554 to eliminate explicitly the inability-to-pay defense in the expedited proceedings context when a member or associated person fails to pay an arbitration award to a customer.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

FINRA Rule 9554 allows FINRA to bring expedited actions to address failures to pay FINRA arbitration awards.[3] Once a monetary award has been issued in a FINRA arbitration proceeding, the party that must pay the award, the respondent (*i.e.*, a member or an associated person), has thirty days to do so.[4] FINRA coordinates between FINRA Dispute Resolution's arbitration forum and FINRA's enforcement program by verifying whether a respondent has paid the monetary award within thirty days. If the respondent has not paid, FINRA initiates an expedited proceeding by sending a notice explaining that the respondent will be suspended unless the respondent pays the award or requests a hearing.

A respondent that requests a hearing may raise a number of defenses to the suspension. One of the current defenses is establishing a bona fide inability-to-pay. When a respondent successfully demonstrates a bona fide inability-to-pay, that is a complete defense to the suspension. Consequently, the inability-to-pay defense currently precludes a harmed customer from obtaining payment of a valid arbitration award.

FINRA's expedited proceedings for failure to pay an arbitration award use the leverage of a potential suspension to help ensure that a member or an associated person promptly pays a valid arbitration award. However, if a respondent demonstrates a financial inability-to-pay the award—regardless of the reason—the leverage is removed. When FINRA's efforts to suspend a respondent who has not paid the award have been defeated, a claimant is much less likely to be paid. By eliminating the inability-to-pay defense, FINRA will increase the probability of customers having their awards paid, or, at a minimum, it should prompt meaningful settlement discussions between claimants and respondents. FINRA believes that eliminating this defense would further its goal of investor protection by facilitating the payment of arbitration awards to customers harmed by the actions of members and associated persons. Accordingly, FINRA proposes amending Rule 9554 to eliminate explicitly the inability-to-pay defense in the expedited proceedings context when a member or associated person fails to pay an arbitration award to a customer.[5]

The ability to work in the securities industry carries with it, among other things, an obligation to comply with the Federal securities laws, FINRA rules, and orders imposed by the disciplinary and arbitration processes. Allowing members or their associated persons that fail to pay arbitration awards to remain in the securities industry presents regulatory risks and is unfair to harmed customers.

Although FINRA proposes to eliminate the inability-to-pay defense, a respondent would still have available the following four defenses:

- The member or person paid the award in full or fully complied with the settlement agreement;
- The arbitration claimant has agreed to installment payments or has otherwise settled the matter;
- The member or person has filed a timely motion to vacate or modify the arbitration award and such motion has not been denied; and
- The member or person has filed a petition in bankruptcy and the bankruptcy proceeding is pending or the award or payment owed under the settlement agreement has been discharged by the bankruptcy court.[6]

Regarding the last defense, FINRA believes that a Federal bankruptcy court is the best forum for adjudicating a financial condition defense. Bankruptcy judges are experts in evaluating whether a debtor's obligations should be legally discharged. The bankruptcy process and associated filings are designed to consider fully and evaluate the financial condition of bankruptcy debtors.[7] In addition, bankruptcy filings, which are subject to Federal perjury charges, provide greater penalties for hiding assets.[8] FINRA's lack of subpoena power over banks and other third parties raises practical concerns regarding its ability to confirm accurately the assets of the firm or person asserting the defense.[9]

The inability-to-pay defense emerged from a series of SEC decisions that require FINRA to consider the defense in disciplinary cases (as opposed to expedited actions), including disciplinary cases involving failures to pay arbitration awards and restitution.[10] The legal underpinnings that support the inability-to-pay defense in disciplinary cases are not, however, present in the expedited proceedings context. SEC cases largely rely on the "excessive and oppressive" language in Section 19(e) of the Exchange Act in requiring FINRA to consider inability-to-pay. Section 19(e) of the Exchange Act provides authority to the SEC to review and affirm, modify or set aside any final disciplinary sanctions imposed by FINRA on its members. Section 19(e), however, does not apply to expedited proceedings. Expedited proceedings are reviewed under Section 19(f), which requires that "the specific grounds" on which FINRA based its action "exist in fact," that FINRA followed its rules, and that those rules are consistent with the Act. The different focus of these two standards and the more limited review for

[3] Expedited actions allow FINRA to address certain types of misconduct more quickly than would be possible using the ordinary disciplinary process. In general, these actions focus on encouraging respondents to comply with the law or take corrective action rather than on sanctioning them for past misconduct. As discussed in detail below, moreover, the Act uses a different standard of review for expedited actions than it does for disciplinary cases.

[4] FINRA Rule 10330(h).

[5] The rule change would not affect the defenses available in actions that do not involve customers.

[6] In its order approving changes to the predecessor to Rule 9554, the SEC noted that the issues in these types of cases are narrow and generally limited to determining whether the respondent has proven any of these four defenses or an inability-to-pay the award. *See* Securities Exchange Act Release No. 40026 (May 26, 1998), 63 FR 30789, 30790 (June 5, 1998).

[7] *See* 4 *Collier on Bankruptcy,* ¶¶ 521.01, 521.09 (15th ed. 2009).

[8] *See* 18 U.S.C. 151–58 (2010). Bankruptcy fraud is punishable by a fine, or by up to five years in prison, or both. *Id.*

[9] The ability to legally discharge debts, the more thorough and accurate verification of a bankruptcy debtor's financial condition, and possible criminal prosecution for intentionally inaccurate disclosures, among other aspects, distinguish bankruptcy from inability-to-pay.

[10] *See Toney L. Reed,* 52 S.E.C. 944 (1996), *recons. denied,* Securities Exchange Act Release No. 39354 (Nov. 25, 1997); *Bruce M. Zipper,* 51 S.E.C. 928 (1993). In addition, in an order approving a rule change for a predecessor to Rule 9554, the SEC noted that it had previously recognized that a bona fide inability-to-pay an arbitration award is an important consideration in determining whether any sanction for failing to pay an arbitration award is "excessive or oppressive." *See* Securities Exchange Act Release No. 40026 (May 26, 1998), 63 FR 30789 (June 5, 1998). Without further discussion, the order cited the SEC's decision in *Zipper,* which was a disciplinary case, not an expedited action.

expedited actions are understandable and support eliminating the inability-to-pay defense in expedited actions.[11] Unlike disciplinary cases, FINRA is not imposing a monetary sanction in these expedited actions; it is suspending a respondent for failing to pay a previously imposed arbitration award. There also is an explicit procedural mechanism built into these expedited actions that allows a suspension to be lifted once respondents satisfy any of the four defenses highlighted above. The main goal is to encourage respondents to comply with the law or previously imposed orders, not to sanction them for past misconduct.

In sum, members and associated persons that fail to pay arbitration awards to customers should not be allowed to remain in the securities industry by relying on the inability-to-pay defense in expedited actions. This is especially true because they can avoid regulatory action by paying the award, reaching a settlement with the customers (which can include payment plans), moving to vacate the award, or filing for bankruptcy. FINRA believes that, in its expedited actions involving respondents that have failed to pay arbitration awards to customers; the inability-to-pay defense should be eliminated.

The proposed rule change will automatically become effective 30 days following Commission approval.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal also is consistent with Section 15A(b)(7) of the Act,[13] which provides that FINRA must take appropriate action when members and associated persons violate provisions of the Act or FINRA rules. The proposed rule change is consistent with these purposes because it would promote a fair and efficient process for taking action to encourage members and associated persons to pay arbitration awards to customers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–FINRA–2010–014 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–FINRA–2010–014. 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*). Comments are also 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. 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–FINRA–2010–014 and should be submitted on or before May 17, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–9549 Filed 4–23–10; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61944; File No. SR–NASDAQ–2010–035]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Accelerated Approval of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

April 20, 2010.

**I. Introduction**

On March 11, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4

[11] In *William J. Gallagher,* Securities Exchange Act Release No. 47501, 2003 SEC LEXIS 599 (March 14, 2003), the SEC emphasized that expedited actions are reviewed under Section 19(f) of the Act not Section 19(e). The SEC stated, "Gallagher misconstrues the applicable review standard when he argues that [FINRA's] sanction is 'excessive and oppressive' and that [FINRA's] indefinite suspension order is inconsistent with the [FINRA] Sanction Guidelines, standards relevant in the Commission's review of [FINRA] disciplinary proceedings under Section 19(e) of the Exchange Act." *Id.* at *6. The SEC explained that its review is limited to analyzing whether "the specific ground on which [FINRA] based its suspension—failure to pay in full an arbitration award—'exists in fact[,]'" the "SRO's determination was in accordance with its rules, and * * * those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act." *Id.* at *5 & *7. In *Gallagher,* FINRA and the SEC rejected the respondent's claim of inability-to-pay on factual grounds. The issue of whether a respondent was permitted to raise the defense as a matter of law was neither raised nor decided.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78o–3(b)(7).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to establish strike-price intervals for options on Index-Linked Securities and to establish trading hours for these products. The proposed rule change was published for comment in the **Federal Register** on March 31, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

## II. Description of the Proposed Rule Change

Prior to the commencement of trading options on Index-Linked Securities (also known as exchange-traded notes ("ETN")), Nasdaq has proposed to establish strike price intervals and trading hours for these new products. The Commission has approved the Nasdaq's and other options exchanges proposals to enable the listing and trading of options on Index-Linked Securities.[4]

*$1 Strikes for ILS (ETN) Options*

Nasdaq's proposal would extend the trading conventions applicable to options on exchange-traded funds ("ETFs") to options on Index-Linked Securities. Specifically, under the proposed rule change, strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the addition of Chapter IV, Section 6, Supplementary Material .01(c) to Section 6.

In support of its proposal, Nasdaq stated that it believes the marketplace and investors will be expecting ETN options to trade in a similar manner to options on ETFs. Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[5] Accordingly, the Exchange asserts that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for ETN options and that investors will be better served if $1 strike price intervals are available for ETN options (where the strike price is less than $200).

Nasdaq further stated that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes (where the strike price is less than $200) for ETN options.

*Trading Hours for ILS (ETN) Options*

Similar to the trading hours for ETF options, the Exchange proposes to amend Chapter VI, Section 2(b) to provide that options contracts on exchange-traded notes including Index-Linked Securities, as defined in Chapter IV, Section 3(l), may be traded on the Exchange until 4:15 p.m. each business day.

## III. Discussion and Commission's Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs. Accordingly, the proposal should provide consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and may provide investors with greater flexibility in achieving their investment objectives.

In addition, the Commission notes that Nasdaq has represented that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes for options on Index-Linked Securities.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[8] for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register.** The Commission notes that it recently approved the same changes to strike price intervals and trading hours for options on Index-Linked Securities for another exchange.[9] The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposed changes to strike price intervals and trading hours for options on Index-Linked Securities do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and greater flexibility in achieving their investment objectives.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASDAQ–2010–035) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–9552 Filed 4–23–10; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61943; File No. SR–Phlx–2010–40]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Granting Accelerated Approval of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index-Linked Securities

April 20, 2010.

## I. Introduction

On March 1, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61766 (March 23, 2010), 75 FR 16221.

[4] *See e.g.,* Securities Exchange Act Release Nos. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR–Phlx–2008–60); 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR–NASDAQ–2009–046); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR–CBOE–2008–64); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (approving SR–NYSEArca–2008–57); 58985 (November 10, 2008), 73 FR 72538 (November 28, 2008) (approving SR–ISE–2008–86).

[5] *See* Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR–OCC–2009–14) (approval order).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (SR–CBOE–2010–005).

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(12).

Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish strike-price intervals for options on Index-Linked Securities and to establish trading hours for these products. The proposed rule change was published for comment in the **Federal Register** on March 22, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

## II. Description of the Proposed Rule Change

Prior to the commencement of trading options on Index-Linked Securities (also known as exchange-traded notes ("ETN")), Phlx has proposed to establish strike price intervals and trading hours for these new products. The Commission has approved the Phlx's and other options exchanges proposals to enable the listing and trading of options on Index-Linked Securities.[4]

*$1 Strikes for ILS (ETN) Options*

Phlx's proposal would extend the trading conventions applicable to options on exchange-traded funds ("ETFs") to options on Index-Linked Securities. Specifically, under the proposed rule change, strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the addition of Commentary .05(a)(v) to Rule 1012.

In support of its proposal, Phlx stated that it believes the marketplace and investors will be expecting ETN options to trade in a similar manner to options on ETFs. Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[5] Accordingly, the Exchange asserts that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for ETN options and that investors will be better served if $1 strike price intervals are available for ETN options (where the strike price is less than $200).

Phlx further stated that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes (where the strike price is less than $200) for ETN options.

*Trading Hours for ILS (ETN) Options*

Similar to the trading hours for ETF options, the Exchange proposes to amend Supplementary Material .01 to Rule 101 to provide that options on exchange-traded notes including Index-Linked Securities may be traded on the Exchange until 4:15 p.m. each business day.

## III. Discussion and Commission's Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that the proposed strike price intervals for options on Index-Linked Securities are consistent with the strike price intervals currently permitted for options on ETFs. Accordingly, the proposal should provide consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and may provide investors with greater flexibility in achieving their investment objectives.

In addition, the Commission notes that Phlx has represented that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes for options on Index-Linked Securities.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[8] for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register.** The Commission notes that it recently approved the same changes to strike price intervals and trading hours for options on Index-Linked Securities for another exchange.[9] The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposed changes to strike price intervals and trading hours for options on Index-Linked Securities do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs and greater flexibility in achieving their investment objectives.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2010–40) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–9551 Filed 4–23–10; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61695 (March 12, 2010), 75 FR 13614.

[4] *See e.g.,* Securities Exchange Act Release Nos. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR–Phlx–2008–60); 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR–NASDAQ–2009–046); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (approving SR–CBOE–2008–64); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (approving SR–NYSEArca–2008–57); 58985 (November 10, 2008), 73 FR 72538 (November 28, 2008) (approving SR–ISE–2008–86).

[5] *See* Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR–OCC–2009–14) (approval order).

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] *See* Securities Exchange Act Release No. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (SR–CBOE–2010–005).

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(12).

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–61942; File No. SR–NYSEArca–2010–26]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Its Fee Schedule

April 20, 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 April 9, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 its Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 12, 2010. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov* and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to modify its fees structure for securities that execute at prices below $1. Recently, on April 1, 2010, the Exchange increased its charges from 0.1% (10 basis points) to 0.3% (30 basis points) of the total dollar value of the execution for these securities for ETP Holders accessing liquidity. Also on April 1, 2010, the Exchange instituted a credit to ETP Holders providing liquidity in these securities of 0.25% (25 basis points) of the total dollar value of the transaction. By this proposal, the Exchange seeks to revert to its pricing prior to these changes and thereby (i) reduce its fee for accessing liquidity in these securities from 0.3% (30 basis points) to 0.1% (10 basis points) and (ii) provide no credit to ETP Holders providing liquidity. These fees are consistent with the limitations of Regulation NMS, SEC Rule 610(c), for securities with a price of less than $1.00.

The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all similarly situated ETP Holders. The proposed changes will become operative on April 12, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed changes to the Schedule are reasonable and equitable in that they apply uniformly to all similarly situated ETP Holders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–26 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–2010–26. 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 Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com.* 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–2010–26 and should be submitted on or before May 17, 2010.

[8] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010–9550 Filed 4–23–10; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. DOT–OST–2007–0022]**

### Denial of Airlines' 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 March 30, 2010, the Department published a notice in the **Federal Register** seeking comment on separate requests by five airlines for a temporary exemption from a requirement that U.S. carriers adopt contingency plans for lengthy tarmac delays. These plans must 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 (ATC) related reasons. The requests cover operations at John F. Kennedy International Airport (JFK), Newark Liberty International Airport (EWR), LaGuardia Airport (LGA), and Philadelphia International Airport (PHL). The carriers contend that without the requested exemption covering seven months in 2010 during which runway construction is expected to be underway at JFK, large numbers of flights will have to be canceled at the New York area airports and affected passengers will face significant inconveniences and delays before being re-accommodated. The Department received approximately 135 comments on these exemption requests, primarily from individual consumers. After fully considering the comments submitted, the Department is issuing this notice to announce its decision denying each of these exemption requests as not being in the public interest since the concerns raised by the carriers can be resolved through more careful flight scheduling. The notice also points out that if totally unexpected situations occur appropriate prosecutorial discretion can be applied with respect to potential enforcement action.

**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:**

### Background

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 or 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 and an ATC-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 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, as determined by the carriers, before deplaning passengers, 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.

On March 4, 2010, JetBlue requested an exemption from the requirements not to 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 for its JFK operations for the time period that operations at JFK are disrupted by the closure of the main runway at that airport, i.e., March 1 through December 1, 2010. JetBlue's request for an exemption during this period was followed by a similar request by Delta Air Lines for its JFK operations and a request by American Airlines that the Department grant an exemption for all carrier operations at JFK. Continental next requested that the Department extend any relief it grants carriers operating at JFK to carriers operating at the Newark and LaGuardia Airports. On March 22, 2010, US Airways also filed a request for a similar exemption for its operations at the Philadelphia Airport.

The carriers argue collectively that without the requested exemptions large numbers of flights will have to be canceled at the New York area airports and affected passengers will have to face significant inconveniences and delays before being re-accommodated. The basic rationale presented by Continental and US Airways in support of exemptions for their operations at Newark, LaGuardia and Philadelphia airports is that the delays and delay mitigation strategies at JFK resulting from the runway construction will affect the former airports by causing delays to spill over.

On March 30, 2010, the Department published a notice in the **Federal Register** 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 three hour limit to be raised to four 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. The comment period closed on April 9, 2010.

**Comments Received**

The Department received approximately 135 comments in response to the notice, primarily from individual consumers. Nearly all of the comments from individual consumers and advocacy organizations support denying the request. The comments from airlines, airline associations and airports are mixed—a few support giving priority or preferential treatment to exemption requests for operations at JFK while most assert that all carriers operating at JFK, LGA, EWR and possibly PHL should receive equal relief from the tarmac delay rule. The commenters' specific positions are set forth below.

In supplementary comments, JetBlue contends that unlike the requests made by Continental and US Airways, JetBlue's request is limited to operations at JFK, and is carefully limited to the time period that JFK operations will be disrupted by the Bay Runway reconstruction. JetBlue argues that Continental and US Airways have "chosen to try to jump on the bandwagon and bootstrap what they claim are related situations at LGA, EWR and PHL in an attempt to obtain relief" from the three hour rule. Continental states that the Department should focus its attention on the closure of the Bay Runway, and requests that the Department select Option 2, granting the requests of JetBlue, American and Delta in their entirety, and extending the same relief to all New York area airports (*i.e.,* JFK, LGA and EWR). Continental takes no position on whether relief should be extended to carriers at PHL.

JetBlue maintains that Options 3 and 4 do not go far enough in relieving carriers at JFK from potential unforeseen and unintended adverse circumstances. JetBlue states that it would not dismiss Option 4; however, it argues that Option 4 leaves carriers with uncertainty as to when and how the rule will be applied, and leaves the application of the rule to judgment after the fact.

JetBlue argues further that any exemption issued by the Department should apply to both domestic and international flights. JetBlue argues that the three hour rule already exempts foreign air carriers, and that it is impractical for a carrier such as JetBlue to use different tarmac delay limits for its domestic and international flights. JetBlue argues that the only realistic way to put U.S. carriers on an equal footing with foreign air carriers is to exempt both domestic and international flights while the Bay Runway is closed.

American argues that while it does not oppose relief at other airports, such as EWR, LGA, and PHL, the Department's first priority should be to address the operational disruption that is widely anticipated will result from the runway closure and construction at JFK during the peak summer travel period into November. American states that at a minimum, the Department should grant a temporary exemption for operations at JFK by raising the three-hour limit to four hours for the period April 29, 2010, through November 15, 2010. In addition, American maintains that the Department should recommend to the Aviation Enforcement Office that it take into account the special circumstances at JFK as well as unexpected bad weather in deciding whether to pursue a case against a carrier for a lengthy tarmac delay incident at JFK.

In its supplemental comments, Continental continues to assert that all three New York metropolitan airports share airspace and arrival and departure corridors, and delays or delay mitigating strategies at JFK will adversely affect air carriers and passengers at EWR and LGA. Continental argues that the Department has long treated the New York/New Jersey airports as a single point, and states that if relief is granted to any carrier at any New York area airport, all carriers at all New York area airports should receive the same relief.

Similarly, US Airways continues to argue that the Philadelphia-New York City airspace is an intertwined web, with components that cannot be considered in isolation, and maintains that action at one airport creates ripple effects throughout the NY/NJ/PHL airspace. US Airways supports the grant of waivers to carriers operating at airports in the NY/NJ/PHL airspace, but argues that waivers must either be granted or denied to all carriers as a whole. US Airways argues that granting an exemption to only certain airports or carriers would be contrary to accepted existing practice, and would provide an unfair advantage to certain operators at the expense of others. US Airways maintains that fundamental fairness dictates that the Department treat all carriers equally and provide a level playing field, regardless of the Department's decision to grant or deny the requested exemptions.

United Airlines (United) states that it takes no position on whether the Department should grant exemptions from the tarmac delay rule at any or all of the airports for which exemptions have been sought. However, United also urges the Department to extend the same relief, if any, to all carriers at a given airport, not just to carriers that have formal exemption requests pending. United argues that the problems caused by runway closures, particularly when combined with adverse weather conditions, will affect all carriers operating at an airport, including those operating a limited number of flights, and opposes any selective relief at any given airport. In addition, while United maintains that it also takes no position with regard to Option 4, it states that if the Department were to adopt this approach, such enforcement policy guidance should not be limited to the instant case, but made applicable to any future case where the temporary closures of any airport movement area, whether due to ongoing construction or other causes, could lead to or exacerbate airside congestion and delays in flight operations, especially during adverse weather conditions.

Spirit Airlines (Spirit) supports a blanket exemption from the tarmac delay rules for all carriers operating at JFK, LGA, and EWR. Spirit argues that requiring carriers to comply with the new rules during the closure and construction of the Bay Runway likely will exacerbate the already difficult situation at JFK by necessitating flight cancellation due to long taxi-out and taxi-in times caused by the construction, as well the possibility of flight crew exceeding legally permitted crew time and increased operational difficulties for airports. Spirit argues that it and other small carriers with few flights will face unique operational challenges because flight cancellations by such carriers will make it difficult for passengers to reach their destinations. Spirit maintains that, unlike legacy carriers that have many slots and can cut back schedules during peak construction periods, Spirit, with only a few flights, is not in a position to scale back service. Spirit argues that granting the requested relief will not encourage carriers to ignore the intent of the rules, but rather will provide flexibility to carriers in borderline delay situations in order to mitigate potential harm to consumers when facing extraordinary adverse conditions resulting from runway closure and construction. In addition, Spirit argues that Option 3 would not be an effective way to

alleviate the problems associated with the runway reconstruction, and argues that enforcement should not be left to the discretion of the Aviation Enforcement Office.

The Air Carrier Association of America (ACAA) asserts that all carriers operating at JFK, LGA, EWR, and PHL should receive equal relief from the tarmac delay rule. The ACAA argues that if the Department approves tarmac delay exemptions for carriers operating at these airports, it should waive the tarmac delay requirements for all carriers at JFK, LGA, EWR, and PHL and for all carriers at any other airport where an exemption from the tarmac delay rule is granted. In addition, ACAA suggests that the Department also look into the impact that significant delays at JFK, LGA, EWR, and PHL will have on other airports in the New York-Philadelphia area and on airports in other parts of the country.

The Port Authority supports Option 4, stating that the Department should deny the blanket requests and that the Aviation Enforcement Office should consider the runway closure together with the unexpected circumstances such as weather conditions that would preclude full use of the remaining JFK runways in deciding whether to pursue an enforcement case against a given carrier. The Port Authority states that because airline schedules have already been reduced and use-or-lose penalties for schedule reductions at JFK have been suspended by the FAA with the support of the Port Authority, important passenger protections should not be waived on a wholesale basis because of the Bay Runway reconstruction.

Comments were also submitted by the City of Philadelphia (Philadelphia), the owner and operator of PHL. Philadelphia agrees with Continental's comment that delays and delay mitigation strategies at one New York Area airport adversely affect and inconvenience air carriers and passengers at other New York Area airports. Philadelphia states that at certain times, the efficiency of aircraft operations at PHL is closely tied to that of those at EWR, JFK, and LGA. Philadelphia argues that exemption from the application of the tarmac delays rules for carriers at only one selected major airport within the New York Air Route Traffic Control Center (New York ARTCC) would be fundamentally unfair and provide a competitive and operational advantage for operations at those selected points. Philadelphia states that each of the airports are subjected to the same airspace, shared departure and arrival routes and common control by the New York ARTCC, and their interdependence of operations dictates that they be treated in a similar and fair manner. Philadelphia states that it does not wish to opine on the four options proposed by the Department, but believes that equal treatment of airports and the carriers operating at these airports should be paramount in the Department's ultimate decision. Philadelphia argues that, should the Department grant the individual or collective requests of carriers for exemptions from the tarmac delays rules at JFK, EWR and LGA, fundamental fairness and the public interest dictate that carriers operating at PHL be similarly exempted.

Comments were also submitted to the Department by U.S. Senators Barbara Boxer and Olympia J. Snowe. In a joint submission, they argue that granting the requested exemptions is unnecessary and would undermine important consumer protections for the flying public. They further contend that the exemption requested by these airlines would render the rule ineffective and maintain an unacceptable status quo. They state that, while the requested exemption may appear to be targeted toward the closure of JFK's main runway, allowing an exemption would create a dangerous precedent. They reason that construction and other disruptions at airports frequently cause minor delays throughout America's airports, and that nothing exceptional or unexpected exists about this particular case that warrants a blanket exemption. They maintain that, in the ordinary course, airlines modify flight schedules to account for construction and other disruptions, and this time should be no different. They argue that it has been clear for a decade that airlines refuse to hold themselves accountable to the voluntary standards they agreed to and that Federal action to compel airlines to recognize passengers' rights is not only long overdue, but the only means available to ensure these rights are protected.

In additional comments, FlyersRights.org argues that the petitioning airlines are trying to nullify the three hour rule so they can continue to over-schedule flights at congested airports without risk of penalty. FlyersRights.org argues that the petitioning carriers are seeking regulatory relief from the consequences of their chronic over-scheduling of daily flights in excess of runway capacity. The organization states that when airport capacity is temporarily reduced due to runway construction, carrier schedules must be reduced and carriers must use larger aircraft to make up the difference for the reduction in the frequency of flights. FlyersRights.org maintains 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, and that a grant of the exemption requests would set a bad precedent. FlyersRights.org argues that the Department has existing regulatory authority to consider mitigating factors in deciding whether to pursue an enforcement case where a violation of the three hour rule exists, and to negotiate the amount of any civil penalty. Therefore, FlyersRights.org argues no exemptions should be granted.

Approximately 125 individuals submitted comments on the carriers' requests for exemption. All but two of these consumers oppose the carriers' requests for an exemption from the three hour tarmac delay rule. Many consumers who oppose the carriers' requests support the position taken by FlyersRights.org, and many argue that the government must step in to protect the public because airlines too often mistreat and take advantage of their customers. One commenter, who supports the carriers' request for an exemption, argues that management science supports not having the tarmac delay rule at all, and that the rule regarding fines for three hour tarmac delays may negatively impact the flying public. The commenter suggests that the Department revoke the option of imposing a fine from its final ruling.

**Decision**

After carefully taking into account all of the information available to us at this time and fully considering the comments we received, the Department finds that inadequate justification exists for granting JetBlue, Delta, American, Continental, and US Airways the requested exemption from the tarmac delay requirements in 14 CFR 259.4(b)(1) and (b)(2) for their operations at JFK, LGA, EWR, and PHL airports, during the period of time that work affecting JFK's Bay Runway is scheduled to take place, or until work on that runway is complete. In these exemption requests, it was incumbent on the petitioners to demonstrate that the requested actions are necessary and in the public interest. They have failed to meet this burden and we are not convinced that it is in the public interest to grant the carriers the requested exemptions from the requirements of 14 CFR 259.4(b)(1) and (b)(2).

JetBlue maintains in its petition and the other petitioning carriers appear to agree that granting relief from 14 CFR 259.4(b)(1) and (b)(2) is critical so that the purpose of the tarmac delay rule—enhancing passenger protections—is not undermined by unforeseen circumstances. JetBlue argues that a rigid and inflexible application of the rule will cause carriers to cancel flights rather than risk substantial penalties to the detriment of passengers who want to reach their destinations.

We find this argument flawed and unpersuasive. JetBlue's argument suggests that it would better serve the public interest to hobble the very protections that the tarmac delay rule affords consumers by permitting carriers to force passengers to remain on an aircraft for more than three hours (as opposed to giving consumers the option to deplane after three hours, or permitting them to choose some other form of transportation, or not to travel at all). We strongly disagree. We cannot lose sight of the fact that passengers on flights delayed on the tarmac have a right to know that they will not be "held hostage" for an unreasonable length of time on the tarmac.

It is also important to note that the Department's Federal Aviation Administration (FAA) predicts that the delays resulting from the runway closure at JFK will be workable, *i.e.,* similar to those seen during peak summer months. The FAA expects that flights can be rerouted or rescheduled in a way that will allow the other three runways to absorb the extra traffic. Airlines have already taken steps to adjust their schedules and operations to help mitigate the expected delays and they should further adjust them, if necessary. We believe that the concerns raised by the petitioning carriers can be resolved through further adjustment of schedules as appropriate, and that the public interest would be better served by keeping the full protections of the tarmac delay rule in place. In addition, we note that since 14 CFR 259.4(b)(2) permits U.S. carriers to establish any tarmac delay limit for their international flights that they choose, we believe there is no substantial reason to grant an exemption from this provision of the rule. Moreover, while in the event of a violation, as always, the Department's Aviation Enforcement Office will consider a number of factors including, for example, the harm to consumers caused by the violation and the specific impact of the runway closure in determining whether to pursue an enforcement case and the civil penalty it would seek in such an enforcement proceeding, it is incumbent on carriers to adjust their schedules to reflect the reality of the runway construction. Therefore, based on the foregoing, we find that granting the requested exemption from the tarmac delay rule is not in the public interest, and we deny the requests of JetBlue, Delta, American, Continental, and US Airways, for an exemption from the requirements of 14 CFR 259.4(b)(1) and (b)(2) for their operations at JFK, LGA, EWR, and PHL airports, during the period of time that work affecting JFK's Runway 13R/31L is scheduled to take place, or until work on that runway is complete.

Issued this April 22, 2010, at Washington, DC.

**Ray LaHood,**

*Secretary of Transportation.*

[FR Doc. 2010–9716 Filed 4–23–10; 8:45 am]

BILLING CODE 4910–9X–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. DOT–OST–2010–0076]**

### Interim Notice of Funding Availability for the Department of Transportation's National Infrastructure Investments Under the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010; and Request for Comments

**AGENCY:** Office of the Secretary of Transportation, DOT.

**ACTION:** Interim notice of funding availability, request for comments.

**SUMMARY:** This interim notice announces the availability of funding and requests proposals for the Department of Transportation's National Infrastructure Investments. In addition, this interim notice announces selection criteria and pre-application and application requirements for the National Infrastructure Investments.

On December 16, 2009, the President signed the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act for 2010 (Div. A of the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, Dec. 16, 2009)) ("FY 2010 Appropriations Act"). The FY 2010 Appropriations Act appropriated $600 million to be awarded by the Department of Transportation ("DOT") for National Infrastructure Investments. This appropriation is similar, but not identical to the appropriation for the Transportation Investment Generating Economic Recovery, or "TIGER Discretionary Grant", program authorized and implemented pursuant to the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"). Because of the similarity in program structure, DOT is referring to the grants for National Infrastructure Investments under the FY 2010 Appropriations Act as "TIGER II Discretionary Grants". As with the TIGER program, funds for the TIGER II program are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area or a region. Through this notice, DOT is soliciting applications for TIGER II Discretionary Grants. Because the TIGER II Discretionary Grant program is a new program, this interim notice requests comments on the proposed selection criteria and guidance for awarding funds. DOT will take all comments into consideration and may publish a supplemental notice revising some elements of this notice. If substantive changes to this notice are necessary, DOT will publish a supplemental **Federal Register** notice by no later than May 28, 2010. In the event that this solicitation does not result in the award and obligation of all available funds, DOT may decide to publish an additional solicitation(s). DOT is particularly interested in receiving comments on its intention to conduct a multi-agency evaluation and award process with the Department of Housing and Urban Development ("HUD") for DOT's TIGER II Planning Grants (as defined below in Section VII (TIGER II Planning Grants)), and HUD's Community Challenge Planning Grants, which were also authorized under the FY 2010 Appropriations Act. HUD is authorized to use $40 million for "Community Challenge Planning Grants" to foster reform and reduce barriers to achieve affordable, economically vital, and sustainable communities. This multi-agency approach for planning awards would be consistent with DOT and HUD's participation in the "Partnership for Sustainable Communities" with the U.S. Environmental Protection Agency ("EPA") to help American families in all communities—rural, suburban and urban—gain better access to affordable housing, more transportation options, lower transportation costs, and a cleaner environment.

DOT and HUD believe there is great value in issuing a joint solicitation for the two planning grant programs in order to better align transportation, housing, economic development, and land use planning and to improve linkages between the three Partnership agencies' programs. DOT and HUD also believe this proposal has the potential to

encourage and reward more holistic planning efforts and result in better projects being built with Federal dollars.

While the DOT and HUD planning grant programs have similar, related purposes, there are differences in the activities that the two programs can fund. DOT's program can fund planning activities that relate directly to a future transportation capital investment, while HUD's program can fund local planning activities that could support future transportation investment.

Transportation planning activities that may be funded under the TIGER II Discretionary Grant program include efforts related to individual transportation projects, transportation corridors, or regional transportation systems or networks. Activities eligible for funding under HUD's program include, but are not limited to, the development of master plans, zoning and building code reform initiatives, including the development of inclusionary zoning ordinances, corridor and district plans, and other strategies, including land acquisition, designed to create walkable, mixed-use, transit-oriented, and affordable communities for persons of all incomes, especially those of low-, very low-, and extremely low-income persons and families.

Additionally, the two programs can provide funding to different applicants. DOT's TIGER II Planning Grants are available to any Eligible Applicant, as defined below in Section I (Background) for TIGER II Discretionary Grants. The HUD Community Challenge Grants are potentially available to a broader range of applicants, including nonprofit organizations. DOT and HUD would like to invite comments about whether the differences in eligibility should be maintained and, if so, how it might be managed in a joint selection process.

DOT and HUD would like to receive comments on the evaluation method that should be used for a combined planning grant process, in terms of selection criteria and goals. Also, feedback is invited on funding categories and where the overlap between DOT and HUD's program might be applied most effectively. To the extent DOT and HUD determine that a joint solicitation is feasible and advisable, it would be published no later than May 28, 2010, with the final notice of funding availability for the TIGER II Discretionary Grant program.

**DATES:** Comments must be received by May 7, 2010, at 5 p.m. EST. Late-filed comments will be considered to the extent practicable. Pre-applications must be submitted by July 16, 2010, at 5 p.m. EST (the "Pre-Application Deadline"). Final applications must be submitted through Grants.gov by August 23, 2010, at 5 p.m. EST (the "Application Deadline"). The DOT pre-application system will open no later than June 15, 2010 to allow prospective applicants to submit pre-applications. Subsequently, the Grants.gov "Apply" function will open on July 30, 2010, allowing applicants to submit applications. While applicants are encouraged to submit pre-applications in advance of the Pre-Application Deadline, pre-applications will not be reviewed until after the pre-application deadline. Similarly, while applicants are encouraged to submit applications in advance of the Application Deadline, applications will not be evaluated, and awards will not be made, until after the Application Deadline. Pursuant to the FY 2010 Appropriations Act, DOT will evaluate all applications and announce the projects that have been selected to receive TIGER II Discretionary Grants no sooner than September 15, 2010.

**ADDRESSES:** *For Comments:* You must include the agency name (Office of the Secretary of Transportation) and the docket number DOT–OST–2010–0076 with your comments. To ensure that your comments are not entered into the docket more than once, please submit comments, identified by the docket number DOT–OST–2010–0076, by only one of the following methods:

*Web site:* The U.S. Government electronic docket site is *www.regulations.gov.* Go to this Web site and follow the instructions for submitting comments into docket number DOT–OST–2010–0076;

*Fax:* Telefax comments to 202–493–2251;

*Mail:* Mail your comments to U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590; or

*Hand Delivery:* Bring your comments to the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions for submitting comments:* You must include the agency name (Office of the Secretary of Transportation) and Docket number DOT–OST–2010–0076 for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. For confirmation that the Office of the Secretary of Transportation has received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided, and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000 (65 FR 19477), or you may visit *www.regulations.gov.*

*For Pre-Applications and Applications:* Pre-applications must be submitted electronically to DOT and applications must be submitted electronically through Grants.gov. Only pre-applications received by DOT and applications received through Grants.gov will be deemed properly filed. Instructions for submitting pre-applications to DOT and applications through Grants.gov are included in Section IX (Pre-Application and Application Cycle).

**FOR FURTHER INFORMATION CONTACT:** For further information concerning this notice please contact the TIGER II Discretionary Grant program manager via e-mail at *TIGERIIGrants@dot.gov,* or call Robert Mariner at 202–366–8914. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, DOT will regularly post answers to questions and requests for clarifications on DOT's Web site at *http://www.dot.gov/recovery/ost/TIGERII.*

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## I. Background

*Recovery Act TIGER Discretionary Grants*

On February 17, 2009, the President of the United States signed the Recovery Act, which appropriated $1.5 billion of discretionary grant funds to be awarded by DOT for capital investments in surface transportation infrastructure. DOT refers to these grants as Grants for Transportation Investment Generating Economic Recovery or "TIGER

Discretionary Grants". DOT solicited applications for TIGER Discretionary Grants through a notice of funding availability published in the **Federal Register** on June 17, 2009 (an interim notice was published on May 18, 2009). Applications for TIGER Discretionary Grants were due on September 15, 2009 and over 1400 applications were received with funding requests totaling almost $60 billion. Funding for 51 projects totaling nearly $1.5 billion was announced on February 17, 2010. Grant announcements ranged from $3.15 million to $105 million for individual projects, with an average award size of approximately $30 million and the median project amount being $22 million. Less than three percent of the applications (by dollar value) received any funding. Projects were selected for funding based on their alignment with the selection criteria specified in the June 17, 2009, **Federal Register** notice for the TIGER Discretionary Grant program.

On December 16, 2009, the President signed the FY 2010 Appropriations Act. This Act appropriated $600 million to DOT for National Infrastructure Investments using language that is similar, but not identical to the language in the Recovery Act authorizing the TIGER Discretionary Grants. DOT is referring to the grants for National Infrastructure Investments as TIGER II Discretionary Grants.

*TIGER II Discretionary Grants*

Like the TIGER Discretionary Grants, TIGER II Discretionary Grants are for capital investments in surface transportation infrastructure and are to be awarded on a competitive basis for projects that will have a significant impact on the Nation, a metropolitan area, or a region. Key requirements of the TIGER II Discretionary Grant program are summarized below, and material differences from the TIGER Discretionary Grant program are highlighted.

"Eligible Applicants" for TIGER II Discretionary Grants are State and local governments, including U.S. territories, tribal governments, transit agencies, port authorities, metropolitan planning organizations (MPOs), other political subdivisions of State or local governments, and multi-State or multi-jurisdictional groups applying through a single lead applicant (for multi-jurisdictional groups, each member of the group, including the lead applicant, must be an otherwise eligible applicant as defined in this paragraph).

Projects that are eligible for TIGER II Discretionary Grants under the FY 2010 Appropriations Act ("Eligible Projects") include, but are not limited to: (1) Highway or bridge projects eligible under title 23, United States Code; (2) public transportation projects eligible under chapter 53 of title 49, United States Code; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments. Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, United States Code, apply to all projects receiving funds. This description of Eligible Projects is, in practice, identical to the description of eligible projects under the TIGER Discretionary Grant program. (The Recovery Act provided further details elaborating on project eligibility under categories (1), (2), and (4), as listed above, for TIGER Discretionary Grants).[1]

The FY 2010 Appropriations Act requires a new solicitation of applications and, therefore, any unsuccessful applicant for a TIGER Discretionary Grant that wishes to be considered for a TIGER II Discretionary Grant must reapply according to the procedures laid out in this notice.

The FY 2010 Appropriations Act specifies that TIGER II Discretionary Grants may be not less than $10 million and not greater than $200 million. The comparable figures for TIGER Discretionary Grants funded under the Recovery Act were $20 million and $300 million, although the largest grant announced under the TIGER program was $105 million. Based on DOT's experience with the TIGER Discretionary Grant program, it is unlikely that the $200 million maximum grant size for the TIGER II Discretionary Grant program will be reached for any project. The Recovery Act gave DOT discretion to waive the minimum grant size for significant projects in smaller cities, regions, or States. The FY 2010 Appropriations Act does not provide similar authority to waive the minimum $10 million grant size for TIGER II Discretionary Grants. However, for projects located in rural areas (as defined in section V (Projects in Rural Areas)), the minimum TIGER II Discretionary Grant size is $1 million. The term "grant" in the provision of the FY 2010 Appropriations Act specifying a minimum grant size does not include TIGER II TIFIA Payments, as defined below.

Pursuant to the FY 2010 Appropriations Act, no more than 25 percent of the funds made available for TIGER II Discretionary Grants (or $150 million) may be awarded to projects in a single State. The comparable figure for TIGER Discretionary Grants was 20 percent (or $300 million).

The FY 2010 Appropriations Act directs that not less than $140 million of the funds provided for TIGER II Discretionary Grants is to be used for projects located in rural areas. There was no comparable amount set aside for rural areas under the Recovery Act for TIGER Discretionary Grants. In awarding TIGER II Discretionary Grants pursuant to the FY 2010 Appropriations Act, DOT must take measures to ensure an equitable geographic distribution of grant funds, an appropriate balance in addressing the needs of urban and rural areas and the investment in a variety of transportation modes. The Recovery Act provided a similar provision for the TIGER Discretionary Grant program, but with no language on ensuring investments in a variety of transportation modes.

TIGER II Discretionary Grants may be used for up to 80 percent of the costs of a project, but priority must be given to projects for which Federal funding is required to complete an overall financing package and projects can increase their competitiveness by demonstrating significant non-Federal contributions. The Recovery Act included a similar priority for TIGER Discretionary Grants, but allowed DOT to fund up to 100 percent of the costs of a project. For TIGER II Discretionary Grants, DOT may increase the Federal share above 80 percent only for projects located in rural areas, in which case DOT may fund up to 100 percent of the costs of a project. However, the statutory requirement to give priority to projects that use Federal funds to complete an overall financing package applies to projects located in rural areas as well, and projects located in rural areas can increase their competitiveness for purposes of the TIGER II program by demonstrating significant non-Federal financial contributions.

The Recovery Act required DOT to give priority to projects that were expected to be completed by February 17, 2012. The FY 2010 Appropriations Act does not include any similar

[1] Consistent with the FY 2010 Appropriations Act, DOT will apply the following principles in determining whether a project is eligible as a capital investment in surface transportation: (1) Surface transportation facilities generally include roads, highways and bridges, ports, freight and passenger railroads, transit systems, and projects that connect transportation facilities to other modes of transportation; and (2) surface transportation facilities also include any highway or bridge project eligible under title 23, U.S.C., or public transportation project eligible under chapter 53 of title 49, U.S.C. Please note that the Department may use a TIGER II Discretionary Grant to pay for the surface transportation components of a broader project that has non-surface transportation components, and applicants are encouraged to apply for TIGER II Discretionary Grants to pay for the surface transportation components of these projects.

requirements for the TIGER II Discretionary Grants, although TIGER II funds are only available for obligation through September 30, 2012.

The Recovery Act emphasizes the generation of near-term economic effects from expenditures on project costs, such as construction job creation, as a fundamental goal of the TIGER Discretionary Grant program. However, the FY 2010 Appropriations Act does not include explicit emphasis on job creation and instead focuses more broadly on the impact of projects on the Nation, a metropolitan area, or a region including the medium and long-term benefits that would accrue post-project completion. Therefore, in all cases, TIGER II Discretionary Grant applications will need to be competitive on the merits of the medium to long-term impacts of the projects themselves, as demonstrated by a project's alignment with the Long-Term Outcomes selection criterion described in Section II(A) (Selection Criteria) below. However, because communities nationwide continue to face difficult economic times, the Department will also continue to incorporate near term impacts like job creation in its evaluation of TIGER II applications, as demonstrated by a project's alignment with the Job Creation & Economic Stimulus selection criterion described in Section II(A) below. Consideration of near-term benefits will apply particularly in the case of projects that will employ people in Economically Distressed Areas as discussed in more detail in Section II(A) below.

The FY 2010 Appropriations Act allows for an amount not to exceed $150 million of the $600 million to be used to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act of 1998 ("TIFIA") program, a Federal credit assistance program, if it would further the purposes of the TIGER II Discretionary Grant program. DOT is referring to these payments as "TIGER II TIFIA Payments." The Recovery Act authorized DOT to use up to $200 million of the amount available for TIGER Discretionary Grants for similar purposes.

Based on the subsidy amounts required for projects in the TIFIA program's existing portfolio, DOT estimates that $150 million of TIGER II TIFIA Payments could support approximately $1.5 billion in TIFIA credit assistance. The amount of budget authority required to support TIFIA credit assistance is calculated on a project-by-project basis. Applicants for TIGER II TIFIA Payments should submit an application pursuant to this notice and a separate TIFIA letter of interest, as described below in Section VI (TIGER II TIFIA Payments). Unless otherwise noted, or the context requires otherwise, references in this notice to TIGER II Discretionary Grants include TIGER II TIFIA Payments.

DOT reserves the right to offer a TIGER II TIFIA Payment to an applicant that applied for a TIGER II Discretionary Grant even if DOT does not choose to fund the requested TIGER II Discretionary Grant and the applicant did not specifically request a TIGER II TIFIA Payment. Therefore, as described below in Section VI (TIGER II TIFIA Payments), applicants for TIGER II Discretionary Grants, particularly applicants that require a substantial amount of funds to complete a financing package, should indicate whether or not they have considered applying for a TIGER II TIFIA Payment. To the extent an applicant thinks that TIFIA may be a viable option for the project, applicants should provide a brief description of a project finance plan that includes TIFIA credit assistance and identifies a source of revenue which may be available to support the TIFIA credit assistance.

The FY 2010 Appropriations Act also permits DOT to use an amount not to exceed $35 million of the available TIGER II funds for the planning, preparation, or design of Eligible Projects ("TIGER II Planning Grants"). TIGER II Planning Grants may be awarded to Eligible Applicants. The Recovery Act did not explicitly provide funding for similar activities under the TIGER Discretionary Grant program. Unless otherwise noted, or the context requires otherwise, references in this notice to TIGER II Discretionary Grants includes TIGER II Planning Grants.

The FY 2010 Appropriations Act provides that the Secretary of Transportation may retain up to $25 million of the $600 million to fund the award and oversight of TIGER II Discretionary Grants. Portions of the $25 million may be transferred for these purposes to the Administrators of the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration, and the Federal Maritime Administration.

The purpose of this notice is to solicit applications for TIGER II Discretionary Grants.

**Tiger II Discretionary Grants**

## II. Selection Criteria and Guidance on Application of Selection Criteria

This section specifies the criteria that DOT will use to evaluate applications for TIGER II Discretionary Grants. The criteria incorporate the statutory eligibility requirements for this program, which are specified in this notice as relevant. This section is split into two parts. Part A (Selection Criteria) specifies the criteria that DOT will use to rate projects. Additional guidance about how DOT will apply these criteria, including illustrative metrics and examples, is provided in Part B (Additional Guidance on Selection Criteria).

### *A. Selection Criteria*

TIGER II Discretionary Grants will be awarded based on the selection criteria as outlined below. There are two categories of selection criteria, "Primary Selection Criteria" and "Secondary Selection Criteria."

The Primary Selection Criteria include (1) Long-Term Outcomes and (2) Job Creation & Economic Stimulus. The Secondary Selection Criteria include (1) Innovation and (2) Partnership. The Primary Selection Criteria are intended to capture the primary objective of the TIGER II provisions of the FY 2010 Appropriations Act, which is to invest in infrastructure projects that will have a significant impact on the Nation, a metropolitan area, or a region. The Secondary Selection Criteria are intended to capture the benefits of new and/or innovative approaches to achieving this programmatic objective.

#### 1. Primary Selection Criteria

##### (a) Long-Term Outcomes

DOT will give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. Applications that do not demonstrate a likelihood of significant long-term benefits in this criterion will not proceed in the evaluation process. The following types of long-term outcomes will be given priority:

(i) *State of Good Repair:* Improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize life-cycle costs.

(ii) *Economic Competitiveness:* Contributing to the economic competitiveness of the United States over the medium- to long-term.

(iii) *Livability:* Fostering livable communities through place-based policies and investments that increase transportation choices and access to transportation services for people in communities across the United States.

(iv) *Environmental Sustainability:* Improving energy efficiency, reducing dependence on oil, reducing greenhouse

gas emissions and benefitting the environment.

(v) *Safety:* Improving the safety of U.S. transportation facilities and systems.

(b) Job Creation & Economic Stimulus

While the TIGER II Discretionary Grant program is not a Recovery Act program, job creation and economic stimulus remain a top priority of this Administration; therefore, DOT will give priority (as it did for the TIGER Discretionary Grant program) to projects that are expected to quickly create and preserve jobs and stimulate rapid increases in economic activity, particularly jobs and activity that benefit economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161) ("Economically Distressed Areas"). [2]

2. Secondary Selection Criteria

(a) Innovation

DOT will give priority to projects that use innovative strategies to pursue the long-term outcomes outlined above.

(b) Partnership

DOT will give priority to projects that demonstrate strong collaboration among a broad range of participants and/or integration of transportation with other public service efforts.

*B. Additional Guidance on Selection Criteria*

The following additional guidance explains how DOT will evaluate each of the selection criteria identified above in Section II(A) (Selection Criteria). Applicants are encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits specified below in Section IX(D) (Length of Application).

[2] While Economically Distressed Areas are typically identified under the Public Works and Economic Development Act at the county level, for the purposes of this program DOT will consider regions, municipalities, smaller areas within larger communities, or other geographic areas to be Economically Distressed Areas if an applicant can demonstrate that any such area otherwise meets the requirements of an Economically Distressed Area as defined in section 301 of the Public Works and Economic Development Act of 1965.

1. Primary Selection Criteria

(a) Long-Term Outcomes

In order to measure a project's alignment with this criterion, DOT will assess the public benefits generated by the project, as measured by the extent to which a project produces one or more of the following outcomes.

(i) *State of Good Repair:* In order to determine whether the project will improve the condition of existing transportation facilities or systems, including whether life-cycle costs will be minimized, DOT will assess (i) whether the project is part of, or consistent with, relevant State, local or regional efforts and plans to maintain transportation facilities or systems in a state of good repair, (ii) whether an important aim of the project is to rehabilitate, reconstruct or upgrade surface transportation assets that, if left unimproved, threaten future transportation network efficiency, mobility of goods or people, or economic growth due to their poor condition, (iii) whether the project is appropriately capitalized up front and uses asset management approaches that optimize its long-term cost structure, and (iv) the extent to which a sustainable source of revenue is available for long-term operations and maintenance of the project. The application should include any quantifiable metrics of the facility or system's current condition and performance and, to the extent possible, projected condition and performance, with an explanation of how the project will improve the facility or system's condition, performance and/or long-term cost structure, including calculations of avoided operations and maintenance costs and associated delays.

(ii) *Economic Competitiveness:* In order to determine whether a project promotes the economic competitiveness of the United States, DOT will assess whether the project will measurably contribute over the long-term to growth in employment, production or other high value economic activity, including the efficient movement of both workers and goods. For purposes of aligning a project with this outcome, applicants should provide evidence of the long-term economic benefits that are provided by the completed project, not the near-term economic benefits of construction that are captured in the Job Creation & Economic Stimulus criterion. In weighing long-term employment benefits, applicants should describe how the project's mobility benefits support long-term efficiency and growth in employment including a description of the quality of jobs and number of workers likely to be supported as well as whether these jobs are expected to provide employment in Economically Distressed Areas.

Priority consideration will be given to projects that: (i) Improve long-term efficiency, reliability or cost-competitiveness in the movement of workers or goods, or (ii) make improvements that increase the economic productivity of land, capital or labor at specific locations, particularly Economically Distressed Areas. Applicants may propose other methods of demonstrating a project's contribution to the economic competitiveness of the country and such methods will be reviewed on a case-by-case basis.

Economic competitiveness may be demonstrated by the project's ability to increase the efficiency and effectiveness of the transportation system through integration or better use of all existing transportation infrastructure (which may be evidenced by the project's involvement with or benefits to more than one mode and/or its compatibility with and preferably augmentation of the capacities of connecting modes and facilities), but only to the extent that these enhancements lead to the economic benefits that are identified in the opening paragraph of this section.

For purposes of demonstrating economic impacts, applicants should estimate National-level or region-wide economic impacts on productivity and production, and should net out those benefits most likely to result in transfers of economic activity from one localized area to another. Therefore, in estimating local and regional impacts, applicants should consider net increases in economic productivity and benefits, and should take care not to include economic benefits that are being shifted from one location in the United States to another location. Applicants may also estimate economic impacts that an investment will have at a concentrated local or regional level but should distinguish such benefits from those that enhance National or regional productivity as described above. Highly localized benefits will receive the most consideration under circumstances where such benefits are most likely to improve an Economically Distressed Area (as defined herein) or otherwise improve access to employment opportunities for under-employed and disadvantaged populations.

Finally, the TIGER II program strives to promote long-term economic growth in a manner that will be sustainable for generations to come. Therefore, for projects designed to enhance economic

competitiveness, applicants should also provide evidence that the project will achieve the goals of this outcome in an environmentally sustainable manner. To satisfy this condition, applicants should reference the fourth criterion in this Section II(B) "Environmental Sustainability" for more information on what features promote sustainable growth and be sure to address the extent to which sustainability features are incorporated into the proposed project's economic impact.

(iii) *Livability:* 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, descriptions of how projects enhance livability should include a description of the affected community and the scale of the project's impact as measured in person-miles traveled or number of trips affected. In order to determine whether a project improves the quality of the living and working environment of a community, DOT will consider whether the project furthers the six livability principles developed by DOT with HUD and EPA as part of the Partnership for Sustainable Communities, which are listed fully at *http://www.dot.gov/affairs/2009/dot8009.htm.* For this criterion, the Department will give particular consideration to the first principle, which prioritizes the creation of affordable and convenient transportation choices.[3] Specifically, DOT will qualitatively assess whether the project:

(1) Will significantly enhance or reduce the average cost of user mobility through the creation of more convenient transportation options for travelers;

(2) will improve existing transportation choices by enhancing points of modal connectivity, increasing the number of modes accommodated on existing assets, or reducing congestion on existing modal assets;

(3) will improve accessibility and transport services for economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities, or will make goods, commodities, and services more readily available to these groups; and/or

(4) is the result of a planning process which coordinated transportation and land-use planning decisions and encouraged community participation in the process.

Livability improvements may include projects for new or improved biking and walking infrastructure. Particular attention will be paid to the degree to which such projects contribute significantly to broader traveler mobility through intermodal connections, enhanced job commuting options, or improved connections between residential and commercial areas. Projects that appear designed primarily as isolated recreational facilities and do not enhance traveler mobility as described above will not be funded.

(iv) *Environmental Sustainability:* In order to determine whether a project promotes a more environmentally sustainable transportation system, DOT will assess the project's ability to:

(1) Improve energy efficiency, reduce dependence on oil and/or reduce greenhouse gas emissions; applicants are encouraged to provide quantitative information regarding expected reductions in emissions of $CO_2$ 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 will be given priority under this factor; and

(2) Maintain, protect or enhance the environment, as evidenced by its avoidance of adverse environmental impacts (for example, adverse impacts related to air or water quality, wetlands, and endangered species) and/or by its environmental benefits (for example, improved air quality, wetlands creation or improved habitat connectivity).

Applicants are encouraged to provide quantitative information that validates the existence of substantial transportation-related costs related to energy consumption and adverse environmental effects and evidence of the extent to which the project will reduce or mitigate those costs.

(v) *Safety:* In order to determine whether the project improves safety, DOT will assess the project's ability to reduce the number, rate and consequences of surface transportation-related crashes, and injuries and fatalities among drivers and/or non-drivers in the United States or in the affected metropolitan area or region, and/or the project's contribution to the elimination of highway/rail grade crossings, the protection of pipelines, or the prevention of unintended release of hazardous materials.

*Evaluation of Expected Project Costs and Benefits:* DOT believes that benefit-cost analysis ("BCA"), including the monetization and discounting of costs and benefits in a common unit of measurement in present-day dollars, is an important discipline. For BCA to yield useful results, full consideration of costs and benefits is necessary. These include traditionally quantified fuel and travel time savings as well as reductions in greenhouse gas emissions, water quality impacts, public health effects, and other costs and benefits that are more indirectly related to vehicle-miles or that are harder to measure. In addition, BCA should attempt to measure the indirect effects of transportation investments on land use and on the portions of household budgets spent on transportation. The systematic process of comparing expected benefits and costs helps decisionmakers organize information about, and evaluate trade-offs between, alternative transportation investments. DOT has a responsibility under Executive Order 12893, Principles for Federal Infrastructure Investments, 59 FR 4233, to base infrastructure investments on systematic analysis of expected benefits and costs, including both quantitative and qualitative measures.

Therefore, applicants for TIGER II Discretionary Grants are generally required to identify, quantify, and compare expected benefits and costs, subject to the following qualifications:

All applicants will be expected to prepare an analysis of benefits and costs; however, DOT understands that the level of expense that can be expected in these analyses for surveys, travel demand forecasts, market forecasts, statistical analyses, and so on will be less for smaller projects than for larger projects. Smaller projects will therefore be given greater latitude to estimate benefits subjectively. However, even smaller projects will be expected to quantify these subjective estimates of benefits and costs, and to provide whatever evidence they have available to lend credence to their subjective estimates. Estimates of benefits should be presented in monetary terms whenever possible; if a monetary estimate is not possible, then at least a quantitative estimate (in physical, non-monetary terms, such as ridership estimates, emissions levels, etc.) should be provided.

The requirement to conduct an economic analysis is not applicable to applicants seeking TIGER II Planning Grants; however, such applicants

[3] In full, this principle reads: "Provide more transportation choices. Develop safe, reliable and economical transportation choices to decrease household transportation costs, reduce our nation's dependence on foreign oil, improve air quality, reduce greenhouse gas emissions and promote public health."

should describe the expected benefits of the underlying project(s) that the planning activities will help advance.

The lack of a useful analysis of expected project benefits and costs may be the basis for denying an award of a TIGER II Discretionary Grant to an applicant. If it is clear to DOT that the total benefits of a project are not reasonably likely to outweigh the project's costs, DOT will not award a TIGER II Discretionary Grant to the project. Consistent with the broader goals of DOT and the FY 2010 Appropriations Act, DOT can consider some factors that do not readily lend themselves to quantification or monetization, including equitable geographic distribution of grant funds and an appropriate balance in addressing the needs of urban and rural areas and investment in a variety of transportation modes.

Detailed guidance for the preparation of benefit-cost analyses is provided in *Appendix A.* Benefits should be presented, whenever possible, in a tabular form showing benefits and costs in each year for the useful life of the project. Benefits and costs should both be discounted to the year 2010 and present discounted values of both the stream of benefits and the stream of costs should be calculated. If the project has multiple parts, each of which has independent utility, the benefits and costs of each part should be estimated and presented separately. A project component has independent utility if the component itself is an Eligible Project and provides benefits that satisfy the selection criteria specified in this notice, as described further in Section III(B) (Evaluation of Eligibility) below.

DOT recognizes that some categories of costs and benefits are more difficult to quantify or monetize than others. In presenting benefit-cost analyses, applicants should include qualitative discussion of the categories of benefits and costs that they were not able to quantify, noting that these benefits and costs are in addition to other benefits and costs that were quantified. However, in the event of an unreasonable absence of data and analysis, or poor applicant effort to put forth a robust quantification of benefits and costs, the application is unlikely to receive further consideration. In general, the lack of a useful analysis comparing benefits and costs for any such project is ground for denying the award of a TIGER II Discretionary Grant.

*Evaluation of Project Performance:* Each project selected for TIGER II Discretionary Grant funding will be required to work with DOT on the development and implementation of a plan to collect information and report on the project's performance with respect to the relevant long-term outcomes that are expected to be achieved through construction of the project.

(b) Job Creation & Economic Stimulus

In order to measure a project's alignment with this criterion, DOT will assess whether the project promotes the short- or long-term creation or preservation of jobs and whether the project rapidly promotes new or expanded business opportunities during construction of the project or thereafter. Demonstration of a project's rapid economic impact is critical to a project's alignment with this criterion. Applicants are encouraged to provide information to assist DOT in making these assessments, including the total amount of funds that will be expended on construction and construction-related activities by all of the entities participating in the project and, to the extent measurable, the number and type of jobs to be created and/or preserved by the project by calendar quarters during construction and annually thereafter. Applicants should also identify any business enterprises to be created or benefited by the project during its construction and once it becomes operational.[4]

Consistent with the Recovery Act, the Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 issued by the Office of Management and Budget ("OMB") on April 3, 2009 (the "OMB Guidance"), each of which DOT is applying as a matter of policy, and consistent with applicable Federal laws, applicants are encouraged to provide information to assist DOT in assessing (1) whether the project will promote the creation of job opportunities for low-income workers through the use of best practice hiring programs and utilization of apprenticeship (including pre-apprenticeship) programs; (2) whether the project will provide maximum practicable opportunities for small businesses and disadvantaged business enterprises, including veteran-owned small businesses and service disabled veteran-owned small businesses; (3) whether the project will make effective use of community-based organizations in connecting disadvantaged workers with economic opportunities; (4) whether the project will support entities that have a sound track record on labor practices and compliance with Federal laws ensuring that American workers are safe and treated fairly; and (5) whether the project implements best practices, consistent with our Nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender, age, disability, and national origin—benefit from TIGER II grant funding.

To the extent possible, applicants should indicate whether the populations most likely to benefit from the creation or preservation of jobs or new or expanded business opportunities are from Economically Distressed Areas. In addition, to the extent possible, applicants should indicate whether the project's procurement plan is likely to create follow-on jobs and economic stimulus for manufacturers and suppliers that support the construction industry. A key consideration in assessing projects under this criterion will be how quickly jobs are created.

In evaluating a project's alignment with this criterion, DOT will assess whether a project is ready to proceed rapidly upon receipt of a TIGER II Discretionary Grant, as evidenced by:

(i) *Project Schedule:* A feasible and sufficiently detailed project schedule demonstrating that the project can begin construction quickly upon receipt of a TIGER II Discretionary Grant and that the grant funds will be spent steadily and expeditiously once construction starts; the schedule should show how many direct, on-project jobs are expected to be created or sustained during each calendar quarter after the project is underway;

(ii) *Environmental Approvals:* Receipt (or reasonably anticipated receipt) of all environmental approvals necessary for

[4] The Executive Office of the President, Council of Economic Advisers, issued a memorandum in May 2009 on "Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009." The memorandum is available at: *http://www.whitehouse.gov/administration/eop/cea/Estimate-of-Job-Creation/*. Table 5 of this memorandum provides a simple rule for estimating job-years created by government spending, which is that $92,000 of government spending creates one job-year. Of this, 64% of the job-year estimate represents direct and indirect effects and 36% of the job-year estimate represents induced effects. Applicants can use this estimate as an appropriate indicator of direct, indirect and induced job-years created by TIGER II Discretionary Grant spending, but are encouraged to supplement or modify this estimate to the extent they can demonstrate that such modifications are justified. However, since the May 2009 memorandum makes job creation purely a function of the level of expenditure, applicants should also demonstrate how quickly jobs will be created under the proposed project. Projects that generate a given number of jobs more quickly will have a more favorable impact on economic recovery. A quarter-by-quarter projection of the number of direct job-hours expected to be created by the project is useful in assessing the impacts of a project on economic recovery. Furthermore, applicants should be aware that certain types of expenditures are less likely to align well with the Job Creation & Economic Stimulus criterion. These types of expenditures include, among other things, engineering or design work and purchasing existing facilities or right-of-way.

the project to proceed to construction on the timeline specified in the project schedule, including satisfaction of all Federal, State and local requirements and completion of the National Environmental Policy Act ("NEPA") process; DOT will not evaluate applications from applicants that have not initiated the NEPA process for their project by the Pre-Application Deadline, as evidenced by the identification of and engagement with the appropriate Federal/State lead agency for the NEPA review and preparation of draft NEPA documentation; relevant NEPA documentation must be provided with the application—preferably by way of a Web site link—for Departmental review;

(iii) *Legislative Approvals:* Receipt of all necessary legislative approvals (for example, legislative authority to charge user fees or set toll rates), and evidence of support from State and local elected officials; evidence of support from all relevant State and local officials is not required, however, the evidence should demonstrate that the project is broadly supported;

(iv) *State and Local Planning:* The inclusion of the project in the relevant State, metropolitan, and local planning documents, or a certification from the appropriate agency that the project will be included in the relevant planning document prior to award of a TIGER II Discretionary Grant;[5] any MPO that is applying for a TIGER II Discretionary Grant should provide evidence that the owner of the project supports the application and will cooperate in carrying out the activities to be supported by the TIGER II Discretionary Grant;

(v) *Technical Feasibility:* The technical feasibility of the project, including completion of substantial preliminary engineering work; and

(vi) *Financial Feasibility:* The viability and completeness of the project's financing package (assuming the availability of the requested TIGER II Discretionary Grant funds), including evidence of stable and reliable financial commitments and contingency reserves, as appropriate, and evidence of the grant recipient's ability to manage grants.

DOT reserves the right to revoke any award of TIGER II Discretionary Grant funds and to award such funds to another project to the extent that such funds are not timely expended and/or construction does not begin in accordance with the project schedule. Because projects have different schedules DOT will consider on a case-by-case basis how much time after award of a TIGER II Discretionary Grant each project has before funds must be obligated and construction started. This deadline will be specified for each TIGER II Discretionary Grant in the project-specific grant agreements signed by the grant recipients and will be based on critical path items identified by applicants in response to items (i) through (vi) above. For example, if an applicant reasonably anticipates that NEPA requirements will be completed and final documentation received within 30 to 60 days of award of a TIGER II Discretionary Grant, this timeframe will be taken into account in evaluating the application, but also in establishing a deadline for obligation of funds and commencement of construction. DOT's ability to obligate funds for TIGER II Discretionary Grants expires on September 30, 2012.

2. Secondary Selection Criteria

(a) Innovation

In order to measure a project's alignment with this criterion, DOT will assess the extent to which the project uses innovative technology (including, for example, intelligent transportation systems, dynamic pricing, rail wayside or on-board energy recovery, smart cards, real-time dispatching, active traffic management, radio frequency identification (RFID), or others) to pursue one or more of the long-term outcomes outlined above and/or to significantly enhance the operational performance of the transportation system. DOT will also assess the extent to which the project incorporates innovations that demonstrate the value of new approaches to, among other things, transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance. The applicant should clearly demonstrate that the innovation is designed to pursue one or more of the long-term outcomes outlined above and/or significantly enhance the transportation system.

Innovative, multi-modal projects are often difficult to fund under traditional transportation programs. DOT will consider the extent to which innovative projects might be difficult to fund under other programs and will give priority to projects that align well with the Primary Selection Criteria but are unlikely to receive funding under traditional programs.

(b) Partnership

(i) *Jurisdictional & Stakeholder Collaboration:* In order to measure a project's alignment with this criterion, DOT will assess the project's involvement of non-Federal entities and the use of non-Federal funds, including the scope of involvement and share of total funding. DOT will give priority to projects that receive financial commitments from, or otherwise involve, State and local governments, other public entities, or private or nonprofit entities, including projects that engage parties that are not traditionally involved in transportation projects, such as nonprofit community groups. Pursuant to the OMB Guidance, DOT will give priority to projects that make effective use of community-based organizations in connecting disadvantaged people with economic opportunities.

In compliance with the FY 2010 Appropriations Act, DOT will give priority to projects for which a TIGER II Discretionary Grant will help to complete an overall financing package. An applicant should clearly demonstrate the extent to which the project cannot be readily and efficiently completed without Federal assistance, and the extent to which other sources of Federal assistance are or are not readily available for the project. DOT will assess the amount of private debt and equity to be invested in the project or the amount of co-investment from State, local or other non-profit sources.

DOT will also assess the extent to which the project demonstrates collaboration among neighboring or regional jurisdictions to achieve National, regional or metropolitan benefits. Multiple States or jurisdictions may submit a joint application and should identify a lead State or jurisdiction as the primary point of contact. Where multiple States or jurisdictions are submitting a joint application, the application should demonstrate how the project costs are

[5] All regionally significant projects requiring an action by the FHWA or the FTA must be in the metropolitan transportation plan, TIP and STIP. Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. To the extent a project is required to be on a metropolitan transportation plan, TIP and/or STIP it will not receive a TIGER II Discretionary Grant until it is included in such plans. Projects that are not required to be in long range transportation plans, STIPs and TIPs will not need to be included in such plans in order to receive a TIGER II Discretionary Grant. Freight and passenger rail projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. This is consistent with the exemption for high speed and intercity passenger rail projects under the Recovery Act. However, applicants seeking funding for freight and passenger rail projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals.

apportioned between the States or jurisdictions to assist DOT in making the distributional determinations described below in Section III(C) (Distribution of Funds).

(ii) *Disciplinary Integration:* In order to demonstrate the value of partnerships across government agencies that serve various public service missions and to promote collaboration on the objectives outlined in this notice, DOT will give priority to projects that are supported, financially or otherwise, by non-transportation public agencies that are pursuing similar objectives. For example, DOT will give priority to transportation projects that create more livable communities and are supported by relevant public housing agencies or are consistent with State or local efforts or plans to promote economic development, revitalize communities, or protect historic or cultural assets; similarly, DOT will give priority to transportation projects that encourage energy efficiency or improve the environment and are supported by relevant public agencies with energy or environmental missions.

## III. Evaluation and Selection Process

### *A. Evaluation Process*

TIGER II Discretionary Grant applications will be evaluated in accordance with the below discussed evaluation process. DOT will establish a pre-application evaluation team to review each pre-application that is received by DOT on or prior to the Pre-Application Deadline. This evaluation team will be organized and led by the Office of the Secretary and will include members from the relevant modal administrations in DOT with the most experience and/or expertise in the relevant project areas (the "Cognizant Modal Administrations"). These representatives will include technical and professional staff with relevant experience and/or expertise. This evaluation team will be responsible for analyzing whether the pre-application satisfies the following key threshold requirements:

1. The project is an Eligible Project or a DOT Eligible Planning Activity;

2. NEPA has been initiated, as described above in Section II(B)(2)(b)(ii) (Environmental Approvals); and

3. Local matching funds to support 20 percent or more of the costs for the project are identified and committed; this requirement is not applicable to projects located in rural areas, however, applications for projects in rural areas will be more competitive to the extent they include non-Federal financial contributions.

To the extent the pre-application evaluation team determines that a pre-application does not satisfy these key threshold requirements, DOT will inform the project sponsor that an application for the project will not be reviewed unless the application submitted on or prior to the Application Deadline can demonstrate that the requirement has been addressed.

DOT will establish application evaluation teams to review each application that is received by DOT prior to the Application Deadline. These evaluation teams will be organized and led by the Office of the Secretary and will include members from each of the Cognizant Modal Administrations. These representatives will include technical and professional staff with relevant experience and/or expertise. The evaluation teams will be responsible for evaluating and rating all of the projects and making funding recommendations to the Secretary. The evaluation process will require team members to evaluate and rate applications individually before convening with other members to discuss ratings. The composition of the evaluation teams will be finalized after the Pre-Application Deadline, based on the number and nature of pre-applications received.

DOT will not assign specific numerical scores to projects based on the selection criteria outlined above in Section II(A) (Selection Criteria). Rather, ratings of "highly recommended," "recommended," "not recommended", or "negative" will be assigned to projects for each of the selection criteria. DOT will award TIGER II Discretionary Grants to projects that are well-aligned with one or more of the selection criteria, with projects that are well-aligned with multiple selection criteria being more likely to receive TIGER II Discretionary Grants. In addition, DOT will consider whether a project has a negative effect on any of the selection criteria, and any such negative effect may reduce the likelihood that the project will receive a TIGER II Discretionary Grant. To the extent the initial evaluation process does not sufficiently differentiate among highly rated projects, DOT will use a similar rating process to re-assess the projects that were highly rated and identify those that should be most highly rated.

DOT will give more weight to the two Primary Selection Criteria (Long-Term Outcomes and Job Creation & Economic Stimulus) than to the two Secondary Selection Criteria (Innovation and Partnership). Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in Section II(A)(1)(a) (Long-Term Outcomes) will not proceed in the evaluation process. A project need not be well aligned with each of the long-term outcomes in order to be successful in the long-term outcomes criterion overall. However, projects that are strongly aligned with multiple long-term outcomes will be the most successful in this criterion. Furthermore, a project that has a negative effect on safety or environmental sustainability will need to demonstrate significant merits in other long-term outcomes in order to be selected for funding.

For the Job Creation & Economic Stimulus criterion, projects need not receive a rating of "highly recommended" in order to be recommended for funding, although a project that is not ready to proceed quickly, as evidenced by the items requested in Section II(B)(1)(b)(i)–(vi) (Project Schedule, Environmental Approvals, Legislative Approvals, State and Local Planning, Technical Feasibility, and Financial Feasibility), is less likely to be successful in this criterion.

DOT will give less weight to the two Secondary Selection Criteria (Innovation and Partnership) than to the two Primary Selection Criteria (Long-Term Outcomes and Job Creation & Economic Stimulus). The two Secondary Selection Criteria will be rated equally.

The following table summarizes the weighting of the selection criteria, as described in the preceding paragraphs:

| | |
|---|---|
| Long-Term Outcomes ..... | DOT will give more weight to this criterion than to either of the Secondary Selection Criteria. In addition, this criterion has a minimum threshold requirement. Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in this criterion will not proceed in the evaluation process. |
| Job Creation & Economic Stimulus. | DOT will give more weight to this criterion than to either of the Secondary Selection Criteria. This criterion will be considered after it is determined that a project demonstrates a likelihood of significant long-term benefits in at least one of the five long-term outcomes identified in the long-term outcomes criterion. |

| | |
|---|---|
| Innovation & Partnership .... | DOT will give less weight to these criteria than to the Primary Selection Criteria. These criteria will be rated equally. |

As noted below in Section III(C) (Distribution of Funds), upon completion of this competitive rating process DOT will analyze the preliminary list and determine whether the purely competitive ratings are consistent with the distributional requirements of the FY 2010 Appropriations Act. If necessary, DOT will adjust the list of recommended projects to satisfy the statutory distributional requirements while remaining as consistent as possible with the competitive ratings.

*B. Evaluation of Eligibility*

To be selected for a TIGER II Discretionary Grant, a project must be an Eligible Project and the applicant must be an Eligible Applicant. DOT may consider one or more components of a large project to be an Eligible Project, but only to the extent that the components have independent utility, meaning the components themselves, not the project of which they are a part, are Eligible Projects and satisfy the selection criteria identified above in Section II(A) (Selection Criteria). For these projects, the benefits described in an application must be related to the components of the project for which funding is requested, not the full project of which they are a part. DOT will not fund individual phases of a project if the benefits of completing only these phases would not align well with the selection criteria specified in the Notice because the overall project would still be incomplete.

To the extent an applicant requests a substantial amount of grant funds for a larger project or a group of related projects, DOT reserves the right to award funds for a part of the project, not the full project, if a part of the project has independent utility and aligns well with the selection criteria specified in this notice. To the extent applicants expect that DOT may wish to consider funding one or more parts of a project and not the full project that is the subject of the application, then applicants should clearly identify in their applications the separate parts of the project and the benefits that each part of the project provides, and how these benefits align with the selection criteria. Similarly, if a project is not viable unless DOT funds the full project, this should be stated in the application.

*C. Distribution of Funds*

As noted above in Section I (Background), the FY 2010 Appropriations Act prohibits the award of more than 25 percent of the funds made available under the TIGER II program to projects in any one State. The FY 2010 Appropriations Act also requires that DOT take measures to ensure an equitable geographic distribution of funds, an appropriate balance in addressing the needs of urban and rural areas, and the investment in a variety of transportation modes. DOT will apply an initial unconstrained competitive rating process based on the selection criteria identified above in Section II(A) (Selection Criteria) to determine a preliminary list of projects recommended for TIGER II Discretionary Grants. DOT will then analyze the preliminary list and determine whether the purely competitive ratings are consistent with the distributional requirements of the FY 2010 Appropriations Act. If necessary, DOT will adjust the list of recommended projects to satisfy the statutory distributional requirements while remaining as consistent as possible with the competitive ratings.

As noted above in Section II(B)(2)(b)(i) (Jurisdictional & Stakeholder Collaboration), applications submitted jointly by multiple States should include an allocation of project costs to assist DOT in making these determinations. In addition, DOT will use the subsidy and administrative cost estimate, not the principal amount of credit assistance, to determine any TIGER II TIFIA Payment's effect on these distributional requirements.

*D. Transparency of Process*

In the interest of transparency, DOT will disclose as much of the information related to its evaluation process as is practical. DOT expects that the TIGER II Discretionary Grant program may be reviewed and/or audited by Congress, the U.S. Government Accountability Office, DOT's Inspector General, or others, and has and will continue to take steps to document its decision-making process.

## IV. Grant Administration

DOT expects that each TIGER II Discretionary Grant will be administered by one of the Cognizant Modal Administration, pursuant to a grant agreement between the TIGER II Discretionary Grant recipient and the Cognizant Modal Administration. In accordance with the FY 2010 Appropriations Act, the Secretary has the discretion to delegate such responsibilities.

Applicable Federal laws, rules and regulations will apply to projects that receive TIGER II Discretionary Grants.

As noted above in Section II(B)(1)(b) (Job Creation & Economic Stimulus), how soon after award a project is expected to obligate grant funds and start construction will be considered on a case-by-case basis and will be specified in the project-specific grant agreements. DOT reserves the right to revoke any award of TIGER II Discretionary Grant funds and to award such funds to another project to the extent that such funds are not timely expended and/or construction does not begin in accordance with the project schedule. DOT's ability to obligate funds for TIGER II Discretionary Grants expires on September 30, 2012.

## V. Projects in Rural Areas

The FY 2010 Appropriations Act directs that not less than $140 million of the funds provided for TIGER II Discretionary Grants are to be used for projects in rural areas. For purposes of this notice, DOT is generally defining "rural area" as any area not in an Urbanized Area, as such term is defined by the Census Bureau,[6] and will

[6] For Census 2000, the Census Bureau classified as urban all territory, population, and housing units located within urbanized areas (UAs) and urban clusters (UCs), both defined using the same criteria. The Census Bureau delineates UA and UC boundaries to encompass densely settled territory, which generally consists of:

- A cluster of one or more block groups or census blocks, each of which has a population density of at least 1,000 people per square mile at the time.
- Surrounding block groups and census blocks, each of which has a population density of at least 500 people per square mile at the time.
- Less densely settled blocks that form enclaves or indentations, or are used to connect discontiguous areas with qualifying densities.

Rural consists of all territory, population, and housing units located outside of UAs and UCs.

For Census 2000, the urban and rural classification was applied to the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

Urbanized Areas (UAs)—An urbanized area consists of densely settled territory that contains 50,000 or more people. The Census Bureau delineates UAs to provide a better separation of urban and rural territory, population, and housing in the vicinity of large places. For Census 2000, the UA criteria were extensively revised and all areas were reexamined and redefined, rather than building from the previous decade's UA boundary as had been the practice in previous censuses (territory that was part of a 1990 UA was not automatically grandfathered into the 2000 UA). Because of changes in criteria, some territory that was classified as urbanized for the 1990 census was reclassified as rural. In addition, some areas that

consider a project to be in a rural area if all or a material portion of a project is located in a rural area. For projects located in rural areas the FY 2010 Appropriation Act does not require matching funds (although the statute does direct DOT to give priority to projects, including projects located in rural areas, for which Federal funding is required to complete an overall financing package that includes non-Federal sources of funds) and the minimum grant size is $1 million. Applicants for TIGER II Discretionary Grants of between $1 million and $10 million for projects located in rural areas are encouraged to apply and should address the same criteria as applicants for TIGER II Discretionary Grants in excess of $10 million.

## VI. TIGER II TIFIA Payments

Up to $150 million of the $600 million available for TIGER II Discretionary Grants may be used for TIGER II TIFIA Payments. Based on the average subsidy cost of the existing TIFIA portfolio, $150 million in TIGER II TIFIA Payments could support approximately $1.5 billion in Federal credit assistance.

Applicants seeking TIGER II TIFIA Payments should apply in accordance with all of the criteria and guidance specified in this notice for TIGER II Discretionary Grant applications and will be evaluated concurrently with all other applicants. Any applicant seeking a TIGER II TIFIA Payment is also required to submit a TIFIA letter of interest concurrent with the TIGER II TIFIA Payment application. If selected for a TIGER II TIFIA Payment, the applicant must comply with all of the TIFIA program's standard application and approval requirements including submission of a complete TIFIA application and $30,000 application fee (the TIFIA program guide can be downloaded from *http://tifia.fhwa.dot.gov/*).

Applicants should demonstrate that they are ready to proceed rapidly upon receipt of a TIGER II TIFIA Payment in accordance with the guidance specified above in Section II(B)(1)(b) (Job Creation & Economic Stimulus). DOT's TIFIA Joint Program Office will assist DOT in determining a project's readiness to proceed rapidly upon receipt of a TIGER II TIFIA Payment.

Applicants seeking TIGER II TIFIA Payments may also apply for a TIGER II Discretionary Grant for the same project and must indicate the type(s) of funding for which they are applying clearly on the face of their applications. An applicant for a TIGER II TIFIA Payment must submit an application pursuant to this notice for a TIGER II TIFIA Payment even if it does not wish to apply for a TIGER II Discretionary Grant.

DOT reserves the right to offer a TIGER II TIFIA Payment to an applicant that applied for a TIGER II Discretionary Grant even if DOT does not choose to fund the requested TIGER II Discretionary Grant request and the applicant did not request a TIGER II TIFIA Payment. Therefore, applicants for TIGER II Discretionary Grants, particularly applicants that require a substantial amount of funds to complete a financing package, should indicate whether or not they have considered applying for a TIGER II TIFIA Payment. To the extent an applicant thinks that TIFIA may be a viable option for the project, applicants should provide a brief description of a project finance plan that includes TIFIA credit assistance and identifies a source of revenue which may be available to support the TIFIA credit assistance.

Unless otherwise expressly noted herein, any and all requirements that apply to TIGER II Discretionary Grants pursuant to the FY 2010 Appropriations Act, this notice, or otherwise, apply to TIGER II TIFIA Payments. TIFIA applicants that do not receive TIGER II TIFIA Payments will not be required to comply with any of these requirements.

## VII. TIGER II Planning Grants

The FY 2010 Appropriations Act permits DOT to use up to $35 million of the amount available for TIGER II Discretionary Grants for TIGER II Planning Grants.

TIGER II Planning Grants may be awarded, like TIGER II Discretionary Grants, to Eligible Applicants, and may be used for activities related to the planning, preparation or design of Eligible Projects, including transportation corridors or regional transportation systems ("DOT Eligible Planning Activities"). Applications for planning assistance may be made alone or as part of a TIGER II Discretionary Grant application.

Applicants seeking TIGER II Planning Grants should apply in accordance with all of the application requirements specified in this notice for TIGER II Discretionary Grants, unless specified otherwise. This includes responding to each of the selection criteria specified for TIGER II Discretionary Grants and submission of a pre-application and application in accordance with the requirements specified in Section IX (Pre-Application and Application Cycle) below.

DOT reserves the right to offer a TIGER II Planning Grant to an applicant that applied for a TIGER II Discretionary Grant even if DOT does not choose to fund the requested TIGER II Discretionary Grant request and the applicant did not request a TIGER II Planning Grant.

For purposes of this interim notice, DOT is seeking comments on its intention to conduct a multi-agency evaluation and award process with HUD for DOT's TIGER II Planning Grants and HUD's Community Challenge Planning Grants, which were also authorized under the FY 2010 Appropriations Act. HUD is authorized to use $40 million for Community Challenge Planning Grants to foster reform and reduce barriers to achieve affordable, economically vital, and sustainable communities. This multi-agency approach for the planning grants would be consistent with DOT and HUD's participation in the "Partnership for Sustainable Communities" with EPA to help American families in all communities—rural, suburban and urban—gain better access to affordable housing, more transportation options, lower transportation costs, and a cleaner environment.

DOT and HUD believe there is great value in issuing a joint solicitation for the two planning grant programs in order to better align transportation, housing, economic development, and land use planning and to improve linkages between the three Partnership agencies' programs. DOT and HUD also believe this proposal has the potential to encourage and reward more holistic planning efforts and result in better projects being built with Federal dollars.

While the DOT and HUD planning grant programs have similar, related purposes, there are differences in the activities that the two programs can fund. DOT's program can fund planning activities that relate directly to a future transportation capital investment, while HUD's program can fund local planning

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were identified as being within UAs for the 1990 census were reclassified as within urban clusters.

Urban Clusters (UCs)—An urban cluster consists of densely settled territory that has at least 2,500 people but fewer than 50,000 people. The Census Bureau introduced the UC concept for Census 2000 to provide a more consistent and accurate measure of urban population, housing, and territory throughout the United States, Puerto Rico, and the Island Areas. Prior to Census 2000, urban places of 2,500 or more population were identified outside UAs without regard to population density. In addition, densely settled populations located outside places and outside UAs were classified as rural prior to Census 2000. Because of the adoption of the UC concept for Census 2000, some territory that was classified as rural for the 1990 census was reclassified as urban. Note: All urban areas defined within Guam based on the results of Census 2000 are designated as urban clusters regardless of their total population.

Updated lists of UAs and UCs are available on the Census Bureau Web site.

activities that could support future transportation investment.

Transportation planning activities that may be funded through the TIGER II Discretionary Grant program include efforts related to individual transportation projects, transportation corridors, or regional transportation systems or networks. Activities eligible for funding under HUD's program include, but are not limited to, the development of master plans, zoning and building code reform initiatives, including the development of inclusionary zoning ordinances, corridor and district plans, and other strategies, including land acquisition, designed to create walkable, mixed-use, transit-oriented, and affordable communities for persons of all incomes, especially those of low-, very low-, and extremely low-income persons and families.

Additionally, the two programs can provide funding to different applicants. DOT's TIGER II Planning Grants are available to any Eligible Applicant. The HUD Community Challenge Grants are potentially available to a broader range of applicants, including nonprofit organizations. DOT and HUD would like to invite comments about whether the differences in eligibility should be maintained and, if so, how it might be managed in a joint selection process.

DOT and HUD would like to receive comments on the evaluation method that should be used for a combined planning grant process, in terms of selection criteria and goals. Also, feedback is invited on funding categories and where the overlap between DOT and HUD's program might be applied most effectively. To the extent DOT and HUD determine that a joint solicitation is feasible and advisable, it would be published no later than May 28, 2010, with the final notice of funding availability for the TIGER II Discretionary Grant program.

## Pre-Application and Application Cycle

## VIII. Pre-Application and Application Cycle

### *A. Two Stages of Application Cycle*

The application cycle for TIGER II Discretionary Grants has two stages:

1. *Pre-Application:* In Stage 1, applicants must submit a pre-application form to the DOT. This step qualifies applicants to submit an application in Stage 2. No application submitted during Stage 2 that does not correlate with a properly completed Stage 1 pre-application will be considered.

2. *Application:* In Stage 2, applicants must submit a complete application package through Grants.gov.

Pre-applications must be submitted to DOT by the Pre-Application Deadline, which is July 16, 2010, at 5 p.m. EST. Final applications must be submitted through Grants.gov by the Application Deadline, which is August 23, 2010, at 5 p.m. EST. The Grants.gov "Apply" function will open on July 30, 2010, allowing applicants to submit applications. While applicants are encouraged to submit pre-applications in advance of the Pre-Application Deadline, pre-applications will not be reviewed until after the Pre-Application Deadline. Similarly, while applicants are encouraged to submit applications in advance of the Application Deadline, applications will not be evaluated, and awards will not be made, until after the Application Deadline.

Pre-applications (stage 1) must be submitted to the DOT. The pre-application form will be available on the DOT Web site at *http://www.dot.gov/recovery/ost/TIGERII* on June 15, 2010, together with instructions for submitting the pre-application form electronically to DOT.

Applications (Stage 2) must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and submit applications can be found at *http://www.grants.gov.* Please be aware that the registration process usually takes 2–4 weeks and must be completed before an application can be submitted. If interested parties experience difficulties at any point during the registration or application process, please call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST. Additional information on applying through Grants.gov is available in *Appendix B,* attached hereto.

### *B. Contents of Pre-Applications*

An applicant for a TIGER II Discretionary Grant should provide all of the information requested below in its pre-application form. DOT reserves the right to ask any applicant to supplement the data in its pre-application, but expects pre-applications to be complete upon submission. Applicants must complete the pre-application form and send it to DOT electronically on or prior to the Pre-Application Deadline, in accordance with the instructions specified at *http://www.dot.gov/recovery/ost/TIGERII.* The pre-application form must include the following information:

i. Name of applicant (if the application is to be submitted by more than one entity, a lead applicant must be identified);

ii. Applicant's DUNS (Data Universal Numbering System) number;

iii. Type of applicant (State government, local government, U.S. territory, Tribal government, transit agency, port authority, metropolitan planning organization, or other unit of government;);

iv. State(s) where the project is located;

v. County(s) where the project is located;

vi. City(s) where the project is located;

vii. Project title (descriptive);

viii. Project type: Highway, transit, rail, port, multimodal, bicycle and pedestrian, or planning activity (if the project is a multimodal project, the pre-application form will require that applicants provide additional information identifying the affected modes);

ix. Whether the project is requesting a TIGER II TIFIA Payment;

x. Project description (describe the project in plain English terms that would be generally understood by the public, using no more than 50 words (e.g. "the project will replace the existing bridge over the W river on interstate-X between the cities of Y and Z" or "the TIGER II Planning Grant will fund planning activities for streetcar service from location X to location Y"; please do not describe the project's benefits, background, or alignment with the selection criteria in this description);

xi. Total cost of the project;

xii. Total amount of TIGER II Discretionary Grant funds requested;

xiii. Contact name, phone number, e-mail address, and physical address for applicant;

xiv. Congressional districts affected by the project;

xv. Type of jurisdiction where the project is located (urban or rural, as defined above in Section V (Projects in Rural Areas));

xvi. Whether or not the project is in an Economically Distressed Area, as defined in Section II(A) (Selection Criteria);

xvii. An assurance that the NEPA process has been initiated, as evidenced by the identification of and engagement with the appropriate Federal/State lead agency for the NEPA review and preparation of draft NEPA documentation (while not required for the pre-application, relevant NEPA documentation must be provided with

the application—preferably by way of a website link—for Departmental review); applicants for TIGER II Planning Grants do not need to demonstrate that the NEPA process has been initiated; and

xviii. An assurance that local matching funds to support 20 percent or more of the costs of the project are identified and committed (as noted in Section I (Background), this requirement is waived for projects located in rural areas (as defined above in Section V (Projects in Rural Areas)), and these projects do not need to provide this assurance).

To the extent the pre-application does not provide adequate assurances for items xvii or xviii, DOT will inform the project sponsor that an application for the project will not be reviewed unless the application submitted on or prior to the Application Deadline can demonstrate that the requirement has been addressed.

*C. Contents of Applications*

An applicant for a TIGER II Discretionary Grant should include all of the information requested below in its application. DOT reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. To the extent practical, DOT encourages applicants to provide data and evidence of project merits in a form that is publicly available or verifiable. For TIGER II TIFIA Payments, these requirements apply only to the applications required under this notice; the standard TIFIA letter of interest and loan application requirements, including the standard $30,000.00 application fee, are separately described in the Program Guide and Application Form found at *http://tifia.fhwa.dot.gov*.

1. Standard Form 424, Application for Federal Assistance

Please see *http://www07.grants.gov/assets/SF424Instructions.pdf* for instructions on how to complete the SF 424, which is part of the standard Grants.gov submission. Additional clarifying guidance and FAQs to assist applicants in completing the SF–424 will be available at *http://www.dot.gov/recovery/ost/TIGERII* by July 30, 2010, when the "Apply" function within Grants.gov opens to accept applications under this notice.

2. Project Narrative (Attachment to SF 424)

The project narrative must respond to the application requirements outlined below. DOT recommends that the project narrative be prepared with standard formatting preferences (e.g. a single-spaced document, using a standard 12-point font, such as Times New Roman, with 1-inch margins).

A TIGER II Discretionary Grant application must include information required for DOT to assess each of the criteria specified in Section II(A) (Selection Criteria), as such criteria are explained in Section II(B) (Additional Guidance on Selection Criteria). Applicants are encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits identified below in Part D (Length of Applications). Information provided pursuant to this paragraph must be quantified, to the extent possible, to describe the project's impacts on the Nation, a metropolitan area, or a region. Information provided pursuant to this paragraph should include projections for both the build and no-build scenarios for the project for a point in time at least 20 years beyond the project's completion date or the lifespan of the project, whichever is closest to the present.

All applications should include a detailed description of the proposed project and geospatial data for the project, including a map of the project's location and its connections to existing transportation infrastructure. An application should also include a description of how the project addresses the needs of an urban and/or rural area. An application should clearly describe the transportation challenges that the project aims to address, and how the project will address these challenges. The description should include relevant data such as, for example, passenger or freight volumes, congestion levels, infrastructure condition, or safety experience.

DOT recommends that the project narrative generally adhere to the following basic outline, and include a table of contents, maps and graphics that make the information easier to review:

I. Project Description (including a description of the transportation challenges that the project aims to address, and how the project will address these challenges);

II. Project Parties (information about the grant recipient and other project parties);

III. Grant Funds and Sources/Uses of Project Funds (information about the amount of grant funding requested, availability/commitment of funds sources and uses of all project funds, total project costs, percentage of project costs that would be paid for with TIGER II Discretionary Grant funds, and the identity and percentage shares of all parties providing funds for the project (including Federal funds provided under other programs));

IV. Selection Criteria (information about how the project aligns with each of the primary and secondary selection criteria and a description of the results of the benefit-cost analysis):

a. Long-Term Outcomes:

i. State of Good Repair;

ii. Economic Competitiveness;

iii. Livability;

iv. Sustainability;

v. Safety;

b. Job Creation and Economic Stimulus;

c. Innovation;

d. Partnership;

V. Project Readiness and NEPA (information about how ready the project is to move forward quickly, including information about the project schedule, environmental approvals, legislative approvals, state and local planning, technical feasibility, and financial feasibility); applications for TIGER II Planning Grants do not need to address project readiness and NEPA;

VI. Federal Wage Rate Certification (an application must include a certification, signed by the applicant, stating that it will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the FY 2010 Appropriations Act); and

VII. To the extent relevant, the final page of the application should describe (in one page or less) any material changes that need to be made to the pre-application form, including changes to the assurances provided in items xvii and xviii regarding initiation of NEPA and required cost sharing.

The purpose of this recommended format is to ensure that applications are provided in a format that clearly addresses the application requirements and makes critical information readily apparent and easy to locate.

*D. Length of Applications*

The project narrative should not exceed 25 pages in length. Documentation supporting the assertions made in the narrative portion may also be provided, but should be limited to relevant information. If possible, Web site links to supporting documentation (including a more detailed discussion of the benefit-cost

analysis) should be provided rather than copies of these materials. At the applicant's discretion, relevant materials provided previously to a Cognizant Modal Administration in support of a different DOT discretionary program (for example, New Starts or TIFIA) may be referenced and described as unchanged. To the extent referenced, this information need not be resubmitted for the TIGER II Discretionary Grant application. DOT recommends use of appropriately descriptive file names (e.g., "Project Narrative," "Maps," "Memoranda of Understanding and Letters of Support," etc.) for all attachments. Cover pages and tables of contents do not count towards the 25-page limit for the narrative portion of the application, and the Federal wage rate certification and one-page update of the pre-application form (if necessary) may also be outside of the 25-page narrative. Otherwise, the only substantive portions of the application that should exceed the 25-page limit are any supporting documents provided to support assertions or conclusions made in the 25-page narrative section.

*E. Contact Information*

Contact information is requested as part of the SF–424. DOT will use this information to inform parties of DOT's decision regarding selection of projects, as well as to contact parties in the event that DOT needs additional information about an application.

*F. National Environmental Policy Act Requirement*

An application for a TIGER II Discretionary Grant must detail whether the project will significantly impact the natural, social and/or economic environment. If the NEPA process is completed, an applicant must indicate the date of, and provide a Web site link or other reference to, the final Categorical Exclusion, Finding of No Significant Impact or Record of Decision. If the NEPA process is underway but not complete, the application must detail where the project is in the process, indicate the anticipated date of completion and provide a Web site link or other reference to copies of any NEPA documents prepared.

*G. Environmentally Related Federal, State and Local Actions*

An application for a TIGER II Discretionary Grant must indicate whether the proposed project is likely to require actions by other agencies (e.g., permits), indicate the status of such actions and provide a Web site link or other reference to materials submitted to the other agencies, and/or demonstrate compliance with other Federal, State and local regulations as applicable, including, but not limited to, Section 4(f) Parklands, Recreation Areas, Refuges, & Historic Properties; Section 106 Historic and Culturally Significant Properties; Clean Water Act Wetlands and Water; Executive Orders Wetlands, Floodplains, Environmental Justice; Clean Air Act Air Quality (specifically note if the project is located in a nonattainment area); Endangered Species Act Threatened and Endangered Biological Resources; Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat; The Bald and Golden Eagle Protection Act; and/or any State and local requirements.

*H. Protection of Confidential Business Information*

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI);" (2) mark each affected page "CBI;" and (3) highlight or otherwise denote the CBI portions. DOT protects such information from disclosure to the extent allowed under applicable law. In the event DOT receives a Freedom of Information Act (FOIA) request for the information, DOT will follow the procedures described in its FOIA regulations at 49 CFR § 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

## IX. Project Benefits

DOT expects to identify and report on the benefits of the projects that it funds with TIGER II Discretionary Grants. To this end, DOT will request that recipients of TIGER II Discretionary Grants cooperate in Departmental efforts to collect and report on information related to the benefits produced by the projects that receive TIGER II Discretionary Grants.

The benefits that DOT reports on may include the following: (1) Improved condition of existing transportation facilities and systems; (2) long-term growth in employment, production or other high-value economic activity; (3) improved livability of communities across the United States; (4) improved energy efficiency, reduced dependence on oil and reduced greenhouse gas emissions; (5) reduced adverse impacts of transportation on the natural environment; (6) reduced number, rate and consequences of surface transportation-related crashes, injuries and fatalities; (7) greater use of innovative technology and innovative approaches to transportation funding and project delivery; (8) greater collaboration with state and local governments, other public entities, private entities, nonprofit entities, or other non-traditional partners; (9) greater integration of transportation decision making with decision making by other public agencies with similar public service objectives; or (10) any other benefits claimed in the project's benefit-cost analysis.

Because of the limited nature of this program, these benefits are likely to be reported on a project-by-project basis and trends across projects that were selected for TIGER II Discretionary Grants may not be readily available. In addition, because many of these benefits are long-term outcomes, it may be years before the value of the investments can be quantified and fully reported. DOT is considering the most appropriate way to collect and report information about these potential project benefits.

## X. Questions and Clarifications

For further information concerning this notice please contact the TIGER II Discretionary Grant program manager via e-mail at *TIGERIIGrants@dot.gov,* or call Robert Mariner at 202–366–8914. A TDD is available for individuals who are deaf or hard of hearing at 202–366–3993. DOT will regularly post answers to these questions and other important clarifications on DOT's Web site at *http://www.dot.gov/recovery/ost/TIGERII.*

## Appendix A: Additional Information on Benefit-Cost Analysis

As previously discussed in the Notice, the lack of a useful analysis of expected project benefits and costs may be a basis for denying an award of a TIGER II Discretionary Grant to any applicant. Additionally, if it is clear that the total benefits of a project are not reasonably likely to outweigh the project's costs, the Department will not award a TIGER II Discretionary Grant to the project. Consequently, it is incumbent upon the applicant to prepare a thorough benefit-cost analysis that demonstrates clearly the derivation of both the costs and the benefits of the project. However, DOT understands that the level of expense

that can be expected in these analyses for surveys, travel demand forecasts, market forecasts, statistical analyses, and so on will be less for smaller projects than for larger projects. Smaller projects will therefore be given greater latitude to estimate benefits subjectively. However, even smaller projects will be expected to quantify these subjective estimates of benefits and costs, and to provide whatever evidence they have available to lend credence to their subjective estimates. Estimates of benefits should be presented in monetary terms whenever possible; if a monetary estimate is not possible, then at least a quantitative estimate (in physical, non-monetary terms, such as ridership estimates, emissions levels, etc.) should be provided. A benefit-cost analysis is not necessary for TIGER II Planning Grant applicants; however, such applicants should describe the expected benefits of the underlying project(s) that the planning activities will help advance.

This appendix provides general information and guidance on conducting an analysis. In addition to this guidance, applicants should also refer to OMB Circulars A–4 and A–94 in preparing their analysis (*http://www.whitehouse.gov/omb/circulars/*). Circular A–4 also cites textbooks on cost-benefit analysis (e.g., Mishan and Quah [7]) if an applicant wants to review additional background material. The Department will rate all analyses as indicated below.

TABLE 1—RATINGS OF BENEFIT-COST ANALYSES

| Rating | Description |
|---|---|
| Very Useful | The economic analysis (i) is comprehensive (quantifying and monetizing the full range of costs and benefits, including the likely timing of such costs and benefits, for which such measures are reasonably available), (ii) attempts to describe the indirect effects of transportation investments on land use (when applicable), (iii) helps the Department organize information about, and evaluate trade-offs between, alternative transportation investments, (iv) provides a high degree of confidence as to the extent to which the benefits of the project will exceed the project's costs on a net present value basis, and (v) provides sensitivity analysis to show how changes in key assumptions affect the outcome of the analysis. |
| Useful | The economic analysis (i) identifies, quantifies, monetizes, and compares the project's expected benefits and costs, but has minor gaps in coverage of benefits and costs or the precise timing of benefits and costs, or fails in some cases to quantify or monetize benefits and costs for which such measures are reasonably available, and (ii) provides a sufficient degree of confidence that the benefits of the project will exceed the project's costs on a net present value basis. |
| Marginally Useful | The economic analysis (i) identifies, quantifies, monetizes, and compares the project's expected benefits and costs, but has significant gaps in coverage, quantification, monetization, or timing of benefits and costs, or significant errors in its measurement of benefits or costs, and (ii) the Department is uncertain whether the benefits of the project will exceed the project's costs on a net present value basis. |
| Not Useful | The economic analysis (i) does not adequately identify, quantify, monetize, and compare the project's expected benefits and costs or timing of benefits and costs, (ii) provides little basis for concluding that the benefits of the project will exceed the project's costs on a net present value basis, and (iii) demonstrates an unreasonable absence of data and analysis or poor applicant effort to put forth a robust quantification of net benefits. |

A benefit-cost analysis attempts to measure the dollar value of the benefits and the costs to all the members of society (in this context, "society" means all residents of the United States) on a net present value basis. The benefits represent a dollar measure of the extent to which people are made better off by the project—that is, the benefits represent the amount that all the people in the society would jointly be willing to pay to carry out the project, and feel as if they had generated enough benefits to justify the project's costs accounting for the relative timing of those benefits and costs. In some cases, benefits may be difficult to measure in dollar terms. Applicants must at least describe the nature of each of the major types of benefits described in this guidance. To the extent possible, applicants must also quantify each of those types of benefits (e.g., in terms of the number of users making use of a transportation facility). Finally, applicants must attempt to measure those benefits in dollar terms (i.e., "monetize" them). These benefits must then be compared with a dollar measure of the costs of the project. Both benefits and costs must be estimated for each year after work on the project is begun, and these streams of annual benefits and costs must be discounted to the present using an appropriate discount rate, so that a present value of the stream of benefits and a present value of the stream of costs is calculated.

As a starting point for any analysis, applicants should provide a Project Summary describing the project and what it changes. The Project Summary should provide:

- A description of the current infrastructure baseline (e.g., two-lane road).
- A description of what the proposed project is and how it would change the current infrastructure baseline (e.g., extension of a trolley line).
- A general justification for the project and how it affects the long-term outcomes relative to the current baseline.
- A description of who would be the users of the project or what groups of people would benefit from it.
- A description of what types of economic effects the project is expected to have.

If an application contains multiple separate projects, each of which has independent utility, the applicant should provide a separate summary (and analysis) for each project. The summary should also identify the types of societal benefits the project might generate. The applicant should list the types of benefits here and then clearly demonstrate in the analysis how it estimated benefits for each category. The summary should also include the full cost of a project, including Federal, State, local, and private funding, and not simply the requested grant amount or the local amount.

Each application must include in its analysis estimates of the project's expected benefits with respect to each of the five long-term outcomes specified in Section II(A) (Selection Criteria). We recognize that it may in some cases be unclear in which of these categories of outcomes a benefit should be listed. In these cases, it is less important in which category a benefit is listed than to make

[7] E.J. Mishan and Euston Quah, Cost-Benefit Analysis, 5th edition (New York: Routledge, 2007).

sure that the benefit is listed and measured (but only once). Applicants must demonstrate that the proposed project has independent utility as defined in this Notice. It cannot be a component of a larger project such that, if the larger project were not built, this project would have little or no transportation value (or, if it is part of a larger project, the application must demonstrate that funding for the larger project is committed). If the applicant provides a benefit-cost analysis for a larger project, then it must estimate what portion of the benefits and costs of the larger project apply to the smaller project for which funding is being sought. The following sections describe baselines, affected population, discounting, forecasting, costs, and benefit categories in more detail. The Department expects a thorough discussion of these items in the body of the analysis.

*Benefit-Cost Analysis vs. Economic Impact Analysis*

First, it is important to recognize that a benefit-cost analysis is not an economic impact analysis. Applicants are required to provide a benefit-cost analysis in support of their proposed projects. An economic impact analysis is not acceptable.

A benefit-cost analysis attempts to measure the dollar value of the benefits and the costs to all the members of society (in this context, "society" means all residents of the United States). The benefits represent a dollar measure of the extent to which people are made better off by the project—that is, the benefits represent the amount that all the people in the society would jointly be willing to pay to carry out the project, and feel as if they had generated enough benefits to justify the project's costs.

An economic impact analysis, on the other hand, typically focuses on local benefits rather than national benefits. Some of the benefits that are counted in an economic impact analysis, such as diversion of economic activity from one region of the country to another, represent benefits to one part of the country but costs to another part, so they are not benefits from the standpoint of the nation as a whole.

Moreover, economic impact analyses estimate "impacts" rather than "benefits," and the "impacts" are normally much larger than the "benefits." For example, the total payroll of workers on a project is usually considered one of the "impacts" in an economic impact analysis. The total payroll is not a measure of the "benefits" of the project, however, for two reasons. First, a payroll is a cost to whoever pays the employees, at the same time that it is a benefit to the employees, so it is not a net benefit. Second, even for the employees, the employees have to work for their wages, so the amount they are paid is not a net benefit to them—it is a benefit only to the extent that they value their wages more than the cost to them of having to be at work every day.

Economic impact analyses also often treat real estate investments induced by a project as one of the economic "impacts." The full value of such an investment is not a "benefit," however, because the benefit of those investments to the community in which they are made is balanced by the cost of the investment to the investor. Because these investments are a cost as well as a benefit, they are not a net benefit for purposes of a benefit-cost analysis.

There is often an element of benefit in these "impacts." A worker who gets a higher-paying job as a result of a transportation investment project benefits if he or she works just as hard as he or she did at his or her previous job but is paid more. Such projects produce benefits by increasing the productivity of labor. A transportation investment project that increases the value and productivity of land and thus induces real estate investment can also provide a benefit, but the benefit must be measured net of the cost of making the real estate investment. Measuring these labor productivity effects requires a careful analysis of the local labor market and how that market is changed by the transportation investment. Similarly, measuring the effects of transportation projects on the productivity of land requires a careful netting out of increases in land values that are compensated by costs of real estate investment and increases in land values that in effect capitalize other types of benefits that have already been counted, such as time savings.

In summary, applicants must be careful to measure only the net benefits of a project, and should avoid using software packages that are designed to produce economic impact analyses. An application containing only an economic impact analysis does not meet the program's requirements and may be denied an award for that reason.

*Baselines and Alternatives*

Applicants should measure costs and benefits of a proposed project against a baseline (also called a "base case" or a "no build" case). The baseline should be an assessment of the way the world would look if the project did not receive the requested TIGER II Discretionary Grant funding. Usually, it is reasonable to forecast that that baseline world resembles the present state. However, it is important to factor in any projected changes (e.g., baseline economic growth, increased traffic volumes, or completion of already planned and funded projects) that would occur even if the proposed project were not funded. In some cases the proposed project already has a financing plan that would allow it to be built, but that involves a slower construction schedule than would occur if it received TIGER II Discretionary Grant funding. Or it may be likely that, in the absence of TIGER II Discretionary Grant funding, the project would be built later using ordinary funding sources. In these cases, the TIGER II Discretionary Grant funding may accelerate completion of the project, but it does not allow a project to be built that would never otherwise have been built. The benefits and costs in this case should thus be limited to the marginal benefits (and marginal costs) of having the project completed in a shorter period of time and including the cost of expending resources on the project sooner than otherwise planned.

Many projects have multiple parts or multiple phases, only one or two of which would actually receive funding from a TIGER II Discretionary Grant. It is important in these cases that both the costs and the benefits pertain to the same portion of the project. If the part or phase of the project funded by a TIGER Discretionary Grant has independent utility, then the analysis should compare the costs and the benefits of just that part or phase. If the part or phase of the project funded by a TIGER Discretionary Grant does not have independent utility, then the applicant must first demonstrate that funding is committed for the entire project (or for an entire portion of the project, including the TIGER Discretionary Grant-funded portion, that has independent utility). In this case, the applicant should compare the benefits and costs of the entire project (or the entire portion of the project that has independent utility). The applicant must make clear exactly what portions of the project form the basis of the estimates of benefits and costs.

It is incorrect to claim benefits from time savings accruing from a 100-mile highway when the TIGER II Discretionary Grant will only fund 10 miles. Similarly, it would be incorrect to attribute all the benefits from a new port facility to a TIGER II Discretionary Grant when the TIGER Discretionary Grant-grant-funded portion only pays for pavement. In some cases, the applicant may choose to allocate the benefits of the project proportionately to the costs

of the project that would be funded by the TIGER II Discretionary Grant, but this should generally be done only if (1) the TIGER Discretionary Grant funds are commingled with non-TIGER Discretionary Grant funds for a single, non-divisible structure that has independent utility) and (2) the project has sufficient funding in place to be completed as a whole unit. If a project is being funded by multiple Federal, State, and local sources, it would be inappropriate to attribute the full benefit of the project to only one source of funding (such as the local share or the TIGER II Discretionary Grant itself).

All costs and benefits of the project should be evaluated, including benefits and costs that fall outside of the jurisdiction sponsoring the project. It is also important that the applicant assume the continuation of reasonable and sound management practices in establishing a baseline. Assuming a baseline scenario in which the owner of the facility does no maintenance on the facility and ignores traffic problems and maintenance is not realistic and will lead to the overstatement of project benefits.

In addition to the baseline, the applicant should present and consider reasonable alternatives in the analysis. Smaller-scale and more focused projects should be evaluated for comparison purposes. For example, if an applicant is requesting funds to replace a pier, it should also analyze the alternative of rehabilitating the current pier. Similarly, if an applicant seeks funds to establish a relatively large streetcar project, it should also evaluate a more focused project serving only the more densely populated corridors or an area.

*Affected Population*

Applicants should clearly identify the population that the project will affect and measure the number of passengers (for a passenger project) and the amount of freight (for a freight project) affected by the project. If possible, passenger and freight traffic should be measured in passenger-miles and freight ton-miles (and possibly value of freight). If, as is often the case (e.g., projected growth in highway traffic), the forecasted traffic volume is not the same for all years, then the applicant needs to break out the forecasted traffic annually. In some cases, the characteristics of the passenger population or of the freight shipper population may be important (e.g., whether the passengers or shippers are members of a disadvantaged group, or whether the passengers or shippers are spread across a multi-state region. Measures of freight traffic might include growing levels of port calls. In some cases, the relevant population is the volume of traffic that is diverted from one mode to another. Applicants must clearly identify which population will be affected by any particular benefit. For example, the affected population that will enjoy travel time savings may be different from the affected population benefiting from reduced shipping costs. Further, the applicant should be realistic as to how the project affects these populations. For example, improving rail access to a wholesale distribution center near an urban area may take some trucks off the road that had been carrying freight from a truck/rail intermodal yard to the wholesale distribution center. However, it is unrealistic to claim benefits from reduced truck traffic all the way from the shipping origin point hundreds or thousands of miles away to the truck/rail intermodal yard, if that traffic would be likely to be moving by rail already.

*Discounting*

Applicants should discount future benefits and costs to present values using a real discount rate of 7 percent, following guidance provided by OMB in Circulars A–4 and A–94 (*http://www.whitehouse.gov/omb/circulars_default/*). Applicants may also provide an alternative analysis using a real discount rate of 3 percent. The latter approach should be used when the alternative use of funds currently dedicated to the project would be other public expenditures, rather than private investment.

As a first step, applicants should present the year-by-year stream of benefits and costs from the project. Applicants should clearly identify when they expect costs and benefits to occur. The beginning point for the year-by-year stream of benefits should be the first year in which the project will start generating costs or benefits. The ending point should be far enough in the future to encompass all of the significant costs and benefits resulting from the project but not to exceed the usable life of the asset without capital improvement.[8] In presenting these year-by-year streams, applicants should measure them in constant (or "real") dollars prior to discounting. Applicants should not add in the effects of inflation to the estimates of future benefits and costs prior to discounting. Once an applicant has generated the stream of costs and benefits in constant dollars, it should then discount these estimates to arrive at a present value of costs and benefits. The standard formula for the discount factor in any given year is $1/(1 + r)^t$, where "r" is the discount rate and "t" measures the number of years in the future that the costs or benefits will occur. Infrequently, benefits or costs will be the same in constant dollars for all years. In these limited cases, an applicant can calculate the formula for the present value of an ordinary annuity instead of showing a year-by-year calculation.[9]

*Forecasting*

Benefit-cost analyses of transportation projects almost always depend on forecasts of projected levels of usage (road traffic, port calls, etc.). When an applicant is using such forecasts to generate benefit estimates, it must assess the reliability of these forecasts. If the applicant is using outside forecasts, it must provide a citation and an appropriate page number for the forecasts. An applicant should carefully review any outside forecasts for reliability before using them in its analyses. In cases where an applicant is using its own estimates, it should clearly demonstrate in the analysis the methodology it used to forecast affected population (e.g., traffic). The number of individuals who enjoy the benefits of a project will partly determine the net benefits of the project. Consequently, accurate forecasts are essential to conducting a quality benefit-cost analysis. Applicants should incorporate indirect effects into their forecasts

[8] In some cases the application may use a fixed term of years to analyze benefits and costs (e.g., 20 years), even though the applicant knows that the project will last longer than that and continue to have benefits and costs in later years. In these cases, the project will retain a "residual value" at the end of the analysis period. For instance, a new bridge may be expected to have a 100-year life but the analysis period for the benefit-cost analysis might cover only 40 years. In such cases, a residual value can be claimed as a benefit (or cost offset) for the asset at the end of the analysis period. One method to estimate the residual value is to calculate the percentage of the project that will not be depreciated or used up at the end of the analysis period and to multiply this percentage by the original cost of the project. Different components of the project may have different depreciation rates—land typically does not depreciate. The estimated residual value is assigned to the end of the analysis period and should then be discounted to its present value as would any other cost or benefit occurring at that time. Note that a residual value of a project can only be claimed if the project will be kept in operation beyond the end of the analysis period. If the project will be retired at that time, a salvage value (reflecting revenues raised from the decommissioning of the project) can be claimed.

[9] See *http://www.brighthub.com/money/personal-finance/articles/17948.aspx.* For example, 10.594 is the discount factor that would be multiplied by an annual benefit to get the present value of a constant benefit stream over 20 years at a discount rate of seven percent. If the constant annual benefit is $500,000, then the present value of the benefits is $5.297 million. In these limited cases, the applicant must show the calculation of the discount factor of the ordinary annuity formula.

where possible (e.g. induced demand). Applicants should also take great care to match forecasts of affected population to the corresponding year. For example, using projected traffic levels for 2030 to generate benefits for all the earlier years is incorrect. For more information on forecasting, applicants can refer to the forecasting section of FHWA's Economic Analysis Primer (*http://www.fhwa.dot.gov/infrastructure/asstmgmt/primer06.cfm*). While produced for analysis of highway projects, the primer is a good source of information on issues related to all transportation forecasting.

*Costs*

As noted above, the estimate of costs must pertain to the same project as the estimate of benefits. If the TIGER II Discretionary Grant is to pay for only part of the project, but the project is indivisible (i.e., no one part of the project would have independent utility), then the benefits of the whole project should be compared to the costs of the whole project, including costs paid for by State, local, and private partners other than the Federal government. Applicants may not claim that the TIGER II Discretionary Grant "leverages" the financial contributions of other parties, and therefore that all the benefits of the project are attributable to the TIGER II Discretionary Grant, even though the TIGER II Discretionary Grant only pays for part of the project.

The analysis of costs should be equally as rigorous as the analysis of benefits. The lack of a useful analysis of expected project costs may be a basis for denying the award of a TIGER II Discretionary Grant to an applicant. In general, applicants should use a life-cycle cost analysis approach in estimating the costs of the project. The Department expects applicants to include operating, maintenance, and other life-cycle costs of the project, along with capital costs. In addition to construction costs, other direct costs may include design and land acquisition. If the time period considered in the analysis is long enough to require the rehabilitation of the facility during the period of analysis, then the costs of that rehabilitation should be included. External costs, such as noise, increased congestion, and environmental pollutants resulting from the use of the facility or related changes in usage on other facilities in the same network, should be considered as costs in the analysis. Additionally, applicants should include, to the extent possible, costs to users during construction, such as delays and increased vehicle operating costs. The applicant should correctly discount annual costs to arrive at a present value of the project's cost.

*Types of Benefits—Livability*

There are several potential benefits that a project could generate that affect livability. The most important aspect of livability is accessibility to non-single-occupancy vehicle modes of transportation, such as transit, bicycle paths, and sidewalks. Measuring the benefits of increased accessibility should start with a quantitative measure of the increase in accessibility—how many people will have access to these alternative modes who did not have access before? The analysis should go on to estimate how many people are actually likely to use these newly available transportation modes and how much of their existing single-occupancy vehicle travel are those people likely to divert to these alternative modes. Finally, the analysis should attempt to estimate the monetary value that people place on access to these newly available transportation modes. In some cases, monetary values may be estimated based on existing market transactions—e.g., bicycle rentals. In others, differentials in the market values of land or rents between residences and businesses that are already easily accessible (e.g. < 0.5 miles) to these modes and those that are in the same areas but not easily accessible (e.g. > 0.5 miles) can be used as a proxy estimate of the value of this access. In other cases, no objective market values are available, and the applicant should make the best subjective estimate it can of the average value that this accessibility has to those who now have access to these alternative modes.

Transit and bicycle paths may provide greater accessibility to alternative transportation modes, but they will not actually enhance livability unless people actually want to use them, and the desire to use them will depend in part on where these modes go and on the amenities provided with them. An important part of accessibility is making sure not only that people's residences are accessible to these modes, but that the modes connect to workplaces, schools, shopping, and other desired destinations. Assessments of enhanced accessibility should describe where these alternative modes go as well as where they start.

Land use changes are also an important aspect of livability. When people live closer to their workplaces, their schools, and shopping, they will be more likely to use these alternative transportation modes. Transportation changes that encourage more mixed-use land development (where residences are intermixed with workplaces and shopping) will shorten the length of travel and encourage more use of non-highway modes. The analysis should evaluate the extent to which the proposed transportation project will encourage these changes in land use and be coordinated with zoning changes and other public and private investments. Changes in land use that result in shorter travel distances can result in long-term travel time savings, and the quantitative extent of these time savings can be estimated. Values of time can then be used to estimate the monetary value of these time savings. The applicant should propose a subjective estimate of the monetary value of land use changes. Land use changes can also reduce the total cost of transportation for the affected population, so applicants should attempt to measure the effects of the project and associated land use changes on average household transportation expenditures.

In using differentials in property values or rents to measure the value of changes in accessibility, applicants must identify other factors that might have caused property values and/or rents to change and isolate the portion of the change that is attributable to the change in accessibility. Applicants must also be careful to avoid double-counting. If the applicant has already counted reductions in travel time as a benefit, the value of those reductions in travel time may get capitalized in changes in property values or rents, and the applicant must be careful not to count those benefits again as part of the change in property values.

Finally, an important aspect of livability is the availability of transportation to disadvantaged communities, such as low-income people, non-drivers, people with disabilities, and senior citizens. Applicants should assess the extent to which their projects will improve transportation opportunities for members of these disadvantaged communities. While there may not be well-defined methodologies for assigning monetary values to these enhancements to accessibility, applicants should attempt to measure the size of the disadvantaged community affected and make subjective judgments of the monetary values that should be assigned to these improvements.

*Types of Benefits—Economic Competitiveness*

Economic competitiveness benefits might include reduced operating costs due to infrastructure improvements. In

some cases, a project produces economic competitiveness benefits because the existing users of the facility will have lower operating costs after the improvement is completed. In other cases, the economic competitiveness benefits result from modal diversion—users shifting from a higher-cost transportation mode to a lower-cost transportation mode when the quality of service on the lower-cost mode becomes more competitive. In this case, the applicant should demonstrate clearly what the basis is of any estimated modal diversion. In estimating operating cost savings, it is important to avoid double-counting. For example, applicants must not count both the reductions in fuel costs and the overall reductions in operating costs, because fuel costs are part of operating costs.

One particular form of reduced operating costs is travel time savings. Road improvements or other projects whose purpose is to relieve congestion frequently generate travel time savings for travelers and shippers that contribute to economic competitiveness. Where this is the case, applicants should clearly demonstrate how the travel time savings are calculated and should account for induced travel demand to the extent practical or applicable. If travel time savings vary over time, the applicant must clearly show savings by year. Once the applicant generates its estimate of hours saved, it should apply the Department's guidance on the value of time to those estimates (*http://ostpxweb.dot.gov/policy/reports.htm*) to monetize them.

Freight-related projects that improve roads, rails, and ports frequently generate savings to shippers that they pass on to consumers (e.g., fuel savings and other operating cost savings). If applicants are projecting these savings as benefits, they need to carefully demonstrate how the proposed project would generate such benefits. However, savings to freight carriers can not be counted along with savings to shippers that are passed along from the carrier to the shipper.

Applicants should also guard against analysis that double-counts other kinds of benefits. Analysis should distinguish between real benefits and transfer payments. Benefits reflect real resource usage and overall benefits to society, while transfers represent payments by one group to another and do not represent a net increase in societal benefits. Employment or output multipliers that purport to measure secondary effects should not be included as societal benefits because these secondary effects are generally the same (per dollar spent) regardless of what kind of project is funded.

As noted earlier in this Appendix (see *Benefit-Cost Analysis vs. Economic Impact Analysis*), applicants must be extremely cautious about including job creation and economic development benefits as societal benefits in the benefit-cost analysis. In the case of job creation, for example, every job represents both a cost to the employer (paying a wage) and a benefit to the employee (receiving a wage), so it is a transfer payment, rather than a net benefit. However, if a project increases the productivity of labor, then the applicant can count the increased productivity as a benefit. For example, if the project allows workers working at low-productivity jobs to switch to high-productivity jobs, then the increase in their productivity can be counted as a benefit. But the applicant needs to demonstrate rigorously how such productivity benefits are estimated and the exact time period over which the productivity benefits occur. Simply asserting these gains is inadequate.

With respect to economic development, estimates of capital investments or property tax revenues are not legitimate benefits in a benefit-cost analysis. A property tax is a benefit to the tax assessor, but it is a cost to the taxpayer. An applicant can potentially claim an increase in the value of land as a benefit if the transportation project increases the value and productivity of the land. However, the applicant needs to count the increase in the value of the land carefully to avoid double counting and transfer payments. For example, if the property value goes up by the exact same value as the developer's investment, then this is not a benefit. Property value increases over and above the developer's investment may potentially be a benefit from the project. However, if this property value increase is due to improved travel times that the applicant has already included as a benefit then there is no additional benefit here. The analysis should also consider to what extent an increase in land values induced by the project in one area causes a reduction in land values in some other area. Only the net increase in land value can be counted as a benefit.

Applicants must carefully net out any embedded time savings in the property value increase before claiming any benefits. Simply asserting that there is a property tax increase net of time savings is inadequate. The Department expects any applicant claiming these types of benefits to provide a rigorous justification of the benefit that shows how it is derived from the project (rather than from some other non-project investment) and that shows how increases in property values attributable to other benefits (such as travel time savings) have been deducted. Applicants should note that any claimed societal benefit from a property value increase is only a one-time stock benefit. Applicants can not treat it as a stream of benefits accruing annually.

*Types of Benefits—Safety*

Road projects can also improve the safety of transportation. A well-designed project can reduce fatalities and injuries as well as reduce other crash costs, such as hazardous materials releases. The applicant should clearly demonstrate how the project will improve safety. For example, to claim a reduction in fatalities, an applicant must clearly demonstrate how the existence of the project would have prevented the types of fatalities that commonly occur in that area. Applicants should use crash causation factors or similar analyses of causes of crashes to show the extent to which the type of improvements proposed would actually reduce the likelihood of the kinds of crashes that actually had occurred. Alternatively, when only a few cases are involved, the applicant should provide a description of the incidents and demonstrate the linkage between the proposed project and crash reduction. In some cases, safety benefits may occur because of modal diversion from a less safe mode to a more safe mode. When this type of benefit is claimed, the applicant should provide a clear analysis of why the forecasted modal diversion will take place. Once the applicant has established a reasonable count of the incidents that are likely to be prevented by the project, it should apply the Department's guidance on value of life and injuries (*http://ostpxweb.dot.gov/policy/reports.htm*) to monetize them. Sources of information on the social benefits of reducing crash costs are discussed in Chapter VIII of the Final Regulatory Impact Analysis of the National Highway Traffic Safety Administration's rulemaking on Corporate Average Fuel Economy for MY 2011 Passenger Cars and Light Trucks (*http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.d0b5a45b55bfbe582f57529cdba046a0/*). The economic values of various benefits are summarized in Table VIII–5 on page VIII–60.

*Types of Benefits—State of Good Repair*

Many infrastructure projects that improve the state of good repair of transportation infrastructure can reduce long-term maintenance and repair costs.

These benefits are in addition to the benefits of reductions in travel time, shipping costs, and crashes which the applicant should account for separately. Applicants should include these maintenance and repair savings as benefits. Improving state of good repair may also reduce operating costs and congestion by reducing the amount of time that the infrastructure is out of service due to maintenance and repairs, or may prevent a facility (such as a bridge) from being removed from service entirely. In the latter case, the analysis should include a reasonable assessment of the cost that closing the facility would have on system users who would be required to take longer and more circuitous routes, as well as the probability (and likely time in the future) when the bridge would need to be closed. The application should also consider differences in maintenance and repair costs when comparing different project alternatives. For example, an applicant can compare the maintenance costs that would be required after rehabilitating an existing pier with those that would be required after building a new one. As part of the data that go into estimating the benefits of improving the state of good repair, applicants should provide accepted metrics for assessing an asset's current condition. For example, applicants can use Present Serviceability Ratings (PSR) to discuss pavement condition and bridge sufficiency ratings to discuss the condition of a bridge. As discussed in the section on costs, the Department expects applicants to consider the life-cycle costs of the project when making these comparisons.

*Types of Benefits—Sustainability*

Transportation can generate environmental costs in the form of emissions of "criteria pollutants" (e.g., $SO_X$, $NO_X$, and particulates) and from the emission of greenhouse gases, such as carbon dioxide ($CO_2$). Increased traffic congestion results in increased levels of these emissions. Transportation projects that reduce congestion can reduce these emissions and produce societal benefits given reduced idling and otherwise constant vehicle miles travelled. Also, transportation projects that encourage transportation users to shift from more-polluting modes to less-polluting modes can similarly reduce emissions. Applicants claiming these types of benefits must clearly demonstrate and quantify how the project will reduce emissions. Once an applicant has adequately quantified levels of emission reductions, it should estimate the dollar value of these benefits. Sources of information on the social benefits of reducing criteria pollutant emissions are discussed in Chapter VIII of the Final Regulatory Impact Analysis of the National Highway Traffic Safety Administration's rulemaking on Corporate Average Fuel Economy for MY 2011 Passenger Cars and Light Trucks (*http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.d0b5a45b55bfbe582f57529cdba046a0/*).

The Interagency Working Group on Social Cost of Carbon has recently issued its guidance on "Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866" (*http://www1.eere.energy.gov/buildings/appliance_standards/commercial/pdfs/sem_finalrule_appendix15a.pdf*). This guidance lays out a range of values to use for monetizing the social cost of carbon at various years in the future and at various discount rates. Applicants should clearly indicate how and to what degree calculations of benefits in their analyses are based on these assumed values of $CO_2$ emissions reduction.

*Transparency and Reproducibility of Calculations*

Applicants must ensure that the results of their analyses are transparent and easily reproduced. Applicants should clearly set out basic assumptions, methods, and data underlying the analysis and discuss any uncertainties associated with the estimates. Applicants should describe factors that could cause estimates to be incorrect, such as failure of traffic to materialize or actual costs turning out to exceed estimates. Applicants should also explain how likely these events are to occur and what actions that might take to mitigate these risks.

A Department reviewer reading the analysis should be able to understand the basic elements of the analysis and the way in which the applicant derived the estimates. If the application refers the reader to more detailed documentation to explain how the calculations were done, that documentation must go beyond merely providing spreadsheets. It must include a thorough verbal description of how the calculation was done, including references to tabs and cells in the spreadsheet. This verbal description should include specific sources for all the numbers in the spreadsheet that are not calculated from the spreadsheet itself.

If an applicant uses a "pre-packaged" economic model to calculate net benefits, the applicant should provide annual benefits and costs by benefit and cost type for the entire analysis period. In any case, applicants must provide a detailed explanation of the assumptions used to run the model (e.g., peak traffic hours and traffic volume during peak hours, mix of traffic by cars, buses, and trucks, etc.). The applicant must provide enough information so that a Department reviewer can follow the derivation of the estimates and reproduce them if need be.

Ideally, the applicant should be able to summarize all pertinent data and cost and benefit calculations in a single spreadsheet tab (or table in Word). A Department reviewer should be able to understand the calculations of the spreadsheet both from directions in the spreadsheet and any accompanying text. The following provides a simplified example for expository purposes of discounted costs and benefits from a road project providing travel time savings only to local travelers over the course of five years following a one-year period of construction.

| Calendar year | Project year | Affected drivers | Travel time saved (hours) [1] | Total value of time saved ($2008) [2] | Initial costs ($2008) | Operations & maintenance costs ($2008) [3] | Undiscounted net benefits | Discounted at 7% |
|---|---|---|---|---|---|---|---|---|
| 2011 | 1 | | | | $38,500,000 | $6,000,000 | −$44,500,000 | −$41,588,785 |
| 2012 | 2 | 80,000 | 1,040,000 | $14,248,000 | | 700,000 | 13,548,000 | 11,833,348 |
| 2013 | 3 | 95,000 | 1,235,000 | 16,919,500 | | 700,000 | 16,219,500 | 13,239,943 |
| 2014 | 4 | 100,000 | 1,300,000 | 17,810,000 | | 700,000 | 17,110,000 | 13,053,137 |
| 2015 | 5 | 102,000 | 1,326,000 | 18,166,200 | | 700,000 | 17,466,200 | 12,453,159 |
| 2016 | 6 | 109,000 | 1,417,000 | 19,412,900 | | 700,000 | 18,712,900 | 12,469,195 |
| NPV | | | | | | | | 21,459,998 |

[1] Number of drivers times three minutes a day (3/60 hours) over 260 workdays.
[2] Hours at $13.70 per hour ($2008).
[3] Includes costs from delays to users during construction.

Most applicant analyses will be more complicated than this example and will likely include several benefit categories. However, the summary cost and benefit data should be as transparent and as easy to follow and replicate as the example above.

**Appendix B: Additional Information on Applying Through Grants.gov**

Applications (Stage 2) for TIGER II Discretionary Grants must be submitted through Grants.gov. To apply for funding through Grants.gov, applicants must be properly registered. Complete instructions on how to register and apply can be found at *http://www.grants.gov.* If interested parties experience difficulties at any point during registration or application process, please call the Grants.gov Customer Support Hotline at 1–800–518–4726, Monday–Friday from 7 a.m. to 9 p.m. EST.

Registering with Grants.gov is a one-time process; however, processing delays may occur and it can take up to several weeks for first-time registrants to receive confirmation and a user password. It is highly recommended that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application by the deadlines specified. Applications will not be accepted after the relevant due date; delayed registration is not an acceptable reason for extensions. In order to apply for TIGER II Discretionary Grant funding under this announcement and to apply for funding through Grants.gov, all applicants are required to complete the following:

1. *Acquire a DUNS Number.* A DUNS number is required for Grants.gov registration. The Office of Management and Budget requires that all businesses and nonprofit applicants for Federal funds include a DUNS (Data Universal Numbering System) number in their applications for a new award or renewal of an existing award. A DUNS number is a unique nine-digit sequence recognized as the universal standard for identifying and keeping track of entities receiving Federal funds. The identifier is used for tracking purposes and to validate address and point of contact information for Federal assistance applicants, recipients, and sub-recipients. The DUNS number will be used throughout the grant life cycle. Obtaining a DUNS number is a free, one-time activity. Obtain a DUNS number by calling 1–866–705–5711 or by applying online at *http://www.dunandbradstreet.com.*

2. *Acquire or Renew Registration with the Central Contractor Registration (CCR) Database.* All applicants for Federal financial assistance maintain current registrations in the Central Contractor Registration (CCR) database. An applicant must be registered in the CCR to successfully register in Grants.gov. The CCR database is the repository for standard information about Federal financial assistance applicants, recipients, and sub-recipients. Organizations that have previously submitted applications via Grants.gov are already registered with CCR, as it is a requirement for Grants.gov registration. Please note, however, that applicants must update or renew their CCR registration at least once per year to maintain an active status, so it is critical to check registration status well in advance of relevant application deadlines. Information about CCR registration procedures can be accessed at *http://www.ccr.gov.*

3. *Acquire an Authorized Organization Representative (AOR) and a Grants.gov Username and Password.* Complete your AOR profile on Grants.gov and create your username and password. You will need to use your organization's DUNS Number to complete this step. For more information about the registration process, go to *http://www.grants.gov/applicants/get_registered.jsp.*

4. *Acquire Authorization for your AOR from the E-Business Point of Contact (E-Biz POC).* The E-Biz POC at your organization must login to Grants.gov to confirm you as an AOR. Please note that there can be more than one AOR for your organization.

5. *Search for the Funding Opportunity on Grants.gov.* Please use the following identifying information when searching for the TIGER II funding opportunity on Grants.gov. The Catalog of Federal Domestic Assistance (CFDA) number for this solicitation is 20.933, titled Surface Transportation Infrastructure Discretionary Grants for Capital Investments II.

6. *Submit an Application Addressing All of the Requirements Outlined in this Funding Availability Announcement.* Within 24–48 hours after submitting your electronic application, you should receive an email validation message from Grants.gov. The validation message will tell you whether the application has been received and validated or rejected, with an explanation. You are urged to submit your application at least 72 hours prior to the due date of the application to allow time to receive the validation message and to correct any problems that may have caused a rejection notification.

**Note:** When uploading attachments please use generally accepted formats such as .pdf, .doc, and .xls. While you may imbed picture files such as .jpg, .gif, .bmp, in your files, please do not save and submit the attachment in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

**Experiencing Unforeseen Grants.gov Technical Issues**

If you experience unforeseen Grants.gov technical issues beyond your control that prevent you from submitting your application by the deadline, you must contact Robert Mariner at 202–366–8914 or *Robert.Mariner@dot.gov* within 24 hours after the deadline and request approval to submit your application. At that time, DOT staff will require you to email the complete grant application, your DUNS number, and provide a Grants.gov Help Desk tracking number(s). After DOT staff review all of the information submitted as well as contacts the Grants.gov Help Desk to validate the technical issues you reported, DOT staff will contact you to either approve or deny your request to submit a late application. If the technical issues you reported cannot be validated, your application will be rejected as untimely.

To ensure a fair competition for limited discretionary funds, the following conditions are not valid reasons to permit late submissions: (1) Failure to complete the registration process before the deadline date; (2) failure to follow Grants.gov instructions on how to register and apply as posted on its Web site; (3) failure to follow all of the instructions in the funding availability notice; and (4) technical issues experienced with the applicant's computer or information technology (IT) environment.

Issued on: April 21, 2010.

**Ray LaHood,**

*Secretary.*

[FR Doc. 2010–9591 Filed 4–23–10; 8:45 am]

BILLING CODE 4910–9X–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice

announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on September 10, 2009, and comments were due by November 9, 2009. No comments were received.

**DATES:** Comments should be submitted on or before May 26, 2010.

**FOR FURTHER INFORMATION CONTACT:** Dr. Shashi Kumar, U.S. Merchant Marine Academy, Kings Point, NY 11024. Telephone: 516–726–5833; or E-Mail: *kumars@usmma.edu.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* United States Merchant Marine Academy (USMMA) Alumni Survey.

*OMB Control Number:* 2133–NEW.

*Type of Request:* New collection.

*Affected Public:* Graduates of the U.S. Merchant Marine Academy.

*Form Numbers:* KP2–66–DK1, KP2–67–DK2, KP3–68–DK3, KP2–69–ENG1, KP2–70–ENG2, KP2–71–ENG3.

*Abstract:* 46 U.S.C. 51309 authorizes the Academy to confer academic degrees. To maintain the appropriate academic standards, the program must be accredited by the appropriate accreditation body. The survey is part of USMMA's academic accreditation process.

*Annual Estimated Burden Hours:* 250 hours.

*Addresses:* Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

*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 information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

(Authority: 49 CFR 1.66.)

Issued in Washington, DC, on April 6, 2010.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2010–9586 Filed 4–23–10; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration

**[Docket ID Number RITA 2008–0002]**

### Agency Information Collection; Activity Under OMB Review; Airline Service Quality Performance—Part 234

**AGENCY:** Research and Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring large certificated air carriers to file "On-Time Flight Performance Reports" and "Mishandled-Baggage Reports" pursuant to 14 CFR 234.4 and 234.6. These reports are used to monitor the quality of air service that major air carriers are providing the flying public. The Federal Aviation Administration uses the On-Time Flight Performance Reports to identify problem areas within the air traffic control system.

**DATES:** Written comments should be submitted by June 25, 2010.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, Office of Airline Information, RTS–42, Room E36–303, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

*Comments:* Comments should identify the associated OMB approval #2138–0041 and Docket ID Number RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0041, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.* 2138–0041.

*Title:* Airline Service Quality Performance—Part 234.

*Form No.:* BTS Form 234.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated air carriers that account for at least 1 percent of the domestic scheduled passenger revenues.

*Number of Respondents:* 18.

*Number of Responses:* 216.

*Total Burden per Response:* 20 hours.

*Total Annual Burden:* 4,320 hours.

*Needs and Uses:*

**Consumer Information**

Part 234 gives air travelers information concerning their chances of on-time flights and the rate of mishandled baggage by the 18 largest scheduled domestic passenger carriers.

**Reducing and Identifying Traffic Delays**

The Federal Aviation Administration uses part 234 data to pinpoint and analyze air traffic delays. Wheels-up and wheels-down times are used in conjunction with departure and arrival times to show the extent of ground delays. Actual elapsed flight time, wheels-down minus wheels-up time, is compared to scheduled elapsed flight time to identify airborne delays. The reporting of aircraft tail number allows the FAA to track an aircraft through the air network, which enables the FAA to study the ripple effects of delays at hub airports. The data can be analyzed for airport design changes, new equipment purchases, the planning of new runways or airports based on current and projected airport delays, and traffic levels. The identification of the reason for delays allows the FAA, airport operators, and air carriers to pinpoint delays under their control.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

**Anne Suissa,**

*Director, Office of Airline Information.*

[FR Doc. 2010–9556 Filed 4–23–10; 8:45 am]

**BILLING CODE 4910–HY–P**

## DEPARTMENT OF TRANSPORTATION

### Research and Innovative Technology Administration

**[Docket ID Number RITA 2008–0002]**

### Agency Information Collection; Activity Under OMB Review; Report of Passengers Denied Confirmed Space—BTS Form 251

**AGENCY:** Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting reports on the number of passengers holding confirmed reservations that voluntarily or involuntarily give up their seats when the airline oversells the flight. Comments are requested concerning whether (a) The collection is still needed by the Department of Transportation, (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted by June 25, 2010.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, Office of Airline Information, RTS–42, Room E36–303, RITA, BTS, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

*Comments:* Comments should identify the associated OMB approval #2138–0018 and Docket ID Number RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB #2138–0018, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.* 2138–0018.

*Title:* Report of Passengers Denied Confirmed Space.

*Form No:* BTS Form 251.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Large certificated and foreign air carriers.

*Number of Respondents:* 18.

*Number of Responses:* 72.

*Total Annual Burden:* 960 hours.

*Needs and Uses:* BTS Form 251 is a one-page report on the number of passengers denied seats either voluntarily or involuntarily, whether these bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. U.S. air carriers that account for at least 1 percent of domestic scheduled passenger service must report all operations with 30 seat or larger aircraft that depart a U.S. airport. Carriers do not report data from inbound international flights because the protections of 14 CFR part 250 *Oversales* do not apply to these flights. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. While the involuntarily denied-boarding rate has decreased from 4.38 per 10,000 passengers in 1980 to 1.09 for the quarter ended December 2009, the rate is up from the 0.89 attained for the nine month period that ended on September 30, 2005. The publishing of the carriers' individual denied boarding rates has negated the need for more intrusive regulation. The rate of denied boarding can be examined as a continuing fitness factor. This rate provides an insight into a carrier's customer service practices. A rapid sustained increase in the rate of denied boarding may indicate operational difficulties. Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with lower incidences of bumping passengers. This information is available in the *Air Travel Consumer Report* at: *http://airconsumer.ost.dot.gov/reports/index.htm.* The *Air Travel Consumer Report* is also sent to newspapers, magazines, and trade journals. Without Form 251, determining the effectiveness of the Department's oversales rule would be impossible.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

**Anne Suissa,**

*Director, Office of Airline Information.*

[FR Doc. 2010–9557 Filed 4–23–10; 8:45 am]

**BILLING CODE 4910–HY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236, as detailed below.

[Docket Number FRA–2010–0081]

*Applicant:* Mr. D. C. Francis, Canadian National—North America, System Senior Manager S&C Design/Standards, 17641 South Ashland Avenue, Homewood, Illinois 60430.

The Canadian National—North America (CN) seeks temporary relief from § 236.301, where signals shall be provided, relative to CN's EJ&E Griffith Connection project involving the Matteson Subdivision and the South Bend Subdivision. CN has planned construction of a connection at Griffith, Station Sign 36.2, on the Matteson Subdivision to route trains to and from Kirk Yard via the South Bend Subdivision. CN is seeking expedited temporary relief of § 236.301 to allow movements to and from Kirk Yard via the South Bend Subdivision using hand-throw switches within the interlocking on a proposed new connecting track until final construction is complete and the interlocking plant is fully in compliance. Upon completion, the hand-throw switches are to be replaced with power-operated switches. During the temporary installation of the connecting track, train operations will be governed as follows: A speed restriction of 20 mph on all routes over the hand-throw switches on the connecting track; switch circuit controllers on the connecting track, which will open the OST input to the appropriate microprocessor and put all signals to stop when one or both switches are greater than ¼″ from normal to full reverse; a temporary track

circuit will be inserted to cover the trap circuit operation for the diamond on the Matteson Subdivision (North Side); fouling circuits will be effective on the new connection track; and derails will be installed on both ends of the new connecting track. A mandatory directive (GBO) will be issued covering the following: No signals will be given for trains routed over the new connecting track. All trains routed over the new connecting track will be talked by the appropriate Red signal governing movements into the interlocking. Highway-rail crossing starts on the Matteson Subdivision and South Bend Subdivision will be covered by Order.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should be identified by Docket Number FRA–2010–0081 and may be submitted by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic site;
- *Fax:* 202–493–2251;
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590; or
- *Hand Delivery:* Room W12–140 of the U.S. Department of Transportation West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on April 20, 2010.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator, for Safety Standards and Program Development.*

[FR Doc. 2010–9631 Filed 4–23–10; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35087]**

### Canadian National Railway Company and Grand Trunk Corporation—Control—EJ&E West Company [1]

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice.

**SUMMARY:** The Surface Transportation Board will hold a public hearing beginning at 1 p.m. on Wednesday, April 28, 2010, in the Hearing Room on the first floor of the Board's headquarters in Washington, DC. The purpose of the hearing is for Canadian National Railway Company (CN) to explain why CN's submissions to the Board on crossing blockages of 10 minutes or more differ from data automatically reported in its own crossing gates, and why CN did not disclose that it had such information. The meeting will be open for public observation but not public participation.

**DATES:** The meeting will take place on Wednesday, April 28, 2010, beginning at 1 p.m.

**ADDRESS:** The meeting will be held in the Hearing Room on the first floor of the Board's headquarters at Patriot's Plaza, 395 E Street, SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Amy Ziehm, Office of Proceedings, Telephone: (202) 245–0391. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

**SUPPLEMENTARY INFORMATION:** In a decision served December 24, 2008, the Board approved, subject to numerous environmental and other conditions, the acquisition of control by CN of EJ&E West Company, a wholly owned, noncarrier subsidiary of Elgin, Joliet and Eastern Railway Company (EJ&E). *See Canadian Nat'l Ry. & Grand Trunk Corp.—Control—EJ&E W. Co. (Approval Decision),* FD 38057, *et al.* (STB served Dec. 24, 2008). As part of the *Approval Decision,* the Board established a 5-year monitoring and oversight period to allow the Board to examine closely various aspects of the transaction, including community concerns about post-acquisition increased delay and blockages at the numerous highway/rail at-grade crossings (places where rail lines cross streets at the same level, rather than going over or under the streets) on the former EJ&E line. As part of that oversight process, CN must file monthly status reports on certain operational matters related to the acquisition, including "the date and descriptive information about each crossing blocking occurrence on the [former] EJ&E rail line that exceeds 10 minutes in duration." *Id.* at 26. CN also must file quarterly reports on the implementation of the environmental conditions.

CN reported in its November 2009 operational report that 4 street crossing blockages of 10 minutes or more occurred because of stopped CN trains on the former EJ&E line. CN's December 2009 operational report stated that 10 street crossing blockages of 10 minutes or more had occurred as a result of stopped CN trains.

Citizens and communities along the former EJ&E line began to voice concerns about the accuracy and completeness of CN's reports. To investigate, the Board tasked its independent third-party contractor, HDR, Inc. (HDR), to review and audit information provided by CN in its monthly reports for November and December 2009. HDR was specifically instructed to review the information reported by CN on the number of trains operating on the former EJ&E line that caused blockages at highway/rail at-grade crossings for 10 minutes or more.[2]

HDR's independent audit report, prepared at the Board's request, presents

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[1] This decision also embraces *Elgin, Joliet & E. Ry.—Corporate Family Exemption—EJ&E W. Co.,* FD 35087 (Sub-No. 1); *Chi., Cent. & Pac. R.R.—Trackage Rights Exemption—EJ&E W. Co.,* FD 35087 (Sub-No. 2); *Grand Trunk W. R.R.—Trackage Rights Exemption—EJ&E W. Co.,* FD 35087 (Sub-No. 3); *Ill. Cent. R.R.—Trackage Rights Exemption—EJ&E W. Co.,* FD 35087 (Sub-No. 4); *Wis. Cent. Ltd.—Trackage Rights Exemption—EJ&E W. Co.,* FD 35087 (Sub-No. 5); *EJ&E W. Co.—Trackage Rights Exemption—Chi., Cent. & Pac. R.R.,* FD 35087 (Sub-No. 6); and *EJ&E W. Co.—Trackage Rights Exemption—Ill. Cent. R.R.,* FD 35087 (Sub-No. 7).

[2] The audit also involved vehicle delay and traffic congestion at at-grade crossings; train volumes; noise and vibration caused by CN trains; operational accidents; and appropriate public grade crossing signs.

a significantly different story than CN's reports. HDR's report explains that it discovered that many of the highway/rail at-grade crossings on the former EJ&E line acquired by CN are equipped with "Radio Transmission Units," also known as RTUs, which record when crossing gates are down. When the gate down time exceeds 10 minutes, the RTU sends a time-stamped fax to the train dispatcher. When the crossing gate is raised, the RTU sends another fax to the train dispatcher indicating that the gate has been raised, along with the time that the crossing gate has gone up. The total elapsed time is then calculated and archived.

According to HDR's report, the RTU-generated data shows 1,457 instances, involving 85 different crossings on the former EJ&E line, where the crossing signal system was activated and the gates were in the down position for periods exceeding 10 minutes in November/December 2009. The 14 instances of street crossing blockages due to stopped trains in CN's reports for November/December 2009 are included in the RTU-generated data for the same time periods. However, 1,443 street crossing blockages of 10 minutes or more listed in the RTU-generated data are not described in CN's monthly reports.

Consequently, the Board hereby orders CN to appear for a hearing at the Board's offices on April 28, 2010. At that time, the Board expects CN to address why it did not report the existence of this data to the Board earlier as part of its ongoing monitoring responsibilities. HDR representatives also will appear at the hearing to answer Board questions regarding its independent audit that uncovered this RTU data.

The hearing will be open for public observation but not for public participation. The general public is invited to file written comments by May 28, 2010, on HDR's audit and the RTU-data CN will be submitting to the Board.

*Live Video Streaming Available Via the Internet:* A video broadcast of this hearing will be available on the Board's Web site at *http://www.stb.dot.gov,* under "Information Center"/"Webcast"/"Live Video."

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: April 20, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. 2010–9611 Filed 4–23–10; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**TIME AND DATE:** May 20, 2010, 12 noon to 3 p.m., Eastern Standard Time.

**PLACE:** This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in this meeting by telephone.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: April 19, 2010.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 2010–9666 Filed 4–22–10; 11:15 am]

**BILLING CODE 4910–EX–P**

Federal Register

Monday,
April 26, 2010

# Part II

# Regulatory Information Service Center

## Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

## REGULATORY INFORMATION SERVICE CENTER

### Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Regulatory Information Service Center.

**ACTION:** Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions.

**SUMMARY:** The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the **Federal Register** describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Executive Order 12866 ''Regulatory Planning and Review,'' signed September 30, 1993 (58 FR 51735), and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies' agendas, including specific types of information for each entry.

The **Unified Agenda of Federal Regulatory and Deregulatory Actions** (Unified Agenda) helps agencies fulfill these requirements. All Federal regulatory agencies have chosen to publish their regulatory agendas as part of the Unified Agenda.

Editions of the Unified Agenda prior to fall 2007 were printed in their entirety in the **Federal Register**. Beginning with the fall 2007 edition, the Internet is the basic means for conveying Regulatory Agenda information to the maximum extent legally permissible. The complete Unified Agenda for spring 2010, which contains the regulatory agendas for 57 Federal agencies, is available to the public at **http://reginfo.gov**.

The spring 2010 Unified Agenda publication appearing in the **Federal Register** consists of agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

**ADDRESSES:** Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** For further information about specific regulatory actions, please refer to the agency contact listed for each entry.

To provide comment on or to obtain further information about this publication, contact: John C. Thomas, Executive Director, Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405, (202) 482-7340. You may also send comments to us by e-mail at:

RISC@gsa.gov

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## INTRODUCTION TO THE UNIFIED AGENDA OF FEDERAL REGULATORY AND DEREGULATORY ACTIONS

### I. What Is the Unified Agenda?

The Unified Agenda provides information about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983 and has been available online since 1995. To further the objective of using modern technology to deliver better service to the American people for lower cost, beginning with the fall 2007 edition, the Internet is the basic means for conveying Regulatory Agenda information to the maximum extent legally permissible. The complete Unified Agenda is available to the public at **http://reginfo.gov**. The online Unified Agenda offers flexible search tools and will soon offer access to the entire historic Unified Agenda database.

The spring 2010 Unified Agenda publication appearing in the **Federal Register** consists of agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete agenda information for those entries appears, in a uniform format, in the online Unified Agenda at **http://reginfo.gov**.

These publication formats meet the publication mandates of the Regulatory Flexibility Act and Executive Order 12866, as well as move the Agenda process toward the goal of e-Government, at a substantially reduced printing cost compared with prior editions. The current format does not reduce the amount of information available to the public, but it does limit most of the content of the Agenda to online access. The complete online edition of the Unified Agenda includes regulatory agendas from 57 Federal agencies. Agencies of the United States Congress are not included.

The following agencies have no entries identified for inclusion in the printed regulatory flexibility agenda. The regulatory agendas of these agencies are available to the public at **http://reginfo.gov**.

Department of Education

Department of Housing and Urban Development

Department of State

Department of Veterans Affairs

Agency for International Development

Architectural and Transportation Barriers Compliance Board

Commission on Civil Rights

Commodity Futures Trading Commission

Committee for Purchase From People Who Are Blind or Severely Disabled

Consumer Product Safety Commission

Corporation for National and Community Service

Court Services and Offender Supervision Agency for the District of Columbia

Equal Employment Opportunity Commission

Farm Credit Administration

Federal Deposit Insurance Corporation

Federal Energy Regulatory Commission

Federal Housing Finance Agency

Federal Maritime Commission

Federal Mediation and Conciliation Service

Institute of Museum and Library Services

National Aeronautics and Space Administration

National Archives and Records Administration

National Endowment for the Humanities

National Indian Gaming Commission

National Science Foundation

Office of Government Ethics

Office of Management and Budget

Office of Personnel Management

Peace Corps

Pension Benefit Guaranty Corporation

Postal Regulatory Commission

Railroad Retirement Board

Recovery Accountability and Transparency Board

Selective Service System

Social Security Administration

Surface Transportation Board

The Regulatory Information Service Center (the Center) compiles the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of Executive Order 12866. The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

The activities included in the Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may choose to include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. Executive Order 12866 does not require agencies to include regulations concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters.

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. The Unified Agenda does not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.

## II. Why Is the Unified Agenda Published?

The Unified Agenda helps agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

*Regulatory Flexibility Act*

The *Regulatory Flexibility Act* requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610). Executive Order 13272 entitled ''Proper Consideration of Small Entities in Agency Rulemaking,'' signed August 13, 2002 (67 FR 53461), provides additional guidance on compliance with the Act.

*Executive Order 12866*

*Executive Order 12866* entitled ''Regulatory Planning and Review,'' signed September 30, 1993 (58 FR 51735), requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their ''most important significant regulatory actions,'' which appears as part of the fall Unified Agenda. Executive Order 13497, signed January 30, 2009 (74 FR 6113), revoked the amendments to Executive Order 12866 that were contained in Executive Order 13258 and Executive Order 13422.

*Executive Order 13132*

*Executive Order 13132* entitled ''Federalism,'' signed August 4, 1999 (64 FR 43255), directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have ''federalism implications'' as defined in the Order. Under the Order, an agency that is proposing a

regulation with federalism implications, which either preempt State law or impose nonstatutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such a regulation, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

*Unfunded Mandates Reform Act of 1995*

The *Unfunded Mandates Reform Act of 1995* (Pub. L. 104-4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions ''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 . . . in any 1 year . . . .'' The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

*Executive Order 13211*

*Executive Order 13211* entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' signed May 18, 2001 (66 FR 28355), directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for ''those matters identified as significant energy actions.'' As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

*Small Business Regulatory Enforcement Fairness Act*

The *Small Business Regulatory Enforcement Fairness Act* (Pub. L. 104-121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 et seq.), which defers, unless exempted, the effective date of a ''major'' rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is ''major'' if it has resulted, or is likely to result, in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

**III. How Is the Unified Agenda Organized?**

Agency regulatory flexibility agendas are printed in a single daily edition of the **Federal Register**. A regulatory flexibility agenda is printed for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The parts are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Agencies may in turn be divided into subagencies. Each agency's part of the Agenda contains a preamble providing information specific to that agency. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

The online, complete Unified Agenda contains the preambles of all participating agencies. Unlike the printed edition, the online Agenda has no fixed ordering. In the online Agenda, users can select the particular agencies whose agendas they want to see. Users have broad flexibility to specify the characteristics of the entries of interest to them by choosing the desired responses to individual data fields. To see a listing of all of an agency's entries, a user can select the agency without specifying any particular characteristics of entries.

Each entry in the Agenda is associated with one of five rulemaking stages. The rulemaking stages are:

1. *Prerule Stage* — actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. *Proposed Rule Stage* — actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. *Final Rule Stage* — actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.

4. *Long-Term Actions* — items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. *Completed Actions* — actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the Unified Agenda for the first time.

In the printed edition, all entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. The sequence number is used as the reference in the printed table of contents. Sequence numbers are not used in the online Unified Agenda because the unique Regulation Identifier Number (RIN) is able to provide this cross-reference capability.

Editions of the Unified Agenda prior to fall 2007 contained several indexes, which identified entries with various characteristics. These included regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis, actions selected for periodic review under section 610(c) of the Regulatory Flexibility Act, and actions that may have federalism implications as defined in Executive Order 13132

or other effects on levels of government. These indexes are no longer compiled, because users of the online Unified Agenda have the flexibility to search for entries with any combination of desired characteristics. The online edition retains the Unified Agenda's subject index based on the **Federal Register Thesaurus of Indexing Terms**. In addition, online users have the option of searching Agenda text fields for words or phrases.

**IV. What Information Appears for Each Entry?**

All entries in the online Unified Agenda contain uniform data elements including, at a minimum, the following information:

*Title of the Regulation* — a brief description of the subject of the regulation. In the printed edition, the notation ''Section 610 Review'' following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews. In the online edition, these notations appear in a separate field.

*Priority* — an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

(1) Economically Significant

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of $100 million or more or will 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. The definition of an ''economically significant'' rule is similar but not identical to the definition of a ''major'' rule under 5 U.S.C. 801 (Pub. L. 104-121). (See below.)

(2) Other Significant

A rulemaking that is not Economically Significant but is considered Significant by the agency. This category includes rules that the agency anticipates will be reviewed under Executive Order 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

(3) Substantive, Nonsignificant

A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

(4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

(5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

*Major* — whether the rule is ''major'' under 5 U.S.C. 801 (Pub. L. 104-121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

*Unfunded Mandates* — whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate.

*Legal Authority* — the section(s) of the United States Code (U.S.C.) or Public Law (Pub. L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

*CFR Citation* — the section(s) of the Code of Federal Regulations that will be affected by the action.

*Legal Deadline* — whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

*Abstract* — a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

*Timetable* — the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 03/00/11 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is ''To Be Determined.'' ''Next Action Undetermined'' indicates the agency does not know what action it will take next.

*Regulatory Flexibility Analysis Required* — whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

*Small Entities Affected* — the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

*Government Levels Affected* — whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

*International Impacts* — whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to the Nation's international trading partners.

*Federalism* — whether the action has ''federalism implications'' as defined in Executive Order 13132. This term refers to actions ''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.'' Independent regulatory agencies are not required to supply this information.

*Included in the Regulatory Plan* — whether the rulemaking was included in the agency's current regulatory plan published in fall 2009.

*Agency Contact* — the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, e-mail address, and TDD for each agency contact.

Some agencies have provided the following optional information:

*RIN Information URL* — the Internet address of a site that provides more information about the entry.

*Public Comment URL* — the Internet address of a site that will accept public comments on the entry. Alternatively, timely public comments may be submitted at the governmentwide e-rulemaking site, **http://www.regulations.gov**.

*Additional Information* — any information an agency wishes to include that does not have a specific corresponding data element.

*Compliance Cost to the Public* — the estimated gross compliance cost of the action.

*Affected Sectors* — the industrial sectors that the action may most affect, either directly or indirectly. Affected sectors are identified by North American Industry Classification System (NAICS) codes.

*Energy Effects* — an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' signed May 18, 2001 (66 FR 28355).

*Related RINs* — one or more past or current RIN(s) associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

Some agencies that participated in the fall 2009 edition of **The Regulatory Plan** have chosen to include the following information for those entries that appeared in the Plan:

*Statement of Need* — a description of the need for the regulatory action.

*Summary of the Legal Basis* — a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

*Alternatives* — a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of Executive Order 12866.

*Anticipated Costs and Benefits* — a description of preliminary estimates of the anticipated costs and benefits of the action.

*Risks* — a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

**V. Abbreviations**

The following abbreviations appear throughout this publication:

*ANPRM* — An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register**, announcing that an agency is considering a regulatory action. An agency may issue an ANPRM before it develops a detailed proposed rule. An ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

*CFR* — The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the agencies of the Federal Government. The Code is divided into 50 titles, each title covering a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

*EO* — An Executive order is a directive from the President to Executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

*FR* — The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal agencies.

*FY* — The Federal fiscal year runs from October 1 to September 30.

*NPRM* — A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

- a statement of the time, place, and nature of the public rulemaking proceeding;
- a reference to the legal authority under which the rule is proposed; and
- either the terms or substance of the proposed rule or a description of the subjects and issues involved.

*PL (or Pub. L.)* — A public law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 110-4 is the fourth public law of the 110th Congress.

*RFA* — A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

*RIN* — The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Unified Agenda, as directed by Executive Order 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

*Seq. No.* — The sequence number identifies the location of an entry in the printed edition of the Unified Agenda. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers if it appears in different printed editions of the Unified Agenda. Sequence numbers are not used in the online Unified Agenda

*USC* — The United States Code is a consolidation and codification of all general and permanent laws of the United States. The USC is divided into 50 titles, each title covering a broad area of Federal law.

**VI. How Can Users Get Copies of the Agenda?**

Copies of the **Federal Register** issue containing the printed edition of the Unified Agenda (agency regulatory flexibility agendas) are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954. Telephone: (202) 512-1800 or 1-866-512-1800 (toll-free).

Copies of individual agency materials may be available directly from the agency or may be found on the agency's website. Please contact the particular agency for further information.

All editions of **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** since fall 1995 are available in electronic form at **http://reginfo.gov**, along withflexible search tools. During 2010, searchable access to the entire historic Unified Agenda database back to 1983 will be added to the site.

In accordance with regulations for the **Federal Register**, the Government Printing Office's GPO Access website contains copies of the Agendas and Regulatory Plans that have been printed in the **Federal Register**. These documents are available at **http://www.gpoaccess.gov/ua/index.html**.

**Dated:** April 7, 2010.

**John C. Thomas,**

*Executive Director.*

[FR Doc. 2010–9118 Filed 04–23–10;8:45 am]

BILLING CODE 6820–27–S

Federal Register

Monday,
April 26, 2010

# Part III

# Department of Agriculture

## Semiannual Regulatory Agenda

# DEPARTMENT OF AGRICULTURE (USDA)

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Subtitle A, Chs. I-VII, IX-XII, XIV-XVIII, XXI, XXIV-XXIX

### 9 CFR Chs. I-IV

### 36 CFR Ch. II

### 41 CFR Ch. 4

### Semiannual Regulatory Agenda, Spring 2010

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Order 12866 ''Regulatory Planning and Review.''

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication, except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

USDA's complete regulatory agenda is available online at www.reginfo.gov. Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), USDA's printed agenda entries include only:

(1) Rules that are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules identified for periodic review under section 610 of the Regulatory Flexibility Act.

**FOR FURTHER INFORMATION CONTACT:** For further information on any specific entry shown in this agenda, please contact the person listed for that action. For general comments or inquiries about the agenda, please contact Michael Poe, Office of Budget and Program Analysis, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-3275.

**Dated:** March 9, 2010.

**Michael Poe,**

*Chief, Legislative and Regulatory Staff.*

## Agricultural Marketing Service—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 1 | National Organic Program: Dairy Replacement Animals (Livestock) | 0581–AC69 |
| 2 | National Organic Program, Sunset (2011) (Crops and Processing) (TM-07-14) | 0581–AC77 |

## Agricultural Marketing Service—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 3 | National Dairy Promotion and Research Program; Dairy Import Assessments | 0581–AC87 |
| 4 | National Organic Program: Amendments to the National List (Crops, Livestock, and Processing) TM-08-06 | 0581–AC91 |

## Agricultural Marketing Service—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 5 | National Organic Program: Access to Pasture, TM-05-14 | 0581–AC57 |

## Farm Service Agency—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 6 | Emergency Forest Restoration Program | 0560–AH89 |
| 7 | Biomass Crop Assistance Program | 0560–AH92 |
| 8 | Farm Loan Programs Loan Making Activities | 0560–AI03 |
| 9 | Conservation Loan Guarantee Program | 0560–AI04 |

## USDA

### Farm Service Agency—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 10 | Loan Servicing; Farm Loan Programs | 0560–AI05 |

### Animal and Plant Health Inspection Service—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 11 | Animal Welfare: Marine Mammals; Nonconsensus Language and Interactive Programs **(Rulemaking Resulting From a Section 610 Review)** | 0579–AB24 |
| 12 | Animal Welfare; Regulations and Standards for Birds | 0579–AC02 |
| 13 | Bovine Spongiform Encephalopathy; Importation of Bovines and Bovine Products | 0579–AC68 |
| 14 | Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish | 0579–AC74 |
| 15 | Importation of Lemons From Northwest Argentina | 0579–AC79 |
| 16 | Scrapie in Sheep and Goats | 0579–AC92 |
| 17 | Plant Pest Regulations; Update of General Provisions | 0579–AC98 |
| 18 | Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts | 0579–AD10 |

### Animal and Plant Health Inspection Service—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 19 | Importation of Plants for Planting; Establishing a New Category of Plants for Planting Not Authorized for Importation Pending Risk Assessment **(Rulemaking Resulting From a Section 610 Review)** | 0579–AC03 |
| 20 | Citrus Canker; Compensation for Certified Citrus Nursery Stock | 0579–AC05 |
| 21 | Citrus Canker; Quarantine of the State of Florida | 0579–AC07 |
| 22 | Importation of Poultry and Poultry Products From Regions Affected With Highly Pathogenic Avian Influenza | 0579–AC36 |
| 23 | Citrus Greening and Asian Citrus Psyllid; Quarantine and Interstate Movement Regulations | 0579–AC85 |

### Animal and Plant Health Inspection Service—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 24 | Phytosanitary Certificates for Imported Fruits and Vegetables | 0579–AB18 |
| 25 | Phytophthora Ramorum; Quarantine and Regulations | 0579–AB82 |
| 26 | Boll Weevil; Quarantine and Regulations | 0579–AB91 |
| 27 | Minimum Age Requirements for the Transport of Animals | 0579–AC14 |
| 28 | Introduction of Organisms and Products Altered or Produced Through Genetic Engineering | 0579–AC31 |
| 29 | Animal Welfare; Climatic and Environmental Conditions for Transportation of Warm-Blooded Animals Other Than Marine Mammals | 0579–AC41 |
| 30 | Handling of Animals; Contingency Plans | 0579–AC69 |
| 31 | Light Brown Apple Moth Quarantine | 0579–AC71 |
| 32 | Sirex Woodwasp; Quarantine and Regulations | 0579–AC86 |

### Animal and Plant Health Inspection Service—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 33 | Foot-and-Mouth Disease; Payment of Indemnity | 0579–AB34 |
| 34 | Tuberculosis in Cattle; Import Requirements **(Completion of a Section 610 Review)** | 0579–AB44 |
| 35 | Bovine Spongiform Encephalopathy; Minimal-Risk Regions and Importation of Commodities; Unsealing of Means of Conveyance and Transloading of Products | 0579–AB97 |

## USDA

### Animal and Plant Health Inspection Service—Completed Actions (Continued)

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 36 | National Veterinary Accreditation Program **(Completion of a Section 610 Review)** | 0579–AC04 |
| 37 | Agricultural Inspection and AQI User Fees Along the U.S./Canada Border | 0579–AC06 |
| 38 | Tuberculosis in Cattle; Import Requirements for Roping Steers | 0579–AC50 |
| 39 | Importation of Cattle From Mexico; Addition of Port at San Luis, Arizona | 0579–AC63 |
| 40 | Importation of Grapes From Chile Under a Systems Approach | 0579–AC82 |

### Rural Housing Service—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 41 | Guaranteed Single-Family Housing | 0575–AC18 |

### Food Safety and Inspection Service—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 42 | Mandatory Inspection of Catfish and Catfish Products | 0583–AD36 |

### Food Safety and Inspection Service—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 43 | Performance Standards for the Production of Processed Meat and Poultry Products; Control of Listeria Monocytogenes in Ready-To-Eat Meat and Poultry Products | 0583–AC46 |
| 44 | Federal-State Interstate Shipment Cooperative Inspection Program | 0583–AD37 |

### Forest Service—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 45 | Special Areas; State-Specific Inventoried Roadless Area Management: Colorado | 0596–AC74 |

### Office of the Secretary—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 46 | Designation of Biobased Items for Federal Procurement, Round 7 | 0503–AA36 |
| 47 | Designation of Biobased Items for Federal Procurement, Round 8 | 0503–AA39 |
| 48 | Revised Program Guidelines | 0503–AA40 |

### Office of the Secretary—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 49 | Voluntary Labeling Program for Designated Biobased Products | 0503–AA35 |

BILLING CODE 3410–90–S

## Department of Agriculture (USDA) — Proposed Rule Stage

## Agricultural Marketing Service (AMS)

### 1. NATIONAL ORGANIC PROGRAM: DAIRY REPLACEMENT ANIMALS (LIVESTOCK)

**Legal Authority:** 7 USC 6501

**Abstract:** The National Organic Program (NOP) is administered by the Agricultural Marketing Service (AMS). Under the NOP, AMS established national standards for the production and handling of organically produced products. Since implementation of the NOP, some members of the public have advocated for amending the regulations for sourcing dairy replacement animals. They have asserted that the current regulatory language on sourcing dairy replacement animals lacks clarity, has established an inequitable two track system, and has harmed organic dairy producers by creating an environment that has prevented the development of a market for organic dairy replacement animals. They seek amendment to the regulations to require that once a dairy operation has converted to organic production all future animals be organic from the last third of gestation.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |
| Final Action | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Shannon H. Nally, Acting Director, Standards Division, NOP, Department of Agriculture, Agricultural Marketing Service, Room 2646–South Building, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720–3252
Email: shannon.nally@usda.gov

**RIN:** 0581–AC69

### 2. NATIONAL ORGANIC PROGRAM, SUNSET (2011) (CROPS AND PROCESSING) (TM–07–14)

**Legal Authority:** 7 USC 6501

**Abstract:** The Agricultural Marketing Service (AMS) is amending regulations pertaining to the National List of Allowed and Prohibited Substances. As required by the National Organic Foods Production Act of 1990, the allowed use of the 12 synthetic and non-synthetic substances in organic production and handling will expire on September 12, 2011. The AMS published an advance notice of proposed rulemaking to make the public aware of this requirement. AMS believes that public comment is essential in the review process to determine whether these substances should continue to be allowed or prohibited in the production and handling of organic agricultural products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/14/08 | 73 FR 13795 |
| ANPRM Comment Period End | 05/13/08 | |
| NPRM | 10/00/10 | |
| Final Action | 08/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Shannon H. Nally, Acting Director, Standards Division, NOP, Department of Agriculture, Agricultural Marketing Service, Room 2646–South Building, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720–3252
Email: shannon.nally@usda.gov

**RIN:** 0581–AC77

## Department of Agriculture (USDA) — Final Rule Stage

## Agricultural Marketing Service (AMS)

### 3. NATIONAL DAIRY PROMOTION AND RESEARCH PROGRAM; DAIRY IMPORT ASSESSMENTS

**Legal Authority:** 7 USC 4501 to 4514; 7 USC 7401

**Abstract:** The Dairy Act authorizes the Order for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products and to reduce milk surpluses. The program functions to strengthen the dairy industry's position in the marketplace by maintaining and expanding domestic and foreign consumption of fluid milk and dairy products. Amendments to the Order are pursuant to the 2002 and 2008 Farm Bills. The 2002 Farm Bill mandates that the Order be amended to implement an assessment on imported dairy products to fund promotion and research. The 2008 Farm Bill specifies a mandatory assessment rate of 7.5-cent per hundredweight of milk, or equivalent thereof, on dairy products imported into the United States. Additionally, in accordance with the 2008 Farm Bill, the term ''United States'' is the Dairy Act is amended to mean all States, the District of Columbia, and the Commonwealth of Puerto Rico. Producers in these areas will be assessed 15 cents per hundredweight for all milk produced and marketed.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/19/09 | 74 FR 23359 |
| NPRM Comment Period End | 06/18/09 | |
| Final Action | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Whitney Rick, Promotion and Research Branch Chief, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–6909
Fax: 202 720–0285
Email: whitney.rick@usda.gov

**RIN:** 0581–AC87

### 4. NATIONAL ORGANIC PROGRAM: AMENDMENTS TO THE NATIONAL LIST (CROPS, LIVESTOCK, AND PROCESSING) TM–08–06

**Legal Authority:** 7 USC 6517 and 6518

**Abstract:** The Agricultural Marketing Service is amending the National List of Allowed and Prohibited Substances contained in the National Organic Program regulations. This rule would add six new substances and remove one from the list.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/03/09 | 74 FR 26591 |
| NPRM Comment Period End | 08/03/09 | |
| Final Action | 06/00/10 | |

## USDA—AMS

## Final Rule Stage

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Shannon H. Nally, Acting Director, Standards Division, NOP, Department of Agriculture, Agricultural Marketing Service, Room 2646–South Building, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720–3252
Email: shannon.nally@usda.gov

**RIN:** 0581–AC91

## Department of Agriculture (USDA)
## Agricultural Marketing Service (AMS)

## Completed Actions

### 5. NATIONAL ORGANIC PROGRAM: ACCESS TO PASTURE, TM–05–14

**Legal Authority:** 7 USC 6501 et seq

**Abstract:** The National Organic Program (NOP) is administered by the Agricultural Marketing Service (AMS). Under the NOP, AMS established national standards for the production and handling of organically produced agricultural products. Since implementation of the NOP, some members of the public have advocated for a more explicit regulatory standard on the relationship between livestock, particularly dairy animals, and grazing land. They have asserted the current regulatory language on access to pasture for ruminants and temporary confinement based on an animal's stage of production, when applied together, do not provide a uniform requirement for the pasturing of ruminant animals that meet the principles underlying an organic management system for livestock and livestock products that consumers expect. Comments received as a result of the proposed rule will assist in determining the Agency's next steps in rulemaking on this issue.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Final Action: Comments Requested | 02/17/10 | 75 FR 7154 |
| Comments Due | 04/19/10 | 75 FR 7154 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Shannon H. Nally
Phone: 202 720–3252
Email: shannon.nally@usda.gov

**RIN:** 0581–AC57

BILLING CODE 3410—02—S

## Department of Agriculture (USDA)
## Farm Service Agency (FSA)

## Proposed Rule Stage

### 6. EMERGENCY FOREST RESTORATION PROGRAM

**Legal Authority:** PL 110–246

**Abstract:** We are adding a new subpart to the regulations in 7 CFR part 701 to implement the Emergency Forest Restoration Program (EFRP), which was authorized by the 2008 Farm Bill. EFRP will provide cost-share funding to owners of nonindustrial private forest land to restore the land after the land is damaged by a natural disaster. The damaged land must have had a tree cover immediately before the natural disaster. The 2008 Farm Bill authorized such funds as may be necessary to be appropriated to carry out this program; the appropriated amounts are to remain available until expended.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

**RIN:** 0560–AH89

### 7. BIOMASS CROP ASSISTANCE PROGRAM

**Legal Authority:** PL 110–246

**Abstract:** We are adding a new regulation to implement the Biomass Crop Assistance Program (BCAP) as required by the 2008 Farm Bill. We will collaborate with USDA/Rural Development (RD), private industry and agricultural and forest land owners to support the evaluation and selection of BCAP project areas. BCAP project areas must include a commitment to use local production; evidence of sufficient equity (if the facility is not operational at the time of proposal); anticipated economic impacts; opportunities for local ownership; the participation rate by beginning and socially disadvantaged farmers and ranchers; the impact on soil, water, and related resources; and the variety in biomass production approaches. FSA will partner with RD, which has capability and responsibility, including the potential for providing funding for proposed biomass conversion facility, regarding BCAP project area evaluation and selection. After BCAP project area selection, FSA, acting on behalf of the Commodity Credit Corporation (CCC), may enter into contracts with BCAP project area producers for a term of up to 5 years for annual and perennial crops, and up to 15 years for woody biomass.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice | 10/01/08 | 73 FR 57047 |
| Notice–EIS | 05/13/09 | |
| Notice Comment Period End | 06/12/09 | |
| Notice–NOFA | 06/11/09 | 74 FR 27767 |
| Notice Comment Period End | 08/10/09 | |
| Notice–EIS | 08/10/09 | 74 FR 39915 |
| Notice Comment Period End | 09/24/09 | |
| NPRM | 02/08/10 | 75 FR 6264 |
| NPRM Comment Period End | 04/09/10 | |
| Final Rule | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm

Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

**RIN:** 0560–AH92

## 8. FARM LOAN PROGRAMS LOAN MAKING ACTIVITIES

**Legal Authority:** PL 110–246

**Abstract:** The rule will implement the provisions of the 2008 Farm Bill that affect Farm Loan Programs (FLP) Loan Making Division (LMD); there is discretion involved in the implementation. The sections being implemented are: 5001, Direct Loans; 5005, Beginning Farmer or Rancher and Socially Disadvantaged Farmer or Rancher Contract Land Sales Program Down Payment Loan Program; 5101, Farming Experience as an Eligibility Requirement; 5201, Eligibility of Equine Farmers and Ranchers for Emergency Loans; 5301, Beginning Farmer and Rancher Individual Development Accounts Pilot Program; and 5501, Loans to Purchase Highly Fractionated Land.

A Beginning Farmer and Rancher Individual Development Accounts five-year pilot program will be established in at least 15 States. The program entails FSA making grants to qualified nonprofit organizations who then deliver the program to eligible participants. Grantees must match 50 percent of the grant received. Under the program, qualified, low-income beginning farmers or prospective beginning farmers would establish saving accounts with a monthly deposit plan administered by the grantees. The program funds must match the participants' deposits at a minimum of 100 percent and a maximum of 200 percent. Participants must use the savings account funds toward the purchase of farmland, livestock, or similar farm start-up/operating expenses. The program must be operated by and in conjunction with FSA farm loan programs. The initial applications for the program must be approved no more than one year after the law is enacted. The program is not mandatory; an appropriation of up to $5 million annually is authorized to fund the program.

Individual tribal members will be allowed to qualify for Indian Land Acquisition loans.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |
| NPRM Comment Period End | 06/00/10 | |
| Final Rule | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

**RIN:** 0560–AI03

## 9. CONSERVATION LOAN GUARANTEE PROGRAM

**Legal Authority:** PL 110–246

**Abstract:** The rule will implement the provisions of the 2008 Farm Bill that affect Farm Loan Programs (FLP) Loan Making Division (LMD); there is discretion in how several of the provisions are implemented. The section being implemented is 5002, Conservation Loan and Loan Guarantee. Implementation of this provision will create a new direct and guaranteed loan program directed at assisting farmers in implementing conservation practices.

The rule establishes a new loan and loan guarantee program to finance qualifying conservation projects. All guarantees will be at 75 percent of the loan amount. The applicant must have an acceptable conservation plan that includes the project(s) to be financed. Preference is given to beginning farmer and socially disadvantaged applicants, conversion to sustainable or organic production practices, and compliance with highly erodible land conservation requirements. Eligibility for the program is not restricted to those who cannot get credit elsewhere. The program is not mandatory; appropriations are authorized.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |
| NPRM Comment Period End | 06/00/10 | |
| Final Rule | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

**RIN:** 0560–AI04

# Department of Agriculture (USDA)
# Farm Service Agency (FSA)

Final Rule Stage

## 10. LOAN SERVICING; FARM LOAN PROGRAMS

**Legal Authority:** PL 110–246

**Abstract:** The 2008 Farm Bill requires several changes to the Farm Service Agency (FSA) Farm Loan Program (FLP) loan servicing regulations. An overall plan will be established to insure that borrowers can be transitioned to private credit in the shortest timeframe practicable. At present, FSA monitors the status of all borrowers to determine if graduation is possible. The 2008 Farm Bill emphasizes this responsibility and insures that FSA uses all the tools available to graduate borrowers to commercial credit as soon as they can financially do so. In 2007, over 2,500 direct borrowers (about 3.7 percent of the portfolio) graduated to commercial credit. FSA believes graduation will continue in the 3 to 5 percent range and is dependant on the overall farm economy.

The right of an FSA borrower-owner to purchase leased property under Homestead Protection will be extended beyond the borrower-owner to the immediate family. Currently, FSA only has 38 properties in Homestead Protection.

## USDA—FSA

## Final Rule Stage

Acceleration and foreclosure will be suspended on borrowers who file a claim of program discrimination against the Department or have a claim pending. Interest accrual and offset will also be suspended during the time of the moratorium. If the borrower does not prevail in the claim, the interest, which would have accrued during the moratorium, will be due and offset on the account will be reestablished.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/07/09 | 74 FR 39565 |
| NPRM Comment Period End | 10/06/09 | |
| Final Rule | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Deirdre Holder, Director, Regulatory Review Group, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Washington, DC 20250–0572
Phone: 202 205–5851
Fax: 202 720–5233
Email: deirdre.holder@wdc.usda.gov

**RIN:** 0560–AI05

BILLING CODE 3410—05—S

## Department of Agriculture (USDA)
## Animal and Plant Health Inspection Service (APHIS)

## Proposed Rule Stage

### 11. ANIMAL WELFARE: MARINE MAMMALS; NONCONSENSUS LANGUAGE AND INTERACTIVE PROGRAMS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

**Legal Authority:** 7 USC 2131 to 2159

**Abstract:** The U.S. Department of Agriculture regulates the humane handling, care, treatment, and transportation of certain marine mammals under the Animal Welfare Act. The present standards for these animals have been in effect since 1979 and amended in 1984. During this time, advances have been made and new information has been developed with regard to the housing and care of marine mammals. This rulemaking addresses marine mammal standards on which consensus was not reached during negotiated rulemaking conducted between September 1995 and July 1996. These include standards affecting variances, indoor facilities, outdoor facilities, space requirements, and water quality, as well as swim-with-the-dolphin programs. These actions appear necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 05/30/02 | 67 FR 37731 |
| ANPRM Comment Period End | 07/29/02 | |
| NPRM | 06/00/10 | |
| NPRM Comment Period End | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 84, Riverdale, MD 20737–1234
Phone: 301 734–7833

**RIN:** 0579–AB24

### 12. ANIMAL WELFARE; REGULATIONS AND STANDARDS FOR BIRDS

**Legal Authority:** 7 USC 2131 to 2159

**Abstract:** APHIS intends to establish standards for the humane handling, care, treatment, and transportation of birds other than birds bred for use in research.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |
| NPRM Comment Period End | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Gerald Rushin, Veterinary Medical Officer, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 84, Riverdale, MD 20737–1234
Phone: 301 734–0954

**RIN:** 0579–AC02

### 13. BOVINE SPONGIFORM ENCEPHALOPATHY; IMPORTATION OF BOVINES AND BOVINE PRODUCTS

**Legal Authority:** 7 USC 450; 7 USC 1622; 7 USC 7701 to 7772; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

**Abstract:** This rulemaking would amend the regulations regarding the importation of bovines and bovine products. Under this rulemaking, countries would be classified as either negligible risk, controlled risk, or undetermined risk for bovine spongiform encephalopathy (BSE). Some commodities would be allowed importation into the United States regardless of the BSE classification of the country of export. Other commodities would be subject to importation restrictions or prohibitions based on the type of commodity and the BSE classification of the country. The criteria for country classification and commodity import would be closely aligned with those of the World Organization for Animal Health.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |
| NPRM Comment Period End | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Christopher Robinson, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 40, Riverdale, MD 20737–1231
Phone: 301 734–7837

**RIN:** 0579–AC68

### 14. VIRAL HEMORRHAGIC SEPTICEMIA; INTERSTATE MOVEMENT AND IMPORT RESTRICTIONS ON CERTAIN LIVE FISH

**Legal Authority:** 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

**Abstract:** We are establishing regulations to restrict the interstate movement and importation into the United States of live fish that are susceptible to viral hemorrhagic septicemia, a highly contagious disease of certain fresh and saltwater fish. Viral hemorrhagic septicemia has been detected in freshwater fish in several of the Great Lakes and related tributaries. The disease has been responsible for several large-scale die-offs of wild fish in the Great Lakes region. This action is necessary to prevent further introductions into, and dissemination within, the United States of viral hemorrhagic septicemia. This proposed rule replaces a previously published but not effective interim rule that contained substantially different restrictions on the interstate movement and importation of VHS-susceptible live fish.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/09/08 | 73 FR 52173 |
| Interim Final Rule Comment Period End | 11/10/08 | |
| Interim Final Rule: Delay of Effective Date | 10/28/08 | 73 FR 63867 |
| Interim Final Rule Effective | 01/09/09 | |
| Interim Final Rule: Delay of Effective Date | 01/02/09 | 74 FR 1 |
| NPRM | 07/00/10 | |
| NPRM Comment Period End | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** P. Gary Egrie, Senior Staff Veterinary Medical Officer, National Center for Animal Health Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 46, Riverdale, MD 20737–1231
Phone: 301 734–6188

Peter Merrill, Senior Staff Veterinarian, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737–1231
Phone: 301 734–8364

**RIN:** 0579–AC74

### 15. IMPORTATION OF LEMONS FROM NORTHWEST ARGENTINA

**Legal Authority:** 7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

**Abstract:** This rulemaking would amend the fruits and vegetables regulations to allow the importation of lemons from northwest Argentina into the continental United States. Lemons from northwest Argentina would be required to be imported in commercial consignments, produced and packed under specified conditions, treated with a surface disinfectant and inspected for quarantine pests before shipping, and accompanied by a phytosanitary certificate. This action would allow for the importation of lemons from northwest Argentina into the United States while continuing to provide protection against the introduction of quarantine pests.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |
| NPRM Comment Period End | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Meredith Jones, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 133, Riverdale, MD 20737–1231
Phone: 301 734–7467

**RIN:** 0579–AC79

### 16. SCRAPIE IN SHEEP AND GOATS

**Legal Authority:** 7 USC 8301 to 8317

**Abstract:** This rulemaking would amend the scrapie regulations by changing the risk groups and categories established for individual animals and for flocks, increasing the use of genetic testing as a means of assigning risk levels to animals, reducing movement restrictions for animals found to be genetically less susceptible or resistant to scrapie, and simplifying, reducing, or removing certain recordkeeping requirements. This action would provide designated scrapie epidemiologists with more alternatives and flexibility when testing animals in order to determine flock designations under the regulations. It would change the definition of high-risk animal, which will change the types of animals eligible for indemnity, and to pay higher indemnity for certain pregnant ewes and early maturing ewes. It would also make the identification and recordkeeping requirements for goat owners consistent with those for sheep owners. These changes would affect sheep and goat producers and State governments.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |
| NPRM Comment Period End | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Diane Sutton, National Scrapie Program Coordinator, Ruminant Health Programs, NCAHP, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 43, Riverdale, MD 20737–1235
Phone: 301 734–6954

**RIN:** 0579–AC92

### 17. PLANT PEST REGULATIONS; UPDATE OF GENERAL PROVISIONS

**Legal Authority:** 7 USC 450; 7 USC 2260; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8817; 19 USC 136; 21 USC 111; 21 USC 114a; 21 USC 136 and 136a; 31 USC 9701; 42 USC 4331 to 4332

**Abstract:** We are proposing to revise our regulations regarding the movement of plant pests. We are proposing to regulate the movement of not only plant pests, but also biological control organisms and associated articles. We are proposing risk-based criteria regarding the movement of biological control organisms, and are proposing to exempt certain types of plant pests from permitting requirements for their interstate movement and movement for environmental release. We are also proposing to revise our regulations regarding the movement of soil, and to establish regulations governing the biocontainment facilities in which plant pests, biological control organisms, and associated articles are held. This proposed rule replaces a

previously published proposed rule, which we are withdrawing as part of this document. This proposal would clarify the factors that would be considered when assessing the risks associated with the movement of certain organisms, facilitate the movement of regulated organisms and articles in a manner that also protects U.S. agriculture, and address gaps in the current regulations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent to Prepare an Environmental Impact Statement | 10/20/09 | 74 FR 53673 |
| Notice Comment Period End | 11/19/09 | |
| NPRM | 04/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Shirley Wager–Page, Chief, Pest Permitting Branch, Plant Health Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 131, Riverdale, MD 20737–1236
Phone: 301 734–8453

**RIN:** 0579–AC98

### 18. • BOVINE SPONGIFORM ENCEPHALOPATHY AND SCRAPIE; IMPORTATION OF SMALL RUMINANTS AND THEIR GERMPLASM, PRODUCTS, AND BYPRODUCTS

**Legal Authority:** 7 USC 450; 7 USC 1622; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

**Abstract:** This rulemaking would amend the bovine spongiform encephalopathy (BSE) and scrapie regulations regarding the importation of live sheep, goats, and wild ruminants and their embryos, semen, products, and byproducts. Some countries from which such imports would be allowed under this rule are currently those from which the importation of live sheep, goats, wild ruminants, their embryos, and ruminant products and byproducts are prohibited under existing BSE regulations. Some products would be allowed importation without restriction due to the inherent lack of BSE risk regarding the product. Certain other products and live animals would be allowed importation if it can be certified that the live animals or the animals from which the products were derived were born after implementation of an effective feed ban. The proposed scrapie revisions regarding the importation of sheep, goats, and susceptible wild ruminants for other than immediate slaughter are similar to those recommended by the World Organization for Animal Health in restricting the importation of such animals to those from scrapie-free regions or certified scrapie-free flocks.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/10 | |
| NPRM Comment Period End | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Betzaida Lopez, Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737–1231
Phone: 301 734–5677

**RIN:** 0579–AD10

## Department of Agriculture (USDA) — Final Rule Stage
## Animal and Plant Health Inspection Service (APHIS)

### 19. IMPORTATION OF PLANTS FOR PLANTING; ESTABLISHING A NEW CATEGORY OF PLANTS FOR PLANTING NOT AUTHORIZED FOR IMPORTATION PENDING RISK ASSESSMENT (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

**Legal Authority:** 7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

**Abstract:** This action would establish a new category in the regulations governing the importation of nursery stock, also known as plants for planting. This category would list taxa of plants for planting whose importation is not authorized pending risk assessment. We would allow foreign governments to request that a pest risk assessment be conducted for a taxon whose importation is not authorized pending risk evaluation. After the pest risk assessment was completed, we would conduct rulemaking to remove the taxon from the proposed category if determined appropriate by the risk assessment. We are also proposing to expand the scope of the plants regulated in the plants for planting regulations to include non-vascular plants. These changes would allow us to react more quickly to evidence that a taxon of plants for planting may pose a pest risk while ensuring that our actions are based on scientific evidence.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/23/09 | 74 FR 36403 |
| NPRM Comment Period End | 10/21/09 | |
| Final Rule | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Arnold T. Tschanz, Senior Risk Manager, Commodity Import Analysis and Operations, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 133, Riverdale, MD 20737–1231
Phone: 301 734–5306

**RIN:** 0579–AC03

### 20. CITRUS CANKER; COMPENSATION FOR CERTIFIED CITRUS NURSERY STOCK

**Legal Authority:** 7 USC 7701 to 7772; 7 USC 7781 to 7786

**Abstract:** This action follows a rulemaking that established provisions under which eligible commercial citrus nurseries may, subject to the availability of appropriated funds, receive payments for certified citrus nursery stock destroyed to eradicate or control citrus canker. The payment of these funds is necessary in order to reduce the economic effects on affected commercial citrus nurseries that have had certified citrus nursery stock destroyed to control citrus canker.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/08/06 | 71 FR 33168 |
| Interim Final Rule Effective | 06/08/06 | |
| Interim Final Rule Comment Period End | 08/07/06 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 137, Riverdale, MD 20737–1231
Phone: 301 734–4387

**RIN:** 0579–AC05

## 21. CITRUS CANKER; QUARANTINE OF THE STATE OF FLORIDA

**Legal Authority:** 7 USC 7701 to 7772; 7 USC 7781 to 7786

**Abstract:** This action follows an interim rule that amended the citrus canker regulations to list the entire State of Florida as a quarantined area for citrus canker and amended the requirements for the movement of regulated articles from Florida now that the eradication of citrus canker in Florida is no longer being carried out as an objective. It also amended the regulations to allow regulated articles that would not otherwise be eligible for interstate movement to be moved to a port for immediate export. These changes were necessary in light of the Department's determination that the established eradication program was no longer a scientifically feasible option to address citrus canker.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 08/01/06 | 71 FR 43345 |
| Interim Final Rule Effective | 08/01/06 | |
| Interim Final Rule Comment Period End | 10/02/06 | |
| Technical Amendment | 01/12/07 | 72 FR 1415 |
| Final Action | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stephen Poe, Senior Operations Officer, Emergency and Domestic Programs, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 137, Riverdale, MD 20737–1231
Phone: 301 734–4387

**RIN:** 0579–AC07

## 22. IMPORTATION OF POULTRY AND POULTRY PRODUCTS FROM REGIONS AFFECTED WITH HIGHLY PATHOGENIC AVIAN INFLUENZA

**Legal Authority:** 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a

**Abstract:** This rulemaking will amend the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of birds, poultry, and bird and poultry products from regions that have reported the presence in commercial birds or poultry of highly pathogenic avian influenza other than subtype H5N1. This action will supplement existing prohibitions and restrictions on articles from regions that have reported the presence of exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1. The new restrictions will be almost identical to those imposed on articles from regions with exotic Newcastle disease.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 04/00/10 | |
| Interim Final Rule Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Julia Punderson, Senior Staff Veterinarian, NCIE, Animal Health Policy and Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, MD 20737
Phone: 301 734–4356

**RIN:** 0579–AC36

## 23. CITRUS GREENING AND ASIAN CITRUS PSYLLID; QUARANTINE AND INTERSTATE MOVEMENT REGULATIONS

**Legal Authority:** 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

**Abstract:** This rulemaking will establish regulations that designate the States of Florida and Georgia, Puerto Rico, two parishes in Louisiana, and two counties in South Carolina as quarantined areas for citrus greening and Alabama, Florida, Guam, Hawaii, Puerto Rico, Louisiana, Mississippi, Texas, three counties in South Carolina, portions of one county in Arizona, and all of three and portions of an additional three counties in California as quarantined areas for Asian citrus psyllid, a vector of a bacterium that causes citrus greening. It also establishes restrictions on the interstate movement of regulated articles from the quarantined areas, as well as treatments under which Asian Citrus psyllid host material may be moved interstate from a quarantined area. These actions follow the discovery of citrus greening and/or Asian citrus psyllid in the quarantined areas, and are necessary in order to prevent the spread of the disease and its vector to noninfested areas of the United States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Availability of an Environmental Assessment | 09/09/09 | 74 FR 46409 |
| Environmental Assessment Comment Period End | 11/09/09 | |
| Interim Final Rule | 04/00/10 | |
| Interim Final Rule Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patrick J. Gomes, National Project Coordinator, Citrus Health Response Program, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606–5213
Phone: 919 855–7313

**RIN:** 0579–AC85

## Department of Agriculture (USDA) — Long-Term Actions

## Animal and Plant Health Inspection Service (APHIS)

### 24. PHYTOSANITARY CERTIFICATES FOR IMPORTED FRUITS AND VEGETABLES

**Legal Authority:** 7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

**Abstract:** Currently APHIS does not require a phytosanitary certificate to accompany fruits and vegetables imported into the United States except for certain fruits and vegetables grown in designated foreign regions. This rule will require that a phytosanitary certificate accompany noncommercial consignments of fresh fruits and vegetables imported into the United States by air passengers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/29/01 | 66 FR 45637 |
| NPRM Comment Period End | 10/29/01 | |
| NPRM; Availability of Risk Assessment | 05/24/06 | 71 FR 29846 |
| NPRM; Availability of Risk Assessment Comment Period End | 07/24/06 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Evelia Sosa
Phone: 301 734–8295

**RIN:** 0579–AB18

### 25. PHYTOPHTHORA RAMORUM; QUARANTINE AND REGULATIONS

**Legal Authority:** 7 USC 7701 to 7772; 7 USC 7781 to 7786

**Abstract:** This action will amend the Phytophthora ramorum regulations to make the regulations consistent with a Federal Order issued by APHIS in December 2004 that established restrictions on the interstate movement of nursery stock from nurseries in nonquarantined counties in California, Oregon, and Washington. This action will also update conditions for the movement of regulated articles of nursery stock from quarantined areas, as well as restrict the interstate movement of all other nursery stock from nurseries in quarantined areas. We are also updating the list of plants regulated because of P. ramorum and the list of areas that are quarantined for P. ramorum and making other miscellaneous revisions to the regulations. These actions are necessary to prevent the spread of P. ramorum to noninfested areas of the United States. We will continue to update the regulations through additional rulemakings as new scientific information on this pathogen becomes available.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 02/27/07 | 72 FR 8585 |
| Interim Final Rule Effective | 02/27/07 | |
| Interim Final Rule Comment Period End | 04/30/07 | |
| Final Action | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Prakash Hebbar
Phone: 301 734–5717

**RIN:** 0579–AB82

### 26. BOLL WEEVIL; QUARANTINE AND REGULATIONS

**Legal Authority:** 7 USC 7701 to 7772; 7 USC 7781 to 7786

**Abstract:** This action would establish domestic boll weevil regulations that would restrict the interstate movement of regulated articles within regulated areas and from regulated areas into or through nonregulated areas in commercial cotton-producing States. The regulations would help prevent the artificial spread of boll weevil into noninfested areas of the United States and the reinfestation of areas from which the boll weevil has been eradicated.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/31/06 | 71 FR 63707 |
| NPRM Comment Period End | 01/02/07 | |
| NPRM Comment Period Extended | 12/20/06 | 71 FR 76224 |
| NPRM Comment Period End | 02/01/07 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** William Grefenstette
Phone: 301 734–8676

**RIN:** 0579–AB91

### 27. MINIMUM AGE REQUIREMENTS FOR THE TRANSPORT OF ANIMALS

**Legal Authority:** 7 USC 2131 to 2159

**Abstract:** This rulemaking would amend the Animal Welfare Act regulations by adding minimum age and weaning requirements for the transport in commerce of animals. The regulations currently contain such requirements for dogs and cats, but no corresponding ones for other regulated animals, despite the risks associated with the early transport of these species. The rule would also provide an exemption to allow animals to be transported without their mothers for medical treatment and for scientific research before reaching the minimum age and weaning requirement, provided certain conditions are met. Establishing minimum age requirements for the transport of animals and providing for the transport of animals that have not met the minimum age requirements are necessary to help ensure the humane treatment of these animals.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/09/08 | 73 FR 26344 |
| NPRM Comment Period End | 07/08/08 | |
| NPRM Comment Period Reopened | 07/31/08 | 73 FR 44671 |
| NPRM Comment Period Extended | 09/02/08 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Barbara Kohn
Phone: 301 734–7833

**RIN:** 0579–AC14

### 28. INTRODUCTION OF ORGANISMS AND PRODUCTS ALTERED OR PRODUCED THROUGH GENETIC ENGINEERING

**Legal Authority:** 7 USC 7701 to 7772; 7 USC 7781 to 7786; 31 USC 9701

**Abstract:** This rulemaking would revise the regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms in order to bring the regulations into alignment with provisions of the Plant Protection Act. The revisions would also update the regulations in response to advances in genetic science and technology and our accumulated experience in implementing the current regulations. This is the first comprehensive review and revision of the regulations since they were established in 1987. This rule would

affect persons involved in the importation, interstate movement, or release into the environment of genetically engineered plants and certain other genetically engineered organisms.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent to Prepare an Environmental Impact Statement | 01/23/04 | 69 FR 3271 |
| Comment Period End | 03/23/04 | |
| Notice of Availability of Draft Environmental Impact Statement | 07/17/07 | 72 FR 39021 |
| Comment Period End | 09/11/07 | |
| NPRM | 10/09/08 | 73 FR 60007 |
| NPRM Comment Period End | 11/24/08 | |
| Correction | 11/10/08 | 73 FR 66563 |
| NPRM Comment Period Reopened | 01/16/09 | 74 FR 2907 |
| NPRM Comment Period End | 03/17/09 | |
| NPRM; Notice of Public Scoping Session | 03/11/09 | 74 FR 10517 |
| NPRM Comment Period Reopened | 04/13/09 | 74 FR 16797 |
| NPRM Comment Period End | 06/29/09 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John Turner
Phone: 301 734–5720

**RIN:** 0579–AC31

## 29. ANIMAL WELFARE; CLIMATIC AND ENVIRONMENTAL CONDITIONS FOR TRANSPORTATION OF WARM–BLOODED ANIMALS OTHER THAN MARINE MAMMALS

**Legal Authority:** 7 USC 2131 to 2159

**Abstract:** This rulemaking would amend the Animal Welfare Act regulations regarding transportation of live animals other than marine mammals by removing the current ambient temperature requirements for various stages in the transportation of those animals. The action would replace those requirements with a single performance standard under which the animals would be transported under climatic and environmental conditions that are appropriate for their welfare. The regulations currently require that ambient temperatures be maintained within certain ranges during transportation, but animals may be transported at ambient temperatures below the minimum temperatures if their consignor provides a certificate signed by a veterinarian certifying that the animals are acclimated to temperatures lower than the minimum temperature. This proposal would make acclimation certificates for live animals other than marine mammals unnecessary. This rule would replace a previously published proposed rule, which we are withdrawing as part of this document, that would have required that the acclimation certificate for a dog or cat be signed by the owner of the dog or cat being transported rather than by a veterinarian. This rulemaking does not address marine mammals due to their unique requirements for care and handling. We believe that establishing a single performance standard would ensure that warm-blooded animals other than marine mammals are transported in climatic and environmental conditions that are not detrimental to their welfare while allowing for variations in climatic and environmental conditions that are suitable for individual animals.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/03/08 | 73 FR 413 |
| NPRM Comment Period End | 03/03/08 | |
| NPRM Comment Period Reopened | 03/18/08 | 73 FR 14403 |
| NPRM Comment Period End | 04/17/08 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Gerald Rushin
Phone: 301 734–0954

**RIN:** 0579–AC41

## 30. HANDLING OF ANIMALS; CONTINGENCY PLANS

**Legal Authority:** 7 USC 2131 to 2159

**Abstract:** This rulemaking will amend the Animal Welfare Act regulations to add requirements for contingency planning and training of personnel by research facilities and by dealers, exhibitors, intermediate handlers, and carriers. These requirements are necessary because we believe all licensees and registrants should develop a contingency plan for all animals regulated under the Animal Welfare Act in an effort to better prepare for potential disasters. This action will heighten the awareness of licensees and registrants regarding their responsibilities and help ensure a timely and appropriate response should an emergency or disaster occur.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/23/08 | 73 FR 63085 |
| NPRM Comment Period End | 12/22/08 | |
| NPRM Comment Period Extended | 12/19/08 | 73 FR 77554 |
| NPRM Comment Period End | 02/20/09 | |
| Final Action | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeanie Lin
Phone: 301 734–7833

**RIN:** 0579–AC69

## 31. LIGHT BROWN APPLE MOTH QUARANTINE

**Legal Authority:** 7 USC 7701 to 7772; 7 USC 7781 to 7786

**Abstract:** We are quarantining 16 counties in California and the entire State of Hawaii because of the light brown apple moth and restricting the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the spread of the light brown apple moth into noninfested areas of the United States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Andrea Simao
Phone: 301 734–0930

**RIN:** 0579–AC71

## 32. SIREX WOODWASP; QUARANTINE AND REGULATIONS

**Legal Authority:** 7 USC 7701 to 7772; 7 USC 7781 to 7786; 21 USC 136 and 136a

**Abstract:** This rulemaking will quarantine counties in Michigan, New Jersey, New York, Ohio, Pennsylvania, and Vermont because of the Sirex woodwasp and establish restrictions on the interstate movement of regulated articles from these quarantined areas.

## USDA—APHIS

## Long-Term Actions

This action is necessary on an emergency basis to prevent the artificial spread of this plant pest to noninfested areas of the United States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lynn Evans–Goldner
Phone: 301 734–7228

**RIN:** 0579–AC86

## Department of Agriculture (USDA)
## Animal and Plant Health Inspection Service (APHIS)

## Completed Actions

### 33. FOOT–AND–MOUTH DISEASE; PAYMENT OF INDEMNITY

**Legal Authority:** 7 USC 8301 to 8317

**Abstract:** This rule would amend the regulations for the cooperative control and eradication of foot-and-mouth disease (FMD) and other serious diseases, including both cooperative programs and extraordinary emergencies. The purpose of this rule is to remove possible sources of delay in eradicating foot-and-mouth disease, should an occurrence of that disease occur in this country, so that eligible claimants will be fully compensated while at the same time protecting the U.S. livestock population from the further spread of this highly contagious disease.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn: No Action Anticipated Within the Next 12 Months | 02/02/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Mark Teachman
Phone: 301 734–8073

**RIN:** 0579–AB34

### 34. TUBERCULOSIS IN CATTLE; IMPORT REQUIREMENTS (COMPLETION OF A SECTION 610 REVIEW)

**Legal Authority:** 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

**Abstract:** This rulemaking would amend the regulations regarding the importation of animals into the United States to establish several levels of risk classifications to be applied to foreign regions with regard to tuberculosis and to establish requirements governing the importation of cattle and captive bison based on each risk classification. These changes are necessary to help ensure that cattle and captive bison infected with tuberculosis are not imported into the United States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Withdrawn: APHIS Will Address This Issue as Part of a Broader Approach | 02/02/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kelly Rhodes, Senior Staff Veterinarian, Regionalization and Evaluation Services, ISTIT, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, MD 20737–1231
Phone: 301 734–4356

**RIN:** 0579–AB44

### 35. BOVINE SPONGIFORM ENCEPHALOPATHY; MINIMAL–RISK REGIONS AND IMPORTATION OF COMMODITIES; UNSEALING OF MEANS OF CONVEYANCE AND TRANSLOADING OF PRODUCTS

**Legal Authority:** 7 USC 450; 7 USC 1622; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701; 42 USC 4331 and 4332

**Abstract:** In a final rule published in the Federal Register on January 4, 2005, we amended the regulations regarding the importation of animals and animal products to establish a category of regions that present a minimal risk of introducing bovine spongiform encephalopathy into the United States via live ruminants and ruminant products and byproducts, and added Canada to this category. We also established conditions for the importation of certain live ruminants and ruminant products and byproducts from such regions. This rule will amend the regulations to broaden who is authorized to break seals on means of conveyances carrying certain ruminants of Canadian origin. Additionally, it will amend the regulations regarding the transiting through the United States of certain ruminant products from Canada to allow for direct transloading of the products from one means of conveyance to another in the United States under Federal supervision. These actions will contribute to the humane treatment of ruminants shipped to the United States from Canada and remove an impediment to international trade, without increasing the risk of the BSE disease agent entering the United States.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn: Superseded by the BSE Comprehensive Rule and Will Be Addressed Under RIN 0579–AC68 | 02/02/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Karen A. James–Preston
Phone: 301 734–8172

**RIN:** 0579–AB97

### 36. NATIONAL VETERINARY ACCREDITATION PROGRAM (COMPLETION OF A SECTION 610 REVIEW)

**Legal Authority:** 7 USC 1622; 7 USC 8301 to 8317; 15 USC 1828; 21 USC 136a

**Abstract:** This rulemaking amends the regulations regarding the National Veterinary Accreditation Program to establish two accreditation categories in place of the former single category, to add requirements for supplemental training and renewal of accreditation, and to offer program certifications. We are making these changes in order to support the Agency's animal health safeguarding initiatives, to involve accredited veterinarians in integrated

surveillance activities, and to make the provisions governing our National Veterinary Accreditation Program more uniform and consistent. These changes will increase the level of training and skill of accredited veterinarians in the areas of disease prevention and preparedness for animal health emergencies in the United States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/01/06 | 71 FR 31109 |
| NPRM Comment Period End | 07/31/06 | |
| Supplemental NPRM | 02/27/07 | 72 FR 8634 |
| Supplemental NPRM Comment Period End | 04/30/07 | |
| Final Rule | 12/09/09 | 74 FR 64998 |
| Final Rule Effective | 02/01/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Todd Behre, National Veterinary Accreditation Program, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 200, Riverdale, MD 20737
Phone: 301 734–0853

**RIN:** 0579–AC04

## 37. AGRICULTURAL INSPECTION AND AQI USER FEES ALONG THE U.S./CANADA BORDER

**Legal Authority:** 7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a; 49 USC 80503

**Abstract:** This action adopts as a final rule, with changes, an interim rule that amended the foreign quarantine and user fee regulations by removing the exemptions from inspection for fruits and vegetables grown in Canada and the exemptions from user fees for commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international air passengers entering the United States from Canada. As a result of this action, all agricultural products imported from Canada are subject to inspection and commercial conveyances as well as airline passengers arriving on flights from Canada are subject to inspection and user fees. We took this action in part because we were not recovering the costs of our inspection activities at the U.S./Canada border. In addition, our data showed an increasing number of interceptions on the U.S./Canada border of prohibited material that originated in regions other than Canada that presents a high risk of introducing plant pests or animal diseases into the United States. These findings, combined with additional Canadian airport preclearance data on interceptions of ineligible agricultural products approaching the U.S. border from Canada, strongly indicated that we needed to expand and strengthen our pest exclusion and smuggling interdiction efforts at that border. In order to do this and to recover the costs of our existing inspection activity, we need to collect user fees from all commercial conveyances, with certain exceptions, and international air passengers entering the United States from Canada.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Final Action | 03/09/10 | 75 FR 10634 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Cynthia Stahl
Phone: 301 734–8415

**RIN:** 0579–AC06

## 38. TUBERCULOSIS IN CATTLE; IMPORT REQUIREMENTS FOR ROPING STEERS

**Legal Authority:** 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

**Abstract:** This document will withdraw a proposed rule that we published on August 24, 2004 (69 FR 51960 to 51962, APHIS Docket No. 03-081-3). In our August 2004 proposed rule, we proposed to require that steers and spayed heifers with any evidence of horn growth that are entering the United States meet the same tuberculosis testing requirements as sexually intact animals entering the United States. Instead of proposing provisions specific to cattle imported for use at rodeos, as our August 2004 proposal did, APHIS is considering broader changes to the tuberculosis regulations.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn: APHIS Will Address This Issue as Part of a Broader Approach | 02/02/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Francisco Collazo–Mattei
Phone: 301 734–6954

**RIN:** 0579–AC50

## 39. IMPORTATION OF CATTLE FROM MEXICO; ADDITION OF PORT AT SAN LUIS, ARIZONA

**Legal Authority:** 7 USC 1622; 7 USC 8301 to 8317; 21 USC 136 and 136a; 31 USC 9701

**Abstract:** This rulemaking will amend the regulations regarding the importation of cattle from Mexico by adding San Luis, AZ, as a port through which cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases may be imported into the United States. A new facility for the handling of animals is to be constructed on the Mexican side of the border at the port of San Luis, AZ, that will be equipped with facilities necessary for the proper chute inspection, dipping, and testing that are required for such cattle under the regulations. The rule will also amend the regulations to remove provisions that limit the admission of cattle that have been infested with fever ticks or exposed to fever ticks or tick-borne diseases to the State of Texas. The statutory requirement that limited the admission of those cattle to the State of Texas has been repealed. These changes make an additional port of entry available and relieve restrictions on the movement of imported Mexican cattle within the United States.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn: No Action Anticipated Within the Next 12 Months | 02/02/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Betzaida Lopez
Phone: 301 734–5677

**RIN:** 0579–AC63

## 40. IMPORTATION OF GRAPES FROM CHILE UNDER A SYSTEMS APPROACH

**Legal Authority:** 7 USC 450; 7 USC 7701 to 7772; 7 USC 7781 to 7786; 7 USC 8301 to 8317; 21 USC 136 and 136a

**Abstract:** We are proposing two changes related to our proposed rule

## USDA—APHIS

## Completed Actions

published in the Federal Register on August 27, 2008, that would amend the fruit and vegetable regulations to allow fresh table grapes from Chile to be imported into the continental United States under a systems approach. Currently as a condition of entry, all table grapes from Chile have to be fumigated with methyl bromide as a risk-mitigation measure for Brevipalpus chilensis. On August 27, 2008, we proposed to allow a combination of risk-mitigation measures, or systems approach, to be employed in lieu of methyl bromide fumigation for B. chilensis. However, there is a new quarantine pest of table grapes, Lobesia botrana, in Chile, and the proposed systems approach does not address and was not intended to mitigate the risk for this pest. Therefore, this supplemental proposed rule modifies the proposed systems approach so that it is effective for L. botrana. Alternatively, it would require Chilean grapes that do not meet the conditions of the systems approach for L. botrana to be fumigated with methyl bromide as a condition of their importation into the continental United States.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawn: Program Will Repropose With New Supporting Documents and a Different Approach | 02/02/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Charisse Cleare
Phone: 301 734–0773

**RIN:** 0579–AC82

BILLING CODE 3410—34—S

## Department of Agriculture (USDA)
## Rural Housing Service (RHS)

## Final Rule Stage

### 41. GUARANTEED SINGLE–FAMILY HOUSING

**Legal Authority:** 5 USC 301; 7 USC 1989; 42 USC 1480

**Abstract:** The Guaranteed Single-Family Housing program will provide better clarity and consistency within the program. The action is taken to update the regulations to current mortgage industry standards and provide more guidance on program oversight and monitoring.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/15/99 | 64 FR 70124 |
| NPRM Comment Period End | 02/14/00 | |
| Final Action | 11/00/10 | |
| Final Action Effective | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Joaquin Tremols, Acting Director, Single–Family Housing Guaranteed Loan Division, Department of Agriculture, Rural Housing Service, 1400 Independence Avenue SW, STOP 0784, Washington, DC 20250
Phone: 202 720–1465
Fax: 202 205–2476
Email: joaquin.tremols@wdc.usda.gov

**RIN:** 0575–AC18

BILLING CODE 3410—XV—S

## Department of Agriculture (USDA)
## Food Safety and Inspection Service (FSIS)

## Proposed Rule Stage

### 42. MANDATORY INSPECTION OF CATFISH AND CATFISH PRODUCTS

**Legal Authority:** 21 USC 601 et seq; PL 110–249, sec 11016

**Abstract:** The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, sec. 11016), known as the 2008 Farm Bill, amended the Federal Meat Inspection Act (FMIA) to make catfish an amenable species under the FMIA. Amenable species must be inspected, so this rule will define inspection requirements for catfish. The regulations will define ''catfish'' and the scope of coverage of the regulations to apply to establishments that process farm-raised species of catfish and to catfish and catfish products. The regulations will take into account the conditions under which the catfish are raised and transported to a processing establishment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Quita Bowman Blackwell, Acting Assistant Administrator, Office of Catfish Inspection Program, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–5735
Fax: 202 690–1742

**RIN:** 0583–AD36

## Department of Agriculture (USDA) — Final Rule Stage
## Food Safety and Inspection Service (FSIS)

### 43. PERFORMANCE STANDARDS FOR THE PRODUCTION OF PROCESSED MEAT AND POULTRY PRODUCTS; CONTROL OF LISTERIA MONOCYTOGENES IN READY–TO–EAT MEAT AND POULTRY PRODUCTS

**Legal Authority:** 21 USC 451 et seq; 21 USC 601 et seq

**Abstract:** FSIS has proposed to establish pathogen reduction performance standards for all ready-to-eat (RTE) and partially heat-treated meat and poultry products, and measures, including testing, to control Listeria monocytogenes in RTE products. The performance standards spell out the objective level of pathogen reduction that establishments must meet during their operations in order to produce safe products, but allow the use of customized, plant-specific processing procedures other than those prescribed in the earlier regulations. With HACCP, food safety performance standards give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls, while providing objective, measurable standards that can be verified by Agency inspectional oversight. This set of performance standards will include and be consistent with standards already in place for certain ready-to-eat meat and poultry products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/27/01 | 66 FR 12590 |
| NPRM Comment Period End | 05/29/01 | |
| NPRM Comment Period Extended | 07/03/01 | 66 FR 35112 |
| NPRM Comment Period End | 09/10/01 | |
| Interim Final Rule | 06/06/03 | 68 FR 34208 |
| Interim Final Rule Effective | 10/06/03 | |
| Interim Final Rule Comment Period End | 01/31/05 | |
| NPRM Comment Period Reopened | 03/24/05 | 70 FR 15017 |
| NPRM Comment Period End | 05/09/05 | |
| Affirmation of Interim Final Rule | 03/00/11 | |
| Final Action | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dr. Daniel L. Engeljohn, Deputy Assistant Administrator, Office of Policy and Program Development, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 205–0495
Fax: 202 401–1760
Email: daniel.engeljohn@fsis.usda.gov

**RIN:** 0583–AC46

### 44. FEDERAL–STATE INTERSTATE SHIPMENT COOPERATIVE INSPECTION PROGRAM

**Legal Authority:** PL 110–246, sec 11015

**Abstract:** FSIS is proposing regulations to implement a new voluntary Federal-State cooperative inspection program under which State-inspected establishments with 25 or fewer employees would be eligible to ship meat and poultry products in interstate commerce. State-inspected establishments selected to participate in this program would be required to comply with all Federal standards under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA). These establishments would receive inspection services from State inspection personnel that have been trained and certified to assist with enforcement of the FMIA and PPIA. Meat and poultry products produced under the program that have been inspected and passed by selected State-inspection personnel would bear a Federal mark of inspection. FSIS is proposing these regulations in response to the Food, Conservation, and Energy Act, enacted on June 18, 2008 (the 2008 Farm Bill). Section 11015 of 2008 Farm Bill provides for the interstate shipment of State-inspected meat and poultry product from selected establishments and requires that FSIS promulgate implementing regulations no later than 18 months from the date of its enactment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/16/09 | 74 FR 47648 |
| NPRM Comment Period End | 11/16/09 | |
| Final Action | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rachel Edelstein, Director, Policy Issuances Division, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720–0399
Fax: 202 690–0486
Email: rachel.edelstein@fsis.usda.gov

**RIN:** 0583–AD37

BILLING CODE 3410—DM—S

## Department of Agriculture (USDA) — Proposed Rule Stage
## Forest Service (FS)

### 45. SPECIAL AREAS; STATE–SPECIFIC INVENTORIED ROADLESS AREA MANAGEMENT: COLORADO

**Legal Authority:** Not Yet Determined

**Abstract:** On April 11, 2007, Governor of Colorado Ritter submitted a petition under the provisions of the Administrative Procedure Act (5 U.S.C. 553(e)) and Agriculture Department regulation (7 CFR 1.28) to promulgate regulations, in cooperation with the State, for the management of inventoried roadless areas within the State of Colorado. After review and recommendation by the Roadless Area Conservation National Advisory Committee, the Secretary accepted the Governor's petition and initiated a proposed rulemaking for inventoried roadless areas in Colorado. The proposed rulemaking would manage Colorado's inventoried roadless areas by prohibiting road building and tree cutting, with some exceptions, on 4.1 million acres of inventoried roadless areas in Colorado. The 4.1 million acres reflect the most updated IRA boundaries for Colorado, which incorporate planning rule revisions since 2001 on several Colorado national forests. Inventoried roadless areas that are allocated to ski area special uses (approximately 10,000 acres) would also be removed from roadless designation. Road construction and

reconstruction plus timber harvesting would be prohibited in inventoried roadless areas, with some exceptions, on the Arapaho-Roosevelt, Grand Mesa-Uncompahgre, Gunnison, Manti-La Sal, Pike-San Isabel, Rio Grande, Routt, San Juan, and White River National Forests in Colorado. Exceptions to the prohibitions would be allowed for certain health, safety, valid existing rights, resource protection, and ecological management needs.

Web site: http://roadless.fs.fed.us

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/25/08 | 73 FR 43544 |
| NPRM Comment Period End | 10/23/08 | |
| Second NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lorrie Parker, Regulatory Analyst, Department of Agriculture, Forest Service, ATTN: ORMS, D&R Branch, 1400 Independence Avenue SW, Washington, DC 20250–0003
Phone: 202 205–6560
Fax: 202 205–6539
Email: lsparker@fs.fed.us

**RIN:** 0596–AC74

BILLING CODE 3410—11—S

## Department of Agriculture (USDA) Office of the Secretary (AgSEC) — Proposed Rule Stage

### 46. DESIGNATION OF BIOBASED ITEMS FOR FEDERAL PROCUREMENT, ROUND 7

**Legal Authority:** PL 110–246

**Abstract:** Designates bath products; concrete and asphalt cleaners, including microbial and non-microbial concrete and asphalt cleaners as subcategories; corrosion removers; dishwashing detergents; floor cleaners and protectors; hair cleaning products, including shampoos and conditioners as subcategories; microbial cleaners; oven and grill cleaners; slide way lubricants; and thermal shipping containers, including durable and non-durable thermal shipping containers as subcategories.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ron Buckhalt, Manager, BioPreferred Program, Office of Procurement and Policy Management, Department of Agriculture, 361 Reporters Building, 300 7th Street SW, Washington, DC 20250
Phone: 202 205–4008
Fax: 202 720–8972
Email: ronb.buckhalt@da.usda.gov

**RIN:** 0503–AA36

### 47. ● DESIGNATION OF BIOBASED ITEMS FOR FEDERAL PROCUREMENT, ROUND 8

**Legal Authority:** PL 110–246

**Abstract:** Designates an additional 15 groups of biobased products for preferred procurement.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ron Buckhalt, Manager, BioPreferred Program, Office of Procurement and Policy Management, Department of Agriculture, 361 Reporters Building, 300 7th Street SW, Washington, DC 20250
Phone: 202 205–4008
Fax: 202 720–8972
Email: ronb.buckhalt@da.usda.gov

**RIN:** 0503–AA39

### 48. ● REVISED PROGRAM GUIDELINES

**Legal Authority:** PL 110–246

**Abstract:** The 2008 Farm Bill requires USDA to address how the BioPreferred Program will designate complex products and intermediate materials and feed stocks and make other changes to update program guidelines.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ron Buckhalt, Manager, BioPreferred Program, Office of Procurement and Policy Management, Department of Agriculture, 361 Reporters Building, 300 7th Street SW, Washington, DC 20250
Phone: 202 205–4008
Fax: 202 720–8972
Email: ronb.buckhalt@da.usda.gov

**RIN:** 0503–AA40

## Department of Agriculture (USDA) Office of the Secretary (AgSEC) — Final Rule Stage

### 49. VOLUNTARY LABELING PROGRAM FOR DESIGNATED BIOBASED PRODUCTS

**Legal Authority:** PL 110–246

**Abstract:** The purpose of the program is to provide a ''USDA Certified Biobased Product'' label for use on biobased products meeting certain criteria to be established in the proposed rule, to specify those criteria for gaining use of the label, establish a system to make the label available to manufacturers and vendors of biobased products, and to establish the labeling program.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/31/09 | 74 FR 38296 |
| NPRM Comment Period End | 09/29/09 | |
| Final Action | 09/00/10 | |

**USDA—AgSEC** **Final Rule Stage**

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ron Buckhalt, Manager, BioPreferred Program, Office of Procurement and Policy Management, Department of Agriculture, 361 Reporters Building, 300 7th Street SW, Washington, DC 20250
Phone: 202 205–4008
Fax: 202 720–8972
Email: ronb.buckhalt@da.usda.gov

**RIN:** 0503–AA35

[FR Doc. 2010–8928 Filed 04–23–10; 8:45 am]

BILLING CODE 3410–90–S

Federal Register

Monday,
April 26, 2010

# Part IV

# Department of Commerce

## Semiannual Regulatory Agenda

# DEPARTMENT OF COMMERCE (DOC)

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### 13 CFR Ch. III

### 15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI

### 19 CFR Ch. III

### 37 CFR Chs. I, IV, and V

### 48 CFR Ch. 13

### 50 CFR Chs. II, III, IV, and VI

### Spring 2010 Semiannual Agenda of Regulations

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** In compliance with Executive Order 12866, entitled ''Regulatory Planning and Review,'' and the Regulatory Flexibility Act, as amended, the Department of Commerce (Department), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development of review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the fall 2009 agenda. The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, or issued by the Department. The agenda is intended to facilitate comments and views by interested members of the public.

The Department's spring 2010 regulatory agenda includes regulatory activities that are expected to be conducted during the period April 1, 2010, through March 31, 2011.

**FOR FURTHER INFORMATION CONTACT:**

*Specific:* For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

*General:* Comments or inquiries of a general nature about the agenda should be directed to Tricia Choe, Acting Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230; telephone: 202-482-3151.

**SUPPLEMENTARY INFORMATION:** Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this order. By memorandum of January 15, 2010, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the spring 2010 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to publish, in the spring and fall of each year, a regulatory flexibility agenda that contains a brief description of the subject of any rule likely to have a significant economic impact on a substantial number of small entities. The agenda also identifies those entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

In addition, beginning with the fall 2007 edition, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Commerce's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the United Agenda published on the Internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including the Department of Commerce's Regulatory Plan.

Within the Department, the Office of the Secretary and various operating units may issue regulations. Operating units, such as the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark Office issue the greatest share of the Department's regulations.

A large number of regulatory actions reported in the agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of the NMFS programs, an ''Explanation of Information Contained in NMFS Regulatory Entries'' is provided below.

**Explanation of Information Contained in NMFS Regulatory Entries**

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (the Act) governs the management of fisheries within the Exclusive Economic Zone (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. Fishery Management Plans (FMPs) are to be prepared for fisheries that require conservation and management measures. Regulations implementing these FMPs regulate domestic fishing and foreign fishing where permitted. Foreign fishing may be conducted in a fishery in which there is no FMP only if a preliminary fishery management plan has been issued to govern that foreign fishing. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs or amendments to FMPs for fisheries within their respective areas. In the development of such plans or amendments and their implementing regulations, the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

The Department's spring 2010 regulatory agenda follows.

**Cameron F. Kerry,**
*General Counsel.*

## DOC

### International Trade Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 50 | Commercial Availability of Fabric and Yarn | 0625–AA59 |

### National Oceanic and Atmospheric Administration—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 51 | Maximize Retention and Monitoring Program in the Shore-Based Pacific Whiting Fishery | 0648–AR63 |
| 52 | American Lobster Fishery; Fishing Effort Control Measures To Complement Interstate Lobster Management Recommendations by the Atlantic States Marine Fisheries Commission | 0648–AT31 |
| 53 | South Atlantic Fishery Ecosystem Plan Comprehensive Amendment | 0648–AV31 |
| 54 | Collection and Use of Tax Identification Numbers From Holders of and Applicants for National Marine Fisheries Service Permits | 0648–AV76 |
| 55 | Amendment 17 to the South Atlantic Fishery Management Council Snapper Grouper Fishery Management Plan | 0648–AW11 |
| 56 | Amendment 2 to the Fishery Management Plan for the Queen Conch Fishery of Puerto Rico and the U.S. Virgin Islands | 0648–AW15 |
| 57 | Marine Mammal Protection Act Stranding Regulation Revisions | 0648–AW22 |
| 58 | Amendment 4 to the Atlantic Herring Fishery Management Plan | 0648–AW75 |
| 59 | Allowable Modifications to the Turtle Excluder Device (TED) Requirements | 0648–AW93 |
| 60 | Regulatory Amendment To Correct and Clarify Amendment 13 and Subsequent Frameworks of the Northeast Multispecies Fishery Management Plan | 0648–AW95 |
| 61 | Amendment 11 to the Atlantic Mackerel, Squid, Butterfish Fishery Management Plan | 0648–AX05 |
| 62 | Amendment 30 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs Arbitration Regulations | 0648–AX47 |
| 63 | Salmon Bycatch Reduction Management Measures for the Fishery Management Plan 91 in the Bering Sea Aleutian Islands | 0648–AX89 |
| 64 | Revoke Inactive Quota Share and Annual Individual Fishing Quota From a Holder of Quota Share Under the Pacific Halibut and Sablefish Fixed Gear Individual Fishing Quota Program | 0648–AX91 |
| 65 | 2010 Summer Flounder, Scup, and Black Sea Bass Recreational Management Measures | 0648–AY04 |
| 66 | Maximized Retention Monitoring Program for Catcher Vessels in the Pacific Whiting Mothership Fishery in the Pacific Coast Groundfish Fishery | 0648–AY17 |
| 67 | Fisheries of the Caribbean, Gulf of Mexico, South Atlantic; Gulf of Mexico Fisheries; Generic Amendment for Annual Catch Limits | 0648–AY22 |
| 68 | Regulatory Amendment To Revise Charter Halibut Logbook Submission Requirements | 0648–AY38 |
| 69 | Addendum IV to the Weakfish Interstate Management Plan—Bycatch Trip Limit | 0648–AY41 |
| 70 | Framework 21 to the Atlantic Sea Scallop Fishery Management Plan | 0648–AY43 |
| 71 | Fishery Management Plan Amendment 95 for Skates Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands | 0648–AY48 |
| 72 | Amendment 2; Fishery Management Plan for Queen Conch Fishery of Puerto Rico and U.S. Virgin Islands, and Amendment 5; Reef Fish Fishery Management Plan of Puerto Rico and U.S. Virgin Islands | 0648–AY55 |
| 73 | Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Interim 2010 Tribal Whiting Regulations | 0648–AY59 |
| 74 | Fisheries Off West Coast States; West Coast Salmon Fisheries; 2010 Management Measures | 0648–AY60 |
| 75 | Marine Mammal Protection Act Permit Regulation Revisions | 0648–AV82 |
| 76 | Take and Import Marine Mammals: Proposed Rule for Take of Marine Mammals Incidental to Routine Operations of 13 Power Generating Stations in Central and Southern California | 0648–AW59 |
| 77 | Reduce Sea Turtle Bycatch in Atlantic Trawl Fisheries | 0648–AY61 |

### National Oceanic and Atmospheric Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 78 | Certification of Nations Whose Fishing Vessels Are Engaged in IUU Fishing or Bycatch of Protected Living Marine Resources | 0648–AV51 |
| 79 | Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) Environmental Review Procedure | 0648–AV53 |
| 80 | Revise Regulations Governing the North Pacific Groundfish Observer Program | 0648–AW24 |

## DOC

### National Oceanic and Atmospheric Administration—Final Rule Stage (Continued)

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 81 | Amendment 3 to the Northeast Skate Complex Fishery Management Plan | 0648–AW30 |
| 82 | Atlantic Highly Migratory Species; Atlantic Shark Management Measures | 0648–AW65 |
| 83 | Amendment 31 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico | 0648–AX67 |
| 84 | Snapper-Grouper Fishery Management Plan of the South Atlantic | 0648–AX75 |
| 85 | Framework Adjustment 44 and Specifications for the Northeast Multispecies Fishery Management Plan | 0648–AY29 |
| 86 | FY 2010 Atlantic Deep-Sea Red Crab Specifications | 0648–AY51 |
| 87 | Provide Regulations for Permits for Capture, Transport, Import, and Export of Protected Species for Public Display, and for Maintaining a Captive Marine Mammal Inventory | 0648–AH26 |
| 88 | Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act | 0648–AV15 |
| 89 | Rulemaking To Establish Take Prohibitions for the Threatened Southern Distinct Population Segment of North American Green Sturgeon | 0648–AV94 |
| 90 | Taking and Importing Marine Mammals; U.S. Naval Surface Warfare Center Panama City Division Mission Activities | 0648–AW80 |
| 91 | Rule To Revise the Critical Habitat Designation for the Endangered Leatherback Sea Turtle | 0648–AX06 |
| 92 | Critical Habitat Designation for Cook Inlet Beluga Whale Under the Endangered Species Act | 0648–AX50 |
| 93 | Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Training Operations Conducted Within the Gulf of Mexico Range Complex | 0648–AX86 |

### National Oceanic and Atmospheric Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 94 | Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico | 0648–AS65 |
| 95 | Amendment 5 to the Atlantic Herring Fishery Management Plan | 0648–AY47 |

### National Oceanic and Atmospheric Administration—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 96 | Fisheries in the Western Pacific; Pelagic Fisheries; Squid Jig Fisheries | 0648–AS71 |
| 97 | Modifying Maximum Retainable Amounts (MRAs) for Selected Groundfish Species Caught by the Non-American Fishing Act Trawl Catcher Processor Sector | 0648–AV32 |
| 98 | Initial Implementation of the Western and Central Pacific Fisheries Convention Implementation Act | 0648–AV63 |
| 99 | Amendment 15B to the South Atlantic Fishery Management Council Snapper Grouper Fishery Management Plan | 0648–AW12 |
| 100 | Fisheries in the Western Pacific; Western Pacific Pelagic Fisheries; Amendment 18 to the Pelagics Fishery Management Plan; Shallow-Set Longline Swordfish Fishery | 0648–AW49 |
| 101 | Halibut Charter Vessel Moratorium | 0648–AW92 |
| 102 | Atlantic Highly Migratory Species; 2009 North and South Atlantic Commercial Quotas | 0648–AX07 |
| 103 | Amendment 29 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico | 0648–AX39 |
| 104 | Western and Central Pacific Fisheries for Highly Migratory Species; Implementation of the Longline Catch Limits Adopted at the Fifth Session of the Western and Central Pacific Fisheries Commission | 0648–AX59 |
| 105 | Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Data Collection for the Trawl Rationalization Program | 0648–AX98 |
| 106 | Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan | 0648–AY00 |
| 107 | Fishing Restrictions in the Longline and Purse Seine Fisheries in the Eastern Pacific Ocean in 2009, 2010, and 2011 | 0648–AY08 |
| 108 | 2010 Atlantic Mackerel, Squid, and Butterfish Fishery Specifications and Management Measures | 0648–AY13 |
| 109 | 2010 Pacific Halibut Fisheries; Catch Sharing Plan | 0648–AY31 |
| 110 | Harbor Porpoise Take Reduction Plan Regulations | 0648–AW51 |

## DOC

### Patent and Trademark Office—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 111 | Revision of USPTO Fees for Fiscal Year 2011 | 0651–AC43 |
| 112 | Revision of USPTO Fees for Fiscal Year 2012 | 0651–AC44 |

### Patent and Trademark Office—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 113 | Interim Increase on Patent Fees for Fiscal Year 2011 | 0651–AC42 |

### Patent and Trademark Office—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 114 | Examination of Patent Applications That Include Claims Containing Alternative Language | 0651–AC00 |
| 115 | Fiscal Year 2009 Revision of Request for Continued Examination, 18-Month Publication, and Other Miscellaneous Cost-Recovery Patent Fees | 0651–AC29 |

## Department of Commerce (DOC) — Long-Term Actions

## International Trade Administration (ITA)

### 50. COMMERCIAL AVAILABILITY OF FABRIC AND YARN

**Legal Authority:** PL 106–200, sec 112(b)(5)(B); PL 106–200, sec 211; EO 13191; PL 107–210, sec 3103

**Abstract:** This rule implements certain provisions of the Trade and Development Act of 2000 (the Act). Title I of the Act (the African Growth and Opportunity Act or AGOA), title II of the Act (the United States-Caribbean Basin Trade Partnership Act or CBTPA), and title XXXI of the Trade Act of 2002 (the Andean Trade Promotion and Drug Eradication Act or ATPDEA) provide for quota- and duty-free treatment for qualifying apparel products from designated beneficiary countries. AGOA and CBTPA authorize quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more designated beneficiary countries from yarn or fabric that is not formed in the United States or a beneficiary country, provided it has been determined that such yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner. The President has delegated to the Committee for the Implementation of Textile Agreements (the Committee), which is chaired by the Department of Commerce, the authority to determine whether yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the ATPDEA, and the CBTPA, and has authorized the Committee to extend quota- and duty-free treatment to apparel of such yarn or fabric. The rule provides the procedure for interested parties to submit a request alleging that a yarn or fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner, the procedure for public comments, and relevant factors that will be considered in the Committee's determination. The rule also outlines the factors to be considered by the Committee in extending quota- and duty-free treatment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Janet Heinzen
Phone: 202 482–4006
Email: janet__heinzen@ita.doc.gov

**RIN:** 0625–AA59

**Department of Commerce (DOC)** **Proposed Rule Stage**

**National Oceanic and Atmospheric Administration (NOAA)**

## NATIONAL MARINE FISHERIES SERVICE

### 51. MAXIMIZE RETENTION AND MONITORING PROGRAM IN THE SHORE–BASED PACIFIC WHITING FISHERY

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** The Pacific Fishery Management Council (Pacific Council) at their October 21-25, 1996, meeting in San Francisco, California addressed the treatment and disposition of salmon in the groundfish trawl fisheries, specifically the shore-based whiting fishery. At that meeting, the Pacific Council discussed the retention of salmon in the shore-based whiting fishery and took action to maintain a viable shore-based whiting fishery by using exempted fishing permits (EFPs). These EFPs allowed the shore-based whiting fleet to temporarily deliver unsorted catch to processing plants and provided for the monitoring of incidentally taken salmon until a permanent monitoring program could be implemented. In keeping with the Pacific Council's recommendation, NMFS is proceeding with implementing a monitoring program for the shore-based whiting fishery. This action will aid in the sustainable management of Pacific Coast salmon and groundfish fisheries while providing an important economic opportunity to those associated with the harvest, processing, and selling of whiting taken by the shore-based whiting fleet. The need for implementing a permanent monitoring program in the shore-based Pacific whiting fishery is to provide for a full retention fishery by enabling the shore-based whiting fleet, comprised exclusively of catcher vessels, to deliver unsorted catch to processing plants. This practice is necessary to ensure that whiting landings are of market quality, while abiding by Federal groundfish regulations and those implementing the Pacific Coast salmon and groundfish fishery management plans (FMPs).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Barry Thom, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, Building 1, 7600 Sand Point Way NE., Seattle, WA 48115–0070
Phone: 206 526–6150
Fax: 206 526–6426
Email: barry.thom@noaa.gov

**RIN:** 0648–AR63

### 52. AMERICAN LOBSTER FISHERY; FISHING EFFORT CONTROL MEASURES TO COMPLEMENT INTERSTATE LOBSTER MANAGEMENT RECOMMENDATIONS BY THE ATLANTIC STATES MARINE FISHERIES COMMISSION

**Legal Authority:** 16 USC 5101 et seq

**Abstract:** The National Marine Fisheries Service announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for the Exclusive Economic Zone (EEZ) associated with effort control measures as recommended for Federal implementation by the Atlantic States Marine Fisheries Commission (ASFMC), as outlined in the Interstate Fishery Management Plan (ISFMP) for American Lobster. This action will evaluate effort control measures in certain Lobster Conservation Management Areas including: limits on future access based on historic participation criteria; procedures to allow trap transfers among qualifiers and impose a trap reduction or conservation tax on any trap transfers; and a trap reduction schedule to meet the goals of the ISFMP.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 05/10/05 | 70 FR 24495 |
| ANPRM Comment Period End | 06/09/05 | |
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AT31

### 53. SOUTH ATLANTIC FISHERY ECOSYSTEM PLAN COMPREHENSIVE AMENDMENT

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** The purpose of this action is to develop an ecosystem-based approach to resource management. The South Atlantic Council plans to develop a Fishery Ecosystem Plan (FEP) Comprehensive Amendment, which would modify all its Fishery Management Plans (FMPs). The initial amendment would include the following: (1) Various actions to comply with new essential fish habitat requirements; (2) establishment of deep water coral Habitat Areas of Particular Concern, with gear limitations, such as the establishment of allowable trawl areas; and (3) other possible actions necessary to implement ecosystem-based fishery management.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AV31

### 54. COLLECTION AND USE OF TAX IDENTIFICATION NUMBERS FROM HOLDERS OF AND APPLICANTS FOR NATIONAL MARINE FISHERIES SERVICE PERMITS

**Legal Authority:** 31 USC 7701; 16 USC 1801 et seq; 16 USC 1361 et seq; 16 USC 1531 et seq

**Abstract:** In conformance with the Debt Collection Improvement Act of 1996 (Debt Collection Act), the National Marine Fisheries Service (NMFS) will issue a rule to require that each existing holder of and future applicant for a permit, license, endorsement, authorization, transfer or like instrument issued by the agency provide a Taxpayer Identification Number (TIN) (business, employer identification number or individual,

social security number) and Date of Incorporation or Date of Birth, as appropriate. Under the Debt Collection Act, NMFS is required to collect the TIN to report on and collect any delinquent non-tax debt owed to the Federal Government. NMFS plans to use Date of Incorporation or Date of Birth information for administrative aspects of permitting procedures with appropriate confidentiality safeguards pursuant to the Privacy Act. The rule will specify: (a) The particular uses that may be made of the reported TIN; (b) the effects, if any, of not providing the required information; (c) how the information will be used to ascertain if the permit holder or applicant owes delinquent non-tax debt to the Government pursuant to the Debt Collection Act; (d) the effects on the permit holder or applicant when such delinquent debts are owed; and (e) the agency's intended communications with the permit holder or applicant regarding the relationship of such delinquent debts to its permitting process and the need to resolve such debts as a basis for completing permit issuance or renewal. The rule will amend existing agency permit regulations and contain all appropriate modified and new collections-of-information pursuant to the Paperwork Reduction Act.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2334
Fax: 301 713–0596
Email: alan.risenhoover@noaa.gov

**RIN:** 0648–AV76

## 55. AMENDMENT 17 TO THE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL SNAPPER GROUPER FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801

**Abstract:** Amendment 17 is intended to establish management reference points (MSY, OY) for red snapper; establish a rebuilding plan (rebuilding timeframe and rebuilding strategy) for red snapper; specify Annual Catch Limits (ACL), Annual Catch Targets (ACT), and Accountability Measures (AM) for 10 species undergoing overfishing; and modify management measures to ensure future catch is equal to or below the ACL.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AW11

## 56. AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE QUEEN CONCH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

**Legal Authority:** 16 USC 1801

**Abstract:** St. Croix queen conch landings by commercial fishermen alone have exceeded sustainable harvest levels since the 2000-2001 fishing season. In 2005-2006, the commercial harvest was over four times sustainable levels. Additionally, there is an unknown but significant recreational harvest. Overfishing of queen conch has led to resource collapse in other regions and in some cases, long-term resource loss. According to the NMFS Report on the Status of the U.S. Fisheries for 2006, queen conch is overfished and undergoing overfishing. Under current fishing practices, reductions in mortality are not expected to be sufficient in the queen conch fishery. Without a reduction in mortality, queen conch are not expected to achieve the rebuilding goals established in the Sustainable Fisheries Amendment of 2005. Therefore, a change in fishing practices is needed to help achieve the necessary reductions in queen conch fishing mortality.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 10/11/07 | 72 FR 58057 |
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AW15

## 57. MARINE MAMMAL PROTECTION ACT STRANDING REGULATION REVISIONS

**Legal Authority:** 16 USC 1379; 16 USC 1382; 16 USC 1421

**Abstract:** The National Marine Fisheries Service (NMFS) is considering proposing changes to its implementing regulations (50 CFR 216) governing the taking of stranded marine mammals under section 109(h), section 112(c), and title IV of the Marine Mammal Protection Act and is soliciting public comment to better inform the process. NMFS intends to clarify the requirements and procedures for responding to stranded marine mammals and for determining the disposition of rehabilitated marine mammals, which includes the procedures for the placement of non-releasable animals and for authorizing the retention of releasable rehabilitated marine mammals for scientific research, enhancement, or public display. This action will be analyzed under the National Environmental Policy Act with an Environmental Assessment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 01/31/08 | 73 FR 5786 |
| ANPRM Comment Period End | 03/31/08 | |
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** David Cottingham, Department of Commerce, National Oceanic and Atmospheric

Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2322
Fax: 301 713–2521
Email: david.cottingham@noaa.gov

**RIN:** 0648–AW22

## 58. AMENDMENT 4 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** The goal of Amendment 4 is to improve catch monitoring and ensure compliance with the Reauthorized Magnuson-Stevens Fishery Conservation and Management Act (MSRA). The management measures developed in this amendment may address one or more of the following objectives: (1) To implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery; (2) to implement annual catch limits and accountability measures consistent with the MSRA; (3) to implement other management measures as necessary to ensure compliance with the new provisions of the MSRA; (4) to develop a sector allocation process or other limited access privilege program for the herring fishery; and (5) in the context of objectives 1-4 (above), to consider the health of the herring resource and the important role of herring as a forage fish and a predator fish throughout its range.
The New England Fishery Management Council will develop conservation and management measures to address the issues identified above and meet the goals/objectives of the amendment. Any conservation and management measures developed in this amendment also must comply with all applicable laws.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 05/08/08 | 73 FR 26082 |
| Notice of Intent Comment Period End | 06/30/08 | |
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AW75

## 59. ALLOWABLE MODIFICATIONS TO THE TURTLE EXCLUDER DEVICE (TED) REQUIREMENTS

**Legal Authority:** 16 USC 1531 et seq

**Abstract:** NMFS proposes to revise the TED requirements to allow new materials and modifications to existing approved TED designs. Specifically, proposed allowable modifications include the use of flat bar, box pipe, and oval pipe for use in currently-approved TED grids; an increase in mesh size on escape flaps from 1-5/8 inches to 2 inches; the use of the Boone single straight cut and triangular escape openings; specifications on the use of TED grid brace bars; and the use of the Chauvin Shrimp Kicker to improve shrimp retention.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Michael Barnette, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 551–5794
Email: michael.barnette@noaa.gov

**RIN:** 0648–AW93

## 60. REGULATORY AMENDMENT TO CORRECT AND CLARIFY AMENDMENT 13 AND SUBSEQUENT FRAMEWORKS OF THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** This action would make corrections and clarifications to the final rule implementing Amendment 13 to the Northeast Multispecies Fishery Management Plan, as well as subsequent groundfish actions. These corrections are administrative in nature and are intended to correct inaccurate references and other inadvertent errors and to clarify specific regulations to maintain consistency with the intent of Amendment 13 and subsequent actions.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AW95

## 61. AMENDMENT 11 TO THE ATLANTIC MACKEREL, SQUID, BUTTERFISH FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** Amendment 11 may consider: (1) Limited access in the Atlantic mackerel (mackerel) fishery; (2) implementation of annual catch limits (ACLs) and accountability measures (AMs) for mackerel and butterfish required under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA); (3) updating of the description and identification of essential fish habitat (EFH) for all life stages of mackerel, Loligo squid, Illex squid, and butterfish (including gear impacts on Loligo squid egg EFH); and (4) possible limitations on at-sea processing of mackerel.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 08/11/08 | 73 FR 46590 |
| Notice of Intent Comment Period End | 09/10/08 | |
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AX05

### 62. AMENDMENT 30 TO THE FISHERY MANAGEMENT PLAN FOR BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRABS ARBITRATION REGULATIONS

**Legal Authority:** 16 USC 1862; PL 109–241; PL 109–479

**Abstract:** The proposed action would implement Amendment 30 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crabs to make minor modifications to the arbitration system used to settle price and other disputes among harvesters and processors in the Bering Sea/Aleutian Islands crab rationalization program.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| Notice of Availability | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |
| Notice of Availability Comment Period End | 07/00/10 | |
| Final Rule | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249
Email: doug.mecum@noaa.gov

**RIN:** 0648–AX47

### 63. SALMON BYCATCH REDUCTION MANAGEMENT MEASURES FOR THE FISHERY MANAGEMENT PLAN 91 IN THE BERING SEA ALEUTIAN ISLANDS

**Legal Authority:** 16 USC 1801 et seq; 16 USC 3631 et seq; 16 USC 773 et seq; PL 108–447

**Abstract:** This fishery management plan amendment and rulemaking will implement the North Pacific Fishery Management Council's recommendations for management measures to minimize to the extent practicable Chinook salmon bycatch in the Bering Sea pollock fishery. These management measures provide two options for the pollock sectors (e.g., inshore catcher vessels, offshore catcher-processors, catcher vessels delivering to motherships, or CDQ entities): fish under a lower Chinook salmon cap or participate in an incentive program and fish under a higher cap. Under the first option, the fleet as a whole may choose to fish under a transferable cap of 47,591 Chinook salmon, which would be allocated by season and sector. Once each sector reaches its specific cap, it would be prohibited from continuing to fish for pollock for the remainder of the season. Alternatively, vessels or CDQ entities may choose to participate in private contracts called incentive plan agreements (IPA) which would describe how participants would maintain low bycatch even when their bycatch levels are well below the hard cap approved. Those vessels or CDQ entities participating in an IPA would be allocated a transferable share of up to 60,000 Chinook salmon. This cap would be reduced for any vessels or CDQ entities not participating in an IPA and those vessels and CDQ entities would fish under a lower, non-transferable cap. In addition to the annual cap levels, if any sector operating under an IPA exceeds its proportion of 47,591 Chinook salmon three times in any seven-year period, the sector's maximum bycatch limit will be permanently reduced to its proportional share of the 47,591 cap. If the FMP amendments and proposed rule are approved, fishing under the new Chinook salmon bycatch management measures would start in 2011.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability | 02/18/10 | 75 FR 7228 |
| NPRM | 03/23/10 | 75 FR 14016 |
| Notice of Availability Comment Period End | 04/19/10 | |
| NPRM Comment Period End | 05/07/10 | |
| Final Rule | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249
Email: doug.mecum@noaa.gov

**RIN:** 0648–AX89

### 64. REVOKE INACTIVE QUOTA SHARE AND ANNUAL INDIVIDUAL FISHING QUOTA FROM A HOLDER OF QUOTA SHARE UNDER THE PACIFIC HALIBUT AND SABLEFISH FIXED GEAR INDIVIDUAL FISHING QUOTA PROGRAM

**Legal Authority:** 16 USC 1801 et seq; 16 USC 773 (Halibut Act)

**Abstract:** This action would amend existing commercial fishing regulations for the fixed-gear Pacific Halibut and sablefish individual fishing quota program at 50 CFR 679. The amendment would revoke inactive quota share unless the quota share permit holder affirmatively notices NMFS in writing within 60 days of the agency's preliminary determination of inactivity that they choose to (a) retain the inactive IFQ quota share, (b) activate the quota share through transfer or by fishing, or (c) appeal the preliminary determination. Quota share that is not activated through this process and is revoked would be proportionally distributed to the quota share pool. This regulatory revision is based on the recommendations of the North Pacific Fishery Management Council in June 2006 and again in February 2009. Amending the regulations would improve the efficiency of the Pacific Halibut and Sablefish IFQ program and augment operational flexibility of participating fisherman.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |
| Final Rule | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249
Email: doug.mecum@noaa.gov

**RIN:** 0648–AX91

### 65. 2010 SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

**Legal Authority:** 16 USC 1801

**Abstract:** This action will propose and implement the 2010 recreational management measures (minimum fish size, fishing seasons, and possession limits) for the summer flounder, scup, and black sea bass fisheries.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AY04

## 66. MAXIMIZED RETENTION MONITORING PROGRAM FOR CATCHER VESSELS IN THE PACIFIC WHITING MOTHERSHIP FISHERY IN THE PACIFIC COAST GROUNDFISH FISHERY

**Legal Authority:** 16 USC 1801

**Abstract:** The action would implement a monitoring program for catcher vessels in the mothership sector of the Pacific whiting fishery off the coast of Washington, Oregon, and California. The monitoring program would consist of a camera and other sensors to monitor fishing activity in order to maintain the integrity of the maximized retention requirements found at 50 CFR 660.306 (f)(7). Maximized retention encourages full retention of all catch while allowing minor discard events to occur. This ensures that unsorted catch is available for observers to monitor on board the mothership processors and thereby maintains the integrity of data collected under the observer program.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Frank Lockhart, Program Analyst, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Seattle, WA 98115
Phone: 206 526–6142
Fax: 206 526–6736
Email: frank.lockhart@noaa.gov

**RIN:** 0648–AY17

## 67. FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, SOUTH ATLANTIC; GULF OF MEXICO FISHERIES; GENERIC AMENDMENT FOR ANNUAL CATCH LIMITS

**Legal Authority:** 16 USC 1801

**Abstract:** The generic amendment is intended to modify five of the Council's Fishery Management Plan (FMPs). These include FMPs for: Reef Fish Resources, Shrimp, Stone Crab, Coral and Coral Reef Resources, and Red Drum. NMFS and the Council will develop these Annual Catch Limits (ACLs) in co-operation with the Scientific and Statistical Committee and the Southeast Fisheries Science Center. NMFS, in collaboration with the Council, will develop a DEIS to evaluate alternatives and actions for the ACLs. Some examples of these actions include: establishing sector specific ACLs, selecting levels of risk associated with species yields, considering removal or withdrawal of species from FMPs, and delegating species or species assemblages to state regulators.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 08/04/09 | 74 FR 47206 |
| NPRM | 11/00/10 | |
| NPRM Comment Period End | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AY22

## 68. • REGULATORY AMENDMENT TO REVISE CHARTER HALIBUT LOGBOOK SUBMISSION REQUIREMENTS

**Legal Authority:** 16 USC 2431 et seq; 31 USC 9701 et seq

**Abstract:** Clarifies and revises the charter halibut logbook submission requirements at 50 CFR part 300 to better match the submission schedule and reporting format of the Alaska Department of Fish and Game saltwater charter logbook.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249
Email: doug.mecum@noaa.gov

**RIN:** 0648–AY38

## 69. • ADDENDUM IV TO THE WEAKFISH INTERSTATE MANAGEMENT PLAN—BYCATCH TRIP LIMIT

**Legal Authority:** 16 USC 5101

**Abstract:** NMFS takes this action to modify management restrictions in the Federal weakfish fishery in a manner consistent with the Commission's Weakfish Management Board's (Board) approved Addendum IV to Amendment 4 to the ISFMP for Weakfish. In short, the proposed Federal regulatory change would decrease the incidental catch allowance for weakfish in the EEZ in non-directed fisheries using smaller mesh sizes, from 150 pounds to no more than 100 pounds per day or trip, whichever is longer in duration. In addition it would impose a one fish possession limit on recreational fishers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alan Risenhoover, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13362, 1315

East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2334
Fax: 301 713–0596
Email: alan.risenhoover@noaa.gov

**RIN:** 0648–AY41

### 70. • FRAMEWORK 21 TO THE ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** Framework Adjustment 21 to the Atlantic Sea Scallop Fishery Management Plan (Framework 21) will set specifications for the 2010 scallop fishing year, which begins March 1, 2010, including adjustments to the total allowable catch, days-at-sea (DAS) allocations, scallop access area rotation schedule, and access area trip allocations. This framework is for a single year because the Council is working on Amendment 15, which will establish a process for implementing annual catch limits that are required to be in place in 2011 for the scallop fishery. Framework 21 must also comply with the requirements of the March 14, 2008 (amended February 5, 2009), Biological Opinion completed for the Atlantic Sea Scallop fishery, which requires the amount of allocated scallop fishing effort by limited access DAS scallop vessels that can be used in the Mid-Atlantic to be limited during the time of year when sea turtle distribution overlaps with scallop fishing activity. In addition, Framework 21 considers minor adjustments to the limited access general category individual fishing quota program, scheduled to be implemented March 1, 2010, and the observer set-aside program.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AY43

### 71. • FISHERY MANAGEMENT PLAN AMENDMENT 95 FOR SKATES MANAGEMENT IN THE GROUNDFISH FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

**Legal Authority:** 16 USC 773 et seq; PL 108–447; PL 106–31; PL 106–554; PL 109–479; PL 105–277; 16 USC 1801; 16 USC 1540

**Abstract:** NMFS proposes regulations to implement Amendment 95 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). If approved, Amendment 95 would move skates from the ''other species'' category to the target species list in the FMP. By listing skates as target species, a directed fishery for skates in the Bering Sea and Aleutian Islands Management Area (BSAI) may be managed to reduce the potential for overfishing skates. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |
| Final Action | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249
Email: doug.mecum@noaa.gov

**RIN:** 0648–AY48

### 72. • AMENDMENT 2; FISHERY MANAGEMENT PLAN FOR QUEEN CONCH FISHERY OF PUERTO RICO AND U.S. VIRGIN ISLANDS, AND AMENDMENT 5; REEF FISH FISHERY MANAGEMENT PLAN OF PUERTO RICO AND U.S. VIRGIN ISLANDS

**Legal Authority:** 16 USC 1801

**Abstract:** The Magnuson-Stevens Fishery Conservation and Management Act (MSRA: Pub. L. 94-265), as amended through January 12, 2007, requires the establishment of annual catch limits (ACLs) and accountability measures (AMs) during 2010 for all species that are considered to be overfished or undergoing overfishing. The present amendment is being promulgated to meet those MSRA mandates as well as to establish framework procedures with which to effect future changes to the management plan and to restructure the fisheries management units for grouper and snapper. Various alternatives are included in the draft amendment, including maintenance of the status quo for each action as well as various alternatives regarding the year-sequences used to establish ALCs and the strategies to be employed to account for overages and to respond to needed changes in management methods.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AY55

### 73. • FISHERIES OFF WEST COAST STATES; PACIFIC COAST GROUNDFISH FISHERY; INTERIM 2010 TRIBAL WHITING REGULATIONS

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** NMFS takes this action to establish an interim 2010 tribal whiting allocation, reporting and closure regulations, and refine existing regulations on tribal whiting reapportionment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/12/10 | 75 FR 11829 |
| NPRM Comment Period End | 04/02/10 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Frank Lockhart, Program Analyst, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Seattle, WA 98115
Phone: 206 526–6142
Fax: 206 526–6736
Email: frank.lockhart@noaa.gov

**RIN:** 0648–AY59

## 74. • FISHERIES OFF WEST COAST STATES; WEST COAST SALMON FISHERIES; 2010 MANAGEMENT MEASURES

**Legal Authority:** 16 USC 1854

**Abstract:** This final rule implements the 2010 annual management measures as approved by NMFS.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Frank Lockhart, Program Analyst, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Seattle, WA 98115
Phone: 206 526–6142
Fax: 206 526–6736
Email: frank.lockhart@noaa.gov

**RIN:** 0648–AY60

## 75. MARINE MAMMAL PROTECTION ACT PERMIT REGULATION REVISIONS

**Legal Authority:** 16 USC 1374

**Abstract:** The National Marine Fisheries Service (NMFS) is considering changes to its implementing regulations (50 CFR 216) governing the issuance of permits for scientific research and enhancement activities under Section 104 of the Marine Mammal Protection Act and is soliciting public comment to better inform the process. NMFS intends to streamline and clarify general permitting requirements and requirements for scientific research and enhancement permits, simplify procedures for transferring marine mammal parts, possibly apply the General Authorization (GA) to research activities involving Level A harassment of non-endangered marine mammals, and implement a ''permit application cycle'' for application submission and processing of all marine mammal permits. NMFS intends to write regulations for marine mammal photography permits and is considering whether this activity should be covered by the GA.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 09/13/07 | 72 FR 52339 |
| ANPRM Comment Period Extended | 10/15/07 | 72 FR 58279 |
| ANPRM Comment Period End | 11/13/07 | 72 FR 52339 |
| ANPRM Comment Period End | 12/13/07 | 72 FR 58279 |
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dr. Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7235
Fax: 301 713–2521
Email: michael.payne@noaa.gov

**RIN:** 0648–AV82

## 76. TAKE AND IMPORT MARINE MAMMALS: PROPOSED RULE FOR TAKE OF MARINE MAMMALS INCIDENTAL TO ROUTINE OPERATIONS OF 13 POWER GENERATING STATIONS IN CENTRAL AND SOUTHERN CALIFORNIA

**Legal Authority:** 16 USC 1361 et seq

**Abstract:** NMFS proposes to govern the take of marine mammals by Level A harassment (injury) and mortality from 13 power generating stations located on the coast of central and southern California incidental to routine power plant operations for a period of five years, under the authority of section 101(a)(5)(A) of the Marine Mammal Protection Act. Under that authority NMFS also must prescribe mitigation, monitoring, and reporting requirements in connection with take authorizations. Incidental takings of marine mammals, including California sea lions, harbor seals, and northern elephant seals can and do occur as a result of the operation of circulating water systems (CWS) by the electrical power generation plants located on the coast of central and southern California described in the incidental take authorization applications. These CWS are an integral part of these power stations that provide continuous cooling water necessary for power generation and safety of the facility. The typical location of entrainment occurs as water is taken into the plant via submerged structures or canals. Intake velocities may be strong enough to pull live animals into the plant, particularly if they are actively seeking prey in the vicinity of intake structures. Confinement within intake plumbing could lead to confusion and panic, especially for young, immature animals. If the animal is unable to escape, it could (1) Drown or become fatally injured in transit between intake and large sedimentation basins within the plants known as forebays; (2) survive the transit and succumb in the forebay due to exhaustion, illness, or disease; or (3) survive the transit and be rescued by plant personnel using cages specially designed for such an activity. It is also likely that previously dead animals may end up entrained as well.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dr. Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7235
Fax: 301 713–2521
Email: michael.payne@noaa.gov

**RIN:** 0648–AW59

## 77. • REDUCE SEA TURTLE BYCATCH IN ATLANTIC TRAWL FISHERIES

**Legal Authority:** 16 USC 1531 et seq

**Abstract:** NMFS is initiating a rulemaking action to reduce injury and mortality to endangered and threatened sea turtles resulting from incidental take, or bycatch, in trawl fisheries in the Atlantic waters. NMFS will likely address the size of the turtle excluder device (TED) escape opening currently required in the summer flounder trawl fishery, the definition of a summer flounder trawler and the use of TEDS in this fishery; the use of TEDs in the croaker and weakfish flynet, whelk, Atlantic sea scallop, and calico scallop trawl fisheries of the Atlantic Ocean; and new seasonal and temporal

boundaries for TED requirements. In addition, this rule will address the definition of the Gulf Area applicable to the shrimp trawl fishery in the southeast Atlantic and Gulf of Mexico. The purpose of the rule is to aid in the protection and recovery of listed sea turtle populations by reducing mortality in trawl fisheries through the use of TEDs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alexis Gutierrez, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2322
Email: alexis.gutierrez@noaa.gov

**RIN:** 0648–AY61

## Department of Commerce (DOC) — Final Rule Stage
## National Oceanic and Atmospheric Administration (NOAA)

### NATIONAL MARINE FISHERIES SERVICE

### 78. CERTIFICATION OF NATIONS WHOSE FISHING VESSELS ARE ENGAGED IN IUU FISHING OR BYCATCH OF PROTECTED LIVING MARINE RESOURCES

**Legal Authority:** 16 USC 1801 et seq; 16 USC 1826d to 1826k

**Abstract:** The National Marine Fisheries Service (NMFS) is establishing a process of identification and certification to address illegal, unreported, or unregulated (IUU) activities and bycatch of protected species in international fisheries. Nations whose fishing vessels engage, or have been engaged, in IUU fishing or bycatch of protected living marine resources would be identified in a biennial report to Congress, as required under section 403 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006. NMFS would subsequently certify whether identified nations have taken appropriate corrective action with respect to the activities of its fishing vessels, as required under section 403 of MSRA.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 06/11/07 | 72 FR 33436 |
| ANPRM Comment Period End | 07/05/07 | |
| NPRM | 01/14/09 | 74 FR 2019 |
| NPRM Comment Period End | 05/14/09 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Christopher Rogers, Division Chief, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–9090
Fax: 301 713–9106
Email: christopher.rogers@noaa.gov

**RIN:** 0648–AV51

### 79. MAGNUSON–STEVENS FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT (MSRA) ENVIRONMENTAL REVIEW PROCEDURE

**Legal Authority:** 16 USC 1801

**Abstract:** Section 107 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) (Pub. L. 109-479) requires NOAA Fisheries to revise and update agency procedures for complying with the National Environmental Policy Act (NEPA) in the context of fishery management actions. It further requires that NOAA Fisheries consult with the Council on Environmental Quality (CEQ) and the Regional Fishery Management Councils (Councils) and involve the public in the development of the revised procedures. The MSRA provides that the resulting procedures will be the sole environmental impact assessment procedure for fishery management actions, and that they must conform to the time lines for review and approval of fishery management plans and plan amendments. They must also integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear, and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.
NOAA Fisheries is currently consulting with the councils, the public and CEQ to develop a proposed procedure.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/14/08 | 73 FR 27998 |
| NPRM Comment Period End | 06/13/08 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Steve Leathery, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2239
Email: steve.leathery@noaa.gov

**RIN:** 0648–AV53

### 80. REVISE REGULATIONS GOVERNING THE NORTH PACIFIC GROUNDFISH OBSERVER PROGRAM

**Legal Authority:** 118 Stat 110; 16 USC 773 et seq; 16 USC 1801 et seq; 16 USC 3631 et seq; PL 108–199

**Abstract:** This rulemaking revises Federal regulations relevant to numerous administrative and procedural requirements applicable to observer providers, observers, and industry participating in the North Pacific Groundfish Observer Program. Specifically, this action would: Modify the current permit issuance process so that observer and observer provider permit issuance is a discretionary National Marine Fisheries Service (NMFS) decision; amend current Federal regulations addressing observer behavior involving drugs, alcohol, and physical sexual conduct to remove NMFS oversight of observer behavior

that does not affect job performance; require that observer providers submit policies related to these activities and continue to notify NMFS upon learning of an incident; revise Federal regulations so that observer providers are allowed to provide observers or technical staff for purposes of exempted fishing permits, scientific research permits, or other scientific research activities; revise the definition of ''fishing day'' in Federal regulations; require observer providers to annually submit detailed economic information to NMFS; specify a date by which observers who have collected data in the previous fishing year would be required to be available for debriefing; and implement housekeeping issues related to errors or clarifications in existing regulations at 50 CFR 679.50.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/30/09 | 74 FR 50155 |
| NPRM Comment Period End | 10/31/09 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249
Email: doug.mecum@noaa.gov

**RIN:** 0648–AW24

## 81. AMENDMENT 3 TO THE NORTHEAST SKATE COMPLEX FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801

**Abstract:** NMFS proposes regulations to implement measures in Amendment 3 to the Northeast Skate Complex Fishery Management Plan (Skate FMP). Amendment 3 was developed by the New England Fishery Management Council (Council) to rebuild overfished skate stocks (thorny and smooth skates) and implement annual catch limits (ACLs) and accountability measures (AMs) consistent with the requirements of the reauthorized Magnuson-Stevens Fishery Conservation and Management Act. Amendment 3 would establish an ACL and annual catch target (ACT) for the skate complex, total allowable landings (TAL) for the skate wing and bait fisheries, seasonal quotas for the bait fishery, reduced possession limits, in-season possession limit triggers, and other measures to improve management of the skate fisheries. This rule also includes skate fishery specifications for fishing years (FY) 2010 through 2011.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/21/10 | 75 FR 3434 |
| NPRM Comment Period End | 02/22/10 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AW30

## 82. ATLANTIC HIGHLY MIGRATORY SPECIES; ATLANTIC SHARK MANAGEMENT MEASURES

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** This rule evaluates the management measures for small coastal sharks (SCS) based on the results of the 2007 SCS stock assessment. This rulemaking could consider, among other things, commercial quotas and trip limits, recreational minimum size and bag limits, time/area closures, and the public display quota. In addition, this rule implements a rebuilding plan for blacknose sharks. To the extent that blacknose sharks are caught in fisheries that are not targeted highly migratory species fisheries, the National Marine Fisheries Service (NMFS) will work with the appropriate Regional Fishery Management Council, Interstate Commission, and States to implement regulations through their processes to rebuild blacknose sharks. This action is necessary in light of recent stock assessments, which have determined that blacknose sharks are overfished with overfishing occurring. As needed, this rule may include others items to clarify existing regulations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent | 05/07/08 | 73 FR 25665 |
| Notice of Scoping Meetings and Extension of Comment Period | 07/02/08 | 73 FR 37932 |
| Notice of Intent Comment Period End | 08/05/08 | |
| Notice of Intent Comment Period Extended—Second Extension | 10/29/08 | 73 FR 64307 |
| Notice of Intent Comment Period Extension End | 10/31/08 | |
| Second Extension Comment Period End | 11/14/08 | |
| NPRM | 07/24/09 | 74 FR 36892 |
| NPRM Comment Period Extended | 08/10/09 | 74 FR 39914 |
| NPRM Comment Period End | 09/22/09 | |
| NPRM Comment Period Extended End | 09/25/09 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Margo Schulze–Haugen, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–0234
Fax: 301 713–1917
Email: margo.schulze-haugen@noaa.gov

**RIN:** 0648–AW65

## 83. AMENDMENT 31 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

**Legal Authority:** 16 USC 1801

**Abstract:** In September 2008, NOAA's National Marine Fisheries Service (NMFS) released a report based on observer data that indicated the total number of loggerhead sea turtle takes by the eastern Gulf of Mexico reef fish bottom longline fishery was much greater than that authorized in the most recent biological opinion. In response, the Gulf of Mexico Fishery Management Council (Council) requested NMFS take emergency action to reduce the number of takes by the fishery during the short term while the Council develops long-term measures in Amendment 31. Measures being considered include: (1) Modifying baits; (2) area, season, and depth restrictions;

(3) reducing effort through a longline endorsement program; and (4) using observers or electronic monitoring to close the fishery once a sea turtle take threshold has been met.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/15/10 | 75 FR 2469 |
| NPRM Comment Period End | 03/01/10 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AX67

## 84. SNAPPER–GROUPER FISHERY MANAGEMENT PLAN OF THE SOUTH ATLANTIC

**Legal Authority:** 16 USC 1801

**Abstract:** This action would implement a prohibition on the harvest of red snapper for 180 days to address overfishing of red snapper, through interim measures.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/06/09 | 74 FR 31906 |
| NPRM Comment Period End | 08/05/09 | |
| Final Action | 12/04/09 | 74 FR 63673 |
| Final Action Effective | 01/04/10 | |
| Extension of Final Action | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AX75

## 85. • FRAMEWORK ADJUSTMENT 44 AND SPECIFICATIONS FOR THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801

**Abstract:** Framework Adjustment 44 and Specifications will modify management measures for the Northeast (NE) Multispecies Fishery Management Plan (FMP) to make the FMP more precautionary, and implement Annual Catch Limit (ACL) specifications for the fishery for fishing years 2010, 2011, and 2012.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/01/10 | 75 FR 5016 |
| NPRM Comment Period End | 03/01/10 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AY29

## 86. • FY 2010 ATLANTIC DEEP–SEA RED CRAB SPECIFICATIONS

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** NMFS takes this action to establish the target total allowable catch and days-at-sea allocation for FY 2010 for the red crab fishery.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/19/10 | 75 FR 7435 |
| NPRM Comment Period End | 03/22/10 | |
| Final Action | 05/00/10 | |
| Final Action Effective | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AY51

## 87. PROVIDE REGULATIONS FOR PERMITS FOR CAPTURE, TRANSPORT, IMPORT, AND EXPORT OF PROTECTED SPECIES FOR PUBLIC DISPLAY, AND FOR MAINTAINING A CAPTIVE MARINE MAMMAL INVENTORY

**Legal Authority:** 16 USC 1372(c)

**Abstract:** This rule will revise and simplify criteria and procedures specific to permits for taking, transporting, importing, and exporting protected species for public display and provide convenient formats for reporting marine mammal captive holdings and transports as required by amendments made in 1994 to the Marine Mammal Protection Act.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/03/01 | 66 FR 35209 |
| NPRM Comment Period Extended | 08/22/01 | 66 FR 44109 |
| NPRM Comment Period End | 09/04/01 | |
| Comment Period Extended | 11/02/01 | |
| Final Action | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dr. Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7235
Fax: 301 713–2521
Email: michael.payne@noaa.gov

**RIN:** 0648–AH26

## 88. PROTECTIVE REGULATIONS FOR KILLER WHALES IN THE NORTHWEST REGION UNDER THE ENDANGERED SPECIES ACT AND MARINE MAMMAL PROTECTION ACT

**Legal Authority:** 16 USC 1361 et seq; 16 USC 1531 to 1543

**Abstract:** The National Marine Fisheries Service (NMFS) is considering whether to propose regulations to protect killer whales (Orcinus orca) in the Pacific Northwest. The Southern Resident killer whale distinct population segment (DPS) was listed as endangered under the Endangered Species Act (ESA) on November 18,

2005 (70 FR 69903). In the final rule announcing the listing, NMFS identified vessel effects, including direct interference and sound, as a potential contributing factor in the recent decline of this population. Both the Marine Mammal Protection Act (MMPA) and the ESA prohibit take, including harassment, of killer whales, but these statutes do not prohibit specified acts. NMFS is now considering whether to propose regulations that would prohibit certain acts, under our general authorities under the ESA and MMPA and their implementing regulations. The Proposed Recovery Plan for Southern Resident killer whales (71 FR 69101; November 29, 2006) includes as a management action the evaluation of current guidelines and the need for regulations and/or protected areas. The scope of this ANPR encompasses the activities of any person or conveyance that may result in the unauthorized taking of killer whales and/or that may cause detrimental individual-level and population-level impacts. NMFS requests comments on whether—and if so, what type of—conservation measures, regulations, and, if necessary, other measures would be appropriate to protect killer whales from the effects of these activities.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/22/07 | 72 FR 13464 |
| ANPRM Comment Period End | 04/23/07 | |
| NPRM | 07/29/09 | 74 FR 37674 |
| NPRM Comment Period Extended | 10/19/09 | 74 FR 53454 |
| NPRM Comment Period End | 10/27/09 | |
| NPRM Extended Comment Period End | 01/15/10 | |
| Final Rule | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James H. Lecky, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2332
Fax: 301 427–2520
Email: jim.lecky@noaa.gov

**RIN:** 0648–AV15

## 89. RULEMAKING TO ESTABLISH TAKE PROHIBITIONS FOR THE THREATENED SOUTHERN DISTINCT POPULATION SEGMENT OF NORTH AMERICAN GREEN STURGEON

**Legal Authority:** 16 USC 1531 to 1543

**Abstract:** Under section 4(d) of the Federal Endangered Species Act (ESA), the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. This rule would apply the prohibitions under ESA section 9(a)(1)(A) through 9(a)(1)(G) for threatened Southern DPS green sturgeon, but would include certain exceptions and exemptions from the take prohibitions. Exceptions are included for certain scientific research, emergency fish rescue, law enforcement, and habitat restoration activities that meet the criteria specified in the protective regulations under Section 4(d) of the ESA for Southern DPS green sturgeon. Exemptions are included for state scientific research, fisheries activities, and tribal activities conducted under NMFS approved ESA 4(d) programs. Thus, take of Southern DPS fish may be authorized under ESA section 7 or 10, or under an exception or exemption to the take prohibitions if the activities are conducted in compliance with NMFS criteria or NMFS-approved plans.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/21/09 | 74 FR 23822 |
| NPRM Comment Period End | 07/20/09 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Marta Nammack, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–1401
Fax: 301 427–2523
Email: marta.nammack@noaa.gov

**RIN:** 0648–AV94

## 90. TAKING AND IMPORTING MARINE MAMMALS; U.S. NAVAL SURFACE WARFARE CENTER PANAMA CITY DIVISION MISSION ACTIVITIES

**Legal Authority:** 16 USC 1361 et seq

**Abstract:** On April 3, 2008, the National Marine Fisheries Service (NMFS) received an application from the Navy requesting an authorization for the take of 15 species/stocks of cetacean incidental to the proposed mission activities in the Naval Surface Warfare Center Panama City Division (NSWC PCD) study area over the course of 5 years. These mission activities are classified as military readiness activities. The purpose of the proposed mission activities is to enhance NSWC PCD's capability and capacity to meet littoral and expeditionary warfare requirements by providing Research, Development, Test, and Evaluation (RDT&E) and in service engineering for expeditionary maneuver warfare, operations in extreme environments, mine warfare, maritime operations, and coastal operations. The Navy states that these training activities may cause various impacts to marine mammal species in the NSWC PCD study area. The Navy requests an authorization to take individuals of these cetacean species by Level B Harassment. Further, the Navy requests an authorization to take 1 individual each of bottlenose, Atlantic spotted, and pantropical spotted dolphins per year by injury, as a result of the proposed mission activities.
NMFS is issuing a proposed rule to govern the take of these marine mammals by Level B harassment (behavior) and Level A harassment (injury) incidental to the aforementioned mission activities in the Naval NSWC PCD study area for a period of five years, under the authority of section 101(a)(5)(A) of the Marine Mammal Protection Act. Under that authority NMFS also must prescribe mitigation, monitoring, and reporting requirements in connection with take authorizations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/30/09 | 74 FR 20156 |
| NPRM Comment Period End | 06/01/09 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dr. Michael Payne, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7235
Fax: 301 713–2521

## DOC—NOAA

## Final Rule Stage

Email: michael.payne@noaa.gov

**RIN:** 0648–AW80

### 91. RULE TO REVISE THE CRITICAL HABITAT DESIGNATION FOR THE ENDANGERED LEATHERBACK SEA TURTLE

**Legal Authority:** 16 USC 1531 et seq

**Abstract:** The National Marine Fisheries Service, announces a rule to revise leatherback turtle (Dermochelys coriacea) critical habitat under the Endangered Species Act of 1973, as amended. The leatherback is currently listed as endangered throughout its range, and critical habitat consists of Sandy Point Beach and adjacent waters, St. Croix, U.S. Virgin Islands. This rule would revise critical habitat to include waters along the U.S. West Coast.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/05/10 | 75 FR 319 |
| NPRM Comment Period Extension | 02/19/10 | 75 FR 7434 |
| NPRM Comment Period End | 03/08/10 | |
| NPRM Comment Period Extension End | 04/19/10 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Sara McNulty, Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2322

**RIN:** 0648–AX06

### 92. CRITICAL HABITAT DESIGNATION FOR COOK INLET BELUGA WHALE UNDER THE ENDANGERED SPECIES ACT

**Legal Authority:** 16 USC 1531 et seq

**Abstract:** The National Marine Fisheries Service (NMFS) listed the Cook Inlet beluga whale Distinct Population Segment as endangered under the Endangered Species Act on October 17, 2009. NMFS is required to designate critical habitat no later than one year after the publication of a listing. NMFS intends to publish a proposed rule by October 17, 2009.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 04/14/09 | 74 FR 17131 |
| ANPRM Comment Period End | 05/14/09 | |
| NPRM | 12/02/09 | 74 FR 63080 |
| NPRM Comment Period Extended | 01/12/10 | 75 FR 1582 |
| NPRM Comment Period End | 02/01/10 | |
| Final Action | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Marta Nammack, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–1401
Fax: 301 427–2523
Email: marta.nammack@noaa.gov

**RIN:** 0648–AX50

### 93. TAKING OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES; TAKING MARINE MAMMALS INCIDENTAL TO TRAINING OPERATIONS CONDUCTED WITHIN THE GULF OF MEXICO RANGE COMPLEX

**Legal Authority:** 16 USC 1361 et seq

**Abstract:** NMFS has received requests from the U.S. Navy (Navy) for authorizations for the taking of marine mammals incidental to training and operational activities conducted by the Navy's Atlantic Fleet within Gulf of Mexico (GOMEX) Range Complex for the period beginning December 3, 2009, and ending December 2, 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern that take and requesting information, suggestions, and comments on these proposed regulations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/14/09 | 74 FR 33960 |
| NPRM Comment Period End | 08/13/09 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James H. Lecky, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2332
Fax: 301 427–2520
Email: jim.lecky@noaa.gov

**RIN:** 0648–AX86

## Department of Commerce (DOC)
## National Oceanic and Atmospheric Administration (NOAA)

## Long-Term Actions

### NATIONAL MARINE FISHERIES SERVICE

### 94. FISHERY MANAGEMENT PLAN FOR REGULATING OFFSHORE MARINE AQUACULTURE IN THE GULF OF MEXICO

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** The purpose of the amendment is to develop a regulatory permitting process for regulating and promoting environmentally sound and economically sustainable aquaculture in the Gulf Exclusive Economic Zone. Management actions include: (1) Types of aquaculture permits required; (2) duration aquaculture permits are effective; (3) conditions for permit issuance; (4) species allowed for aquaculture; (5) allowable aquaculture systems; (6) siting requirements and conditions; (7) restricted access zones for aquaculture facilities; (8) recordkeeping and reporting requirements; (9) biological reference points and status determination criteria; and (10) framework procedures for modifying status determination criteria and regulatory measures.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability | 06/04/09 | 74 FR 26829 |
| Notice of Availability Comment Period End | 08/03/09 | |
| NPRM | To Be Determined | |

## DOC—NOAA

## Long-Term Actions

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AS65

### 95. • AMENDMENT 5 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801

**Abstract:** Amendment 5 to the Atlantic Herring Fishery Management Plan will consider: catch monitoring program; Interactions with river herring; access by herring midwater trawl vessels in groundfish closed areas; and interactions with the mackerel fishery.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AY47

## Department of Commerce (DOC)
## National Oceanic and Atmospheric Administration (NOAA)

## Completed Actions

### 96. FISHERIES IN THE WESTERN PACIFIC; PELAGIC FISHERIES; SQUID JIG FISHERIES

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** This action designates pelagic squid as a management unit species under the Western Pacific Pelagics Fishery Management Plan and establishes permitting and reporting requirements.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability | 08/11/08 | 73 FR 46581 |
| NPRM | 08/28/08 | 73 FR 50751 |
| Notice Comment Period End | 10/10/08 | |
| NPRM Comment Period End | 10/14/08 | |
| Final Action | 11/21/08 | 73 FR 70600 |
| Collection of Information Approval | 09/04/09 | 74 FR 45756 |
| Correction | 03/03/10 | 75 FR 9531 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 944–2207
Fax: 808 973–2941
Email: alvin.katekaru@noaa.gov

**RIN:** 0648–AS71

### 97. MODIFYING MAXIMUM RETAINABLE AMOUNTS (MRAS) FOR SELECTED GROUNDFISH SPECIES CAUGHT BY THE NON–AMERICAN FISHING ACT TRAWL CATCHER PROCESSOR SECTOR

**Legal Authority:** 16 USC 1801

**Abstract:** The National Marine Fisheries Service issues this action to amend regulations specifying the current interval of time allowed for determining the maximum retainable amount (MRA) of selected groundfish species that can be retained by non-American Fishery Act trawl catcher processors. This action would change MRA regulations located at 50 CFR 679.20(e) that establish the calculation of MRAs for groundfish species that are closed to directed fishing by increasing the interval of time each vessel in this sector would have to retain the MRA specified in regulation for several species in the Bering Sea and Aleutian Islands. This action is intended to promote the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/13/09 | 74 FR 7209 |
| NPRM Comment Period End | 03/16/09 | |
| Final Rule | 12/10/09 | 74 FR 65503 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249
Email: doug.mecum@noaa.gov

**RIN:** 0648–AV32

### 98. INITIAL IMPLEMENTATION OF THE WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

**Legal Authority:** 44 USC 3501 et seq; PL 109–479

**Abstract:** This action will implement, in part, the Western and Central Pacific Fisheries Convention (WCPFC) Implementation Act, which authorizes the Secretary of Commerce to promulgate regulations needed to carry out the obligations of the United States under the WCPFC. The action will include regulations applicable to owners and operators of U.S. vessels used to fish for highly migratory fish stocks in the western and central Pacific Ocean, possibly including requirements to, among others, obtain authorization to fish, carry position-fixing transmitters as part of a vessel monitoring system, accommodate observers from a regional observer program, report fishing activity, accept boarding and inspection by authorized inspectors of other members of the Commission, and prohibit transshipping at sea from purse seine vessels.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/22/09 | 74 FR 23965 |
| NPRM Comment Period End | 06/22/09 | |
| Final Action | 01/21/10 | 75 FR 3335 |
| Correction | 02/19/10 | 75 FR 7361 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dr. Charles Karnella, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 1110, 1601 Kapiolani Boulevard, Honolulu, HI 96814–4700
Phone: 808 973–2985
Fax: 808 973–2941
Email: charles.karnella@noaa.gov

**RIN:** 0648–AV63

## 99. AMENDMENT 15B TO THE SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL SNAPPER GROUPER FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801

**Abstract:** Amendment 15B assesses the practicability of prohibiting the sale of recreationally caught fish; assesses the practicability of changes to the renewal period on commercial snapper grouper permits; assesses the practicability of allowing one-to-one transfers of commercial permits from an individual to a family-held corporation; implements a plan to monitor and assess bycatch; implements measures to minimize the impacts of incidental take on sea turtles and smalltooth sawfish; updates management reference points for golden tilefish; and defines allocation for snowy grouper and black sea bass.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability | 06/04/09 | 74 FR 26827 |
| NPRM | 06/30/09 | 74 FR 31225 |
| Comment Period End | 08/03/09 | |
| NPRM Comment Period End | 08/04/09 | |
| Final Action | 11/16/09 | 74 FR 58902 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AW12

## 100. FISHERIES IN THE WESTERN PACIFIC; WESTERN PACIFIC PELAGIC FISHERIES; AMENDMENT 18 TO THE PELAGICS FISHERY MANAGEMENT PLAN; SHALLOW–SET LONGLINE SWORDFISH FISHERY

**Legal Authority:** 16 USC 1801

**Abstract:** Amendment 18 removes the annual limit on the number of fishing gear deployments (sets) for the Hawaii-based pelagic longline fishery. The amendment also revises the current maximum limit on the number of physical interactions that occur annually between loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting. Other measures currently applicable to the fishery remain unchanged. Amendment 18 is intended to increase opportunities for the shallow-set fishery to sustainably harvest swordfish and other fish species, without jeopardizing the continued existence of sea turtles and other protected resources.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability | 03/18/09 | 74 FR 11518 |
| Notice of Availability Comment Period End | 05/18/09 | |
| NPRM | 06/19/09 | 74 FR 29158 |
| NPRM Comment Period End | 08/03/09 | |
| Final Action | 12/10/09 | 74 FR 65460 |
| Correction—Final Action | 01/08/10 | 75 FR 1023 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alvin Katekaru, Assistant Regional Administrator, Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Honolulu, HI 96814
Phone: 808 944–2207
Fax: 808 973–2941
Email: alvin.katekaru@noaa.gov

**RIN:** 0648–AW49

## 101. HALIBUT CHARTER VESSEL MORATORIUM

**Legal Authority:** 16 USC 773 to 773k

**Abstract:** This action implements a moratorium on the entry of additional charter vessels into the guided sport fishery for Pacific halibut in waters of International Pacific Halibut Commission regulatory areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). This moratorium limits the number of charter vessels that may participate in the guided sport fishery for halibut in these areas. NMFS would issue a moratorium permit to a licensed charter vessel fishing business owner based on his or her past participation in the charter vessel fishery for halibut and to a Community Quota Entity representing specific rural communities. All moratorium permit holders would be subject to limits on the number of permits they could hold and on the number of charter vessel anglers who could catch and retain halibut on the permitted charter vessel. This action is proposed to achieve the halibut fishery management goals of the North Pacific Fishery Management Council. The intended effect is to curtail growth of fishing capacity in the guided sport fishery for halibut.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/21/09 | 74 FR 18178 |
| NPRM Comment Period End | 06/05/09 | |
| Final Rule | 01/05/10 | 75 FR 554 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert D. Mecum, Acting Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586–7221
Fax: 907 586–7249
Email: doug.mecum@noaa.gov

**RIN:** 0648–AW92

## 102. ATLANTIC HIGHLY MIGRATORY SPECIES; 2009 NORTH AND SOUTH ATLANTIC COMMERCIAL QUOTAS

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** This rule establishes the 2009 fishing season quotas for North and South Atlantic swordfish based on recent updated landings information and recommendations from the 2008 annual meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT). This rule is necessary to ensure that current swordfish quotas account for underharvests and reserve transfer from the 2008 fishing year, consistent with regulations at 50 CFR part 635 and ICCAT recommendations that establish

the U.S. North and South Atlantic swordfish allocations. This rule may also include other minor regulatory clarifications.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/05/09 | 74 FR 39032 |
| NPRM Comment Period End | 09/04/09 | |
| Final Rule | 12/16/09 | 74 FR 66585 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Margo Schulze–Haugen, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–0234
Fax: 301 713–1917
Email: margo.schulze-haugen@noaa.gov

**RIN:** 0648–AX07

## 103. AMENDMENT 29 TO THE FISHERY MANAGEMENT PLAN FOR REEF FISH RESOURCES OF THE GULF OF MEXICO

**Legal Authority:** 16 USC 1801

**Abstract:** Grouper and tilefish species in the Gulf of Mexico are managed under the reef fish fishery management plan. Past management practices under the plan have contributed to overcapitalization in these fisheries, which the Council now seeks to address. The amendment creates an individual fishing quota (IFQ) program to further control effort in the commercial grouper and tilefish fisheries in the Gulf of Mexico. The IFQ program was supported by over 80 percent of all eligible fishermen voting in a referendum for the IFQ program. The proposed rule would implement the IFQ program, establish design elements for the program, and allow consolidation of commercial permit landings history through permit stacking.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/30/09 | 74 FR 20134 |
| NPRM Comment Period End | 06/15/09 | |
| Final Rule | 08/31/09 | 74 FR 44732 |
| Supplemental NPRM | 12/10/09 | 74 FR 65500 |
| Supplemental NPRM Comment Period End | 01/11/10 | |
| Second Final Rule | 03/01/10 | 75 FR 9116 |
| Final Rule Effective | 03/31/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roy Crabtree, Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 Thirteenth Avenue South, St. Petersburg, FL 33701
Phone: 727 570–5305
Fax: 727 570–5583
Email: roy.crabtree@noaa.gov

**RIN:** 0648–AX39

## 104. WESTERN AND CENTRAL PACIFIC FISHERIES FOR HIGHLY MIGRATORY SPECIES; IMPLEMENTATION OF THE LONGLINE CATCH LIMITS ADOPTED AT THE FIFTH SESSION OF THE WESTERN AND CENTRAL PACIFIC FISHERIES COMMISSION

**Legal Authority:** 16 USC 6901 et seq

**Abstract:** This rule implements the decisions adopted at the Fifth Session of the Western and Central Pacific Fisheries Commission (Commission) to reduce or otherwise control the fishing mortality rate from longline fishing of bigeye tuna and potentially other highly migratory fish species in the Western and Central Pacific Ocean. Pursuant to the Western and Central Pacific Fisheries Convention Implementation Act, the Secretary of Commerce is authorized to implement regulations to carry out the obligations of the United States under the Western and Central Pacific Fisheries Convention (Convention), including the implementation of Commission decisions. At its Fifth Regular Session, in December 2008, the Commission adopted specific catch limits in longline fisheries for certain highly migratory fish species in the Convention's area of application for 2009, 2010, and 2011. This rule fulfills the international obligations of the United States regarding these catch limits. Moreover, this rule could establish a framework for implementing future Commission decisions of a similar nature.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/08/09 | 74 FR 32521 |
| NPRM Comment Period End | 08/07/09 | |
| Final Rule | 12/07/09 | 74 FR 63999 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dr. Charles Karnella, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 1110, 1601 Kapiolani Boulevard, Honolulu, HI 96814–4700
Phone: 808 973–2985
Fax: 808 973–2941
Email: charles.karnella@noaa.gov

**RIN:** 0648–AX59

## 105. FISHERIES OFF WEST COAST STATES; PACIFIC COAST GROUNDFISH FISHERY; DATA COLLECTION FOR THE TRAWL RATIONALIZATION PROGRAM

**Legal Authority:** 16 USC 1801

**Abstract:** NMFS plans to collect data to support implementation of a future trawl rationalization program under the Pacific Coast Groundfish Fishery Management Plan (FMP). NMFS may collect ownership information from all potential participants in the trawl rationalization program. In addition, NMFS is notifying potential participants on notice that the agency intends to use the Pacific States Marine Fisheries Commission's Pacific Fisheries Information Network (PacFIN) and the NMFS, Northwest Fisheries Science Center's Pacific whiting observer (NORPAC) databases to determine initial allocation of quota share for the trawl rationalization program.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/16/09 | 74 FR 47545 |
| NPRM Comment Period End | 10/16/09 | |
| Final Action | 01/29/10 | 75 FR 4684 |
| Final Action Effective | 03/01/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Frank Lockhart, Program Analyst, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE., Seattle, WA 98115
Phone: 206 526–6142
Fax: 206 526–6736

Email: frank.lockhart@noaa.gov

**RIN:** 0648–AX98

### 106. AMENDMENT 10 TO THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERY MANAGEMENT PLAN

**Legal Authority:** 16 USC 1801 et seq

**Abstract:** The purpose of Amendment 10 is to: (1) Develop a rebuilding program that allows the butterfish stock to rebuild in the shortest amount of time possible (but not to exceed ten years) and permanently protects the long-term health and stability of the rebuilt stock; (2) minimize bycatch and the fishing mortality of unavoidable bycatch, to the extent practicable, in mackerel, squid, and butterfish (MSB) fisheries; and (3) minimize the race to fish and promote efficient use of fishing capital in Loligo and Illex fisheries while providing a means for the industry to proactively engage in resource governance and to provide greater flexibility in developing management measures that fit localized needs through the development of sectors in the Loligo and Illex fisheries.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Availability | 07/13/09 | 74 FR 33986 |
| NPRM | 09/03/09 | 74 FR 45597 |
| NPRM Comment Period End | 10/19/09 | |
| Final Action | 03/11/10 | 75 FR 11441 |
| Final Action Effective | 04/12/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AY00

### 107. FISHING RESTRICTIONS IN THE LONGLINE AND PURSE SEINE FISHERIES IN THE EASTERN PACIFIC OCEAN IN 2009, 2010, AND 2011

**Legal Authority:** 16 USC 951–961 ; 16 USC 971 et seq

**Abstract:** NMFS is proposing regulations under the Tuna Conventions Act of 1950 to implement a resolution adopted by the Inter-American Tropical Tuna Commission (IATTC Resolution C-09-01). That resolution requires that the United States restrict the catch of bigeye tuna in the longline fishery and the effort in the purse seine fishery in the eastern Pacific Ocean in each of the years 2009, 2010, and 2011 to prevent overfishing of bigeye and yellowfin tuna. First, NMFS would implement a 500 metric ton (mt) catch limit on bigeye tuna caught by longline vessels greater than 24 meters in length in the IATTC Convention Area in 2009, 2010, and 2011. Second, NMFS would prohibit purse seine vessels of class size 4-6 (carrying capacity greater than 182 metric tons) from fishing for yellowfin, bigeye, and skipjack tunas in the IATTC Convention Area for a period of 59 days in 2009, 62 days in 2010, and 73 days in 2011. Notwithstanding this closure, purse seine vessels of class size 4 (between 182 and 272 mt carrying capacity) may make a single fishing trip of up to 30 days during the closed period. Third, class size 4-6 purse seine vessels would be prohibited from fishing for yellowfin, bigeye, and skipjack tunas between 96° and 100° W. longitude and between 4° N. and 3° S. latitude from September 29 to through October 29 for 2009, 2010, and 2011. And lastly, class size 4-6 purse seine vessels would continue to be required to retain all tuna caught unless it is unfit for human consumption for reasons other than size (which continues a long-term requirement).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/19/09 | 74 FR 53455 |
| NPRM Comment Period End | 11/09/09 | |
| Final Rule | 11/23/09 | 74 FR 61046 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Heidi Hermsmeyer, Department of Commerce, National Oceanic and Atmospheric Administration, 501 West Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980–4036
Fax: 562 980–4047
Email: heidi.hermsmeyer@noaa.gov

**RIN:** 0648–AY08

### 108. 2010 ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERY SPECIFICATIONS AND MANAGEMENT MEASURES

**Legal Authority:** 16 USC 1801

**Abstract:** NMFS would implement specifications for the 2010 fishing year for Atlantic mackerel, squid, and butterfish (MSB). The intent of this action is to fulfill this requirement and to promote the development and conservation of the MSB resources.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/12/09 | 74 FR 58234 |
| NPRM Comment Period End | 12/14/09 | |
| Final Action | 02/03/10 | 75 FR 5537 |
| Final Action Effective | 03/05/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Way, Gloucester, MA 01930
Phone: 978 281–9200
Fax: 978 281–9117
Email: pat.kurkul@noaa.gov

**RIN:** 0648–AY13

### 109. • 2010 PACIFIC HALIBUT FISHERIES; CATCH SHARING PLAN

**Legal Authority:** 16 USC 1801

**Abstract:** NMFS takes this action to approve and implement changes to the Pacific Halibut Catch Sharing Plan (Plan) for the International Pacific Halibut Commission's (IPHC or Commission) regulatory Area 2A off Washington, Oregon, and California (Area 2A). NMFS proposes to implement the portions of the Plan and management measures that are not implemented through the IPHC, which includes tribal regulations and the sport fishery allocations and management measures for Area 2A. These actions are intended to enhance the conservation of Pacific halibut, to provide greater angler opportunity where available, and to protect yelloweye rockfish and other overfished groundfish species from incidental catch in the halibut fisheries.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/04/10 | 75 FR 5745 |

## DOC—NOAA — Completed Actions

| Action | Date | FR Cite |
|---|---|---|
| NPRM Comment Period End | 02/19/10 | |
| Final Action | 03/18/10 | 75 FR 13024 |
| Final Action Effective | 04/19/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Barry Thom, Fishery Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–1401
Email: barry.thom@noaa.gov

**RIN:** 0648–AY31

### 110. HARBOR PORPOISE TAKE REDUCTION PLAN REGULATIONS

**Legal Authority:** 16 USC 1361 et seq

**Abstract:** The National Marine Fisheries Service is taking this action to reduce the number of harbor porpoise taken in sink gillnet fisheries in the Gulf of Maine and Mid-Atlantic. The Harbor Porpoise Take Reduction Plan of 1999 implemented measures to reduce the incidental capture of harbor porpoises in sink gillnets to below the stock's Potential Biological Removal level (PBR). Measures included management areas in which deterrent devices (pingers) are required on gillnets; gear modifications; and seasonal closures. Between 2001 and 2005, incidental takes of harbor porpoise showed an increasing trend, and currently takes exceed PBR. This action would implement measures developed through discussions with the Harbor Porpoise Take Reduction Team, which was reconvened in 2007, when it was clear that existing measures were not sufficient to keep porpoise bycatch to below PBR. For the Gulf of Maine, this action would expand pinger use in Massachusetts Bay to include November; establish Stellwagen Bank Management Area, requiring pingers from November-May; establish Coastal Gulf of Maine Consequence Closure Area and require closure in October and November only if, after the most current two years, the average bycatch rate exceeds the trigger rate of .031, identified from observed compliant boats from the Mid-Coast, Massachusetts Bay, and Stellwagen Bank Management Areas; create Southern New England Management Area (includes current Cape Cod South Management Area); require pingers from December-May; establish Cape Cod South Expansion and Eastern Cape Cod Consequence Closure Areas; and require closure from February-April only if, after the most current two years, the average bycatch rate exceeds the trigger rate of 0.023, identified from observed compliant vessels fishing in the Southern New England Management Area. For the Mid Atlantic, this action would establish Mudhole South Management Area; close from February 1-March 15; and modify the tie-down requirement.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/21/09 | 74 FR 36058 |
| Correction | 08/10/09 | 74 FR 39910 |
| NPRM Comment Period End | 08/20/09 | |
| Final Action | 02/19/10 | 75 FR 7383 |
| Final Action Delay of Effective Date | 03/17/10 | 75 FR 12698 |
| Final Action Effective | 03/22/10 | |
| Final Action Delay of Effective Date End | 09/15/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Melissa Andersen, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East–West Highway, Silver Spring, MD 20910
Phone: 301 713–2322
Fax: 301 713–2521
Email: melissa.andersen@noaa.gov

**RIN:** 0648–AW51

## Department of Commerce (DOC) — Proposed Rule Stage
## Patent and Trademark Office (PTO)

### 111. • REVISION OF USPTO FEES FOR FISCAL YEAR 2011

**Legal Authority:** 35 USC 41; 35 USC 119 and 120; 35 USC 132(b) and 376; PL 109–383; PL 110–116; PL 110–137; PL 110–149; PL 110–161; PL 110–5; PL 110–92

**Abstract:** The United States Patent and Trademark Office (USPTO) is taking this action to adjust certain patent and trademark fee amounts set in the aggregate to recover the estimated cost to the USPTO for processing activities and services and materials relating to patents and trademarks, respectively, including proportionate shares of the administrative costs of the USPTO.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |
| NPRM Comment Period End | 07/00/10 | |
| Final Action | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter Schlueter, Budget Analyst—Fees and Forecasting, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22314
Phone: 571 272–6299
Fax: 571 273–6299
Email: walter.schlueter@uspto.gov

**RIN:** 0651–AC43

### 112. • REVISION OF USPTO FEES FOR FISCAL YEAR 2012

**Legal Authority:** 35 USC 41; 35 USC 119 and 120; 35 USC 132(b) and 376; PL 109–383; PL 110–116; PL 110–137; PL 110–149; PL 110–161; PL 110–5; PL 110–92

**Abstract:** The United States Patent and Trademark Office (USPTO) is taking this action to adjust certain patent and trademark fee amounts set in the aggregate to recover the estimated cost to the USPTO for processing activities and services and materials relating to patents and trademarks, respectively, including proportionate shares of the administrative costs of the USPTO.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |
| NPRM Comment Period End | 02/00/11 | |
| Final Action | 06/00/11 | |
| Final Action Effective | 07/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

## DOC—PTO — Proposed Rule Stage

**Agency Contact:** Walter Schlueter, Budget Analyst—Fees and Forecasting, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22314
Phone: 571 272–6299
Fax: 571 273–6299
Email: walter.schlueter@uspto.gov

**RIN:** 0651–AC44

## Department of Commerce (DOC) Patent and Trademark Office (PTO) — Final Rule Stage

### 113. • INTERIM INCREASE ON PATENT FEES FOR FISCAL YEAR 2011

**Legal Authority:** 35 USC 41; 35 USC 119 and 120; 35 USC 132(b); 35 USC 376; PL 109–383; PL 110–116; PL 110–137; PL 110–149; PL 110–161; PL 110–5; PL 110–92

**Abstract:** The United States Patent and Trademark Office (USPTO) is proposing an interim increase on certain patent fees to fund the requirements for putting the USPTO on a sustainable path to fund agency operations, reduce patent inventory and pendency, and invest in information technology.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter Schlueter, Budget Analyst—Fees and Forecasting, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22314
Phone: 571 272–6299
Fax: 571 273–6299
Email: walter.schlueter@uspto.gov

**RIN:** 0651–AC42

## Department of Commerce (DOC) Patent and Trademark Office (PTO) — Completed Actions

### 114. EXAMINATION OF PATENT APPLICATIONS THAT INCLUDE CLAIMS CONTAINING ALTERNATIVE LANGUAGE

**Legal Authority:** 35 USC 2(b)(2)

**Abstract:** The U.S. Patent and Trademark Office (Office) is considering revising the rules of practice to address Markush-type and other claims written so as to claim an invention in the alternative. The search and examination of Markush-type and other claims written in the alternative generally consume a disproportionate amount of Office resources as compared to other types of claims, because these claims can encompass multiple independent and distinct inventions and determining the patentability of such a claim may require a separate examination of each of the alternatives within the claim. The Office anticipates that requiring applicants who choose this claim-drafting format to ensure a certain degree of relatedness among the members of a Markush group or the alternatives presented in the claims will allow the Office to do a better, more thorough, and reliable examination of Markush-type and other claims written in the alternative.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/10/07 | 72 FR 44992 |
| NPRM Comment Period End | 10/09/07 | |
| Initial Regulatory Flexibility Analysis Comment Request | 03/10/08 | 73 FR 12679 |
| NPRM Comment Period End | 04/09/08 | |
| Withdrawn | 01/25/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert W. Bahr, Acting Associate Commissioner for Patent Examination Policy, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313
Phone: 571 272–8800
Fax: 571 273–0125
Email: robert.bahr@uspto.gov

**RIN:** 0651–AC00

### 115. FISCAL YEAR 2009 REVISION OF REQUEST FOR CONTINUED EXAMINATION, 18–MONTH PUBLICATION, AND OTHER MISCELLANEOUS COST–RECOVERY PATENT FEES

**Legal Authority:** 35 USC 2(b)(2); 35 USC 41(d); 35 USC 132(b)

**Abstract:** The USPTO is taking this action to revise the rules of practice to adjust the fee or set a fee for certain processes and services for which the USPTO is required to set a cost-recovery fee. The USPTO is specifically adjusting the fee for a request for continued examination, 18-month publication, and a certificate of correction (applicant's mistake) fee, and set a fee for requesting a corrected republication of a patent application publication. The rules of practice currently do not set a fee, or do not set a fee that recovers the USPTO's costs, for these processes or services. The USPTO is adjusting or setting these fee amounts such that they more accurately reflect the Office costs for these processes or services.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Withdrawn | 01/25/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert W. Bahr, Acting Associate Commissioner for Patent Examination Policy, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313
Phone: 571 272–8800
Fax: 571 273–0125
Email: robert.bahr@uspto.gov

**RIN:** 0651–AC29

[FR Doc. 2010–8930 Filed 04–23–10; 8:45 am]

BILLING CODE 3510–12–S

Federal Register

Monday,
April 26, 2010

# Part V

# Department of Defense

## Semiannual Regulatory Agenda

# DEPARTMENT OF DEFENSE (DOD)

## DEPARTMENT OF DEFENSE

**32 CFR Chs. I, V, VI, and VII**

**33 CFR Ch. II**

**36 CFR Ch. III**

**48 CFR Ch. 2**

### Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Department of Defense (DoD).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Department of Defense (DoD) is publishing this semiannual agenda of regulatory documents, including those that are procurement-related, for public information and comments under Executive Order 12866 ''Regulatory Planning and Review.'' This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under the Executive order and other regulatory guidance. It contains DoD issuances initiated by DoD components that may have economic and environmental impact on State, local, or tribal interests under the criteria of Executive Order 12866. Although most DoD issuances listed in the agenda are of negligible public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process.

This agenda updates the report published on December 7, 2009, and includes regulations expected to be issued and under review over the next 12 months. The next agenda and regulatory plan are scheduled to be published in the fall of 2010. In addition to this agenda, DoD components also publish rulemaking notices pertaining to their specific statutory administration requirements as required.

Starting with the fall 2007 edition, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users the ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Defense's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's agenda requirements. Additional information on these entries is in the Unified Agenda available online.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the overall DoD regulatory improvement program and for general semiannual agenda information, contact Mr. Robert Cushing, telephone 703-696-5282, or write to Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155, or e-mail: robert.cushing@whs.mil.

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600, or call 703-697-2714.

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Ms. Patricia Toppings, telephone 703-696-5284, or write to Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155, or e-mail: patricia.toppings@whs.mil.

For general information on Office of the Secretary agenda items, which are procurement-related, contact Ms. Ynette Shelkin, telephone 703-602-8384, or write to Defense Acquisition Regulations Directorate, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3062, or e-mail: ynette.shelkin@osd.mil.

For general information on Department of the Army regulations, contact Ms. Brenda Bowen, telephone 703-428-6173, or write to the U.S. Army Records Management and Declassification Agency, ATTN: AAHS-RDR-C, Casey Building, Room 102, 7701 Telegraph Road, Alexandria, VA 22315-3860, or e-mail: brenda.bowen@conus.army.mil.

For general information on the U.S. Army Corps of Engineers regulations, contact Mr. Chip Smith, telephone 703-693-3644, or write to Office of the Deputy Assistant Secretary of the Army (Policy and Legislation), 108 Army Pentagon, Room 2E569, Washington, DC 20310-0108, or e-mail: chip.smith@hqda.army.mil.

For general information on Department of the Navy regulations, contact LCDR Ann Vallandingham, telephone 703-614-7408, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374-5066, or e-mail: ann.vallandingham@navy.mil.

For general information on Department of the Air Force regulations, contact Bao-Anh Trinh, telephone 703-696-6515, or write to Department of the Air Force, SAF/XCPP, 1800 Air Force Pentagon, Washington, DC 20330-1800, or e-mail: bao-anh.trinh@pentagon.af.mil.

For specific agenda items, contact the appropriate individual indicated in each DoD component report.

**SUPPLEMENTARY INFORMATION:** This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions is composed of the regulatory status reports, including procurement-related regulatory status reports, from the Office of the Secretary of Defense (OSD) and the Departments of the Army, Navy, and Air Force. Included also is the regulatory status report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of Executive Order 12866 and involve water resource projects and regulation of activities in waters of the United States.

DoD issuances range from DoD directives (reflecting departmental policy) to implementing instructions and regulations (largely internal and used to implement directives). The OSD agenda section contains the primary directives under which DoD components promulgate their implementing regulations.

## DOD

In addition, this agenda, although published under the reporting requirements of Executive Order 12866, continues to be the DoD single-source reporting vehicle, which identifies issuances that are currently applicable under the various regulatory reform programs in progress. Therefore, DoD components will identify those rules which come under the criteria of the:

a. Regulatory Flexibility Act;

b. Paperwork Reduction Act of 1995;

c. Unfunded Mandates Reform Act of 1995.

Those DoD issuances, which are directly applicable under these statutes, will be identified in the agenda and their action status indicated. Generally, the regulatory status reports in this agenda will contain five sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) completed actions; and (5) long-term actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)).

Although not a regulatory agency, DoD will continue to participate in regulatory initiatives designed to reduce economic costs and unnecessary burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD component representatives identified in the regulatory status reports. Although sensitive to the needs of the public, as well as regulatory reform, DoD reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission. The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

**Dated:** March 4, 2010.

**Michael L. Rhodes,**

*Acting Director, Administration and Management.*

### Defense Acquisition Regulations Council—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 116 | Restriction on Ball and Roller Bearings | 0750–AG57 |

### Defense Acquisition Regulations Council—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 117 | Business Systems—Definition and Administration | 0750–AG58 |

## Department of Defense (DOD) — Proposed Rule Stage
## Defense Acquisition Regulations Council (DARC)

### 116. ● RESTRICTION ON BALL AND ROLLER BEARINGS

**Legal Authority:** 41 USC 421

**Abstract:** Revises the domestic source restriction on acquisition of ball and roller bearings. The current DFARS restriction on ball and roller bearings requires that the bearings and the main bearing components be manufactured in the U.S. or Canada. This requirement was based on the restriction at 10 U.S.C. 2534(a)(5), which expired on October 1, 2005. The proposed revision interprets the annual defense appropriations act domestic source restriction on acquisition of ball and roller bearings in a manner similar to the domestic source restriction of the Buy American Act.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ynette Shelkin, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Washington, DC 20301
Phone: 703 602–8384
Email: ynette.shelkin@osd.mil

**RIN:** 0750–AG57

## Department of Defense (DOD) — Final Rule Stage
## Defense Acquisition Regulations Council (DARC)

### 117. ● BUSINESS SYSTEMS—DEFINITION AND ADMINISTRATION

**Legal Authority:** 41 USC 421

**Abstract:** Improves the effectiveness of DoD oversight of contractor business systems.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/15/10 | 75 FR 2457 |

## DOD—DARC

**Final Rule Stage**

| | |
|---|---|
| NPRM Comment Period End | 03/16/10 |
| Final Action | 10/00/10 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Amy Williams, Department of Defense, Defense Acquisition Regulations Council, 3000 Defense Pentagon, Washington, DC 20301–3000
Phone: 703 602–0328
Email: amy.williams@osd.mil

**RIN:** 0750–AG58

[FR Doc. 2010–8932 Filed 04–23–10; 8:45 am]

BILLING CODE 5001–06–S

Federal Register

Monday,
April 26, 2010

# Part VI

# Department of Energy

## Semiannual Regulatory Agenda

# DEPARTMENT OF ENERGY (DOE)

## DEPARTMENT OF ENERGY

### Semiannual Regulatory Agenda

### 10 CFR Chs. II, III, and X

### 48 CFR Ch. 9

### Regulatory Agenda

**AGENCY:** Department of Energy.

**ACTION:** Notice of semiannual regulatory agenda.

**SUMMARY:** The Department of Energy (DOE) has prepared and is making available its portion of the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda), pursuant to Executive Order 12866 ''Regulatory Planning and Review,'' 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

**SUPPLEMENTARY INFORMATION:** The Agenda is a Governmentwide compilation of upcoming and ongoing regulatory activity taking place over the next 12 months, including a brief description of each rulemaking and a timetable for action. The Agenda also includes a list of regulatory actions completed since publication of the last Agenda. The Department of Energy's portion of the Agenda includes regulatory actions called for by the Energy Policy Act of 2005, the Energy Independence and Security Act of 2007, and programmatic needs of DOE offices.

The Internet is the basic means for disseminating the Agenda and providing users the ability to obtain information from the Agenda database. DOE's entire spring 2010 agenda can be accessed online by going to: www.reginfo.gov. Agenda entries reflect the status of activities as of approximately April 30, 2010.

Publication in the **Federal Register** is mandated by the Regulatory Flexibility Act (5 U.S.C. 602) only for Agenda entries that require either a regulatory flexibility analysis or periodic review under section 610 of that Act. DOE currently has two rulemakings that require regulatory flexibility analyses: Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment and Water Heaters, and Test Procedures for Walk-in Coolers and Walk-in Freezers.

Issued in Washington, DC, on March 15, 2010.

**Scott Blake Harris,**

*General Counsel.*

Energy Efficiency and Renewable Energy—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 118 | Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment and Water Heaters | 1904–AA90 |
| 119 | Test Procedures for Walk-In Coolers and Walk-In Freezers | 1904–AB85 |

## Department of Energy (DOE) — Final Rule Stage

## Energy Efficiency and Renewable Energy (EE)

### 118. ENERGY EFFICIENCY STANDARDS FOR POOL HEATERS AND DIRECT HEATING EQUIPMENT AND WATER HEATERS

**Legal Authority:** 42 USC 6295(e)

**Abstract:** The Energy Policy and Conservation Act, as amended, establishes initial energy efficiency standard levels for many types of major residential appliances and generally requires DOE to undertake two subsequent rulemakings, at specified times, to determine whether the existing standard for a covered product should be amended. This is the initial review of the statutory standards for pool heaters and direct heating equipment. This is the second review for water heaters.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice: Public Meeting, Framework Document Availability | 11/24/06 | 71 FR 67825 |
| Notice: Public Meeting, Data Availability | 01/13/09 | 74 FR 1643 |
| NPRM | 12/11/09 | 74 FR 65852 |
| NPRM Comment Period End | 02/09/10 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Mohammed Khan, Office of Building Technologies Program, EE–2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586–7892
Email: mohammed.khan@ee.doe.gov

**RIN:** 1904–AA90

### 119. TEST PROCEDURES FOR WALK–IN COOLERS AND WALK–IN FREEZERS

**Legal Authority:** 42 USC 6314(a)(9)(B)

**Abstract:** The Energy Independence and Security Act of 2007 amendments to the Energy Policy and Conservation Act require that DOE establish test procedures for walk-in coolers and walk-in freezers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/04/10 | 75 FR 186 |
| NPRM Comment Period End | 03/22/10 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Charles Llenza, Office of Building Technologies Program, EE–2J, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585

**DOE—EE** **Final Rule Stage**

Phone: 202 586–2192

Email: charles.llenza@ee.doe.gov

**RIN:** 1904–AB85

[FR Doc. 2010–8967 Filed 04–23–10; 8:45 am]

BILLING CODE 6450–01–S

Federal Register

Monday,
April 26, 2010

# Part VII

# Department of Health and Human Services

## Semiannual Regulatory Agenda

# DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### 21 CFR Ch. I

### 42 CFR Chs. I-V

### 45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII

### Regulatory Agenda

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Semiannual regulatory agenda

**SUMMARY:** The following Agenda presents the results of the statutorily required semi-annual inventory of rulemaking actions currently under development within the U.S. Department of Health and Human Services (HHS). We hope that this information will enable interested members of the public to more effectively participate in the Department's regulatory activity.

**FOR FURTHER INFORMATION CONTACT:** Dawn L. Smalls, Executive Secretary, Department of Health and Human Services, Washington, DC 20201.

**SUPPLEMENTARY INFORMATION:** The information provided in the Agenda presents a forecast of the rulemaking activities that HHS expects to undertake in the foreseeable future. Rulemakings are grouped according to pre-rulemaking actions, proposed rules, final rules, long-term actions, and rulemaking actions completed since the most recent Agenda was published on December 7, 2009. Please note that the actions included in this issue of the **Federal Register,** as required by the Regulatory Flexibility Act of 1980, relate only to those prospective rulemakings that are likely to have a significant economic impact on a substantial number of small entities.

The purpose of the Agenda is to encourage more effective public participation in the regulatory process. HHS invites all interested members of the public to comment on the rulemaking actions included in this issue of the Agenda. The complete Agenda is accessible online at www.reginfo.gov in an interactive format that offers users enhanced capabilities to obtain information from the Agenda's database.

**Dated:** March 10, 2010.

**Dawn L. Smalls,**

*Executive Secretary,*

*Department of Health and Human Services.*

## Office of the Secretary—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 120 | Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act | 0991–AB57 |

## Office of the Secretary—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 121 | Health Information Technology: Initial Set of Standards, Implementation Specifications, and Certification Criteria for Electronic Health Record Technology **(Rulemaking Resulting From a Section 610 Review)** | 0991–AB58 |

## Substance Abuse and Mental Health Services Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 122 | Opioid Drugs in Maintenance or Detoxification Treatment of Opiate Addiction **(Section 610 Review)** | 0930–AA14 |

## Substance Abuse and Mental Health Services Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 123 | Requirements Governing the Use of Seclusion and Restraint in Certain Nonmedical Community-Based Facilities for Children and Youth | 0930–AA10 |

## HHS

### Centers for Disease Control and Prevention—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 124 | Control of Communicable Diseases: Foreign Quarantine Regulations, Proposed Revision of HHS/CDC Animal Importation Regulations | 0920–AA14 |
| 125 | Control of Communicable Diseases: Foreign Quarantine Regulations, Nonhuman Primate | 0920–AA23 |
| 126 | Total Inward Leakage Requirements for Respirators | 0920–AA33 |

### Centers for Disease Control and Prevention—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 127 | Quality Assurance Requirements for Respirators | 0920–AA04 |
| 128 | Control of Communicable Diseases: Foreign Quarantine | 0920–AA12 |

### Centers for Disease Control and Prevention—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 129 | Possession, Use, and Transfer of Select Agents and Toxins: Chapare Virus **(Section 610 Review)** | 0920–AA32 |

### Centers for Disease Control and Prevention—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 130 | Control of Communicable Diseases: Interstate Quarantine, Passenger Information | 0920–AA27 |

### Food and Drug Administration—Prerule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 131 | Food Labeling: Safe Handling Statements, Labeling of Shell Eggs; Refrigeration of Shell Eggs Held for Retail Distribution **(Section 610 Review)** | 0910–AG06 |
| 132 | Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures **(Section 610 Review)** | 0910–AG14 |
| 133 | Sterility Requirement for Aqueous-Based Drug Products for Oral Inhalation **(Section 610 Review)** | 0910–AG25 |
| 134 | Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco To Protect Children and Adolescents | 0910–AG33 |
| 135 | Over-the-Counter Human Drugs; Labeling Requirements **(Section 610 Review)** | 0910–AG34 |

### Food and Drug Administration—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 136 | Electronic Submission of Data From Studies Evaluating Human Drugs and Biologics | 0910–AC52 |
| 137 | Over-the-Counter (OTC) Drug Review—Cough/Cold (Antihistamine) Products | 0910–AF31 |
| 138 | Over-the-Counter (OTC) Drug Review—Internal Analgesic Products | 0910–AF36 |
| 139 | Over-the-Counter (OTC) Drug Review—Laxative Drug Products | 0910–AF38 |
| 140 | Over-the-Counter (OTC) Drug Review—Sunscreen Products | 0910–AF43 |
| 141 | Over-the-Counter (OTC) Drug Review—Topical Antimicrobial Drug Products | 0910–AF69 |
| 142 | Process Controls for Animal Feed Ingredients and Mixed Animal Feed | 0910–AG10 |

## HHS

### Food and Drug Administration—Proposed Rule Stage (Continued)

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 143 | Pediatric Dosing for Cough, Cold, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph | 0910–AG12 |
| 144 | Unique Device Identification | 0910–AG31 |
| 145 | Produce Safety Regulation | 0910–AG35 |
| 146 | Modernization of the Current Food Good Manufacturing Practices Regulation | 0910–AG36 |
| 147 | Cigars Subject to the Family Smoking Prevention and Tobacco Control Act | 0910–AG38 |

### Food and Drug Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 148 | Postmarketing Safety Reporting Requirements for Human Drug and Biological Products | 0910–AA97 |
| 149 | Medical Gas Containers and Closures; Current Good Manufacturing Practice Requirements | 0910–AC53 |
| 150 | Content and Format of Labeling for Human Prescription Drugs and Biologics; Requirements for Pregnancy and Lactation Labeling | 0910–AF11 |
| 151 | Infant Formula: Current Good Manufacturing Practices; Quality Control Procedures; Notification Requirements; Records and Reports; and Quality Factors | 0910–AF27 |
| 152 | Over-the-Counter (OTC) Drug Review—Cough/Cold (Bronchodilator) Products | 0910–AF32 |
| 153 | Over-the-Counter (OTC) Drug Review—Cough/Cold (Combination) Products | 0910–AF33 |
| 154 | Over-the-Counter (OTC) Drug Review—External Analgesic Products | 0910–AF35 |
| 155 | Over-the-Counter (OTC) Drug Review—Skin Protectant Products | 0910–AF42 |
| 156 | Use of Materials Derived From Cattle in Human Food and Cosmetics | 0910–AF47 |
| 157 | Label Requirement for Food That Has Been Refused Admission Into the United States | 0910–AF61 |

### Food and Drug Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 158 | Current Good Manufacturing Practice in Manufacturing, Packing, Labeling, or Holding Operations for Dietary Supplements | 0910–AB88 |
| 159 | Over-the-Counter (OTC) Drug Review—Cough/Cold (Nasal Decongestant) Products | 0910–AF34 |
| 160 | Over-the-Counter (OTC) Drug Review—Labeling of Drug Products for OTC Human Use | 0910–AF37 |
| 161 | Over-the-Counter (OTC) Drug Review—Ophthalmic Products | 0910–AF39 |
| 162 | Over-the-Counter (OTC) Drug Review—Oral Health Care Products | 0910–AF40 |
| 163 | Over-the-Counter (OTC) Drug Review—Vaginal Contraceptive Products | 0910–AF44 |
| 164 | Over-the-Counter (OTC) Drug Review—Weight Control Products | 0910–AF45 |
| 165 | Over-the-Counter (OTC) Drug Review—Overindulgence in Food and Drink Products | 0910–AF51 |
| 166 | Over-the-Counter (OTC) Drug Review—Antacid Products | 0910–AF52 |
| 167 | Over-the-Counter (OTC) Drug Review—Skin Bleaching Products | 0910–AF53 |
| 168 | Over-the-Counter (OTC) Drug Review—Stimulant Drug Products | 0910–AF56 |
| 169 | Over-the-Counter Antidiarrheal Drug Products | 0910–AF63 |
| 170 | Over-the-Counter (OTC) Drug Review—Urinary Analgesic Drug Products | 0910–AF70 |
| 171 | Status of Certain Additional Over-the-Counter Drug Category II Active Ingredients | 0910–AF95 |

### Food and Drug Administration—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 172 | Positron Emission Tomography Drugs; Current Good Manufacturing Practices | 0910–AC55 |
| 173 | Over-the-Counter (OTC) Drug Review—Acne Drug Products Containing Benzoyl Peroxide | 0910–AG00 |

## HHS

### Centers for Medicare & Medicaid Services—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 174 | Home Health Agency (HHA) Conditions of Participation (CoPs) (CMS-3819-P) **(Section 610 Review)** | 0938–AG81 |
| 175 | Requirements for Long-Term Care Facilities: Hospice Services (CMS-3140-P) **(Section 610 Review)** | 0938–AP32 |
| 176 | Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and FY 2011 Rates and to the Long-Term Care Hospital PPS and RY 2011 Rates (CMS-1498-P) | 0938–AP80 |
| 177 | Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2011 (CMS-1504-P) | 0938–AP82 |
| 178 | Home Health Prospective Payment System Refinements and Rate Update for CY 2011 (CMS-1510-P) | 0938–AP88 |
| 179 | Omnibus Influenza Immunization (CMS-3213-P) | 0938–AP92 |
| 180 | Proposed Changes to the Hospital Conditions of Participation: Requirements for Hospital Psychiatric and Rehabilitation Units Excluded From the Prospective Payment System (CMS-3177-P) | 0938–AP97 |

### Centers for Medicare & Medicaid Services—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 181 | Revisions to the Medicare Advantage and Medicare Prescription Drug Benefit Programs for Contract Year 2011 (CMS-4085-F) | 0938–AP77 |

### Centers for Medicare & Medicaid Services—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 182 | Electronic Claims Attachments Standards (CMS-0050-IFC) | 0938–AK62 |
| 183 | Revisions to Payment Policies Under the Physician Fee Schedule for CY 2010 (CMS-1413-FC) | 0938–AP40 |
| 184 | Changes to the Hospital Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System for CY 2010 (CMS-1414-FC) | 0938–AP41 |

## Department of Health and Human Services (HHS) — Proposed Rule Stage

## Office of the Secretary (OS)

### 120. MODIFICATIONS TO THE HIPAA PRIVACY, SECURITY, AND ENFORCEMENT RULES UNDER THE HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT

**Legal Authority:** PL 111–5, secs 13400 to 13410

**Abstract:** The Department of Health and Human Services Office for Civil Rights will issue rules to modify the HIPAA Privacy, Security, and Enforcement Rules as necessary to implement the privacy, security, and certain enforcement provisions of subtitle D of the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Andra Wicks, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201
Phone: 202 205–2292
Fax: 202 205–4786
Email: andra.wicks@hhs.gov

**RIN:** 0991–AB57

## Department of Health and Human Services (HHS) — Final Rule Stage
## Office of the Secretary (OS)

### 121. HEALTH INFORMATION TECHNOLOGY: INITIAL SET OF STANDARDS, IMPLEMENTATION SPECIFICATIONS, AND CERTIFICATION CRITERIA FOR ELECTRONIC HEALTH RECORD TECHNOLOGY (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

**Legal Authority:** 42 USC 300jj–14

**Abstract:** The Department of Health and Human Services (HHS), Office of the National Coordinator for Health Information Technology, will issue an interim final rule with a request for comments to adopt an initial set of standards, implementation specifications, and certification criteria, as required by section 3004(b)(1) of the Public Health Service Act. The certification criteria adopted in this initial set establish the technical capabilities and related standards that certified electronic health record (EHR) technology will need to include in support of the Medicare and Medicaid EHR Incentive Programs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 01/13/10 | 75 FR 2014 |
| Interim Final Rule Comment Period End | 03/15/10 | |
| Interim Final Rule Effective | 02/12/10 | |
| Final Action | 05/00/10 | |
| Final Action Effective | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Steven Posnack, Policy Analyst, Department of Health and Human Services, Office of the Secretary, Office of the National Coordinator for Health Information Technology, 200 Independence Avenue SW., Washington, DC 20201
Phone: 202 690–7151

**RIN:** 0991–AB58

## Department of Health and Human Services (HHS) — Final Rule Stage
## Substance Abuse and Mental Health Services Administration (SAMHSA)

### 122. OPIOID DRUGS IN MAINTENANCE OR DETOXIFICATION TREATMENT OF OPIATE ADDICTION (SECTION 610 REVIEW)

**Legal Authority:** 21 USC 823 (9); 42 USC 257a; 42 USC 290aa(d); 42 USC 290dd–2; 42 USC 300xx–23; 42 USC 300x–27(a); 42 USC 300y–11

**Abstract:** This rule will amend the Federal opioid treatment program regulations. It will modify the dispensing requirements for buprenorphine and buprenorphine combination products that are approved by the Food and Drug Administration (FDA) for opioid dependence and used in federally certified and registered opioid treatment programs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/19/09 | 74 FR 29153 |
| NPRM Comment Period End | 08/18/09 | |
| Final Action | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Nicholas Reuter, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Suite 2–1063, One Choke Cherry Road, Rockville, MD 20857
Phone: 240 276–2716

**RIN:** 0930–AA14

## Department of Health and Human Services (HHS) — Long-Term Actions
## Substance Abuse and Mental Health Services Administration (SAMHSA)

### 123. REQUIREMENTS GOVERNING THE USE OF SECLUSION AND RESTRAINT IN CERTAIN NONMEDICAL COMMUNITY–BASED FACILITIES FOR CHILDREN AND YOUTH

**Legal Authority:** PL 106–310, 42 USC 290jj to 290jj–2

**Abstract:** The Secretary is required by statute to publish regulations governing States that license nonmedical, community-based residential facilities for children and youth. The regulation requires States to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance; requires States to develop and implement such licensing rules and implementation requirements within one year; and ensures that States require such facilities to have adequate staff, and that the States provide training for professional staff.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Paolo Del Vecchio, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Room 13–103, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 443–2619

**RIN:** 0930–AA10

## Department of Health and Human Services (HHS) — Proposed Rule Stage
## Centers for Disease Control and Prevention (CDC)

### 124. CONTROL OF COMMUNICABLE DISEASES: FOREIGN QUARANTINE REGULATIONS, PROPOSED REVISION OF HHS/CDC ANIMAL IMPORTATION REGULATIONS

**Legal Authority:** 42 USC 264

**Abstract:** By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from foreign countries into the United States and from one State or possession into another. The Secretary has designated the authority to prevent the introduction of diseases from foreign countries to the Director, Centers for Disease Control and Prevention (CDC). CDC also enforces entry requirements for certain animals, etiologic agents, and vectors deemed to be of public health significance. Currently the regulations restrict the importation of nonhuman primates, dogs, cats, small turtles, etiologic agents, hosts, and vectors, such as bats (42 CFR sections 71.53, 71.51, 71.52, 71.54). In addition, CDC has recently issued a series of emergency orders restricting the importation of African rodents (42 CFR section 71.56) and civets (67 FR 3364-01). CDC is issuing this Notice of Proposed Rulemaking (NPRM) to revise the regulations for importation of certain animals and vectors into the United States (42 CFR parts 71, subpart F).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 07/31/07 | 72 FR 41676 |
| ANPRM Comment Period End | 10/01/07 | |
| Notice Extending ANPRM Comment Period | 10/01/07 | 72 FR 55729 |
| ANPRM Extended Comment Period End | 12/01/07 | |
| NPRM | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stacy Howard, Department of Health and Human Services, Centers for Disease Control and Prevention, MS E03, CLFT Building 16, Room 4324, Atlanta, GA 30329
Phone: 404 498–1600
Email: showard@cdc.gov

**RIN:** 0920–AA14

### 125. CONTROL OF COMMUNICABLE DISEASES: FOREIGN QUARANTINE REGULATIONS, NONHUMAN PRIMATE

**Legal Authority:** 42 USC 264

**Abstract:** By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from foreign countries into the United States and from one State or possession into another. The Secretary has delegated the authority to prevent the introduction of diseases from foreign countries to the Director, CDC. CDC also enforces entry requirements for certain animals, etiologic agents, and vectors deemed to be of public health significance. CDC is proposing to amend its regulations related to the importation of live nonhuman primates (NHPs) by extending existing requirements for the importation of cynomolgus, African green, and rhesus monkeys to all NHPs. The agency also is proposing to reduce the frequency at which importers of the three species are required to renew their registrations (from every 180 days to every 2 years). CDC proposes to incorporate existing guidelines into the regulations and add new provisions to address NHPs imported as part of a circus or trained animal act, NHPs imported by zoological societies, the transfer of NHPs from approved laboratories, and non-live imported NHP products. CDC is also proposing that all NHPs be imported only through ports of entry where a CDC quarantine station is located.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stacy Howard, Department of Health and Human Services, Centers for Disease Control and Prevention, MS E03, CLFT Building 16, Room 4324, Atlanta, GA 30329
Phone: 404 498–1600
Email: showard@cdc.gov

**RIN:** 0920–AA23

### 126. TOTAL INWARD LEAKAGE REQUIREMENTS FOR RESPIRATORS

**Legal Authority:** 29 USC 651 et seq; 29 USC 657(g); 30 USC 3; 30 USC 7; 30 USC 811; 30 USC 842(h) and 844

**Abstract:** The Centers for Disease Control and Prevention (CDC) proposes to establish total inward leakage (TIL) requirements under 42 CFR part 84 for half-mask air-purifying particulate respirators approved by the National Institute for Occupational Safety and Health (NIOSH) of CDC.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/30/09 | 74 FR 66935 |
| NPRM Comment Period End | 12/29/09 | |
| NPRM Comment Period Reopened | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** William E. Newcomb, Physical Scientist, Department of Health and Human Services, Centers for Disease Control and Prevention, 626 Cochran Mill Road, PO Box 18070, Pittsburgh, PA 15236
Phone: 412 386–5200

**RIN:** 0920–AA33

## Department of Health and Human Services (HHS) — Final Rule Stage
## Centers for Disease Control and Prevention (CDC)

### 127. QUALITY ASSURANCE REQUIREMENTS FOR RESPIRATORS

**Legal Authority:** 29 USC 651 et seq; 30 USC 3; 30 USC 5; 30 USC 7; 30 USC 811; 30 USC 842(h); 30 USC 844

**Abstract:** NIOSH plans to modify the Administrative/Quality Assurance sections of 42 CFR part 84, Approval of Respiratory Protective Devices. Areas for potential modification in this module are: 1) Upgrade of quality assurance requirements; 2) ability to use private sector quality auditors and private sector testing laboratories in the approval program; and 3) revised approval label requirements.

## HHS—CDC

## Final Rule Stage

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/10/08 | 73 FR 75045 |
| NPRM Comment Period End | 02/09/09 | |
| NPRM Comment Period Reopened | 03/04/09 | 74 FR 9381 |
| NPRM Comment Period Reopened End | 04/10/09 | |
| NPRM Comment Period Reopening Extended | 05/21/09 | 74 FR 23815 |
| NPRM Comment Period End | 10/09/09 | |
| Final Action | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** William E. Newcomb, Physical Scientist, Department of Health and Human Services, Centers for Disease Control and Prevention, 626 Cochran Mill Road, PO Box 18070, Pittsburgh, PA 15236
Phone: 412 386–5200

**RIN:** 0920–AA04

### 128. CONTROL OF COMMUNICABLE DISEASES: FOREIGN QUARANTINE

**Legal Authority:** 42 USC 243; 42 USC 248 and 249

**Abstract:** By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from foreign countries into the United States and from one State or possession into another. Quarantine regulations are divided into two parts: Part 71 dealing with foreign arrivals and part 70 dealing with interstate matters. This rule (42 CFR part 71) will update and improve CDC's response to both global and domestic disease threats by creating a multi-tiered illness detection and response process thus substantially enhancing the public health system's ability to slow the introduction, transmission, and spread of communicable disease. The rule will also modify current Federal regulations governing the apprehension, quarantine isolation, and conditional release of individuals suspected of carrying a quarantinable disease, while respecting individual autonomy. CDC maintains quarantine stations at 20 ports of entry staffed with medical and public health officers who respond to reports of diseases from carriers. According to the statutory scheme, the President determines through Executive Order which diseases may subject individuals to quarantine. The current disease list, which was last updated in April 2005, includes cholera, diphtheria, tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers, severe acute respiratory syndrome (SARS), and influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause a pandemic.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/30/05 | 70 FR 71892 |
| NPRM Comment Period End | 01/20/06 | |
| Final Action | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stacy Howard, Department of Health and Human Services, Centers for Disease Control and Prevention, MS E03, CLFT Building 16, Room 4324, Atlanta, GA 30329
Phone: 404 498–1600
Email: showard@cdc.gov

**RIN:** 0920–AA12

## Department of Health and Human Services (HHS)
## Centers for Disease Control and Prevention (CDC)

## Long-Term Actions

### 129. POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS: CHAPARE VIRUS (SECTION 610 REVIEW)

**Legal Authority:** PL 107–188

**Abstract:** The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 authorizes the HHS Secretary to regulate the possession, use, and transfer of select agents and toxins that have the potential to pose a severe threat to public health and safety. These regulations are set forth at 42 CFR 73. Criteria used to determine whether a select agent or toxin should be included under the provisions of these regulations are based on: 1) The effect on human health as a result of exposure to the agent or toxin, 2) the degree of contagiousness of the agent or toxin, 3) the methods by which the agent or toxin is transferred to humans, 4) the availability and effectiveness of pharmacotherapies and immunizations to treat and prevent and illness resulting from infection by the agent or toxin, and 5) any other criteria, including the needs of children and other vulnerable populations that the HHS Secretary considers appropriate. Based on these criteria, we are proposing to amend the list of HHS select agents and toxins by adding Chapare virus to the list. After consulting with subject matter experts from CDC, the National Institutes of Health (NIH), the Food Drug Administration (FDA), the United States Department of Agriculture (USDA) /Animal and Plant Health Inspection Service (APHIS), USDA/Agricultural Research Service (ARS), USDA/CVB (Center for Veterinary Biologics), and the Department of Defense (DOD)/United States Army Medical Research Institute for Infectious Diseases (USAMRIID) and review of relevant published studies, we believe the Chapare virus should be added to the list of HHS select agents and toxins based on our conclusion that the Chapare virus has been phylogenetically identified as a Clade B arenavirus and is closely related to other South American arenaviruses that cause haemorrhagic fever, particularly Sabia virus.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/19/09 | 74 FR 159 |
| NPRM Comment Period End | 10/19/09 | |
| Final Action | To Be Determined | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Robbin Weyant, Department of Health and Human Services, Centers for Disease Control and Prevention, CLFT Building 20, Room 4202, 1600 Clifton Road NE., Atlanta, GA 30333
Phone: 404 718–2000

**RIN:** 0920–AA32

## Department of Health and Human Services (HHS) — Completed Actions
## Centers for Disease Control and Prevention (CDC)

### 130. CONTROL OF COMMUNICABLE DISEASES: INTERSTATE QUARANTINE, PASSENGER INFORMATION

**Legal Authority:** 25 USC 198.231; 25 USC 1661; 42 USC 243; 42 USC 248; 42 USC 249; 42 USC 264; 42 USC 266 to 268; 42 USC 270 to 272; 42 USC 2001

**Abstract:** By statute, the Secretary of Health and Human Services has broad authority to prevent introduction, transmission, and spread of communicable diseases from one State or possession into another. Quarantine regulations are divided into two parts: Part 71 dealing with foreign arrivals and part 70 dealing with interstate matters. The CDC Director has been delegated the responsibility for carrying out these regulations. The Director's authority to investigate suspected cases and potential spread of communicable disease among interstate travelers is thus not limited to those known or suspected of having a quarantinable disease, but rather all communicable diseases that may necessitate a public health response.

Among the fundamental components of the public health response to the report of a person with a communicable disease is the identification and evaluation of individuals who may have been exposed. This provision, which was proposed section 70.4, would require any airline operating in interstate traffic to solicit and electronically submit certain passenger information to CDC for use in contact tracing when necessary to protect the vital interests of an individual, or other persons, in regard to significant health risks.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/30/05 | 70 FR 71892 |
| NPRM Comment Period End | 01/30/06 | |
| Merged With 0920–AA22 | 02/12/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stacy Howard, Department of Health and Human Services, Centers for Disease Control and Prevention, MS E03, CLFT Building 16, Room 4324, Atlanta, GA 30329
Phone: 404 498–1600
Email: showard@cdc.gov

**RIN:** 0920–AA27

## Department of Health and Human Services (HHS) — Prerule Stage
## Food and Drug Administration (FDA)

### 131. FOOD LABELING: SAFE HANDLING STATEMENTS, LABELING OF SHELL EGGS; REFRIGERATION OF SHELL EGGS HELD FOR RETAIL DISTRIBUTION (SECTION 610 REVIEW)

**Legal Authority:** 15 USC 1453 to 1455; 21 USC 321; 21 USC 331; 21 USC 342 and 343; 21 USC 348; 21 USC 371; 42 USC 243; 42 USC 264; 42 USC 271

**Abstract:** Section 101.17(h) (21 CFR 101.17(h)) describes requirements for the labeling of the cartons of shell eggs that have not been treated to destroy Salmonella microorganisms. Section 115. 50 (21 CFR 115.50) describes requirements for refrigeration of shell eggs held for retail distribution. Section 16.5(a)(4) (21 CFR 16.5(a)(4)) provides that part 16 does not apply to a hearing on an order for relabeling, diversion, or destruction of shell eggs under section 361 of the Public Health Service Act (42 U.S.C. 264) and sections 101.17(h) and 115.50. FDA amended 21 CFR 101.17(h) on August 20, 2007 (72 FR 46375) to permit the safe handling statement to appear on the inside lid of egg cartons to provide the industry greater flexibility in the placement of the statement. FDA is undertaking a review of 21 CFR sections 101.17(h), 115.50, and 16.5(a)(4) under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine whether the regulations in sections 101.17(h), 115.50 and 16.5(a)(4) should be continued without change, or whether they should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact on a substantial number of small entities. FDA will consider, and is soliciting comments on, the following: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Begin Review | 12/15/09 | |
| End Review | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Agency Contact:** Geraldine A. June, Supervisor, Product Evaluation and Labeling Team, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, (HFS–820), 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–1802
Fax: 301 436–2636
Email: geraldine.june@fda.hhs.gov

**RIN:** 0910–AG06

### 132. PRESCRIPTION DRUG MARKETING ACT OF 1987; PRESCRIPTION DRUG AMENDMENTS OF 1992; POLICIES, REQUIREMENTS, AND ADMINISTRATIVE PROCEDURES (SECTION 610 REVIEW)

**Legal Authority:** 21 USC 331; 21 USC 333; 21 USC 351; 21 USC 352; 21 USC 353; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 381

**Abstract:** FDA is undertaking a review of 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763) under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine whether the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763) should be continued without change, or whether they should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on, the following:

(1) The continued need for the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (2) the nature of complaints or comments received from the public concerning the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (3) the complexity of the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763); (4) the extent to which the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763) overlap, duplicate, or conflict with other Federal rules, and to the extent feasible, with State and local governmental rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulations in 21 CFR part 203 and 21 CFR sections 205.3 and 205.50 (as amended in 64 FR 67762 and 67763).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Begin Review of Current Regulation | 11/24/08 | |
| End Review of Current Regulation | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Howard Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6234, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002
Phone: 301 796–3601
Fax: 301 847–8440
Email: pdma610(c)review@fda.hhs.gov

**RIN:** 0910–AG14

## 133. STERILITY REQUIREMENT FOR AQUEOUS–BASED DRUG PRODUCTS FOR ORAL INHALATION (SECTION 610 REVIEW)

**Legal Authority:** 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360e; 21 USC 371; 21 USC 374; 21 USC 375

**Abstract:** FDA is undertaking a review of 21 CFR 200.51, under section 610 of the Regulatory Flexibility Act. The purpose of this review is to determine whether this regulation on aqueous-based drug products for oral inhalation should be continued without change, or whether it should be amended or rescinded, consistent with the stated objectives of applicable statues, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on the following: (1) The continued need for 21 CFR 200.51; (2) the nature of complaints or comments received concerning 21 CFR 200.51; (3) the complexity of 21 CFR 200.51; (4) the extent to which the regulation overlaps, duplicates, or conflicts with other Federal, State, or governmental rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by 21 CFR 200.51.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Begin Review | 05/01/09 | |
| End Review | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Howard P. Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6234, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002
Phone: 301 796–3601
Fax: 301 847–8440
Email: howard.mullerjr@fda.hhs.gov

**RIN:** 0910–AG25

## 134. REGULATIONS RESTRICTING THE SALE AND DISTRIBUTION OF CIGARETTES AND SMOKELESS TOBACCO TO PROTECT CHILDREN AND ADOLESCENTS

**Legal Authority:** 21 USC 301 et seq, The Federal Food, Drug, and Cosmetic Act; PL 111–31, Family Smoking Prevention and Tobacco Control Act

**Abstract:** This rule establishes regulations restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents, implementing section 102 of the Family Smoking Prevention and Tobacco Control Act (FSPTCA). FSPTCA sections 102 and 6(c)(1) require the Secretary to publish, within 270 days of enactment, a final rule regarding cigarettes and smokeless tobacco. This final rule must be identical, except for several changes identified in section 102(a)(2) of FSPTCA, to part 897 of the regulations promulgated by the Secretary of HHS in the August 28, 1996, issue of the Federal Register (61 FR 44396).

This final rule prohibits the sale of cigarettes and smokeless tobacco to individuals under the age of 18 and requires manufacturers, distributors, and retailers to comply with certain conditions regarding access to, and promotion of, these products. Among other things, the final rule requires retailers to verify a purchaser's age by photographic identification. It also prohibits, with limited exception, free samples and prohibits the sale of these products through vending machines and self-service displays except in facilities where individuals under the age of 18 are not present or permitted at any time. The rule also limits the advertising and labeling to which children and adolescents are exposed. The rule accomplishes this by generally restricting advertising to which children and adolescents are exposed to a black-and-white, text-only format. The rule also prohibits the sale or distribution of brand-identified promotional, non-tobacco items such as hats and tee shirts. Furthermore, the rule prohibits sponsorship of sporting and other events, teams, and entries in a brand name of a tobacco product, but permits such sponsorship in a corporate name.

FDA will also publish in the same issue of the Federal Register an advance notice of proposed rulemaking requesting comments, data, research, or other information on the regulation of outdoor advertising of cigarettes and smokeless tobacco.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/19/10 | 75 FR 13241 |
| Final Rule | 03/19/10 | 75 FR 13225 |
| ANPRM Comment Period End | 05/18/10 | |
| Final Rule Effective | 06/22/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Annette L. Marthaler, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 9200 Corporate Boulevard, 100K, Rockville, MD 20850
Phone: 877 287–1373
Fax: 240 276–3904
Email: annette.marthaler@fda.hhs.gov

**RIN:** 0910–AG33

## HHS—FDA Prerule Stage

### 135. OVER–THE–COUNTER HUMAN DRUGS; LABELING REQUIREMENTS (SECTION 610 REVIEW)

**Legal Authority:** 5 USC 610

**Abstract:** Part 201.66 (21 CFR section 201.66) established a standardized format for the labeling of OTC drug products that included: (1) Specific headings and subheadings presented in a standardized order, (2) standardized graphical features such as Helvetica type style and the use of ''bullet points'' to introduce key information, and (3) minimum standards for type size and spacing. FDA issued the final rule to improve labeling after considering comments submitted to the agency following the publication of the proposed regulation in 1997. In 1999, FDA published the final rule and stated that a standardized labeling format would significantly improve readability by familiarizing consumers with the types of information in OTC drug product labeling and the location of that information. In addition, a standardized appearance and standardized content, including various ''user-friendly'' visual cues, would help consumers locate and read important health and safety information and allow quick and effective product comparisons, thereby helping consumers to select the most appropriate product.

FDA is initiating a review under section 610 of the Regulatory Flexibility Act for the regulation in part 201.66. The purpose of this review is to determine whether the regulation in part 201.66 should be continued without change, or whether it should be further amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize adverse impacts on a substantial number of small entities. FDA will consider, and is soliciting comments on the following: (1) The continued need for the regulation in part 201.66; (2) the nature of the complaints or comments received concerning the regulation in part 201.66; (3) the complexity of the regulations in part 201.66; (4) the extent to which the regulations in part 201.66 overlap, duplicate, or conflict with other Federal, State, or governmental rules; and (5) the degree to which technology, economic conditions, or other factors have changed for the products still subject to the labeling standard regulations in part 201.

The section 610 review will be carried out along with a regulatory review under section 5 of Executive Order 12866, which calls for agencies to periodically review existing regulations to determine whether any should be modified or eliminated so as to make the agency's regulatory program more effective in achieving its goals, less burdensome, or in greater alignment with the President's priorities and the principles set forth in the Executive order.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Begin Review of Current Regulation | 08/03/09 | |
| End Review of Current Regulation | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AG34

## Department of Health and Human Services (HHS) Food and Drug Administration (FDA) Proposed Rule Stage

### 136. ELECTRONIC SUBMISSION OF DATA FROM STUDIES EVALUATING HUMAN DRUGS AND BIOLOGICS

**Legal Authority:** 21 USC 355; 21 USC 371; 42 USC 262

**Abstract:** The Food and Drug Administration is proposing to amend the regulations governing the format in which clinical study data and bioequivalence data are required to be submitted for new drug applications (NDAs), biological license applications (BLAs), and abbreviated new drug applications (ANDAs). The proposal would revise our regulations to require that data submitted for NDAs, BLAs, and ANDAs, and their supplements and amendments, be provided in an electronic format that FDA can process, review, and archive.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Martha Nguyen, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6352, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002
Phone: 301 796–3471
Fax: 301 847–8440
Email: martha.nguyen@fda.hhs.gov

**RIN:** 0910–AC52

### 137. OVER–THE–COUNTER (OTC) DRUG REVIEW—COUGH/COLD (ANTIHISTAMINE) PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses antihistamine labeling claims for the common cold.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Reopening of Administrative Record | 08/25/00 | 65 FR 51780 |
| NPRM (Amendment) (Common Cold) | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug

Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF31

## 138. OVER–THE–COUNTER (OTC) DRUG REVIEW—INTERNAL ANALGESIC PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 379e

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses products labeled to relieve upset stomach associated with overindulgence in food and drink and to relieve symptoms associated with a hangover. The second action addresses acetaminophen safety. The third action addresses products marketed for children under 2 years old and weight- and age-based dosing for children's products. The fourth action addresses combination products containing the analgesic acetaminophen or aspirin and sodium bicarbonate used as an antacid ingredient. The last document finalizes the Internal Analgesic Products monograph.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment) (Required Warnings and Other Labeling) | 12/26/06 | 71 FR 77314 |
| NPRM Comment Period End | 05/25/07 | |
| NPRM (Over-indulgence/ Hangover) | To Be | Determined |
| Final Action (Required Warnings and Other Labeling) | 04/29/09 | 74 FR 19385 |
| Final Action (Correction) | 06/30/09 | 74 FR 31177 |
| Final Action (Technical Amendment) | 11/25/09 | 74 FR 61512 |
| NPRM (Acetaminophen) | 03/00/11 | |
| NPRM (Amendment) (Pediatric) | To Be | Determined |
| NPRM (Amendment) (Sodium Bicarbonate) | To Be | Determined |
| Final Action (Internal Analgesics) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF36

## 139. OVER–THE–COUNTER (OTC) DRUG REVIEW—LAXATIVE DRUG PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360 to 360a; 21 USC 371 to 371a

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first NPRM listed will address the professional labeling for sodium phosphate drug products. The second NPRM listed will address all other professional labeling requirements for laxative drug products. The final action will address laxative drug products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action (Granular Psyllium) | 03/29/07 | 72 FR 14669 |
| NPRM (Professional Labeling—Sodium Phosphate) | 10/00/10 | |
| NPRM (Professional Labeling) | To Be | Determined |
| Final Action (Laxative Drug Products) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF38

## 140. OVER–THE–COUNTER (OTC) DRUG REVIEW—SUNSCREEN PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses active ingredients reviewed under Time and Extent Applications. The second action addresses other effectiveness issues for OTC sunscreen drug products. The third action finalizes sunscreen formulation, labeling, and testing requirements for both ultraviolet B and ultraviolet A radiation protection. The last action addresses combination products containing sunscreen and insect repellent ingredients.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM (Sunscreen and Insect Repellent) | 02/22/07 | 72 FR 7941 |
| ANPRM Comment Period End | 05/23/07 | |
| NPRM (UVA/UVB) | 08/27/07 | 72 FR 49070 |
| NPRM Comment Period End | 12/26/07 | |
| NPRM (Time and Extent Applications) | 07/00/10 | |
| NPRM (Effectiveness) | 10/00/10 | |
| Final Action (UVA/UVB) | 10/00/10 | |
| NPRM (Sunscreen and Insect Repellent) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human

Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF43

## 141. OVER–THE–COUNTER (OTC) DRUG REVIEW—TOPICAL ANTIMICROBIAL DRUG PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses food handler products. The second action addresses testing requirements for healthcare professional products. The third action addresses the safety and effectiveness of consumer products. The final actions listed will address the healthcare, consumer, and first aid antiseptic drug products respectively.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Healthcare) | 06/17/94 | 59 FR 31402 |
| NPRM (Food Handlers) | To Be | Determined |
| NPRM (Testing — Healthcare Professional Products) | To Be | Determined |
| NPRM (Consumer) | 03/00/11 | |
| Final Action (Healthcare) | To Be | Determined |
| Final Action (Consumer) | To Be | Determined |
| Final Action (First Aid Antiseptic) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF69

## 142. PROCESS CONTROLS FOR ANIMAL FEED INGREDIENTS AND MIXED ANIMAL FEED

**Legal Authority:** 21 USC 342; 21 USC 350e; 21 USC 371; 21 USC 374; 42 USC 264; PL 110–85, sec 1002(a)(2)

**Abstract:** The Food and Drug Administration (FDA) is proposing regulations for process controls for animal feed ingredients and mixed animal feed to provide greater assurance that marketed animal feed ingredients and mixed feeds intended for all animals, including pets, are safe. This action is being taken as part of the FDA's Animal Feed Safety System initiative. The proposed process controls will apply to animal feed ingredients and mixed animal feed, including pet food. This action is also being taken to carry out the requirements of the Food and Drug Administration Amendments Act of 2007. Section 1002(a) directs FDA to establish by regulation processing standards for pet food. This same provision of the law also directs that, in developing these new regulations, FDA obtain input from its stakeholders, including the Association of American Feed Control Officials, veterinary medical associations, animal health organizations, and pet food manufacturers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/11 | |
| NPRM Comment Period End | 06/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kim Young, Deputy Director, Division of Compliance, Department of Health and Human Services, Food and Drug Administration, Center for Veterinary Medicine, Room 106 (MPN–4, HFV–230), 7519 Standish Place, Rockville, MD 20855
Phone: 240 276–9207
Email: kim.young@fda.hhs.gov

**RIN:** 0910–AG10

## 143. PEDIATRIC DOSING FOR COUGH, COLD, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER–THE–COUNTER HUMAN USE; PROPOSED AMENDMENT OF FINAL MONOGRAPH

**Legal Authority:** 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a monograph is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action will propose changes to the final monograph to address safety and efficacy issues associated with pediatric cough and cold products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AG12

## 144. UNIQUE DEVICE IDENTIFICATION

**Legal Authority:** Not Yet Determined

**Abstract:** The Food and Drug Administration Amendments Act of 2007, amended the Federal Food, Drug, and Cosmetic Act by adding section 519(f) (21 USC 360i(f)). This section requires FDA to promulgate regulations establishing a unique identification system for medical devices requiring the label of medical devices to bear a unique identifier, unless FDA specifies an alternative placement or provides for exceptions. The unique identifier must adequately identify the device through distribution and use, and may include information on the lot or serial number.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John J. Crowley, Senior Advisor for Patient Safety, Department of Health and Human Services, Food and Drug Administration, Center for Devices and Radiological Health, WO 66, Room 2315, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 980–1936
Email: jay.crowley@fda.hhs.gov

**RIN:** 0910–AG31

## 145. PRODUCE SAFETY REGULATION

**Legal Authority:** 21 USC 342; 21 USC 371; 42 USC 264

**Abstract:** The Food and Drug Administration (FDA) has determined that enforceable standards (as opposed to voluntary recommendations) for the production and packing of fresh produce are necessary to ensure best practices are commonly adopted. FDA is proposing to promulgate regulations setting enforceable standards for fresh produce safety at the farm and packing house. The purpose of the proposed rule is to reduce the risk of illness associated with contaminated fresh produce. The proposed rule will be based on prevention-oriented public health principles and incorporate what we have learned in the past decade since the agency issued general good agricultural practice guidelines entitled ''Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables'' (GAPs Guide). The proposed rule also will reflect comments received on the agency's 1998 update of its GAPs guide and its July 2009 draft commodity specific guidances for tomatoes, leafy greens, and melons. Although the proposed rule will be based on recommendations that are included in the GAPs guide, FDA does not intend to make the entire guidance mandatory. FDA's proposed rule would, however, set out clear standards for implementation of modern preventive controls. The proposed rule also would emphasize the importance of environmental assessments to identify hazards and possible pathways of contamination and provide examples of risk reduction practices recognizing that operators must tailor their preventive controls to particular hazards and conditions affecting their operations. The requirements of the proposed rule would be scale appropriate and commensurate with the relative risks and complexity of individual operations. FDA intends to issue guidance after the proposed rule is finalized to assist industry in complying with the requirements of the new regulation.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Samir Assar, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Safety, 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–1636
Email: samir.assar@fda.hhs.gov

**RIN:** 0910–AG35

## 146. MODERNIZATION OF THE CURRENT FOOD GOOD MANUFACTURING PRACTICES REGULATION

**Legal Authority:** 21 USC 342; 21 USC 371; 42 USC 264

**Abstract:** The Food and Drug Administration (FDA) is proposing to amend its current good manufacturing practices (CGMP) regulations (21 CFR part 110) for manufacturing, packing, or holding human food. This proposed rule would require food facilities to address issues such as environmental pathogens, food allergens, mandatory employee training, and sanitation of food contact surfaces. The proposed rule also would require food facilities to develop and implement preventive control systems. FDA is taking this action to better address changes that have occurred in the food industry and protect public health.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Paul South, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–317), Office of Food Safety, 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–1640
Email: paul.south@fda.hhs.gov

**RIN:** 0910–AG36

## 147. • CIGARS SUBJECT TO THE FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

**Legal Authority:** 21 USC 301 et seq, The Federal Food, Drug, and Cosmetic Act; PL 111–31, The Family Smoking Prevention and Tobacco Control Act

**Abstract:** The Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) provides FDA authority to regulate cigarettes, cigarette tobacco, roll-your-own tobacco, and smokeless tobacco. Section 901 of the Federal Food, Drug, and Cosmetic Act, as amended by the Tobacco Control Act, permits FDA to issue regulations deeming other tobacco products to be subject to the Tobacco Control Act. This proposed rule would deem cigars to be subject to the Tobacco Control Act and include provisions to address public health concerns raised by cigars.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** May Nelson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 877 287–1373
Fax: 240 276–3904
Email: may.nelson@fda.hhs.gov

**RIN:** 0910–AG38

## Department of Health and Human Services (HHS) — Final Rule Stage
## Food and Drug Administration (FDA)

### 148. POSTMARKETING SAFETY REPORTING REQUIREMENTS FOR HUMAN DRUG AND BIOLOGICAL PRODUCTS

**Legal Authority:** 42 USC 216; 42 USC 241; 42 USC 242a; 42 USC 262 and 263; 42 USC 263a to 263n; 42 USC 264; 42 USC 300aa; 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360b to 360j; 21 USC 361a; 21 USC 371; 21 USC 374; 21 USC 375; 21 USC 379e; 21 USC 381

**Abstract:** The final rule would amend the postmarketing expedited and periodic safety reporting regulations for human drugs and biological products to revise certain definitions and reporting formats as recommended by the International Conference on Harmonisation and to define new terms; to add to or revise current reporting requirements; to revise certain reporting time frames; and to propose other revisions to these regulations to enhance the quality of safety reports received by FDA. These revisions were proposed as part of a single rulemaking (68 FR 12406) to clarify and revise both premarketing and postmarketing safety reporting requirements for human drug and biological products. FDA plans to finalize the premarket and postmarket safety reporting requirements in separate final rules.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/14/03 | 68 FR 12406 |
| NPRM Comment Period Extended | 06/18/03 | |
| NPRM Comment Period End | 07/14/03 | |
| NPRM Comment Period Extension End | 10/14/03 | |
| Final Action | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jane E. Baluss, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6362, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002
Phone: 301 796–3469
Fax: 301 847–8440
Email: jane.baluss@fda.hhs.gov

**RIN:** 0910–AA97

### 149. MEDICAL GAS CONTAINERS AND CLOSURES; CURRENT GOOD MANUFACTURING PRACTICE REQUIREMENTS

**Legal Authority:** 21 USC 321; 21 USC 351 to 21 USC 353

**Abstract:** The Food and Drug Administration is amending its current good manufacturing practice regulations and other regulations to clarify and strengthen requirements for the label, color, dedication, and design of medical gas containers and closures. Despite existing regulatory requirements and industry standards for medical gases, there have been repeated incidents in which cryogenic containers of harmful industrial gases have been connected to medical oxygen supply systems in hospitals and nursing homes and subsequently administered to patients. These incidents have resulted in death and serious injury. There have also been several incidents involving high-pressure medical gas cylinders that have resulted in death and injuries to patients. These amendments, together with existing regulations, are intended to ensure that the types of incidents that have occurred in the past, as well as other types of foreseeable and potentially deadly medical gas accidents, do not occur in the future.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/10/06 | 71 FR 18039 |
| NPRM Comment Period End | 07/10/06 | |
| Final Action | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Patrick Raulerson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO 51, Room 6368, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002
Phone: 301 796–3522
Fax: 301 847–8440
Email: patrick.raulerson@fda.hhs.gov

**RIN:** 0910–AC53

### 150. CONTENT AND FORMAT OF LABELING FOR HUMAN PRESCRIPTION DRUGS AND BIOLOGICS; REQUIREMENTS FOR PREGNANCY AND LACTATION LABELING

**Legal Authority:** 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

**Abstract:** To amend the regulations governing the format and content of labeling for human prescription drugs and biological products (21 CFR parts 201.56, 201.57, and 201.80). Under FDA's current regulations, labeling concerning the use of prescription drugs in pregnancy uses letter categories (A, B, C, D, X) to characterize the risk to the fetus of using the drug in pregnancy. One of the deficiencies of the category system is that drugs may be assigned to the same category when the severity, incidence, and types of risk are quite different. Dissatisfaction with the category system has been expressed by health care providers, medical organizations, experts in the study of birth defects, women's health researchers, and women of childbearing age. Stakeholders consulted through a public hearing, several focus groups, and several advisory committees have recommended that FDA replace the category system with a concise narrative summarizing a product's risks to pregnant women and to women of childbearing age. Therefore, the revised format and the information provided in the labeling would make it easier for health care providers to understand the risks and benefits of drug use during pregnancy and lactation.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/29/08 | 73 FR 30831 |
| NPRM Comment Period End | 08/27/08 | |
| Final Action | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rachel S. Bressler, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation Research, WO 51, Room 6224, 10903 New Hampshire Avenue, Silver Spring, MD 20993–0002
Phone: 301 796–4288

Fax: 301 847–8440
Email: rachel.bressler@fda.hhs.gov

**RIN:** 0910–AF11

## 151. INFANT FORMULA: CURRENT GOOD MANUFACTURING PRACTICES; QUALITY CONTROL PROCEDURES; NOTIFICATION REQUIREMENTS; RECORDS AND REPORTS; AND QUALITY FACTORS

**Legal Authority:** 21 USC 321; 21 USC 350a; 21 USC 371; . . .

**Abstract:** The Food and Drug Administration (FDA) is revising its infant formula regulations in 21 CFR parts 106 and 107 to establish requirements for current good manufacturing practices (CGMP), including audits; to establish requirements for quality factors; and to amend FDA's quality control procedures, notification, and record and reporting requirements for infant formula. FDA is taking this action to improve the protection of infants who consume infant formula products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/09/96 | 61 FR 36154 |
| NPRM Comment Period End | 12/06/96 | |
| NPRM Comment Period Reopened | 04/28/03 | 68 FR 22341 |
| NPRM Comment Period Extended | 06/27/03 | 68 FR 38247 |
| NPRM Comment Period End | 08/26/03 | |
| NPRM Comment Period Reopened | 08/01/06 | 71 FR 43392 |
| NPRM Comment Period End | 09/15/06 | |
| Final Action | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Benson Silverman, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–850), 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–1459
Email: benson.silverman@fda.hhs.gov

**RIN:** 0910–AF27

## 152. OVER–THE–COUNTER (OTC) DRUG REVIEW—COUGH/COLD (BRONCHODILATOR) PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses labeling for single ingredient bronchodilator products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment—Ephedrine Single Ingredient) | 07/13/05 | 70 FR 40237 |
| NPRM Comment Period End | 11/10/05 | |
| Final Action (Technical Amendment) | 11/30/07 | 72 FR 67639 |
| Final Action (Amendment—Single Ingredient Labeling) | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF32

## 153. OVER–THE–COUNTER (OTC) DRUG REVIEW—COUGH/COLD (COMBINATION) PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses cough/cold drug products containing an oral bronchodilator (ephedrine and its salts) in combination with any expectorant or any oral nasal decongestant.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment) | 07/13/05 | 70 FR 40232 |
| NPRM Comment Period End | 11/10/05 | |
| Final Action (Technical Amendment) | 03/19/07 | 72 FR 12730 |
| Final Action | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF33

## 154. OVER–THE–COUNTER (OTC) DRUG REVIEW—EXTERNAL ANALGESIC PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The final action addresses the 2003 proposed rule on patches, plasters, and poultices. The proposed rule will address issues not addressed in previous rulemakings.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action (GRASE dosage forms) | 12/00/10 | |
| NPRM (Amendment) | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human

Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF35

## 155. OVER–THE–COUNTER (OTC) DRUG REVIEW—SKIN PROTECTANT PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The first action addresses skin protectant products used to treat fever blisters and cold sores. The second action identifies safe and effective skin protectant active ingredients to treat and prevent diaper rash.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action (Aluminum Acetate) (Technical Amendment) | 03/06/09 | 74 FR 9759 |
| Final Action (Diaper Rash) | 03/00/11 | |
| Final Action (Technical Amendments) | 02/01/08 | 73 FR 6014 |
| Final Action (Fever Blisters/Cold Sores) | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF42

## 156. USE OF MATERIALS DERIVED FROM CATTLE IN HUMAN FOOD AND COSMETICS

**Legal Authority:** 21 USC 342; 21 USC 361; 21 USC 371

**Abstract:** On July 14, 2004, FDA issued an interim final rule (IFR), effective immediately, to prohibit the use of certain cattle material and to address the potential risk of bovine spongiform encephalopathy (BSE) in human food, including dietary supplements, and cosmetics. Prohibited cattle materials under the IFR include specified risk materials, small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption, and mechanically separated (MS) beef. Specified risk materials are the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older; and the tonsils and distal ileum of the small intestine of all cattle. Prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives. This action minimizes human exposure to materials that scientific studies have demonstrated are highly likely to contain the BSE agent in cattle infected with the disease. Scientists believe that the human disease variant Creutzfeldt-Jakob disease (vCJD) is likely caused by the consumption of products contaminated with the agent that causes BSE.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 07/14/04 | 69 FR 42256 |
| Interim Final Rule Effective | 07/14/04 | |
| Interim Final Rule Comment Period End | 10/12/04 | |
| Interim Final Rule (Amendments) | 09/07/05 | 70 FR 53063 |
| Interim Final Rule (Amendments) Effective | 10/07/05 | |
| Interim Final Rule (Amendments) Comment Period End | 11/07/05 | |
| Interim Final Rule (Amendments) | 04/17/08 | 73 FR 20785 |
| Interim Final Rule (Amendments) Comment Period End | 07/16/08 | |
| Interim Final Rule (Amendments) Effective | 07/16/08 | |
| Final Action | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Amber McCoig, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, (HFS–316), 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–2131
Fax: 301 436–2644
Email: amber.mccoig@fda.hhs.gov

**RIN:** 0910–AF47

## 157. LABEL REQUIREMENT FOR FOOD THAT HAS BEEN REFUSED ADMISSION INTO THE UNITED STATES

**Legal Authority:** 15 USC 1453 to 1455; 21 USC 321; 21 USC 342 and 343; 21 USC 371; 21 USC 374; 21 USC 381; 42 USC 216; 42 USC 264

**Abstract:** The final rule will require owners or consignees to label imported food that is refused entry into the United States. The label will read, ''UNITED STATES: REFUSED ENTRY.'' The proposal describes the label's characteristics (such as its size) and processes for verifying that the label has been affixed properly. We are taking this action to prevent the introduction of unsafe food into the United States, to facilitate the examination of imported food, and to implement section 308 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Pub. L. 107-188).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/18/08 | 73 FR 54106 |
| NPRM Comment Period End | 12/02/08 | |
| Final Action | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John D. Reilly, Regulatory Counsel, Department of Health and Human Services, Food and

Drug Administration, Center for Food Safety and Applied Nutrition, CPK 1, Room 1C–015, (HFS–024), 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–1530
Fax: 301 436–2637
Email: john.reilly@fda.hhs.gov

**RIN:** 0910–AF61

## Department of Health and Human Services (HHS) Food and Drug Administration (FDA) — Long-Term Actions

### 158. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, LABELING, OR HOLDING OPERATIONS FOR DIETARY SUPPLEMENTS

**Legal Authority:** 21 USC 321; 21 USC 342 and 343; 21 USC 348; 21 USC 371; 21 USC 374; 21 USC 381; 21 USC 393; 42 USC 264

**Abstract:** The Food and Drug Administration published a final rule in the Federal Register of June 25, 2007 (72 FR 34752), on current good manufacturing practice (CGMP) regulations for dietary supplements. FDA also published an Interim Final Rule in the same Federal Register (72 FR 34959) that provided a procedure for requesting an exemption from the final rule requirement that the manufacturer conduct at least one appropriate test or examination to verify the identity of any component that is a dietary ingredient. This IFR allows for submission to, and review by, FDA of an alternative to the required 100 percent identity testing of components that are dietary ingredients, provided certain conditions are met. This IFR also establishes a requirement for retention of records relating to the FDA's response to an exemption request.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 02/06/97 | 62 FR 5700 |
| ANPRM Comment Period End | 06/06/97 | |
| NPRM | 03/13/03 | 68 FR 12157 |
| NPRM Comment Period End | 08/11/03 | |
| Final Rule | 06/25/07 | 72 FR 34752 |
| Interim Final Rule | 06/25/07 | 72 FR 34959 |
| Interim Final Rule Comment Period End | 10/24/07 | |
| Final Action | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Linda Kahl, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–024), 5100 Paint Branch Parkway, College Park, MD 20740
Phone: 301 436–2784
Fax: 301 436–2657
Email: linda.kahl@fda.hhs.gov

**RIN:** 0910–AB88

### 159. OVER–THE–COUNTER (OTC) DRUG REVIEW—COUGH/COLD (NASAL DECONGESTANT) PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses the ingredient phenylpropanolamine.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment) (Sinusitis Claim) | 08/02/04 | 69 FR 46119 |
| NPRM Comment Period End | 11/01/04 | |
| NPRM (Phenylephrine Bitartrate) | 11/02/04 | 69 FR 63482 |
| NPRM Comment Period End | 01/31/05 | |
| NPRM (Phenyl-propanolamine) | 12/22/05 | 70 FR 75988 |
| NPRM Comment Period End | 03/22/06 | |
| Final Action (Amendment) (Sinusitis Claim) | 10/31/05 | 70 FR 58974 |
| Final Action (Phenylephrine Bitartrate) | 08/01/06 | 71 FR 83358 |
| Final Action (Phenyl-propanolamine) | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF34

### 160. OVER–THE–COUNTER (OTC) DRUG REVIEW—LABELING OF DRUG PRODUCTS FOR OTC HUMAN USE

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 371; 21 UCS 374; 21 USC 379e

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses labeling for convenience (small) size OTC drug packages.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Convenience Sizes) | 12/12/06 | 71 FR 74474 |
| NPRM Comment Period End | 04/11/07 | |
| Final Action | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF37

### 161. OVER–THE–COUNTER (OTC) DRUG REVIEW—OPHTHALMIC PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action finalizes the monograph for emergency first aid eyewash drug products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment) (Emergency First Aid Eyewashes) | 02/19/03 | 68 FR 7917 |
| Final Action (Amendment) (Emergency First Aid Eyewashes) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF39

### 162. OVER–THE–COUNTER (OTC) DRUG REVIEW—ORAL HEALTH CARE PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360 to 360a; 21 USC 371 to 371a

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The NPRM and final action will address oral health care products used to reduce or prevent dental plaque and gingivitis.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM (Plaque Gingivitis) | 05/29/03 | 68 FR 32232 |
| ANPRM Comment Period End | 08/27/03 | |
| NPRM (Plaque Gingivitis) | To Be | Determined |
| Final Action | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF40

### 163. OVER–THE–COUNTER (OTC) DRUG REVIEW—VAGINAL CONTRACEPTIVE PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 379e

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The proposed rule addresses vaginal contraceptive drug products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action (Warnings) | 12/19/07 | 72 FR 71769 |
| NPRM (Vaginal Contraceptive Drug Products) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF44

### 164. OVER–THE–COUNTER (OTC) DRUG REVIEW—WEIGHT CONTROL PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. The NPRM addresses the use of benzocaine for weight control. The first final action finalizes the 2005 proposed rule for weight control products containing phenylpropanolamine. The second final action will finalize the proposed rule for weight control products containing benzocaine.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Phenyl-propanolamine) | 12/22/05 | 70 FR 75988 |
| NPRM Comment Period End | 03/22/06 | |
| NPRM (Benzocaine) | To Be | Determined |
| Final Action (Phenyl-propanolamine) | To Be | Determined |
| Final Action (Benzocaine) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF45

### 165. OVER–THE–COUNTER (OTC) DRUG REVIEW—OVERINDULGENCE IN FOOD AND DRINK PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses products containing bismuth subsalicylate for relief of symptoms of upset stomach due to overindulgence resulting from food and drink.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment) | 01/05/05 | 70 FR 741 |
| NPRM Comment Period End | 04/05/05 | |
| Final Action | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF51

### 166. OVER–THE–COUNTER (OTC) DRUG REVIEW—ANTACID PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. One action addresses the labeling of products containing sodium bicarbonate as an active ingredient. The other action addresses the use of antacids to relieve upset stomach associated with overindulgence in food and drink.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action (Sodium Bicarbonate Labeling) | To Be | Determined |
| Final Action (Overindulgence Labeling) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF52

### 167. OVER–THE–COUNTER (OTC) DRUG REVIEW—SKIN BLEACHING PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses skin bleaching drug products containing hydroquinone.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/29/06 | 71 FR 51146 |
| NPRM Comment Period End | 12/27/06 | |
| Final Action | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF53

### 168. OVER–THE–COUNTER (OTC) DRUG REVIEW—STIMULANT DRUG PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses the use of stimulant active ingredients to relieve symptoms associated with a hangover.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Amendment) (Hangover) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF56

### 169. OVER–THE–COUNTER ANTIDIARRHEAL DRUG PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. These actions address new labeling for antidiarrheal drug products.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (New Labeling) | To Be | Determined |
| Final Action (New Labeling) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF63

## 170. OVER–THE–COUNTER (OTC) DRUG REVIEW—URINARY ANALGESIC DRUG PRODUCTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action addresses the products used for urinary pain relief.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM (Urinary Analgesic) | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF70

## 171. STATUS OF CERTAIN ADDITIONAL OVER–THE–COUNTER DRUG CATEGORY II ACTIVE INGREDIENTS

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371

**Abstract:** The Food and Drug Administration (FDA) is proposing that certain ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. FDA issued this proposed rule because we did not receive any data and information on these ingredients in response to our request on December 31, 2003 (68 FR 75585). This rule will finalize the 2008 proposed rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/19/08 | 73 FR 34895 |
| NPRM Comment Period End | 09/17/08 | |
| Final Action | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22, Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AF95

# Department of Health and Human Services (HHS)
# Food and Drug Administration (FDA)

## Completed Actions

## 172. POSITRON EMISSION TOMOGRAPHY DRUGS; CURRENT GOOD MANUFACTURING PRACTICES

**Legal Authority:** PL 105–115, sec 121

**Abstract:** Section 121 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) directs FDA to establish requirements for current good manufacturing practices (CGMPs) for positron emission tomography (PET) drugs, a type of radiopharmaceutical. The final rule adopts CGMPs that reflect the unique characteristics of PET drugs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/20/05 | 70 FR 55038 |
| NPRM Comment Period End | 12/19/05 | |
| Final Action | 12/10/09 | 74 FR 65409 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Reena Raman, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., WO 51, Room 6238, Silver Spring, MD 20993–0002
Phone: 301 796–7577
Fax: 301 847–8440
Email: reena.raman@fda.hhs.gov

**RIN:** 0910–AC55

## 173. OVER–THE–COUNTER (OTC) DRUG REVIEW—ACNE DRUG PRODUCTS CONTAINING BENZOYL PEROXIDE

**Legal Authority:** 21 USC 321p; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360 to 360a; 21 USC 371 to 371a

**Abstract:** The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed. This action will address acne drug products containing benzoyl peroxide.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action | 03/04/10 | 75 FR 9767 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Walter J. Ellenberg, Regulatory Project Management Officer, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, WO–22,

Room 5488, 10903 New Hampshire Avenue, Silver Spring, MD 20993
Phone: 301 796–2090
Fax: 301 796–9899
Email: walter.ellenberg@fda.hhs.gov

**RIN:** 0910–AG00

## Department of Health and Human Services (HHS) Centers for Medicare & Medicaid Services (CMS)

## Proposed Rule Stage

### 174. HOME HEALTH AGENCY (HHA) CONDITIONS OF PARTICIPATION (COPS) (CMS–3819–P) (SECTION 610 REVIEW)

**Legal Authority:** 42 USC 1302; 42 USC 1395x; 42 USC 1395cc(a); 42 USC 1395hh; 42 USC 1395bb

**Abstract:** This proposed rule would revise the existing Conditions of Participation (CoPs), last set in 1999, that Home Health Agencies (HHAs) must meet to participate in the Medicare program. The requirements focus on the actual care delivered to patients by HHAs, reflect an interdisciplinary view of patient care, allow HHAs greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are an integral part of our efforts to achieve broad-based improvements and measurements of the quality of care furnished through Federal programs while at the same time reducing procedural burdens on providers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/10/97 | 62 FR 11005 |
| NPRM Comment Period End | 06/09/97 | |
| Second NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Agency Contact:** Danielle Shearer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Clinical Standards & Quality, Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6617
Email: danielle.shearer@cms.hhs.gov

**RIN:** 0938–AG81

### 175. REQUIREMENTS FOR LONG–TERM CARE FACILITIES: HOSPICE SERVICES (CMS–3140–P) (SECTION 610 REVIEW)

**Legal Authority:** 42 USC 1302; 42 USC 1395hh

**Abstract:** This proposed rule would establish that in order to participate in the Medicare and Medicaid programs, long-term care (LTC) facilities must have an agreement with hospice agencies when hospice care is provided in a long-term care facility. We are proposing new requirements to ensure that quality hospice care is provided to eligible residents.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Trish Brooks, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Mailstop S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–4561
Email: trish.brooks@cms.hhs.gov

**RIN:** 0938–AP32

### 176. PROPOSED CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEMS FOR ACUTE CARE HOSPITALS AND FY 2011 RATES AND TO THE LONG–TERM CARE HOSPITAL PPS AND RY 2011 RATES (CMS–1498–P)

**Legal Authority:** Sec 1886(d) of the Social Security Act

**Abstract:** This annual proposed rule would revise the Medicare hospital inpatient and long-term care prospective payment systems for operating and capital-related costs to implement changes arising from our continuing experience with these systems. These changes would be applicable to services furnished on or after October 1st.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Tiffany Swygert, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mailstop C4–25–11, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–4642
Email: tiffany.swygert@cms.hhs.gov

**RIN:** 0938–AP80

### 177. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND AMBULATORY SURGICAL CENTER PAYMENT SYSTEM FOR CY 2011 (CMS–1504–P)

**Legal Authority:** sec 1833 of the Social Security Act

**Abstract:** This annual proposed rule would revise the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system. In addition, the proposed rule describes proposed changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system. The rule also proposes changes to the Ambulatory Surgical Center Payment System list of services and rates. These changes would be applicable to services furnished on or after January 1st.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alberta Dwivedi, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop C5–01–26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–0763
Email: alberta.dwivedi@cms.hhs.gov

**RIN:** 0938–AP82

## HHS—CMS

## Proposed Rule Stage

### 178. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM REFINEMENTS AND RATE UPDATE FOR CY 2011 (CMS–1510–P)

**Legal Authority:** Social Security Act, secs 1102 and 1871; 42 USC 1302 and 42 USC 1395(hh); Social Security Act, sec 1895

**Abstract:** This annual proposed rule would update the 60-day national episode rate (based on the applicable Home Health Market Basket Update and case-mix adjustment) and would also update the national per-visit rates (used to calculate low utilization payment adjustments (LUPAs) and outlier payments) amounts under the Medicare Prospective Payment System for home health agencies. These changes would be applicable to services furnished on or after January 1st.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Randy Throndeset, Technical Advisor, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, Mailstop C5–07–28, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–0131
Email: randy.throndeset@cms.hhs.gov

**RIN:** 0938–AP88

### 179. • OMNIBUS INFLUENZA IMMUNIZATION (CMS–3213–P)

**Legal Authority:** Social Security Act sec 1881, 1861, 1920, 1102, 1871, 1965

**Abstract:** This proposed rule would require certain providers to offer all patients or residents an influenza immunization annually. The providers required to do so are hospitals, intermediate care facilities, critical access hospitals, rural health clinics, Federally qualified health centers, ESRD facilities, psychiatric residential treatment facilities, and inpatient rehabilitation facilities. This proposed rule is based on the most recent recommendations from the CDC's Advisory 3 Committee on Immunization Practices. The goal of this proposed rule is to improve influenza immunization rates for all patients and residents and to address the disparities in immunization rates

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lauren Oviatt, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–4683
Email: lauren.oviatt@cms.hhs.gov

**RIN:** 0938–AP92

### 180. • PROPOSED CHANGES TO THE HOSPITAL CONDITIONS OF PARTICIPATION: REQUIREMENTS FOR HOSPITAL PSYCHIATRIC AND REHABILITATION UNITS EXCLUDED FROM THE PROSPECTIVE PAYMENT SYSTEM (CMS–3177–P)

**Legal Authority:** 42 USC 1385 X; 42 USC 1396 d; 42 USC 1395 hh

**Abstract:** This proposed rule would transfer the existing process requirements for hospital psychiatric and rehabilitation units that are excluded from prospective payment systems to the hospital conditions of participation (CoPs) part of the Act. This would allow accrediting organizations to deem these units as part of their hospital accreditation process providing a timely and cost effective survey and certification process under the CoPs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Scott Cooper, Health Insurnce Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail stop S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–9465
Email: scott.cooper@cms.hhs.gov

**RIN:** 0938–AP97

## Department of Health and Human Services (HHS)
## Centers for Medicare & Medicaid Services (CMS)

## Long-Term Actions

### 181. REVISIONS TO THE MEDICARE ADVANTAGE AND MEDICARE PRESCRIPTION DRUG BENEFIT PROGRAMS FOR CONTRACT YEAR 2011 (CMS–4085–F)

**Legal Authority:** MMA 2003; MIPPA (title XVIII of the Social Security Act)

**Abstract:** This final rule makes revisions to the regulations governing the Medicare Advantage (MA) program (Part C) and prescription drug benefit program (Part D) based on our continued experience in the administration of the Part C and D programs. The revisions strengthen various program participation and exit requirements; strengthen beneficiary protections; ensure that plan offerings to beneficiaries include meaningful differences; improve plan payment rules and processes; improve data collection for oversight and quality assessment; implement new policy such as a Part D formulary policy; and clarify program policy.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/22/09 | 74 FR 54634 |
| NPRM Comment Period End | 12/07/09 | |
| Final Action | 10/00/12 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alissa Deboy, Director, Division of Drug Plan Policy and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Mail Stop C1–26–26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–6041
Email: alissa.deboy@cms.hhs.gov

**RIN:** 0938–AP77

## Department of Health and Human Services (HHS) — Completed Actions

## Centers for Medicare & Medicaid Services (CMS)

### 182. ELECTRONIC CLAIMS ATTACHMENTS STANDARDS (CMS–0050–IFC)

**Legal Authority:** 42 USC 1320d–2(a)(2)(B)

**Abstract:** This rule sets forth electronic standards for health care claims attachments. The standards are required by the Health Insurance Portability and Accountability Act of 1996. They will be used to transmit clinical or administrative data for claims adjudication purposes.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/23/05 | 70 FR 55989 |
| NPRM Comment Period End | 11/22/05 | |
| Withdrawn | 01/25/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Elizabeth Holland, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of E–Health Standards and Services, Mailstop S2–26–17, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–1309
Email: elizabeth.holland@cms.hhs.gov,

**RIN:** 0938–AK62

### 183. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CY 2010 (CMS–1413–FC)

**Legal Authority:** Social Security Act, sec 1102; Social Security Act, sec 1871

**Abstract:** This annual rule revises payment polices under the physician fee schedule, as well as other policy changes to payment under Part B.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/13/09 | 74 FR 33520 |
| NPRM Comment Period End | 08/31/09 | |
| Final Action | 11/25/09 | 74 FR 61738 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Diane Milstead, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicaid Mangement, Mailstop C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–3355
Email: diane.milstead@cms.hhs.gov

**RIN:** 0938–AP40

### 184. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND AMBULATORY SURGICAL CENTER PAYMENT SYSTEM FOR CY 2010 (CMS–1414–FC)

**Legal Authority:** BBA; BBA; BIPA; MMA; MMSEA; MIPPA; DRA; TRHCA

**Abstract:** This annual rule revises the Medicare hospital outpatient prospective payment system to implement applicable statutory requirements and changes arising from our continuing experience with this system and to implement certain related provisions of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). In addition, the rule describes changes to the amounts and factors used to determine the payment rates for Medicare hospital outpatient services paid under the prospective payment system. The rule also changes the Ambulatory Surgical Center Payment System list of services and rates. These changes are applicable to services furnished on or after January 1st.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/20/09 | 74 FR 35231 |
| NPRM Comment Period End | 08/31/09 | |
| Final Action | 11/20/09 | 74 FR 60315 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alberta Dwivedi, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, Mailstop C5–01–26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786–0763
Email: alberta.dwivedi@cms.hhs.gov

**RIN:** 0938–AP41

[FR Doc. 2010–8934 Filed 04–23–10; 8:45 am]

BILLING CODE 4150–24–S

Federal Register

Monday,
April 26, 2010

Part VIII

# Department of Homeland Security

## Semiannual Regulatory Agenda

# DEPARTMENT OF HOMELAND SECURITY (DHS)

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### 6 CFR Chs. I and II

### [DHS Docket No. OGC-RP-04-001]

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This regulatory agenda is a semiannual summary of all current and projected rulemakings, existing regulations, and completed actions of the Department of Homeland Security (DHS) and its components. This agenda provides the public with information about DHS' regulatory activity. DHS expects that this information will enable the public to be more aware of, and effectively participate in, the Department's regulatory activity. DHS invites the public to submit comments on any aspect of this agenda.

**FOR FURTHER INFORMATION CONTACT:**

*General*

Please direct general comments and inquiries on the agenda to the Regulatory Affairs Law Division, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528.

*Specific*

Please direct specific comments and inquiries on individual regulatory actions identified in this agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

**SUPPLEMENTARY INFORMATION:**

DHS provides this notice pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980) and Executive Order 12866, ''Regulatory Planning and Review'' (September 30, 1993), which require the Department to publish a semiannual agenda of regulations. The regulatory agenda is a summary of all current and projected rulemakings, as well as actions completed since the publication of the last regulatory agenda for the Department. DHS' last semiannual regulatory agenda was published on December 7, 2009, at 74 FR 64448.

Beginning in the fall 2007, the Internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov.

The Regulatory Flexibility Act (5 U.S.C. 602) requires federal agencies to publish their regulatory flexibility agenda in the **Federal Register.**A regulatory flexibility agenda shall contain, among other things, ''a brief description of the subject area of any rule . . . which is likely to have a significant economic impact on a substantial number of small entities.'' DHS' printed agenda entries include regulatory actions that are in the Department's regulatory flexibility agenda. Printing of these entries is limited to fields that contain information required by the agenda provisions of the Regulatory Flexibility Act. Additional information on these entries is available in the Unified Agenda published on the Internet.

The semiannual agenda of the Department conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

**Dated:** February 26, 2010.

**Christina E. McDonald,**

*Deputy Associate General Counsel for Regulatory Affairs.*

## U.S. Citizenship and Immigration Services—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 185 | Registration Requirements for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject To Numerical Limitations | 1615–AB71 |
| 186 | U. S. Citizenship and Immigration Services Fee Schedule | 1615–AB80 |

## U.S. Citizenship and Immigration Services—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 187 | Commonwealth of the Northern Mariana Islands Transitional Nonimmigrant Investor Classification | 1615–AB75 |

## U.S. Coast Guard—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 188 | Numbering of Undocumented Barges (USCG-1998-3798) | 1625–AA14 |
| 189 | Commercial Fishing Industry Vessels (USCG-2003-16158) | 1625–AA77 |
| 190 | Inspection of Towing Vessels (USCG-2006-24412) | 1625–AB06 |

## DHS

### U.S. Coast Guard—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 191 | Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (USCG-2001-10486) | 1625–AA32 |
| 192 | Passenger Weight and Inspected Vessel Stability Requirements (USCG-2007-0030) | 1625–AB20 |

### U.S. Coast Guard—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 193 | Claims Procedures Under the Oil Pollution Act of 1990 (USCG-2004-17697) | 1625–AA03 |
| 194 | Great Lakes Pilotage Rates—2010 Annual Review and Adjustment **(Section 610 Review)** | 1625–AB39 |

### U.S. Customs and Border Protection—Prerule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 195 | Transportation of Certain Merchandise and Equipment Between Coastwise Points | 1651–AA84 |

### U.S. Customs and Border Protection—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 196 | Importer Security Filing and Additional Carrier Requirements | 1651–AA70 |

### Transportation Security Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 197 | Aircraft Repair Station Security | 1652–AA38 |

### Transportation Security Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 198 | Modification of the Aviation Security Infrastructure Fee (ASIF) (Market Share) | 1652–AA43 |

### Federal Emergency Management Agency—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 199 | Update of FEMA's Public Assistance Regulations | 1660–AA51 |

## Department of Homeland Security (DHS) — Proposed Rule Stage
## U.S. Citizenship and Immigration Services (USCIS)

### 185. REGISTRATION REQUIREMENTS FOR PETITIONERS SEEKING TO FILE H–1B PETITIONS ON BEHALF OF ALIENS SUBJECT TO NUMERICAL LIMITATIONS

**Legal Authority:** 8 USC 1184(g)

**Abstract:** The Department of Homeland Security is proposing to amend its regulations governing petitions filed on behalf of alien workers subject to annual numerical limitations. This rule proposes an electronic registration program for petitions subject to numerical limitations contained in the Immigration and Nationality Act (the Act). Initially, the program would be for the H-1B nonimmigrant classification; however, other nonimmigrant classifications will be added as needed. This action is necessary because the demand for H-1B specialty occupation workers by U.S. companies generally exceeds the numerical limitation. This rule is intended to allow USCIS to more efficiently manage the intake and lottery process for these H-1B petitions.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |
| NPRM Comment Period End | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Claudia F. Young, Department of Homeland Security, U.S. Citizenship and Immigration Services, Service Center Operations, 20 Massachusetts Avenue NW., Washington, DC 20529
Phone: 202 272–8163
Email: cf1young@dhs.gov

**RIN:** 1615–AB71

### 186. U. S. CITIZENSHIP AND IMMIGRATION SERVICES FEE SCHEDULE

**Legal Authority:** 8 USC 1356(m)

**Abstract:** This rule will adjust the fee schedule for U.S. Citizenship and Immigration Services (USCIS) immigration and naturalization benefit applications and petitions, including nonimmigrant applications and visa petitions. These fees fund the cost of processing applications and petitions for immigration benefits and services, and USCIS' associated operating costs. USCIS is revising these fees because the current fee schedule does not adequately recover the full costs of services provided by USCIS. Without an adjustment of the fee schedule, USCIS cannot provide adequate capacity to process all applications and petitions in a timely and efficient manner. The fee review is undertaken pursuant to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901-03. The CFO Act requires each agency's chief financial officer (CFO) to ''review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.'' Id. at 902(a)(8). This rule will reflect recommendations made by the DHS CFO and USCIS CFO, as required under the CFO Act.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |
| NPRM Comment Period End | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rendell Jones, Chief Financial Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, Suite 4018, 20 Massachusetts Avenue NW., Washington, DC 20259
Phone: 202 272–1969
Fax: 202 272–1970
Email: rendell.jones@dhs.gov

**RIN:** 1615–AB80

## Department of Homeland Security (DHS) — Final Rule Stage
## U.S. Citizenship and Immigration Services (USCIS)

### 187. COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS TRANSITIONAL NONIMMIGRANT INVESTOR CLASSIFICATION

**Legal Authority:** 8 USC 1101 to 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a

**Abstract:** On May 8, 2008, Public Law 110-229, Commonwealth Natural Resources Act, established a transitional period for the application of the Immigration and Nationality Act (INA) to the Commonwealth of the Northern Mariana Islands (CNMI). Although the CNMI is subject to most U.S. laws, the CNMI has administered its own immigration system under the terms of its 1976 covenant with the United States. The Department of Homeland Security is proposing to amend its regulations by creating a new E2 CNMI Investor classification for the duration of the transition period. These temporary provisions are necessary to reduce the potential harm to the CNMI economy before these foreign workers and investors are required to convert into U.S. immigrant or nonimmigrant visa classifications.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/14/09 | 74 FR 46938 |
| NPRM Comment Period End | 10/14/09 | |
| Final Action | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kevin J. Cummings, Chief of Business and Foreign Workers Division, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529–2140
Phone: 202 272–8410
Fax: 202 272–1542
Email: kevin.cummings@dhs.gov

**RIN:** 1615–AB75

## Department of Homeland Security (DHS) — Proposed Rule Stage
## U.S. Coast Guard (USCG)

### 188. NUMBERING OF UNDOCUMENTED BARGES (USCG–1998–3798)

**Legal Authority:** 46 USC 12301

**Abstract:** Title 46 U.S.C. 12301, as amended by the Abandoned Barge Act of 1992, requires that all undocumented barges of more than 100 gross tons operating on the navigable waters of the United States be numbered. This rulemaking would establish a numbering system for these barges. The numbering of undocumented barges will allow identification of owners of barges found abandoned and help prevent future marine pollution. This rulemaking supports the Coast Guard's broad role and responsibility of maritime stewardship.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Request for Comments | 10/18/94 | 59 FR 52646 |
| Comment Period End | 01/17/95 | |
| ANPRM | 07/06/98 | 63 FR 36384 |
| ANPRM Comment Period End | 11/03/98 | |
| NPRM | 01/11/01 | 66 FR 2385 |
| NPRM Comment Period End | 04/11/01 | |
| NPRM Reopening of Comment Period | 08/12/04 | 69 FR 49844 |
| NPRM Comment Period End | 11/10/04 | |
| Supplemental NPRM | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Denise Harmon, Project Manager, Department of Homeland Security, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV 25419
Phone: 304 271–2506

**RIN:** 1625–AA14

### 189. COMMERCIAL FISHING INDUSTRY VESSELS (USCG–2003–16158)

**Legal Authority:** 46 USC 4502(a) to 4502(d); 46 USC 4505 and 4506; 46 USC 6104; 46 USC 10603; DHS Delegation No. 0170.1(92)

**Abstract:** This rulemaking would amend commercial fishing industry vessel requirements to enhance maritime safety. The proposed changes would affect vessel stability and watertight integrity, carriage of immersion suits, training, compliance documentation, and safety equipment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/31/08 | 73 FR 16815 |
| ANPRM Comment Period End | 12/15/08 | |
| NPRM | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jack Kemerer, Project Manager, CG–5433, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593
Phone: 202 372–1249
Email: jack.a.kemerer@uscg.mil

**RIN:** 1625–AA77

### 190. INSPECTION OF TOWING VESSELS (USCG–2006–24412)

**Legal Authority:** 46 USC 3103, 3301, 3306, 3308, 3316, 3703, 8104, and 8904; DHS Delegation No 0170.1

**Abstract:** This rulemaking would implement a program of inspection for certification of towing vessels, which were previously uninspected. It would prescribe standards for safety management systems and third-party entities, along with standards for construction, operation, vessel systems, safety equipment, and recordkeeping. Due to the costs imposed on an entire uninspected segment of the marine industry, the Coast Guard projects that this will be a significant rulemaking, especially for small entities.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Michael Harmon, Program Manager, CG–522, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126
Phone: 202 372–1427

**RIN:** 1625–AB06

## Department of Homeland Security (DHS) — Final Rule Stage
## U.S. Coast Guard (USCG)

### 191. STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS (USCG–2001–10486)

**Legal Authority:** 16 USC 4711

**Abstract:** This rulemaking would propose to add performance standards to 33 CFR part 151, subparts C and D, for discharges of ballast water. It supports the Coast Guard's broad roles and responsibilities of maritime safety and maritime stewardship. This project is significant due to high interest from Congress and several Federal and State agencies, as well as costs imposed on industry.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 03/04/02 | 67 FR 9632 |
| ANPRM Comment Period End | 06/03/02 | |
| NPRM | 08/28/09 | 74 FR 44632 |
| Public Meeting | 09/14/09 | 74 FR 46964 |
| Public Meeting | 09/22/09 | 74 FR 48190 |
| Public Meeting | 09/28/09 | 74 FR 49355 |
| Notice—Extension of Comment Period | 10/15/09 | 74 FR 52941 |
| Public Meeting | 10/22/09 | 74 FR 54533 |
| Public Meeting Correction | 10/26/09 | 74 FR 54944 |
| NPRM Comment Period End | 12/04/09 | 74 FR 52941 |
| Final Rule | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Mr. John C Morris, Project Manager, Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126
Phone: 202 372–1433
Email: john.c.morris@uscg.mil

**RIN:** 1625–AA32

### 192. PASSENGER WEIGHT AND INSPECTED VESSEL STABILITY REQUIREMENTS (USCG–2007–0030)

**Legal Authority:** 33 USC 1321(j); 43 USC 1333; 46 USC 2103, 2113, 3205, 3301, 3306, 3307, 3703, 5115, 6101; 49

## DHS—USCG — Final Rule Stage

USC App 1804; EO 11735; EO 12234; DHS Delegation No 0170.1; PL 103–206, 107 Stat 2439; 49 USC App 1804; EO 11735

**Abstract:** The Coast Guard proposes developing a rule that addresses both the stability calculations and the environmental operating requirements for certain domestic passenger vessels. The proposed rule would address the outdated per-person weight averages that are currently used in stability calculations for certain domestic passenger vessels. In addition, the proposed rule would add environmental operating requirements for domestic passenger vessels that could be adversely affected by sudden inclement weather. This rulemaking would increase passenger safety by significantly reducing the risk of certain types of passenger vessels capsizing due to either passenger overloading or operating these vessels in hazardous weather conditions. This rulemaking would support the Coast Guard's broad role and responsibility of maritime safety.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/20/08 | 73 FR 49244 |
| NPRM Comment Period End | 11/18/08 | |
| NPRM Comment Period Reopened | 12/08/08 | 73 FR 74426 |
| NPRM Comment Period End | 02/06/09 | |
| NPRM Comment Period Reopened | 02/18/09 | 74 FR 7576 |
| NPRM Comment Period End | 03/20/09 | |
| Final Action | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** William Peters, Program Manager, Office of Design and Engineering Standards, Systems Engineering Division (CG–5212), Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126
Phone: 202 372–1371
Email: william.s.peters@uscg.mil

**RIN:** 1625–AB20

## Department of Homeland Security (DHS) — Long-Term Actions
## U.S. Coast Guard (USCG)

### 193. CLAIMS PROCEDURES UNDER THE OIL POLLUTION ACT OF 1990 (USCG–2004–17697)

**Legal Authority:** 33 USC 2713 and 2714

**Abstract:** This rulemaking implements section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement) of the Oil Pollution Act of 1990. An interim rule was published in 1992, and provides the basic requirements for the filing of claims for uncompensated removal costs or damages resulting from the discharge of oil, for the designation of the sources of the discharge, and for the advertisement of where claims are to be filed. The interim rule also includes the processing of natural resource damage (NRD) claims. The NRD claims, however, were not processed until September 25, 1997, when the Department of Justice issued an opinion that the Oil Spill Liability Trust Fund (OSLTF) is available without further appropriation to pay trustee NRD claims under the general claims provisions of the Oil Pollution Act (OPA) of 1990, 33 U.S.C. 2712(a)(4). Release of this more comprehensive notice of proposed rulemaking has been delayed while the Coast Guard gained experience on NRD claims, as well as other OPA damages. This rulemaking supports the Coast Guard's broad role and responsibility of maritime stewardship.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 08/12/92 | 57 FR 36314 |
| Correction | 09/09/92 | 57 FR 41104 |
| Interim Final Rule Comment Period End | 12/10/92 | |
| Supplemental NPRM | 04/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Benjamin White, Project Manager, National Pollution Funds Center, Department of Homeland Security, U.S. Coast Guard, NPFC MS 7100, United States Coast Guard, 4200 Wilson Boulevard, Arlington, VA 20598–7100
Phone: 202 493–6863
Email: benjamin.h.white@uscg.mil

**RIN:** 1625–AA03

### 194. GREAT LAKES PILOTAGE RATES—2010 ANNUAL REVIEW AND ADJUSTMENT (SECTION 610 REVIEW)

**Legal Authority:** 46 USC 9303(f)

**Abstract:** The Coast Guard is proposing to update the rates for pilotage on the Great Lakes by 5.07 percent to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. The proposed update reflects an August 1, 2010, increase in benchmark contractual wages and benefits, as well as an increase in the ratio of pilots to ''bridge hours.'' This rulemaking promotes the Coast Guard strategic goal of maritime safety.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/30/09 | 74 FR 56153 |
| NPRM Comment Period End | 11/30/09 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Paul Wasserman, Director, Great Lakes Pilotage (CG–54122), Department of Homeland Security, U.S. Coast Guard, 2100 Second Street SW., STOP 7581, Washington, DC 20593–7581
Phone: 202 372–1535
Email: paul.m.wasserman@uscg.mil

**RIN:** 1625–AB39

## Department of Homeland Security (DHS) — Prerule Stage
## U.S. Customs and Border Protection (USCBP)

### 195. ● TRANSPORTATION OF CERTAIN MERCHANDISE AND EQUIPMENT BETWEEN COASTWISE POINTS

**Legal Authority:** 46 USC 55102

**Abstract:** The Jones Act provides that only coastwise-qualified vessels may transport merchandise between coastwise points. During 2009, U.S. Customs and Border Protection proposed modifying previously-issued ruling letters that determined whether the transportation of certain articles and equipment by non-coastwise-qualified vessels between coastwise points was in violation of the Jones Act. Because any determination on this matter made by CBP would impact a broad range of regulated parties, and the scope of potential economic impact of any change in existing practice is unknown, CBP is issuing an advance notice of proposed rulemaking to solicit public comment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Glen E. Vereb, Chief, Cargo Security, Carriers and Immigration Branch, Office of International Trade, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 325–0212

**RIN:** 1651–AA84

## Department of Homeland Security (DHS) — Final Rule Stage
## U.S. Customs and Border Protection (USCBP)

### 196. IMPORTER SECURITY FILING AND ADDITIONAL CARRIER REQUIREMENTS

**Legal Authority:** PL 109–347, sec 203; 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433 to 1434; 19 USC 1624; 19 USC 2071 note; 46 USC 60105

**Abstract:** This interim final rule implements the provisions of section 203 of the Security and Accountability for Every Port Act of 2006. It amends CBP Regulations to require carriers and importers to provide to CBP, via a CBP-approved electronic data interchange system, information necessary to enable CBP to identify high-risk shipments to prevent smuggling and insure cargo safety and security. Under the rule, importers and carriers must submit specified information to CBP before the cargo is brought into the United States by vessel. This advance information will improve CBP's risk assessment and targeting capabilities, assist CBP in increasing the security of the global trading system, and facilitate the prompt release of legitimate cargo following its arrival in the United States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/02/08 | 73 FR 90 |
| NPRM Comment Period End | 03/03/08 | |
| NPRM Comment Period Extended | 02/01/08 | 73 FR 6061 |
| NPRM Comment Period End | 03/18/08 | |
| Interim Final Rule | 11/25/08 | 73 FR 71730 |
| Interim Final Rule Effective | 01/26/09 | |
| Interim Final Rule Comment Period End | 06/01/09 | |
| Correction | 12/24/09 | 74 FR 68376 |
| Final Action | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Richard DiNucci, Department of Homeland Security, U.S. Customs and Border Protection, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229
Phone: 202 344–2513
Email: richard.dinucci@dhs.gov

**RIN:** 1651–AA70

## Department of Homeland Security (DHS) — Final Rule Stage
## Transportation Security Administration (TSA)

### 197. AIRCRAFT REPAIR STATION SECURITY

**Legal Authority:** 49 USC 114; 49 USC 44924

**Abstract:** The Transportation Security Administration (TSA) proposed to add a new regulation to improve the security of domestic and foreign aircraft repair stations, as required by the section 611 of Vision 100—Century of Aviation Reauthorization Act and section 1616 of the 9/11 Commission Act of 2007. The regulation proposed general requirements for security programs to be adopted and implemented by repair stations certificated by the Federal Aviation Administration (FAA). A notice of proposed rulemaking (NPRM) was published in the Federal Register on November 18, 2009, requesting public comments to be submitted on January 19, 2010. The comment period was extended to February 19, 2010.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice—Public Meeting; Request for Comments | 02/24/04 | 69 FR 8357 |
| Report to Congress | 08/24/04 | |
| NPRM | 11/18/09 | 74 FR 59873 |
| NPRM Comment Period End | 01/19/10 | |
| NPRM Comment Period Extended | 12/29/09 | 74 FR 68774 |
| NPRM Extended Comment Period End | 02/19/10 | |
| Final Rule | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Celio Young, Program Manager, Repair Stations, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, General Aviation

Division, TSA–28, HQ, E5, 601 South 12th Street, Arlington, VA 20598–6028
Phone: 571 227–3580
Fax: 571 227–1362
Email: celio.young@dhs.gov

Thomas (Tom) Philson, Manager, Economic Analysis, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, TSA–28, HQ, E10–411N, 601 South 12th Street, Arlington, VA 20598–6028
Phone: 571 227–3236
Fax: 571 227–1362
Email: thomas.philson@dhs.gov

Linda L. Kent, Assistant Chief Counsel, Regulations and Security Standards Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, TSA–2, HQ, E12–126S, 601 South 12th Street, Arlington, VA 20598–6002
Phone: 571 227–2675
Fax: 571 227–1381
Email: linda.kent@dhs.gov

**RIN:** 1652–AA38

## Department of Homeland Security (DHS) Transportation Security Administration (TSA) — Long-Term Actions

### 198. MODIFICATION OF THE AVIATION SECURITY INFRASTRUCTURE FEE (ASIF) (MARKET SHARE)

**Legal Authority:** 49 USC 44901; 49 USC 44940

**Abstract:** The Transportation Security Administration will revise the method for apportioning the Aviation Security Infrastructure Fee (ASIF) among air carriers. The ASIF is a fee imposed on air carriers and foreign air carriers to help pay the Government's costs of providing civil aviation security services.

Starting in fiscal year 2005, the Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71; Nov. 19, 2001), codified at 49 U.S.C. 44940, authorizes TSA to change the methodology for imposing the ASIF on air carriers and foreign air carriers from a system based on their 2000 screening costs to a system based on market share or other appropriate measures.

On November 5, 2003, the Transportation Security Administration (TSA) published a notice requesting comment on possible changes in order to allow for open industry and public input. TSA sought comments on issues regarding how to impose the ASIF, and whether, when, and how often the ASIF should be adjusted. The comment period was extended on the notice for an additional 30 days, until February 5, 2004. TSA is considering a market share methodology for implementation.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice; Requesting Comment–Imposition of the Aviation Security Infrastructure Fee (ASIF) | 11/05/03 | 68 FR 62613 |
| Notice—Imposition of ASIF; Comment Period End | 01/05/04 | |
| Notice—Imposition of ASIF; Comment Period Extended | 12/31/03 | 68 FR 75611 |
| Notice—Imposition of ASIF; Extended Comment Period End | 02/05/04 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Michael Gambone, Deputy Director, Office of Revenue, Department of Homeland Security, Transportation Security Administration, Office of Finance and Administration, TSA–14, HQ, W12–319, 601 South 12th Street, Arlington, VA 20598–6014
Phone: 571 227–1081
Fax: 571 227–2904
Email: michael.gambone@dhs.gov

Nicholas (Nick) Acheson, Sr. Economist, Regulatory Development and Economic Analysis, Department of Homeland Security, Transportation Security Administration, Office of Transportation Sector Network Management, TSA–28, HQ, E10–410N, 601 South 12th Street, Arlington, VA 20598–6028
Phone: 571 227–5474
Fax: 571 227–1362
Email: nicholas.acheson@dhs.gov

Linda L. Kent, Assistant Chief Counsel, Regulations and Security Standards Division, Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, TSA–2, HQ, E12–126S, 601 South 12th Street, Arlington, VA 20598–6002
Phone: 571 227–2675
Fax: 571 227–1381
Email: linda.kent@dhs.gov

**RIN:** 1652–AA43

## Department of Homeland Security (DHS) Federal Emergency Management Agency (FEMA) — Proposed Rule Stage

### 199. UPDATE OF FEMA'S PUBLIC ASSISTANCE REGULATIONS

**Legal Authority:** 42 USC 5121 to 5207

**Abstract:** This proposed rule would revise the Federal Emergency Management Agency's Public Assistance program regulations. Many of these changes reflect amendments made to the Robert T. Stafford Disaster Relief and Emergency Assistance Act by the Post-Katrina Emergency Management Reform Act of 2006 and the Security and Accountability For Every Port Act of 2006. The proposed rule also proposes to reflect lessons learned from recent events, and propose further substantive and non-substantive clarifications and corrections to improve upon the Public Assistance regulations. This proposed rule is intended to improve the efficiency and consistency of the Public Assistance program, as well as implement new statutory authority by expanding Federal assistance, improving the Project Worksheet

process, empowering grantees, and improving State Administrative Plans.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James A. Walke, Disaster Assistance Directorate, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100

Phone: 202 646–2751
Fax: 202 646–3304
Email: james.walke@dhs.gov

**RIN:** 1660–AA51

[FR Doc. 2010–8960 Filed 04–23–10; 8:45 am]

BILLING CODE 9110–9B–S

Federal Register

Monday,
April 26, 2010

# Part IX

# Department of the Interior

## Semiannual Regulatory Agenda

# DEPARTMENT OF THE INTERIOR (DOI)

## DEPARTMENT OF THE INTERIOR

**Office of the Secretary**

**25 CFR Ch. I**

**30 CFR Chs. II and VII**

**36 CFR Ch. I**

**43 CFR Subtitle A, Chs. I and II**

**48 CFR Ch. 14**

**50 CFR Chs. I and IV**

## Semiannual Regulatory Agenda

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This notice provides the semiannual agenda of rules scheduled for review or development between spring 2010 and fall 2010. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

**ADDRESSES:** Unless otherwise indicated, all Agency contacts are located at the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** You should direct all comments and inquiries regarding a particular rule to the agency contact listed in the entry for that rule. You should direct general comments relating to the agenda to the Office of Executive Secretariat, Department of the Interior, at the address above or at 202-208-3071.

**SUPPLEMENTARY INFORMATION:** With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have these effects.

**Dated:** March 18, 2010.

**John A. Strylowski,**

*Federal Register Liaison Officer.*

### United States Fish and Wildlife Service—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 200 | Endangered and Threatened Wildlife and Plants; Revision of Regulations That Establish Exemptions for Certain Antelope Species | 1018–AX19 |

### Minerals Management Service—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 201 | Revised Requirements for Well Plugging and Platform Decommissioning | 1010–AD61 |

## Department of the Interior (DOI) — Final Rule Stage

## United States Fish and Wildlife Service (FWS)

### 200. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REVISION OF REGULATIONS THAT ESTABLISH EXEMPTIONS FOR CERTAIN ANTELOPE SPECIES

**Legal Authority:** 16 USC 1531 et seq

**Abstract:** We are publishing a final rule to repeal section (h) from 50 CFR 17.21. This final rule is in response to a judicial decision that 50 CFR 17.21(h) was promulgated in contradiction to the Endangered Species Act.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Timothy Jon Van Norman, Chief, Branch of Permits, Division of Management Authority, International Affairs, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358–2350
Fax: 703 358–2281
Email: tim__vannorman@fws.gov

**RIN:** 1018–AX19

BILLING CODE 4310—55—S

## Department of the Interior (DOI)
## Minerals Management Service (MMS)

**Proposed Rule Stage**

### 201. REVISED REQUIREMENTS FOR WELL PLUGGING AND PLATFORM DECOMMISSIONING

**Legal Authority:** 31 USC 9701; 43 USC 1334

**Abstract:** This rule would establish timely submission requirements for decommissioning and abandonment plans, and establish deadlines for decommissioning permits. The rule would also implement timeframes and clarify requirements for plugging and abandonment of idle wells and decommissioning idle facilities.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |
| NPRM Comment Period End | 02/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** William Hauser, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
Phone: 703 787–1613
Fax: 703 787–1546
Email: william.hauser@mms.gov

**RIN:** 1010–AD61

[FR Doc. 2010–8937 Filed 04–23–10; 8:45 am]

BILLING CODE 4310–MR–S

Federal Register

Monday,
April 26, 2010

# Part X

# Department of Justice

## Semiannual Regulatory Agenda

# DEPARTMENT OF JUSTICE (DOJ)

## DEPARTMENT OF JUSTICE

**8 CFR Ch. V**

**21 CFR Ch. I**

**27 CFR Ch. II**

**28 CFR Ch. I, V**

### Regulatory Agenda

**AGENCY:** Department of Justice.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Department of Justice is publishing its spring 2010 regulatory agenda pursuant to Executive Order 12866 ''Regulatory Planning and Review,'' 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601 to 612 (1988).

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4252, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 514-8059.

**SUPPLEMENTARY INFORMATION:** Beginning with the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Justice's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet.

The Regulatory Flexibility Act (RFA) requires that, each year, the Department publish a list of those regulations that have a significant economic impact upon a substantial number of small entities and are to be reviewed under section 610 of the Act during the succeeding 12 months. This edition of the Department's regulatory agenda includes two regulations requiring such a review: ''Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities'' (RIN 1190-AA44) and ''Nondiscrimination on the Basis of Disability in State and Local Government Services'' (RIN 1190-AA46). In accordance with the RFA, comments are specifically invited on these regulations. Those comments should be addressed to the contact persons listed in the entries for these items.

**Dated:** March 10, 2010.

**Kevin R. Jones,**

*Acting Assistant Attorney General, Office of Legal Policy.*

Civil Rights Division—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 202 | Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review)** | 1190–AA44 |
| 203 | Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review)** | 1190–AA46 |

## Department of Justice (DOJ) — Final Rule Stage

## Civil Rights Division (CRT)

### 202. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)

**Legal Authority:** 5 USC 301; 28 USC 509; 28 USC 510; 42 USC 12186(b)

**Abstract:** In 1991, the Department of Justice published regulations to implement title III of the Americans With Disabilities Act of 1990 (ADA). Those regulations include the ADA Standards for Accessible Design, which establish requirements for the design and construction of accessible facilities that are consistent with the ADA Accessibility Guidelines (ADAAG) published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). In the time since the regulations became effective, the Department of Justice and the Access Board have each gathered a great deal of information regarding the implementation of the Standards. The Access Board began the process of revising ADAAG a number of years ago. It published new ADAAG in final form on July 23, 2004, after having published guidelines in proposed form in November 1999 and in draft final form in April 2002. In order to maintain consistency between ADAAG and the ADA Standards, the Department is reviewing its title III regulations and expects to propose, in one or more stages, to adopt revised ADA Standards consistent with the final revised ADAAG and to make related revisions to the Department's title III regulations. In addition to maintaining consistency between ADAAG and the Standards, the purpose of this review and these revisions is to more closely coordinate with voluntary standards; to clarify areas which, through inquiries and comments to the Department's technical assistance phone lines, have been shown to cause confusion; to reflect evolving technologies in areas affected by the Standards; and to

comply with section 610 of the Regulatory Flexibility Act, which requires agencies once every 10 years to review rules that have a significant economic impact upon a substantial number of small entities.

The first step in adopting revised Standards was an advance notice of proposed rulemaking that was published in the Federal Register on September 30, 2004, at 69 FR 58768, issued under both title II and title III. The Department believes that the advance notice simplified and clarified the preparation of the proposed rule. In addition to giving notice that the proposed rule will adopt revised ADA accessibility standards, the advance notice raised questions for public comment and proposed a framework for the regulatory analysis that accompanied the proposed rule.

The adoption of revised ADAAG will also serve to address changes to the ADA Standards previously proposed in RIN 1190-AA26, RIN 1190-AA38, RIN 1190-AA47, and RIN 1190-AA50, all of which have now been withdrawn from the Unified Agenda. These changes include technical specifications for facilities designed for use by children, accessibility standards for State and local government facilities, play areas, and recreation facilities, all of which had previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department issued as the second step of the above described title III rulemaking. This notice proposed to adopt revised ADA Standards for Accessible Design consistent with the minimum guidelines of the revised ADAAG, and initiated the review of the regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 09/30/04 | 69 FR 58768 |
| ANPRM Comment Period End | 01/28/05 | |
| ANPRM Comment Period Extended | 01/19/05 | 70 FR 2992 |
| ANPRM Comment Period End | 05/31/05 | |
| NPRM | 06/17/08 | 73 FR 34508 |
| NPRM Comment Period End | 08/18/08 | |
| NPRM Correction | 06/30/08 | 73 FR 37009 |
| Final Action | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue NW, Washington, DC 20030
Phone: 800 514–0301
TDD Phone: 800 514–0383
Fax: 202 307–1198

**RIN:** 1190–AA44

## 203. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

**Legal Authority:** 5 USC 301; 28 USC 509 to 510; 42 USC 12134; PL 101–336

**Abstract:** On July 26, 1991, the Department published its final rule implementing title II of the Americans With Disabilities Act (ADA). On November 16, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its first comprehensive review of the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. The Access Board published an Availability of Draft Final Guidelines on April 2, 2002, and published the ADA Accessibility Guidelines in final form on July 23, 2004. The ADA (section 204(c)) requires the Department's standards to be consistent with the Access Board's guidelines. In order to maintain consistency between ADAAG and the Standards, the Department is reviewing its title II regulations and expects to propose, in one or more stages, to adopt revised standards consistent with new ADAAG. The Department will also, in one or more stages, review its title II regulations for purposes of section 610 of the Regulatory Flexibility Act and make related changes to its title II regulations.

In addition to the statutory requirement for the rule, the social and economic realities faced by Americans with disabilities dictate the need for the rule. Individuals with disabilities cannot participate in the social and economic activities of the Nation without being able to access the programs and services of State and local governments. Further, amending the Department's ADA regulations will improve the format and usability of the ADA Standards for Accessible Design; harmonize the differences between the ADA Standards and national consensus standards and model codes; update the ADA Standards to reflect technological developments that meet the needs of persons with disabilities; and coordinate future ADA Standards revisions with national standards and model code organizations. As a result, the overarching goal of improving access for persons with disabilities so that they can benefit from the goods, services, and activities provided to the public by covered entities will be met.

The first part of the rulemaking process was an advance notice of proposed rulemaking, published in the Federal Register on September 30, 2004, at 69 FR 58768, issued under both title II and title III. The Department believes the advance notice simplified and clarified the preparation of the proposed rule to follow. In addition to giving notice of the proposed rule that will adopt revised ADA accessibility standards, the advance notice raised questions for public comment and proposed a framework for the regulatory analysis that accompanied the proposed rule.

The adoption of revised ADA Standards consistent with revised ADAAG will also serve to address changes to the ADA Standards previously proposed under RIN 1190-AA26, RIN 1190-AA38, RIN 1190-AA47, and RIN 1190-AA50, all of which have now been withdrawn from the Unified Agenda. These changes include technical specifications for facilities designed for use by children, accessibility standards for State and local government facilities, play areas, and recreation facilities, all of which had previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department issued as the second step of the above-described title III rulemaking. This notice also proposed to eliminate the Uniform Federal Accessibility Standards (UFAS) as an alternative to the ADA Standards for Accessible Design.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 09/30/04 | 69 FR 58768 |

**DOJ—CRT** **Final Rule Stage**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM Comment Period End | 01/28/05 | |
| ANPRM Comment Period Extended | 01/19/05 | 70 FR 2992 |
| ANPRM Comment Period End | 05/31/05 | |
| NPRM | 06/17/08 | 73 FR 34466 |
| NPRM Comment Period End | 08/18/08 | |
| NPRM Correction | 06/30/08 | 73 FR 36964 |
| Final Action | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue NW, Washington, DC 20030
Phone: 800 514–0301
TDD Phone: 800 514–0383
Fax: 202 307–1198

**RIN:** 1190–AA46

[FR Doc. 2010–8985 Filed 04–23–10; 8:45 am]

BILLING CODE 4410–BP–S

Federal Register

Monday,
April 26, 2010

# Part XI

# Department of Labor

## Semiannual Regulatory Agenda

# DEPARTMENT OF LABOR (DOL)

## DEPARTMENT OF LABOR

### Office of the Secretary

### 20 CFR Chs. I, IV, V, VI, VII, and IX

### 29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

### 30 CFR Ch. I

### 41 CFR Ch. 60

### 48 CFR Ch. 29

### Semiannual Agenda of Regulations

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This document sets forth the Department's semiannual agenda of regulations that have been selected for review or development during the coming year. The Department's agencies have carefully assessed their available resources and what they can accomplish in the next 12 months and have adjusted their agendas accordingly.

The agenda complies with the requirements of both Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists all regulations that are expected to be under review or development between April 2010 and April 2011, as well as those completed during the past 6 months.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Franks, Director, Office of Regulatory Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-2312, Washington, DC 20210; (202) 693-5959.

**NOTE:** Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

**SUPPLEMENTARY INFORMATION:** Executive Order 12866 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. As permitted by law, the Department of Labor is combining the publication of its agendas under the Regulatory Flexibility Act and Executive Order 12866.

Executive Order 12866 became effective September 30, 1993, and, in substance, requires the Department of Labor to publish an agenda listing of all the regulations it expects to have under active consideration for promulgation, proposal, or review during the coming 1-year period. The focus of all departmental regulatory activity will be on the development of effective rules that advance the Department's goals and that are understandable and usable to the employers and employees in all affected workplaces.

In addition, beginning with the fall 2007 edition, the Internet will be the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

The Regulatory Flexibility Act, which became effective on January 1, 1981, requires the Department of Labor to publish an agenda, listing all the regulations it expects to propose or promulgate that are likely to have a ''significant economic impact on a substantial number of small entities'' (5 U.S.C. 602).

The Regulatory Flexibility Act (under section 610) also requires agencies to periodically review rules ''which have or will have a significant economic impact upon a substantial number of small entities'' and to annually publish a list of the rules that will be reviewed during the succeeding 12 months. The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded.

The next 12-month review list for the Department of Labor is provided below, and public comment is invited on the listing. A brief description of each rule, the legal basis for the rule, and the agency contact are provided with each agenda item.

**Occupational Safety and Health Administration**

Methylene Chloride (RIN 1218-AC23)

Bloodborne Pathogens (RIN 1218-AC34)

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved, and are invited to participate in and comment on the review or development of the regulations listed on the agenda.

For this edition of the Department of Labor's regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory Priorities are included in the Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda.

**Hilda L. Solis,**

*Secretary of Labor.*

## Office of Federal Contract Compliance Programs—Prerule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 204 | Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors: Evaluation of Recruitment and Placement Results Under Section 503 | 1250–AA02 |

## Office of Federal Contract Compliance Programs—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 205 | Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors; Evaluation of Recruitment and Placement Results Under the VEVRAA of 1974, As Amended | 1250–AA00 |

## DOL

### Office of Federal Contract Compliance Programs—Proposed Rule Stage (Continued)

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 206 | Construction Contractor Affirmative Action Requirements | 1250–AA01 |

### Office of Labor Management Standards—Prerule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 207 | Internet Balloting in Union Officer Elections | 1245–AA04 |

### Office of Labor Management Standards—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 208 | Labor Organization Officer and Employee Report (Form LM-30) | 1245–AA01 |
| 209 | Form T-1: Reports by Labor Organizations on Related Organizations; Reporting by Public Sector Intermediate Unions | 1245–AA02 |
| 210 | Persuader Agreements: Employer and Labor Consultant Reporting Under the LMRDA | 1245–AA03 |

### Office of Labor Management Standards—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 211 | Notification of Employee Rights Under Federal Labor Laws | 1245–AA00 |

### Office of Worker's Compensation Program—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 212 | Defense Base Act Waivers | 1240–AA01 |
| 213 | Regulations Implementing the Longshore and Harbor Workers' Compensation Act: Recreational Vessels | 1240–AA02 |
| 214 | Claims for Compensation Under the Federal Employees' Compensation Act | 1240–AA03 |

### Office of Worker's Compensation Program—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 215 | Death Gratuity Authorized for Federal Employees | 1240–AA00 |

### Wage and Hour Division—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 216 | Nondisplacement of Qualified Workers Under Service Contracts | 1235–AA02 |
| 217 | The Family and Medical Leave Act of 1993, as Amended | 1235–AA03 |
| 218 | Records To Be Kept by Employers Under the Fair Labor Standards Act | 1235–AA04 |

## DOL

### Wage and Hour Division—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 219 | Amendments to the Fair Labor Standards Act | 1235–AA00 |
| 220 | Child Labor Regulations, Orders, and Statements of Interpretation | 1235–AA01 |

### Wage and Hour Division—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 221 | Application of the Fair Labor Standards Act to Domestic Service | 1235–AA05 |

### Employment Standards Administration—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 222 | Notification of Employee Rights Under Federal Labor Laws | 1215–AB70 |
| 223 | Form T-1: Reports by Labor Organizations on Related Organizations; Reporting by Public Sector Intermediate Unions | 1215–AB75 |
| 224 | Persuader Agreements: Employer and Labor Consultant Reporting Under the LMRDA | 1215–AB79 |

### Employee Benefits Security Administration—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 225 | Amendment of Regulation Relating to Definition of Plan Assets—Participant Contributions | 1210–AB02 |
| 226 | Participant Contributions 610 Regulation Review **(Completion of a Section 610 Review)** | 1210–AB11 |

### Occupational Safety and Health Administration—Prerule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 227 | Occupational Exposure to Beryllium | 1218–AB76 |
| 228 | Methylene Chloride **(Section 610 Review)** | 1218–AC23 |
| 229 | Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl | 1218–AC33 |
| 230 | Bloodborne Pathogens (610 Review) **(Section 610 Review)** | 1218–AC34 |

### Occupational Safety and Health Administration—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 231 | Confined Spaces in Construction | 1218–AB47 |
| 232 | Occupational Exposure to Crystalline Silica | 1218–AB70 |

### Occupational Safety and Health Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 233 | Electric Power Transmission and Distribution; Electrical Protective Equipment | 1218–AB67 |

## DOL

Occupational Safety and Health Administration—Final Rule Stage (Continued)

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 234 | Cranes and Derricks in Construction | 1218–AC01 |

## Department of Labor (DOL) — Prerule Stage
## Office of Federal Contract Compliance Programs (OFCCP)

### 204. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS: EVALUATION OF RECRUITMENT AND PLACEMENT RESULTS UNDER SECTION 503

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 29 USC 706 and 793; EO 11758 (3 CFR 1971 to 1975 Comp p 841)

**CFR Citation:** 41 CFR 60–741

**Legal Deadline:** None

**Abstract:** This Advance Notice of Proposed Rulemaking (ANPRM) seeks information regarding 41 CFR parts 60 to 741. In particular, the ANPRM invites public comments in respect to improving employment opportunities for individuals with disabilities. Further, the ANPRM will request information on how Federal contractors and subcontractors can conduct more substantive analyses and fully monitor their recruitment and placement efforts on behalf of individuals with disabilities.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

**Federalism:** Undetermined

**Agency Contact:** Sandra M. Dillon, Deputy Director, Division of Policy, Planning and Program Development, Department of Labor, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., N3422, Washington, DC 20210
Phone: 202 693–0102
Email: dillon.sandra.m@dol.gov

**Related RIN:** Previously reported as 1215–AB77

**RIN:** 1250–AA02

## Department of Labor (DOL) — Proposed Rule Stage
## Office of Federal Contract Compliance Programs (OFCCP)

### 205. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS; EVALUATION OF RECRUITMENT AND PLACEMENT RESULTS UNDER THE VEVRAA OF 1974, AS AMENDED

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 29 USC 793; 38 USC 4211 (2001) (amended 2002); 38 USC 4212 (2001) (amended 2002); EO 11758 (3 CFR 1971 to 1975 Comp, p 841)

**CFR Citation:** 41 CFR 60–250 and 60–300

**Legal Deadline:** None

**Abstract:** This Notice of Proposed Rulemaking (NPRM) would revise the regulations in 41 CFR parts 60-250 and 60-300, implementing the nondiscrimination and affirmative action provisions of VEVRAA. This NPRM would strengthen the affirmative action requirements for Federal contractors and subcontractors. The NPRM would amend the regulations to require that Federal contractors and subcontractors conduct more substantive analyses of recruitment and placement actions taken under VEVRAA and would require the use of numerical targets to measure the effectiveness of affirmative action efforts. The NPRM would also make revisions to recordkeeping requirements.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

**Federalism:** Undetermined

**Agency Contact:** Sandra M. Dillon, Deputy Director, Division of Policy, Planning and Program Development, Department of Labor, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., N3422, Washington, DC 20210
Phone: 202 693–0102
Email: dillon.sandra.m@dol.gov

**Related RIN:** Previously reported as 1215–AB80

**RIN:** 1250–AA00

### 206. CONSTRUCTION CONTRACTOR AFFIRMATIVE ACTION REQUIREMENTS

**Priority:** Substantive, Nonsignificant

**Legal Authority:** sec 201, 202, 205, 211, 301, 302, and 303 of EO 11246, as amended; 30 FR 12319; 32 FR 14303, as amended by EO 12086

**CFR Citation:** 41 CFR 60–1; 41 CFR 60–4

**Legal Deadline:** None

**Abstract:** This Notice of Proposed Rulemaking (NPRM) would revise the regulations in 41 CFR parts 60-1 and 60-4 implementing the affirmative action requirements of Executive Order 11246 that are applicable to Federal and federally assisted construction contractors. This NPRM would remove outdated regulatory provisions and

## DOL—OFCCP

**Proposed Rule Stage**

update the provisions in the regulations that set forth the actions construction contractors are required to take to implement their affirmative action obligations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/00/11 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

**Federalism:** Undetermined

**Agency Contact:** Sandra M. Dillon, Deputy Director, Division of Policy, Planning and Program Development, Department of Labor, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., N3422, Washington, DC 20210
Phone: 202 693–0102
Email: dillon.sandra.m@dol.gov

**Related RIN:** Previously reported as 1215–AB81

**RIN:** 1250–AA01

## Department of Labor (DOL)
## Office of Labor Management Standards (OLMS)

**Prerule Stage**

### 207. INTERNET BALLOTING IN UNION OFFICER ELECTIONS

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 29 USC 481 and 482

**CFR Citation:** Not Yet Determined

**Legal Deadline:** None

**Abstract:** The Department intends to publish a Request for Information regarding the application of title IV of the Labor-Management Reporting and Disclosure Act (LMRDA) in the context of Internet balloting in union officer elections.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Request for Information | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** None

**URL For More Information:** www.olms.dol.gov

**URL For Public Comments:** www.regulations.gov

**Agency Contact:** Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor–Management Standards, Department of Labor, Office of Labor Management Standards, 200 Constitution Avenue NW., FP Building, Room N–5609, Washington, DC 20210
Phone: 202 693–0123
Fax: 202 693–1340
Email: davis.andrew@dol.gov

**Related RIN:** Previously reported as 1215–AB84

**RIN:** 1245–AA04

## Department of Labor (DOL)
## Office of Labor Management Standards (OLMS)

**Proposed Rule Stage**

### 208. LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORT (FORM LM–30)

**Priority:** Other Significant

**Legal Authority:** 29 USC 432 and 438

**CFR Citation:** 29 CFR 404

**Legal Deadline:** None

**Abstract:** The Department intends to review questions of law and policy within the recently published changes to the Form LM-30. The Form LM-30 (Labor Organization Officer and Employee Report) is required by the LMRDA. The purpose of the Form, among others, is to identify potential conflicts of interest between the labor organization officials and their labor organization.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** None

**Agency Contact:** Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor–Management Standards, Department of Labor, Office of Labor Management Standards, 200 Constitution Avenue NW., FP Building, Room N–5609, Washington, DC 20210
Phone: 202 693–0123
Fax: 202 693–1340
Email: davis.andrew@dol.gov

**Related RIN:** Previously reported as 1215–AB74

**RIN:** 1245–AA01

### 209. FORM T–1: REPORTS BY LABOR ORGANIZATIONS ON RELATED ORGANIZATIONS; REPORTING BY PUBLIC SECTOR INTERMEDIATE UNIONS

**Priority:** Other Significant

**Legal Authority:** 29 USC 438

**CFR Citation:** 29 CFR 403

**Legal Deadline:** None

**Abstract:** On October 2, 2008, the Department published a final rule establishing a Form T-1, Trust Annual Report, which certain labor organizations must file to disclose financial information regarding trusts in which they are interested pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA). This rulemaking would propose to rescind the Form T-1. It would instead propose that filers of Form LM-2, Labor Organization Annual Report, report on their wholly owned, wholly controlled and wholly financed organizations (''subsidiary organizations'') on their Form LM-2 report. Additionally, the rulemaking would propose to change an interpretation of the LMRDA regarding intermediate bodies. The proposed revised interpretation would state that intermediate bodies are covered only if they are themselves composed, in whole or part, of private sector affiliates.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/02/10 | 75 FR 5456 |

## DOL—OLMS

## Proposed Rule Stage

| Action | Date | FR Cite |
|---|---|---|
| NPRM Comment Period End | 04/05/10 | |
| Final Action | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Small Entities Affected:** Organizations

**Government Levels Affected:** None

**Additional Information:** Per DOL this RIN was transferred from 1215-AB75.

**Agency Contact:** Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor–Management Standards, Department of Labor, Office of Labor Management Standards, 200 Constitution Avenue NW., FP Building, Room N–5609, Washington, DC 20210
Phone: 202 693–0123
Fax: 202 693–1340
Email: davis.andrew@dol.gov

**Related RIN:** Previously reported as 1215–AB75

**RIN:** 1245–AA02

### 210. PERSUADER AGREEMENTS: EMPLOYER AND LABOR CONSULTANT REPORTING UNDER THE LMRDA

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 29 USC 433; 29 USC 438

**CFR Citation:** 29 CFR 405; 29 CFR 406

**Legal Deadline:** None

**Abstract:** The Department intends to publish notice and comment rulemaking seeking consideration of a revised interpretation of section 203(c) of the Labor-Management Reporting and Disclosure Act (LMRDA). That statutory provision creates an ''advice'' exemption from reporting requirements that apply to employers and other persons in connection with persuading employees about the right to organize and bargain collectively. A proposed revised interpretation would narrow the scope of the advice exemption.

**Statement of Need:** The Department of Labor is proposing a regulatory initiative to better implement the public disclosure objectives of the Labor-Management Reporting and Disclosure Act (LMRDA) regarding employer-consultant agreements to persuade employees concerning their rights to organize and bargain collectively. Under LMRDA section 203, an employer must report any agreement or arrangement with a third party consultant to persuade employees as to their collective bargaining rights or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. The consultant also is required to report concerning such an agreement or arrangement with an employer. Statutory exceptions to these reporting requirements are set forth in LMRDA section 203(c), which provides, in part, that employers and consultants are not required to file a report by reason of the consultant's giving or agreeing to give ''advice'' to the employer. The Department believes that its current policy concerning the scope of the ''advice exception'' is overbroad and that a narrower construction would better allow for the employer and consultant reporting intended by the LMRDA. Regulatory action is needed to provide workers with information critical to their effective participation in the workplace.

**Summary of Legal Basis:** This proposed rulemaking is authorized under U.S.C. sections 433 and 438 and applies to regulations at 29 CFR part 405 and 29 CFR part 406.

**Alternatives:** Alternatives will be developed and considered in the course of notice and comment rulemaking.

**Anticipated Cost and Benefits:** Anticipated costs and benefits of this proposed regulatory initiative have not been assessed and will be determined at a later date, as appropriate.

**Risks:** This action does not affect public health, safety, or the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** None

**URL For More Information:** www.olms.dol.gov

**URL For Public Comments:** www.regulations.gov

**Agency Contact:** Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor–Management Standards, Department of Labor, Office of Labor Management Standards, 200 Constitution Avenue NW., FP Building, Room N–5609, Washington, DC 20210
Phone: 202 693–0123
Fax: 202 693–1340
Email: davis.andrew@dol.gov

**Related RIN:** Previously reported as 1215–AB79

**RIN:** 1245–AA03

## Department of Labor (DOL)
## Office of Labor Management Standards (OLMS)

## Final Rule Stage

### 211. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

**Priority:** Other Significant

**Legal Authority:** EO 13496

**CFR Citation:** 29 CFR 471

**Legal Deadline:** None

**Abstract:** Pursuant to Executive Order 13496 of January 30, 2009, the Department of Labor's Employment Standards Administration proposes to prescribe the size, form, and content of the notice to be posted by a contractor under paragraph 1 of the contract clause described in section 2 of the order. Such notice shall describe the rights of employees under Federal labor laws, consistent with the policy set forth in section 1 of the order.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/03/09 | 74 FR 38488 |
| NPRM Comment Period End | 09/02/09 | |
| Final Action | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Small Entities Affected:** Businesses

**Government Levels Affected:** Federal

## DOL—OLMS

**Final Rule Stage**

**Additional Information:** Per DOL, this RIN was transferred from 1215-AB70.

**Agency Contact:** Andrew R. Davis, Chief, Division of Interpretations and Standards, Office of Labor–Management Standards, Department of Labor, Office of Labor Management Standards, 200 Constitution Avenue NW., FP Building, Room N–5609, Washington, DC 20210
Phone: 202 693–0123
Fax: 202 693–1340
Email: davis.andrew@dol.gov

**Related RIN:** Previously reported as 1215–AB70

**RIN:** 1245–AA00

## Department of Labor (DOL)
## Office of Worker's Compensation Program (OWCP)

**Proposed Rule Stage**

### 212. DEFENSE BASE ACT WAIVERS

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 42 USC 1651(e)

**CFR Citation:** 20 CFR 704

**Legal Deadline:** None

**Abstract:** The Defense Base Act (DBA), 42 U.S.C. section 1651 et seq., provides workers' compensation benefits for civilian employees of U.S. Government contractors injured or killed while working overseas. The DBA authorizes the Secretary of Labor to waive application of the DBA in any contract, subcontract, location, or class of employees upon the recommendation of the head of any department or agency of the U.S. Government. 42 U.S.C. section 1651(e). Over the years, DOL has granted a variety of waivers without any published rules. This proposed regulation would clarify the procedures for agencies to request waivers, including who may request a waiver, the format of a waiver request, and the supporting information required. The regulation would also explain DOL's procedures for reviewing and granting a waiver, including the factors DOL considers in granting a waiver and the conditions and limitations of any waiver granted.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Federal

**Agency Contact:** Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, OWCP, Department of Labor, Office of Worker's Compensation Program, 200 Constitution Avenue NW., FP Building, Room C–4315, Washington, DC 20210
Phone: 202 693–0038
Fax: 202 693–1380
Email: niss.michael@dol.gov

**Related RIN:** Previously reported as 1215–AB72

**RIN:** 1240–AA01

### 213. REGULATIONS IMPLEMENTING THE LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT: RECREATIONAL VESSELS

**Priority:** Substantive, Nonsignificant

**Legal Authority:** 33 USC 939

**CFR Citation:** 20 CFR 701

**Legal Deadline:** None

**Abstract:** The American Recovery and Reinvestment Act of 2009 amended the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 to 950, to exclude from the Act's coverage certain employees who repair recreational vessels and who dismantle them for repair, regardless of the vessel's length. To implement this amendment, the Department anticipates proposing a rule that addresses the definition of recreational vessel, coverage of those employees who work in both covered employment and employment excluded under the amendment, and the interplay between State workers' compensation coverage and Longshore Act coverage for those who repair recreational vessels and who dismantle them for repair.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Undetermined

**Agency Contact:** Michael Niss, Director, Division of Longshore and Harbor Workers' Compensation, OWCP, Department of Labor, Office of Worker's Compensation Program, 200 Constitution Avenue NW., FP Building, Room C–4315, Washington, DC 20210
Phone: 202 693–0038
Fax: 202 693–1380
Email: niss.michael@dol.gov

**Related RIN:** Previously reported as 1215–AB73

**RIN:** 1240–AA02

### 214. CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT

**Priority:** Other Significant

**Legal Authority:** 5 USC 8149

**CFR Citation:** 20 CFR 1; 20 CFR 10; 20 CFR 25

**Legal Deadline:** None

**Abstract:** ESA's Office of Workers' Compensation Programs (OWCP) plans to issue new regulations to update its organizational description to reflect the reorganization that will transform OWCP into a stand-alone organization reporting directly to the Office of the Secretary of Labor. OWCP administers four major disability compensation programs that provide wage replacement benefits, medical treatment, vocational rehabilitation and other benefits (such as survivors' benefits) to certain workers who experience work-related injury or occupational disease.

The Federal Employees' Compensation Act (FECA) provides workers' compensation benefits to Federal workers for employment-related injuries and occupational diseases as well as survivor benefits for a covered employee's employment-related death. OWCP plans to update its regulations governing administration of claims under the FECA. The last comprehensive update of the FECA regulations was undertaken more than 10 years ago. Since that time a number of improvements have been made to OWCP's processing of claims. The regulations will be revised to reflect those changes and to incorporate new procedures that will enhance OWCP's

## DOL—OWCP

**Proposed Rule Stage**

ability to administer FECA. Changes to the regulations will facilitate the return to work of injured workers who are able to work by such measures as increasing the opportunity for vocational rehabilitation. Revisions to the regulations will also enhance OWCP's ability to efficiently provide sufficient income and medical care for those who are unable to work. The planned regulatory changes will better explain the increased automation of the medical billing process; reflect changes in procedure, such as FECA's centralized mail processing; and also codify changes in case law affecting FECA claims administration. OWCP also plans to modernize the provision of compensation for employees situated overseas who are neither citizens nor residents of the United States to reflect current realities in regard to such employees. The regulations will also be revised to reflect a recent statutory change to the FECA moving the 3-day waiting period before qualifying for wage-loss compensation for employees of the Postal Service.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Douglas Fitzgerald, Director, Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, Department of Labor, Office of Worker's Compensation Program, 200 Constitution Avenue NW., FP Building, Room S–3229, Washington, DC 20210
Phone: 202 693–0040
Fax: 202 693–1497
Email: fitzgerald.douglas@dol.gov

**Related RIN:** Previously reported as 1215–AB83

**RIN:** 1240–AA03

## Department of Labor (DOL)
## Office of Worker's Compensation Program (OWCP)

**Final Rule Stage**

### 215. DEATH GRATUITY AUTHORIZED FOR FEDERAL EMPLOYEES

**Priority:** Other Significant

**Legal Authority:** PL 110–181 National Defense Authorization Act for FY 2008

**CFR Citation:** 20 CFR 10.900 et al

**Legal Deadline:** None

**Abstract:** The National Defense Authorization Act for FY 2008, which was signed in to law on January 28, 2008, resulted in the creation of a new section of the Federal Employees' Compensation Act. This section establishes a death gratuity payment of up to $100,000 for federal employees who die of injuries incurred in connection with the employee's service with an armed force in a contingency operation. This bill also contains a provision for retroactivity for employees who died on or after October 7, 2001.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 08/18/09 | 74 FR 41617 |
| Interim Final Rule Effective | 08/18/09 | |
| Interim Final Rule Comment Period End | 10/19/09 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Agency Contact:** Jennifer Valdivieso, Acting Chief, Branch of Regulations and Procedures, Division of Federal Employees Compensation, Department of Labor, Office of Worker's Compensation Program, 400 West Bay Street, Room 826, Jacksonville, FL 32202
Phone: 904 357–4754
Fax: 904 357–4779
Email: valdivieso.jennifer@dol.gov

**Related RIN:** Previously reported as 1215–AB66

**RIN:** 1240–AA00

## Department of Labor (DOL)
## Wage and Hour Division (WHD)

**Proposed Rule Stage**

### 216. NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS

**Priority:** Other Significant

**Legal Authority:** EO 13495, sec 4 to 6; 5 USC 301

**CFR Citation:** 29 CFR 9

**Legal Deadline:** None

**Abstract:** Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, establishes the policy that Federal service contracts generally include a clause requiring the contractor and its subcontractors, under a contract that succeeds a contract for the same or similar service at the same location, to offer qualified employees (except managerial and supervisory personnel) employed on the predecessor contract a right of first refusal to employment under the successor contract. The order assigns enforcement responsibility to the Secretary of Labor and directs the Secretary, in consultation with the Federal Acquisition Regulatory Council, to issue regulations to implement the order.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/19/10 | 75 FR 13382 |
| NPRM Comment Period End | 05/18/10 | |
| Final Action | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Federal

**Agency Contact:** Timothy Helm, Government Contracts Branch Chief, Division of Enforcement Policy, Department of Labor, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210

Phone: 202 693–0064
Fax: 202 693–1387

**Related RIN:** Previously reported as 1215–AB69

**RIN:** 1235–AA02

## 217. THE FAMILY AND MEDICAL LEAVE ACT OF 1993, AS AMENDED

**Priority:** Economically Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 29 USC 2654

**CFR Citation:** 29 CFR 825

**Legal Deadline:** None

**Abstract:** DOL will propose regulatory changes to implement the National Defense Authorization Act for FY 2010, which further expanded the existing military leave provisions; and the Airline Flight Crew Technical Corrections Act, which expanded FMLA eligibility requirements to include airline flight crews.

**Statement of Need:** The FMLA requires covered employers to grant eligible employees up to 12 work weeks of unpaid, job-protected leave a year for specified family and medical reasons, and to maintain group health benefits during the leave as if the employees continued to work instead of taking leave. When an eligible employee returns from FMLA leave, the employer must restore the employee to the same or an equivalent job with equivalent pay, benefits, and other conditions of employment. FMLA makes it unlawful for an employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA. The President signed the National Defense Authorization Act for FY 2010 and the Airline Flight Crew Technical Corrections Act on October 28, 2009, and December 21, 2009, respectively. The Department is reviewing the implementation of these statutory amendments and other revisions of the current regulations.

**Summary of Legal Basis:** These regulations are authorized by section 404 of the Family and Medical Leave Act, 29 U.S.C. 2654.

**Alternatives:** After completing a review of the implementation of the recent statutory amendments to the FMLA regulatory alternatives will be developed for notice-and-comment rulemaking.

**Anticipated Cost and Benefits:** Preliminary estimates of the anticipated costs and benefits of this initiative will be determined once regulatory alternatives are developed.

**Risks:** This rulemaking action does not directly affect risks to public health, safety, or the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Local, State, Tribal

**Federalism:** Undetermined

**Agency Contact:** Helen Applewhaite, Family and Medical Leave Act Branch Chief, Division of Enforcement Policy, Department of Labor, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210
Phone: 202 693–0066
Fax: 202 693–1387

**Related RIN:** Previously reported as 1215–AB76

**RIN:** 1235–AA03

## 218. RECORDS TO BE KEPT BY EMPLOYERS UNDER THE FAIR LABOR STANDARDS ACT

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Legal Authority:** 29 USC 211(c)

**CFR Citation:** 29 CFR 516

**Legal Deadline:** None

**Abstract:** The Department of Labor proposes to update the recordkeeping regulations under the Fair Labor Standards Act in order to enhance the transparency and disclosure to workers of how their pay is computed, and to modernize other recordkeeping requirements for employees under ''telework'' and ''flexiplace'' arrangements.

**Statement of Need:** The recordkeeping regulation issued under the Fair Labor Standards Act (FLSA), 29 CFR part 516, specifies the scope and manner of records covered employers must keep that demonstrate compliance with minimum wage, overtime, and child labor requirements under the FLSA, or the records to be kept that confirm particular exemptions from some of the Act's requirements may apply. This proposal intends to update the recordkeeping requirements to foster more openness and transparency in demonstrating employers' compliance with applicable requirements to their workers, to better ensure compliance by regulated entities, and to assist in enforcement. In addition, the proposal intends to update the recordkeeping requirements applicable to certain domestic employees and to modernize the requirements, consistent with the increasing emphasis on flexiplace and telecommuting, to allow for automated or electronic recordkeeping systems instead of the mandatory manual preparation of ''homeworker'' handbooks currently required for all work that an employee may perform in the home.

**Summary of Legal Basis:** These regulations are authorized by section 11 of the Fair Labor Standards Act, 29 U.S.C. 211.

**Alternatives:** Alternatives will be developed in considering proposed revisions to the current recordkeeping requirements. The public will be invited to provide comments on the proposed revisions and possible alternatives.

**Anticipated Cost and Benefits:** Preliminary estimates of anticipated costs and benefits of this regulatory initiative have not been determined at this time and will be determined at a later date as appropriate.

**Risks:** This action does not affect public health, safety, or the environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Local, State, Tribal

**Federalism:** Undetermined

**Agency Contact:** Montaniel Navarro, Fair Labor Standards Act Branch Chief, Division of Enforcement Policy, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210
Phone: 202 693–0067
Fax: 202 693–1387

**Related RIN:** Previously reported as 1215–AB78

**RIN:** 1235–AA04

## Department of Labor (DOL)
## Wage and Hour Division (WHD)

**Final Rule Stage**

### 219. AMENDMENTS TO THE FAIR LABOR STANDARDS ACT

**Priority:** Other Significant

**Legal Authority:** 29 USC 201 et seq; PL 104–188, sec 2101 to 2105

**CFR Citation:** 29 CFR 4; 29 CFR 531; 29 CFR 778 to 780; 29 CFR 785 to 786; 29 CFR 790

**Legal Deadline:** None

**Abstract:** Small Business Job Protection Act of 1996 (H.R. 3448) enacted on August 20, 1996 (Pub. L. 104-188, title II), amended the Portal-to-Portal Act (PA) and the Fair Labor Standards Act (FLSA). The U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28) also amended the FLSA by increasing the minimum wage in three steps: to $5.85 per hour effective July 24, 2007; to $6.55 per hour effective July 24, 2008; and to $7.25 per hour effective July 24, 2009. Changes will be required in the regulations to reflect these amendments. Other updates will address needed clarifications to additional sections of the regulations, including sections affected by Public Law 106-151, section 1 (Dec. 9, 1999), 113 Stat. 1731, and Public Law 106-202 (May 18, 2000), 114 Stat. 308.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/28/08 | 73 FR 43654 |
| NPRM Comment Period End | 09/11/08 | |
| NPRM Comment Period Extended | 08/22/08 | 73 FR 49621 |
| Final Action | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Government Levels Affected:** Federal, Local, State

**URL For Public Comments:** www.regulations.gov

**Agency Contact:** Montaniel Navarro, Fair Labor Standards Act Branch Chief, Division of Enforcement Policy, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210
Phone: 202 693–0067
Fax: 202 693–1387

**Related RIN:** Previously reported as 1215–AB13

**RIN:** 1235–AA00

### 220. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION

**Priority:** Other Significant

**Legal Authority:** 29 USC 203(l); 29 USC 212; 29 USC 213(c)

**CFR Citation:** 29 CFR 570

**Legal Deadline:** None

**Abstract:** The Department of Labor continues to review the Fair Labor Standards Act child labor provisions to ensure that the implementing regulations provide job opportunities for working youth that are healthy and safe and not detrimental to their education, as required by the statute (29 U.S.C. sections 203(l), 212(c), 213(c), and 216(e)). This final rule will update the regulations to reflect statutory amendments enacted in 2004, and will propose, among other updates, revisions to address several recommendations of the National Institute for Occupational Safety and Health (NIOSH) in its 2002 report to the Department of Labor on the child labor Hazardous Occupations Orders (HOs) (available at http://www.youthrules.dol.gov/resources.htm).

**Statement of Need:** The Fair Labor Standards Act (FLSA) requires the Secretary of Labor to issue regulations on the employment of minors between 14 and 16 years of age, ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being, and to designate occupations that are particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed and specifies the number of hours in a day and in a week and time periods within a day that such minors may be employed. Updating the child labor regulations issued under the FLSA will help meet the challenge of ensuring good jobs that are safe, healthy, and fair for the Nation's working youth, while balancing their educational needs with job-related experiences that are safe. Updated child labor regulations that better address the safety needs of today's workplaces will ensure our young workers have permissible job opportunities that are safe, enhancing their opportunities to gain the skills to find and hold good jobs with the potential to increase their earnings over time. Ensuring safe and reasonable work hours for working youth will also ensure that top priority is given to their education, consistent with the purposes of the statute.

**Summary of Legal Basis:** These regulations are issued pursuant to sections 3(1), 11, 12, and 13 of the Fair Labor Standards Act, 29 U.S.C. 203(1), 211, 121, and 213.

**Alternatives:** When developing regulatory alternatives in the analysis of recommendations of the National Institute for Occupational Safety and Health in its 2002 report to the Department on the child labor hazardous occupations orders and other proposals, the Department has focused on assuring healthy, safe, and fair workplaces for young workers that are not detrimental to their education, as required by the statute. Some of the regulatory alternatives were developed based on recent legislative amendments.

**Anticipated Cost and Benefits:** Preliminary estimates of the anticipated costs and benefits of this rulemaking initiative indicated it was not economically significant. Benefits to the public, including employers and workers, will include safer working conditions and the avoidance of injuries and lost productivity involving young workers.

**Risks:** The Department's child labor regulations, by ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education, produce positive benefits by reducing health-related and lost-productivity costs employers might otherwise incur from higher accident and injury rates to young and inexperienced workers. Because of the limited nature of the regulatory revisions contemplated under this initiative, a detailed assessment of the magnitude of risk was not prepared.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/17/07 | 72 FR 19337 |
| NPRM Comment Period End | 07/16/07 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Small Entities Affected:** Businesses, Governmental Jurisdictions

## DOL—WHD — Final Rule Stage

**Government Levels Affected:** Local, State

**Agency Contact:** Arthur M. Kerschner, Child Labor and Special Employment Branch Chief, Division of Enforcement Policy, Department of Labor, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210
Phone: 202 693–0072
Fax: 202 693–1387

**Related RIN:** Previously reported as 1215–AB57

**RIN:** 1235–AA01

## Department of Labor (DOL) — Long-Term Actions
## Wage and Hour Division (WHD)

### 221. ● APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

**Priority:** Other Significant. Major status under 5 USC 801 is undetermined.

**Unfunded Mandates:** Undetermined

**Legal Authority:** 29 USC 213 (a)(15); 29 USC 213 (b)(21)

**CFR Citation:** 29 CFR 552

**Legal Deadline:** None

**Abstract:** Fair Labor Standards Act (FLSA) section 13(a)(15) provides an exemption from minimum wage and overtime compensation for domestic employees engaged in providing companionship services. FLSA section 13(b)(21) provides an exemption from overtime compensation for live-in domestic employees. In light of significant changes in the home care industry, the DOL is proposing to update regulations at 29 CFR part 552, Application of the FLSA to Domestic Service, including examining the definition of ''companionship services,'' the criteria used to judge whether employees qualify as trained personnel who are not exempt companions, and the applicability of the exemption to third party employers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/11 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Government Levels Affected:** Federal, Local, State

**Additional Information:** Previously reported as 1215-AB85.

**Agency Contact:** Montaniel Navarro, Fair Labor Standards Act Branch Chief, Division of Enforcement Policy, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW., Room S–3502, FP Building, Washington, DC 20210
Phone: 202 693–0067
Fax: 202 693–1387

**RIN:** 1235–AA05

## Department of Labor (DOL) — Completed Actions
## Employment Standards Administration (ESA)

### 222. NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Transferred to RIN 1245-AA00 | 03/02/10 | |

**RIN:** 1215–AB70

### 223. FORM T–1: REPORTS BY LABOR ORGANIZATIONS ON RELATED ORGANIZATIONS; REPORTING BY PUBLIC SECTOR INTERMEDIATE UNIONS

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Transferred to RIN 1245-AA02 | 03/02/10 | |

**RIN:** 1215–AB75

### 224. PERSUADER AGREEMENTS: EMPLOYER AND LABOR CONSULTANT REPORTING UNDER THE LMRDA

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Transferred to RIN 1245-AA03 | 03/02/10 | |

**RIN:** 1215–AB79

## Department of Labor (DOL) — Completed Actions
## Employee Benefits Security Administration (EBSA)

### 225. AMENDMENT OF REGULATION RELATING TO DEFINITION OF PLAN ASSETS—PARTICIPANT CONTRIBUTIONS

**Legal Authority:** 29 USC 1135

**Abstract:** This rulemaking will amend the regulation that defines when participant moneys paid to or withheld by an employer for contribution to an employee benefit plan constitute ''plan assets'' for purposes of title I of ERISA and the related prohibited transaction provisions of the Internal Revenue Code. The regulation contains an amendment to the current regulation that will establish a safe harbor period of a specified number of business days during which certain moneys that a participant pays to, or has withheld by, an employer for contribution to a plan would not constitute ''plan assets.''

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/29/08 | 73 FR 11072 |
| NPRM Comment Period End | 04/29/08 | |
| Final Action | 01/14/10 | 75 FR 2068 |
| Final Action Effective | 01/14/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Louis J. Campagna, Chief, Division of Fiduciary

## DOL—EBSA

## Completed Actions

Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N–5655, Washington, DC 20210
Phone: 202 693–8510
Fax: 202 219–7291

**RIN:** 1210–AB02

### 226. PARTICIPANT CONTRIBUTIONS 610 REGULATION REVIEW (COMPLETION OF A SECTION 610 REVIEW)

**Legal Authority:** 29 USC 1135

**Abstract:** EBSA has determined that the plan assets-participant contribution regulation under 29 CFR 2510.3-102 does not have a significant economic impact on a substantial number of small entities within the meaning of section 610(a) of the Regulatory Flexibility Act (RFA). Accordingly, a substantive review thereof is not required by section 610(b) of the RFA.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Begin Review | 03/01/06 | |
| End Review | 02/26/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Melissa R. Dennis, Pension Law Specialist, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., FP Building, Room N–5655, Washington, DC 20210
Phone: 202 693–8500
Fax: 202 219–7291

**RIN:** 1210–AB11

## Department of Labor (DOL)

## Occupational Safety and Health Administration (OSHA)

## Prerule Stage

### 227. OCCUPATIONAL EXPOSURE TO BERYLLIUM

**Legal Authority:** 29 USC 655(b); 29 USC 657

**Abstract:** In 1999 and 2001, OSHA was petitioned to issue an emergency temporary standard by the United Steel Workers (formerly the Paper Allied-Industrial, Chemical, and Energy Workers Union), Public Citizen Health Research Group, and others. The Agency denied the petitions but stated its intent to begin data gathering to collect needed information on beryllium's toxicity, risks, and patterns of usage.

On November 26, 2002, OSHA published a Request for Information (RFI) (67 FR 70707) to solicit information pertinent to occupational exposure to beryllium including: current exposures to beryllium; the relationship between exposure to beryllium and the development of adverse health effects; exposure assessment and monitoring methods; exposure control methods; and medical surveillance. In addition, the Agency conducted field surveys of selected work sites to assess current exposures and control methods being used to reduce employee exposures to beryllium. OSHA convened a Small Business Advocacy Review Panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA) and completed the SBREFA Report in January 2008. OSHA is currently conducting a scientific peer review of its draft risk assessment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Request for Information | 11/26/02 | 67 FR 70707 |
| SBREFA Report Completed | 01/23/08 | |
| Initiated Peer Review of Health Effects and Risk Assessment | 03/22/10 | |
| Complete Peer Review | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210
Phone: 202 693–1950
Fax: 202 693–1678
Email: dougherty.dorothy@dol.gov

**RIN:** 1218–AB76

### 228. METHYLENE CHLORIDE (SECTION 610 REVIEW)

**Legal Authority:** 5 USC 553; 5 USC 610; 29 USC 655(b)

**Abstract:** OSHA will undertake a review of the Methylene Chloride Standard (29 CFR 1910.1052) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with other Federal, State, or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Begin Review | 12/01/06 | |
| Request for Comments | 07/10/07 | 72 FR 37501 |
| Comment Period End | 10/09/07 | |
| Reopen Comment Period | 01/08/08 | 73 FR 1299 |
| Comment Period End | 03/10/08 | |
| End Review | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3641, Washington, DC 20210
Phone: 202 693–2400
Fax: 202 693–1641
Email: smith.john@dol.gov

**RIN:** 1218–AC23

### 229. OCCUPATIONAL EXPOSURE TO DIACETYL AND FOOD FLAVORINGS CONTAINING DIACETYL

**Legal Authority:** 29 USC 655(b); 29 USC 657

**Abstract:** On July 26, 2006, the United Food and Commercial Workers International Union (UFCW) and the International Brotherhood of Teamsters (IBT) petitioned DOL for an Emergency Temporary Standard (ETS) for all employees exposed to diacetyl, a major component in artificial butter flavoring. Diacetyl and a number of other volatile

organic compounds are used to manufacture artificial butter food flavorings. These food flavorings are used by various food manufacturers in a multitude of food products including microwave popcorn, certain bakery goods, and some snack foods. OSHA denied the petition on September 25, 2007, but has initiated 6(b) rulemaking.

Evidence from NIOSH and other sources indicated that employee exposure to diacetyl and food flavorings containing diacetyl is associated with bronchiolitis obliterans, a debilitating and potentially fatal disease of the small airways in the lung. Severe obstructive airway disease has been observed in the microwave popcorn industry and in food flavoring manufacturing plants. Experimental evidence has shown that inhalation exposure to artificial butter flavoring vapors and diacetyl damaged tissue lining, the nose, and airways of rats and mice. OSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) on January 21, 2009, but withdrew the ANPRM on March 17, 2009, in order to facilitate timely development of a standard. The Agency subsequently initiated review of the draft proposed standard in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA). The SBREFA Panel Report was completed on July 2, 2009. The next step will be for OSHA to conduct a scientific peer review of its draft risk assessment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Stakeholder Meeting | 10/17/07 | 72 FR 54619 |
| ANPRM | 01/21/09 | 74 FR 3937 |
| ANPRM Withdrawn | 03/17/09 | 74 FR 11329 |
| ANPRM Comment Period End | 04/21/09 | |
| Completed SBREFA Report | 07/02/09 | |
| Initiate Peer Review of Health Effects and Risk Assessment | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210
Phone: 202 693–1950
Fax: 202 693–1678
Email: dougherty.dorothy@dol.gov

**RIN:** 1218–AC33

## 230. BLOODBORNE PATHOGENS (610 REVIEW) (SECTION 610 REVIEW)

**Legal Authority:** 5 USC 533; 5 USC 610; 29 USC 655(b)

**Abstract:** OSHA will undertake a review of the Bloodborne Pathogen Standard (29 CFR 1910.1030) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider the continued need for the rule; whether the rule overlaps, duplicates, or conflicts with other Federal, State or local regulations; and the degree to which technology, economic conditions, or other factors may have changed since the rule was evaluated.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Begin Review | 10/22/09 | |
| Request for Comments | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** John Smith, Directorate of Evaluation and Analysis, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3641, Washington, DC 20210
Phone: 202 693–2400
Fax: 202 693–1641
Email: smith.john@dol.gov

**RIN:** 1218–AC34

# Department of Labor (DOL) — Proposed Rule Stage

# Occupational Safety and Health Administration (OSHA)

## 231. CONFINED SPACES IN CONSTRUCTION

**Legal Authority:** 29 USC 655(b); 40 USC 333

**Abstract:** In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces (29 CFR 1910.146). This standard does not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined-space protection to construction workers appropriate to their work environment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| SBREFA Panel Report | 11/24/03 | |
| NPRM | 11/28/07 | 72 FR 67351 |
| NPRM Comment Period End | 01/28/08 | |
| NPRM Comment Period Extended | 02/28/08 | 73 FR 3893 |
| Public Hearing | 07/22/08 | |
| Close Record | 10/23/08 | |
| Analyze Comments | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Bill Parsons, Acting Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3468, Washington, DC 20210
Phone: 202 693–2020
Fax: 202 693–1689

**RIN:** 1218–AB47

## 232. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

**Legal Authority:** 29 USC 655(b); 29 USC 657

**Abstract:** Crystalline silica is a significant component of the earth's crust, and many workers in a wide range of industries are exposed to it, usually in the form of respirable quartz or, less frequently, cristobalite. Chronic silicosis is a uniquely occupational disease resulting from exposure of employees over long periods of time (10 years or more). Exposure to high levels of respirable crystalline silica causes acute or accelerated forms of silicosis that are ultimately fatal. The current OSHA permissible exposure

limit (PEL) for general industry is based on a formula recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in 1971 (PEL=10mg/cubic meter/(% silica + 2), as respirable dust). The current PEL for construction and maritime (derived from ACGIH's 1962 Threshold Limit Value) is based on particle counting technology, which is considered obsolete. NIOSH and ACGIH recommend 50μg/m3 and 25μg/m3 exposure limits, respectively, for respirable crystalline silica.

Both industry and worker groups have recognized that a comprehensive standard for crystalline silica is needed to provide for exposure monitoring, medical surveillance, and worker training. The American Society for Testing and Materials has published a recommended standard for addressing the hazards of crystalline silica. The Building Construction Trades Department of the AFL-CIO has also developed a recommended comprehensive program standard. These standards include provisions for methods of compliance, exposure monitoring, training, and medical surveillance. OSHA is currently developing a NPRM.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Completed SBREFA Report | 12/19/03 | |
| Initiated Peer Review of Health Effects and Risk Assessment | 05/22/09 | |
| Completed Peer Review | 01/24/10 | |
| NPRM | 02/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210
Phone: 202 693–1950
Fax: 202 693–1678
Email: dougherty.dorothy@dol.gov

**RIN:** 1218–AB70

## Department of Labor (DOL) — Final Rule Stage
## Occupational Safety and Health Administration (OSHA)

### 233. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT

**Legal Authority:** 29 USC 655(b); 40 USC 333

**Abstract:** Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is over 35 years old. OSHA has developed a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. OSHA also intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction. In addition, OSHA will be revising a few miscellaneous general industry requirements primarily affecting electric transmission and distribution work, including provisions on electrical protective equipment and foot protection. This rulemaking also addresses fall protection in aerial lifts for work on power generation, transmission, and distribution installations. OSHA published an NPRM on June 15, 2005. A public hearing was held March 6 to 14, 2006. OSHA reopened the record to gather additional information on minimum approach distances for specific ranges of voltages. The record was reopened a second time to allow more time for comment and to gather information on minimum approach distances for all voltages and on the newly revised Institute of Electrical and Electronics Engineers consensus standard. Additionally, a public hearing was held on October 28, 2009. The posthearing comment period ended in February 2010. OSHA is currently developing a final rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| SBREFA Report | 06/30/03 | |
| NPRM | 06/15/05 | 70 FR 34821 |
| NPRM Comment Period End | 10/13/05 | |
| Comment Period Extended to 01/11/2006 | 10/12/05 | 70 FR 59290 |
| Public Hearing To Be Held 03/06/2006 | 10/12/05 | 70 FR 59290 |
| Posthearing Comment Period End | 07/14/06 | |
| Reopen Record | 10/22/08 | 73 FR 62942 |
| Comment Period End | 11/21/08 | |
| Close Record | 11/21/08 | |
| Second Reopening Record | 09/14/09 | 74 FR 46958 |
| Comment Period End | 10/15/09 | |
| Public Hearings | 10/28/09 | |
| Posthearing Comment Period End | 02/10/10 | |
| Final Rule | 02/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothy Dougherty, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3718, Washington, DC 20210
Phone: 202 693–1950
Fax: 202 693–1678
Email: dougherty.dorothy@dol.gov

**RIN:** 1218–AB67

### 234. CRANES AND DERRICKS IN CONSTRUCTION

**Legal Authority:** 29 USC 651(b); 29 USC 655(b); 40 USC 333

**Abstract:** A number of industry stakeholders asked OSHA to update the cranes and derricks portion of subpart N (29 CFR 1926.550), specifically requesting that negotiated rulemaking be used.

In 2002, OSHA published a notice of intent to establish a negotiated rulemaking committee. A year later, in 2003, committee members were announced and the Cranes and Derricks

Negotiated Rulemaking Committee was established and held its first meeting. In July 2004, the committee reached consensus on all issues resulting in a final consensus document.

A Notice of Proposed Rulemaking (NPRM) was published on October 9, 2008. The comment period for the NPRM was extended and closed January 22, 2009. A public hearing was held on March 20, 2009. The final rule is scheduled to be published in July 2010.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice of Intent To Establish Negotiated Rulemaking | 07/16/02 | 67 FR 46612 |
| Comment Period End | 09/16/02 | |
| Request for Comments on Proposed Committee Members | 02/27/03 | 68 FR 9036 |
| Request for Comments Period End | 03/31/03 | 68 FR 9036 |
| Established Negotiated Rulemaking Committee | 06/12/03 | 68 FR 35172 |
| Rulemaking Negotiations Completed | 07/30/04 | |
| SBREFA Report | 10/17/06 | |
| NPRM | 10/09/08 | 73 FR 59714 |
| NPRM Comment Period Extended | 12/02/08 | 73 FR 73197 |
| NPRM Comment Period End | 01/22/09 | |
| Public Hearing | 03/20/09 | |
| Close Record | 06/18/09 | |
| Final Rule | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Bill Parsons, Acting Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW., FP Building, Room N–3468, Washington, DC 20210
Phone: 202 693–2020
Fax: 202 693–1689

**RIN:** 1218–AC01

[FR Doc. 2010–8938 Filed 04–23–10; 8:45 am]

BILLING CODE 4510–23–S

Federal Register

Monday,
April 26, 2010

Part XII

# Department of Transportation

Semiannual Regulatory Agenda

# DEPARTMENT OF TRANSPORTATION (DOT)

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 14 CFR Chs. I-III

### 23 CFR Chs. I-III

### 33 CFR Chs. I and IV

### 46 CFR Chs. I-III

### 48 CFR Ch. 12

### 49 CFR Subtitle A, Chs. I-VI and Chs. X-XII

**OST Docket 99-5129**

## Department Regulatory Agenda; Semiannual Summary

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The regulatory agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. The agenda provides the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of and allow it to more effectively participate in the Department's regulatory activity. The public is also invited to submit comments on any aspect of this agenda.

**FOR FURTHER INFORMATION CONTACT:**

*General*

You should direct all comments and inquiries on the agenda in general to Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; (202) 366-4723.

*Specific*

You should direct all comments and inquiries on particular items in the agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in Appendix B. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 755-7687.

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### Background

Improvement of our regulations is a prime goal of the Department of Transportation (Department or DOT). There should be no more regulations than necessary, and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed. To view additional information about the Department of Transportation's regulatory activities online, go to http://regs.dot.gov.

To help the Department achieve these goals and in accordance with Executive Order 12866 ''Regulatory Planning and Review'' (58 FR 51735; October 4, 1993) and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), the Department prepares a semiannual regulatory agenda. It summarizes all current and projected rulemaking, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected during the succeeding 12 months or such longer period as may be anticipated or for which action has been completed since the last agenda.

The agendas are based on reports submitted by the offices initiating the rulemaking and are reviewed by the Department Regulations Council. The Department's last agenda was published in the **Federal Register** on December 7, 2009 (74 FR 64470). The next one is scheduled for publication in the **Federal Register** in October 2010.

The Internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), DOT's printed agenda entries include only:

1. The Agency's agenda preamble;
2. Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and
3. Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. These elements are: Sequence Number; Title; Section 610 Review, if applicable; Legal Authority; Abstract; Timetable; Regulatory Flexibility Analysis Required; Agency Contact; and Regulation Identifier Number (RIN). Additional information (for detailed list see section heading ''Explanation of Information on the Agenda'') on these entries is available in the Unified Agenda published on the Internet.

### Significant/Priority Rulemakings

The agenda covers all rules and regulations of the Department. We have classified rules as a DOT agency priority in the agenda if they are, essentially, very costly, controversial, or of substantial public interest under our Regulatory Policies and Procedures. All DOT agency priority rulemaking documents are subject to review by the Secretary of Transportation. If the Office of Management and Budget (OMB) decide a rule is subject to its review under Executive Order 12866, we have classified it as significant in the agenda.

### Explanation of Information on the Agenda

The format for this agenda is required by a fall 2010 memorandum from the Office of Management and Budget.

First, the agenda is divided by initiating offices. Then, the agenda is divided into five categories: (1) Prerule stage, (2) proposed rule stage, (3) final

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rule stage, (4) long-term actions, and (5) completed actions. For each entry, the agenda provides the following information: (1) Its ''significance''; (2) a short, descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (e.g., NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for a decision on whether to take the action; (8) whether the rulemaking will affect small entities and/or levels of government and, if so, which categories; (9) whether a Regulatory Flexibility Act (RFA) analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (With minor exceptions, DOT requires an economic analysis for all its rulemakings.); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act. If there is information that does not fit in the other categories, it will be included under a separate heading entitled ''Additional Information.''

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), to keep those requirements operationally current, we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the ''Timetable'' column, we use abbreviations to indicate the particular documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have made a decision to issue a document; it is the earliest date on which we expect to make a decision on whether to issue it. In addition, these dates are based on current schedules. Information received subsequent to the issuance of this agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•) preceding an entry indicates that the entry appears in the agenda for the first time.

**Request for Comments**

*General*

Our agenda is intended primarily for the use of the public. Since its inception, we have made modifications and refinements that we believe provide the public with more helpful information, as well as make the agenda easier to use. We would like you, the public, to make suggestions or comments on how the agenda could be further improved.

*Reviews*

We also seek your suggestions on which of our existing regulations you believe need to be reviewed to determine whether they should be revised or revoked. We particularly draw your attention to the Department's review plan in Appendix D.

*Regulatory Flexibility Act*

The Department is especially interested in obtaining information on requirements that have a ''significant economic impact on a substantial number of small entities'' and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to us, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (Section 610 Review) appears at the end of the title for these reviews. Please see Appendix D for the Department's section 610 review plans.

*Federalism*

Executive Order 13132 requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive order to include regulations that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we encourage State and local governments to provide us with information about how the Department's rulemakings impact them.

**Purpose**

The Department is publishing this regulatory agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department with regard to any specific item on the agenda. Regulatory action, in addition to the items listed, is not precluded.

**Dated:** March 22, 2010.

**Ray LaHood,**

*Secretary of Transportation.*

**Appendix A—Instructions for Obtaining Copies of Regulatory Documents**

To obtain a copy of a specific regulatory document in the agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most, if not all, such documents, including the semiannual agenda, are available through the Internet at http://www.regulations.gov. See Appendix C for more information.

(Name of contact person), (Name of the DOT agency), 1200 New Jersey Avenue SE., Washington, DC 20590. (For the Federal Aviation Administration, substitute the following address: Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591).

**Appendix B—General Rulemaking Contact Persons**

The following is a list of persons who can be contacted within the Department for general information concerning the

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rulemaking process within the various operating administrations.

FAA - Rebecca MacPherson, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Avenue SW., Room 915A, Washington, DC 20591; telephone (202) 267-3073.

FHWA - Jennifer Outhouse, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0761.

FMCSA - Steven J. LaFreniere, Regulatory Ombudsman, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0596.

NHTSA - Steve Wood, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-2992.

FRA - Kathryn Shelton, Office of Chief Counsel, 1200 New Jersey Avenue SE., Room W31-214, Washington, DC 20590; telephone (202) 493-6063.

FTA - Linda Lasley, Office of Chief Counsel, 1200 New Jersey Avenue SE., Room E56-202, Washington, DC 20590; telephone (202) 366-4063.

SLSDC - Carrie Mann Lavigne, Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-0091.

PHMSA - Patricia Burke, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-4400.

MARAD - Christine Gurland, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-5157.

RITA - Robert Monniere, Office of Chief Counsel, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-5498.

OST - Neil Eisner, Office of Regulation and Enforcement, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-4723.

**Appendix C—Public Rulemaking Dockets**

All comments via the Internet are submitted through the Federal Docket Management System (FDMS) at the following address: http://www.regulations.gov. The FDMS allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system. The above referenced Internet address also allows the public to sign up to receive notification when certain documents are placed in the dockets.

The public also may review regulatory dockets at, or deliver comments on proposed rulemakings to, the Dockets Office at 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, 1-800-647-5527. Working Hours: 9-5.

**Appendix D—Review Plans for Section 610 and Other Requirements**

**Part I— The Plan**

*General*

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our 1979 Regulatory Policies and Procedures require such reviews. We also have responsibilities under Executive Order 12866 ''Regulatory Planning and Review'' and section 610 of the Regulatory Flexibility Act to conduct such reviews. This includes the use of plain language techniques in new rules and considering its use in existing rules when we have the opportunity and resources permit its use. We are committed to continuing our reviews of existing rules and, if needed, will initiate rulemaking actions based on these reviews.

*Section 610 Review Plan*

Section 610 requires that we conduct reviews of rules that (1) have been published within the last 10 years and (2) have a ''significant economic impact on a substantial number of small entities'' (SEIOSNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. The Office of the Secretary and each of the Department's Operating Administrations have a 10-year review plan. These reviews comply with section 610 of the Regulatory Flexibility Act.

*Other Review Plan(s)*

All elements of the Department, except for the Federal Aviation Administration (FAA), have also elected to use this 10-year plan process to comply with the review requirements of the Department's Regulatory Policies and Procedures and Executive Order 12866.

*Changes to the Review Plan*

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a Presidentially mandated review. If there is any change to the review plan, we will note the change in the following agenda. For any section 610 review, we will provide the required notice prior to the review.

**Part II— The Review Process**

*The Analysis*

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the agenda. Thus, Year 1 (2008) begins in the fall of 2008 and ends in the fall of 2009; Year 2 (2009) begins in the fall of 2009 and ends in the fall of 2010; and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or particular analyses should be submitted to the regulatory contacts listed in Appendix B, General Rulemaking Contact Persons.

*Section 610 Review*

The Agency will analyze each of the rules in a given year's group to determine whether any rule has a SEIOSNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability. Publication of agencies' section 610 analyses listed each fall in this agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to us early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each fall agenda, the Agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on

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SEIOSNOSE, we will give a short explanation (e.g., ''these rules only establish petition processes that have no cost impact'' or ''these rules do not apply to any small entities''). For parts, subparts, or other discrete sections of rules that do have a SEIOSNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, we will add an entry to the Agenda in the prerulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

*Other Reviews*

The Agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each fall agenda, the Agency will also publish information on the results of the examinations completed during the previous year.

The FAA, in addition to reviewing its rules in accordance with the Section 610 Review Plan, has established a tri-annual process to comply with the review requirements of the Department's Regulatory Policies and Procedures, Executive Order 12866, and Plain Language Review Plan. The FAA's latest review notice was published November 15, 2007 (72 FR 64170). In that notice, the FAA requested comments from the public to identify those regulations currently in effect that it should amend, remove, or simplify. The FAA also requested the public provide any specific suggestions where rules could be developed as performance-based rather than prescriptive, and any specific plain language that might be used, and provide suggested language on how those rules should be written. The FAA will review the issues addressed by the commenters against its regulatory agenda and rulemaking program efforts and adjust its regulatory priorities consistent with its statutory responsibilities. At the end of this process, the FAA will publish a summary and general disposition of comments and indicate, where appropriate, how it will adjust its regulatory priorities.

**Part III— List of Pending Section 610 Reviews**

The Agenda identifies the pending DOT Section 610 Reviews by inserting (Section 610 Review) after the title for the specific entry. For further information on the pending reviews, see the agenda entries at www.reginfo.gov. For example, to obtain a list of all entries that are Section 610 Reviews under the Regulatory Flexibility Act, a user would select the desired responses on the search screen (by selecting ''advanced search'') and, in effect, generate the desired ''index'' of reviews.

### OFFICE OF THE SECRETARY
### SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR parts 91 through 99 and 14 CFR parts 200 through 212 | 2008 | 2009 |
| 2 | 48 CFR parts 1201 through 1253 and new parts and subparts | 2009 | 2010 |
| 3 | 14 CFR parts 213 through 232 | 2010 | 2011 |
| 4 | 14 CFR parts 234 through 254 | 2011 | 2012 |
| 5 | 14 CFR parts 255 through 298 and 49 CFR part 40 | 2012 | 2013 |
| 6 | 14 CFR parts 300 through 373 | 2013 | 2014 |
| 7 | 14 CFR parts 374 through 398 | 2014 | 2015 |
| 8 | 14 CFR part 399 and 49 CFR parts 1 through 11 | 2015 | 2016 |
| 9 | 49 CFR parts 17 through 28 | 2016 | 2017 |
| 10 | 49 CFR parts 29 through 39 and parts 41 through 89 | 2017 | 2018 |

**Year 1 (fall 2008) List of rules with ongoing analysis**

49 CFR part 91 - International Air Transportation Fair Competitive Practices
49 CFR part 92 - Recovering Debts to the United States by Salary Offset
49 CFR part 93 - Aircraft Allocation
49 CFR part 95 - Advisory Committees
49 CFR part 98 - Enforcement of Restrictions on Post-Employment Activities
49 CFR part 99 - Employee Responsibilities and Conduct
14 CFR part 200 - Definitions and Instructions
14 CFR part 201 - Air carrier authority under subtitle VII of title 49 of the United States Code [Amended]
14 CFR part 203 - Waiver of Warsaw Convention liability limits and defenses
14 CFR part 204 - Data to support fitness determinations
14 CFR part 205 - Aircraft accident liability insurance
14 CFR part 206 - Certificates of public convenience and necessity: Special authorizations and exemptions
14 CFR part 207 - Charter trips by U.S. scheduled air carriers
14 CFR part 208 - Charter trips by U.S. charter air carriers
14 CFR part 211 - Applications for permits to foreign air carriers
14 CFR part 212 - Charter rules for U.S. and foreign direct air carriers

**Year 2 (fall 2009) List of rules that will be analyzed during the next year**

48 CFR part 1201 - Federal acquisition regulations system

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48 CFR part 1202 - Definitions of words and terms
48 CFR part 1203 - Improper business practices and personal conflicts of interest
48 CFR part 1204 - Administrative matters
48 CFR part 1205 - Publicizing contract actions
48 CFR part 1206 - Competition requirements
48 CFR part 1207 - Acquisition planning
48 CFR part 1211 - Describing agency needs
48 CFR part 1213 - Simplified acquisition procedures
48 CFR part 1214 - Sealed bidding
48 CFR part 1215 - Contracting by negotiation
48 CFR part 1216 - Types of contracts
48 CFR part 1217 - Special contracting methods
48 CFR part 1219 - Small business programs
48 CFR part 1222 - Application of labor laws to government acquisitions
48 CFR part 1223 - Environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace
48 CFR part 1224 - Protection of privacy and freedom of information
48 CFR part 1227 - Patents, data, and copyrights
48 CFR part 1228 - Bonds and insurance
48 CFR part 1231 - Contract cost principles and procedures
48 CFR part 1232 - Contract financing
48 CFR part 1233 - Protests, disputes, and appeals
48 CFR part 1234 - [Reserved]
48 CFR part 1235 - Research and development contracting
48 CFR part 1236 - Construction and architect-engineer contracts
48 CFR part 1237 - Service contracting
48 CFR part 1239 - Acquisition of information technology
48 CFR part 1242 - Contract administration and audit services
48 CFR part 1245 - Government property
48 CFR part 1246 - Quality assurance
48 CFR part 1247 - Transportation
48 CFR part 1252 - Solicitation provisions and contract clauses
48 CFR part 1253 - Forms

### FEDERAL AVIATION ADMINISTRATION
### SECTION 610 REVIEW PLAN

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 14 CFR parts 119 through 129 and parts 150 through 156 | 2008 | 2009 |
| 2 | 14 CFR parts 133 through 139 and parts 157 through 169 | 2009 | 2010 |
| 3 | 14 CFR parts 141 through 147 and parts 170 through 187 | 2010 | 2011 |
| 4 | 14 CFR parts 189 through 198 and parts 1 through 16 | 2011 | 2012 |
| 5 | 14 CFR parts 17 through 33 | 2012 | 2013 |
| 6 | 14 CFR parts 34 through 39 and parts 400 through 405 | 2013 | 2014 |
| 7 | 14 CFR parts 43 through 49 and parts 406 through 415 | 2014 | 2015 |
| 8 | 14 CFR parts 60 through 77 | 2015 | 2016 |
| 9 | 14 CFR parts 91 through 105 | 2016 | 2017 |
| 10 | 14 CFR parts 417 through 460 | 2017 | 2018 |

The FAA has elected to use the two-step, 2-year process used by most DOT modes in past plans. As such, the FAA has divided its rules into 10 groups as displayed in the table below. During the first year (the ''analysis year''), all rules published during the previous 10 years within a 10 percent block of the regulations will be analyzed to identify those with a SEIOSNOSE. During the second year (the ''review year''), each rule identified in the analysis year as having a SEIOSNOSE will be reviewed in accordance with section 610(b) to determine if it should be continued without change or changed to minimize impact on small entities. Results of those reviews will be published in the DOT semiannual regulatory agenda.

**Tri-Annual Review Plan**

The FAA, in addition to reviewing its rules in accordance with the Section 610 Review Plan, has established a tri-annual process to comply with the review requirements of the Department's Regulatory Policies and Procedures, Executive Order 12866, and Plain Language Review Plan. Our latest review notice was published November 15, 2007 (72 FR 64170). In that notice, we requested comments from the public to identify those regulations currently in effect that we should amend, remove, or simplify. We also requested the public provide any specific suggestions

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where rules could be developed as performance-based rather than prescriptive, and any specific plain language that might be used, and provide suggested language on how those rules should be written. The FAA will review the issues addressed by the commenters against its regulatory agenda and rulemaking program efforts and adjust its regulatory priorities consistent with its statutory responsibilities. At the end of this process, the FAA will publish a summary and general disposition of comments and indicate, where appropriate, how we will adjust our regulatory priorities.

### Year 1 (2008) List of rules analyzed and summary of results

14 CFR part 119 - Certification: Air Carriers and Commercial Operators

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 121 - Operating Requirements: Domestic, Flag, and Supplemental Operations

- Section 610: The Agency conducted a Section 610 Review of this part and found six amendments that could have a SEIOSNOSE.

### Amendment No. 121-216

Amendment No. 121-216 removed the requirement that windshear flight guidance equipment be installed on older airplanes; amended the provision allowing for an extended compliance period based on an approved airplane retrofit schedule; and provided for acceptance of alternative airplane equipment in the form of an approved airborne windshear detection and avoidance system (predictive systems). The final rule allowed certificate holders to install windshear equipment in coordination with the installation of traffic alert and collision avoidance system (TCAS II) equipment, thereby reducing the prospect that carriers would have to divert critical maintenance resources from other safety programs.

*Original FAA finding:* This amendment primarily was in response to an Air Transport Association (ATA) petition to the FAA, dated June 1, 1989, to amend the windshear rule to exclude certain older airplanes from the flight guidance systems requirements and to extend the compliance date. The FAA determined that ATA's petition had merit and issued amendment No. 121-216. In doing so, the FAA found that there would be a significant beneficial economic impact on a substantial number of small nonscheduled part 121 certificate holders due to the cost relief from not having to install the equipment on certain older aircraft.

*Finding of this 5 U.S.C. section 610 analysis and review:* The benefits to small entities of amendment No. 121-216 have probably diminished over time. However, the original FAA finding of a positive SEIOSNOSE should still stand.

### Amendment No. 121-269

Amendment No. 121-269 upgraded the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments as an option for future type certification.

*Original FAA finding:* The FAA found that this amendment would have a SEIOSNOSE. The FAA conducted an exhaustive analysis of potential alternatives to seek possible ways of mitigating the burden on small entities and still provide an equivalent level of safety. In its analysis, the Agency considered several alternatives that ranged from relatively low-cost, purely preventive approaches (e.g., banning certain types of material from air transport), to mitigating approaches such as: (1) Retrofit of detection systems only; (2) a requirement for detection systems on newly manufactured aircraft only; (3) a requirement for detection and/or suppression systems for extended over water operations only; (4) retrofit of detection and suppression systems; (5) a requirement for detection and suppression systems on newly manufactured aircraft only; and (6) logical combinations of these alternatives.

*Finding of this 5 U.S.C. section 610 analysis and review:* During the comment period, the FAA did not receive any comments that indicated that the amendment would place small part 121 operators at a competitive disadvantage relative to large part 121 operators or that there were alternatives that could provide the same level of safety benefit at reduced costs to small operators. Moreover, no analysis was submitted that indicated that fire safety risks for small part 121 carriers differed from those large part 121 carriers. Therefore, even though this amendment did have a SEIOSNOSE, it was necessary in order to achieve the level of safety sought by this rule action.

### Amendment No. 121-282

Amendment No. 121-282 required design approval holders of certain turbine-powered transport category airplanes, and of any subsequent modifications to these airplanes, to substantiate that the design of the fuel tank system precluded the existence of ignition sources within the airplane fuel tanks. It also required developing and implementing maintenance and inspection instructions to assure the safety of the fuel tank system. For new type designs, this amendment also required demonstrating that ignition sources could not be present in fuel tanks when failure conditions were considered, identifying any safety-critical maintenance actions, and incorporating a means either to minimize development of flammable vapors in fuel tanks or to prevent catastrophic damage if ignition did occur.

*Original FAA finding:* The FAA determined that this amendment would have a SEIOSNOSE. The FAA identified 143 air carriers that would be impacted by this amendment. Of the 143 impacted air carriers, 107 were small airlines.

*Finding of this 5 U.S.C. section 610 analysis and review:* In order to mitigate the costs to the extent possible without reducing the effectiveness of the amendment, the FAA extended operator compliance time from 18 months to 36 months. In addition, the Agency determined that fewer fuel tank re-inspections would be needed than originally estimated in the NPRM. The net result of these modifications was to reduce the overall cost impact from $172.2 million to $126.6 million (in 2000 dollars), a 26.4 percent reduction. The FAA was not able to identify any other alternatives that could reduce the cost impact to small entities and still achieve the desired safety results. A review of the petition for exemption history revealed that no relief was sought from this amendment since its issuance.

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### Amendment No. 121-284

Amendment No. 121-284 (67 FR 72726) required airplanes operated under part 121 to undergo inspections and records reviews by the Administrator or a designated representative after their 14th year in service and at specified intervals thereafter. This amendment also prohibited operation of those airplanes after specified deadlines unless damage-tolerance-based inspections and procedures were included in their maintenance or inspection programs. This amendment represented a critical step toward compliance with the Aging Aircraft Safety Act of 1991.

*Original FAA finding:* The FAA conducted a full regulatory flexibility analysis to assess the impact of this amendment on small entities. The FAA determined that 58 small part 121 carriers would be impacted by this amendment. Two of these were estimated to incur annualized costs greater than 1 percent of annual revenues. A step the FAA took to significantly lower compliance costs on the carriers, including small entities, was to lengthen the time period between required inspections from 5 years to 7 years. This longer period was expected to lower compliance costs to operators by enabling them to schedule the required inspections during heavy maintenance checks. To further assist carriers in complying with the requirements, the FAA also issued an advisory circular to provide guidance for complying with a damage-tolerance supplemental structural inspections program (DT-SSIP).

*Finding of this 5 U.S.C. section 610 analysis and review:* A review of the petition for exemption records indicated that no one sought relief from these requirements since they were implemented. The FAA took actions to minimize the costs on small entities to the extent that it thought was possible and still meet the objectives of the Aging Aircraft Safety Act. Based on the comments it received in response to this interim final rule, the FAA took further steps in amendment No. 121-284 (70 FR 5517).

### Amendment No. 121-297

Amendment No. 121-297 introduced airplane weight and performance characteristics as the basis for collision avoidance system requirements to capture cargo airplanes weighing more than 33,000 pounds maximum certificated takeoff weight (MCTOW). This action was mandated by the Wendell H. Ford Aviation Investment and Reform Act (AIR-21), enacted April 5, 2000, to take measures to reduce the risk and collateral damage of a mid-air collision involving a cargo airplane.

*Original FAA finding:* The FAA found that this amendment would have a SEIOSNOSE. The FAA identified 24 all cargo turbine-powered fleet operators who would be impacted by this amendment. Eleven, or roughly 46 percent, of these operators were determined to be significantly impacted. The FAA identified seven all cargo piston-powered operators who would be impacted by this amendment. Six, or 86 percent, of these operators were determined to be significantly impacted. The Agency believed that a compliance cost of 2 percent or less of a firm's revenue was affordable. The costs to these firms exceeded this level. Due to the congressional mandate, the FAA was limited in what actions it could take to mitigate the impact on small entities. The Agency was able, however, to reduce the TCAS requirement from TCAS II to TCAS I for piston-powered airplanes to mitigate some of the costs to operators of those airplanes. It also eliminated the requirement for TCAS I in turbine-powered airplanes of less than 33,000 pounds maximum certificated takeoff weight. Finally, the FAA set the rule's compliance date at the latest date allowed by the congressional mandate. Taken together, these measures were viewed as the upper level of the extent to which the FAA could mitigate cost impacts on small entities and still achieve the goals of the legislation.

*Finding of this 5 U.S.C. section 610 analysis and review:* Between April 2003 and January 2005, the FAA received five petitions from small entities for exemption from the TCAS requirements of this amendment. Two of these exemptions were denied because they sought relief strictly on the basis of economic impact and did not differ in any material way from other similar requests that had been denied in the past for airplanes involved in non-cargo operations. Three exemptions were granted because they were found to be necessary to ensure that needed services in Alaska would not be disrupted and doing so would not adversely impact safety. The original FAA finding of a SEIOSNOSE held true but should be fully diminished as the compliance date is 4 years past.

### Amendment No. 121-340

Amendment No. 121-340 established a performance-based set of requirements that set acceptable flammability exposure values in tanks most prone to explosion or required the installation of an ignition mitigation means in an affected fuel tank.

*Original FAA finding:* The FAA determined that this amendment would have a SEIOSNOSE. The FAA identified 14 small air carriers that would be affected. Of these 14, 3 were found to be affected significantly. This determination was based on whether or not the cost to the carrier was equal to or exceeded 2 percent of its revenue. Three carriers met this criterion. The FAA considered several alternative approaches to this amendment to ease the burden on small carriers. The Agency concluded that this amendment provided the best balance of cost and benefits for the United States society. The FAA argued, further, that the risk is largely the same, regardless of whether the plane was flown by a large or small entity.

*Finding of this 5 U.S.C. section 610 analysis and review:* This amendment still has a SEIOSNOSE. The FAA will need to make a determination regarding the continued need for this regulation.

14 CFR part 125 - Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 Pounds or More; and Rules Governing Persons on Board Such Aircraft

- Section 610: The Agency conducted a Section 610 Review of this part and found part 125 itself and five amendments that could have a SEIOSNOSE.

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### Part 125

Part 125 provides a single set of certification and operation rules for U.S.-registered airplanes, which have a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when used in any non-common (private) carriage operation.

*Original FAA finding:* The economic impacts of part 125 were estimated and documented by a study conducted by the Aerospace Corporation during December 1978 and January 1979 and reflected data available at that time. While their study did not specifically address the economic impact on small entities, their estimate of $88.28 million in first year total costs (in 1979 dollars, $222.2 million in current dollars), and $20.45 million in recurring annual costs (in 1979 dollars, $51.12 million in current dollars), it can reasonably be concluded that this rule did have a SEIOSNOSE.

*Finding of this 5 U.S.C. section 610 analysis and review:* A review of petitions for exemption from part 125 revealed that relief was generally sought from safety requirements such as collision avoidance systems. The FAA denied these requests because petitioners were never able to provide convincing arguments for why it would be in the public interest to grant them the requested relief. There was no evidence in the record to suggest that part 125 continues to have a SEIOSNOSE.

### Amendment No. 125-10

Amendment No. 125-10 required digital flight data recorders and cockpit voice recorders (CVRs) to be installed in a broad category of airplanes and rotorcraft operated by air carriers and commuters, as well as, in selected aircraft operated in general aviation.

*Original FAA finding:* The FAA determined that this amendment could have aSEIOSNOSE. In order to mitigate the cost to some extent, the FAA modified its proposal to extend the compliance period from 2 years to 3 years. Given that this rule action was in response to a congressional mandate, the Agency was constrained to take sufficient action to ensure the NTSB had available data in needed for accident investigation purposes if acquiring that data was technologically feasible.

*Finding of this 5 U.S.C. section 610 analysis and review:* Since this rulemaking was promulgated over 20 years ago, the cost impact has diminished substantially and has approached if not reached a negligible level. This analysis concludes that there is no longer a SEIOSNOSE as a result of this amendment.

### Amendment No. 125-11

This amendment required the installation and use of a Traffic Alert and Collision Avoidance System (TCAS) in large transport-type airplanes and certain turbine-powered smaller airplanes. The Airport and Airway Safety and Capacity Expansion Act of 1987 directed the FAA to require the installation and operation of TCAS in commercial aircraft flying in the United States.

*Original FAA finding:* The FAA found that this amendment would have a SEIOSNOSE.

*Finding of this 5 U.S.C. section 610 analysis and review:* The FAA estimated the average total cost impact of this amendment on part 125 operators at $96,000 in 1989 dollars ($151,000 in current dollars) annualized over the period of 1989 to 2003. The FAA concluded, however, that there were no viable alternatives for small air carriers to adopt that would reduce the cost of compliance and still achieve the levels of protection sought by this amendment. This amendment implemented a congressional mandate, thereby limiting the discretion the Agency had and still has in mitigating the burden on small entities. Moreover, a review of the petition for exemption records indicates that the Agency has been consistent in denying requests for relief from this requirement on safety grounds. This analysis finds, therefore, that a SEIOSNOSE may still exist and the FAA will need to make a determination regarding the continued need for this regulation.

### Amendment No. 125-36

Amendment No. 125-36 was part of a larger action that required design approval holders of certain turbine-powered transport category airplanes, and any subsequent modifications to these airplanes, to substantiate that the design of the fuel tank system precluded the existence of ignition sources within the airplane fuel tanks. It also required developing and implementing maintenance and inspection instructions to assure the safety of the fuel tank system. For new type designs, this amendment also required demonstrating that ignition sources could not be present in fuel tanks when failure conditions were considered, identifying any safety-critical maintenance actions, and incorporating a means either to minimize development of flammable vapors in fuel tanks or to prevent catastrophic damage if ignition did occur.

*Original FAA finding:* The FAA determined that this amendment would have aSEIOSNOSE. The FAA identified 143 carriers that would be impacted by this amendment. Of the 143 impacted air carriers, 107 were small airlines.

*Finding of this 5 U.S.C. section 610 analysis and review:* In order to mitigate the costs to the extent possible without reducing the effectiveness of the amendment, the FAA extended operator compliance time from 18 months to 36 months. In addition, the Agency determined that fewer fuel tank re-inspections would be needed than originally estimated in the NPRM. The net result of these modifications was to reduce the overall cost impact from $172.2 million to $126.6 million (in 2000 dollars), a 26.4 percent reduction. The FAA was not able to identify any other alternatives that could reduce the cost impact to small entities and still achieve the desired safety results. A review of the petition for exemption history revealed that no relief was sought from this amendment since its issuance.

### Amendment No. 125-41

Amendment No. 125-41 was part of a larger rulemaking action that introduced airplane weight and performance characteristics as the basis for collision avoidance system requirements to capture cargo airplanes weighing more

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than 33,000 pounds maximum certificated takeoff weight (MCTOW). This action was mandated by the Wendell H. Ford Aviation Investment and Reform Act (AIR-21) enacted April 5, 2000, to take measures to reduce the risk and collateral damage of a mid-air collision involving a cargo airplane.

*Original FAA finding:* The FAA found that this amendment would have a SEIOSNOSE. The FAA identified 24 all-cargo turbine-powered fleet operators who would be impacted by this amendment. Eleven, or roughly 46 percent, of these operators were determined to be significantly impacted. The FAA identified seven all-cargo, piston-powered operators who would be impacted by this amendment. Six, or 86 percent, of these operators were determined to be significantly impacted. The Agency believed that a compliance cost of 2 percent or less of a firm's revenue was affordable. The costs to these firms exceeded that level. Due to the congressional mandate, the FAA was limited in what actions it could take to mitigate some of the costs to operators of those airplanes. It also eliminated the requirement for TCAS I in turbine-powered airplanes of less than 33,000 pounds maximum certificated takeoff-weight. Finally, the FAA set the rule's compliance date at the latest date allowed by the congressional mandate. Taken together, these measures were viewed as the upper level of the extent to which the FAA could mitigate cost impacts on small entities and still achieve the goals of the legislation.

*Finding of this 5 U.S.C. section 610 analysis and review:* Between April 2003 and January 2005, the FAA received five petitions from small entities for exemption from the TCAS requirements of this amendment. Two of these exemptions were denied because they sought relief strictly on the basis of economic impact and did not differ in any material way from other similar requests that had been denied in the past for airplanes involved in non-cargo operations. Three exemptions were granted because they were found to be necessary to ensure that needed services in Alaska would not be disrupted and doing so would not adversely impact safety. The original FAA finding of a SEIOSNOSE holds true but should be fully diminished as the compliance date is 4 years past.

**Amendment No. 125-55**

Amendment No. 125-55 established a performance-based set of requirements that set acceptable flammability exposure values in tanks most prone to explosion or required the installation of an ignition mitigation means in an affected fuel tank.

*Original FAA finding:* The FAA determined that this amendment would have a SEIOSNOSE. The FAA identified 14 small air carriers that would be affected. Of these 14, three were found to be affected significantly. This determination was based on whether or not the cost to the carrier was equal to or exceeded 2 percent of its revenue. Three carriers met this criterion. The FAA considered several alternative approaches to this amendment to ease the burden on small carriers. The Agency concluded that this amendment provided the best balance of cost and benefits for the United States society. The FAA argued, further, that the risk is largely the same, regardless of whether the plane was flown by a large or small entity.

*Finding of this 5 U.S.C. section 610 analysis and review:* This amendment still has a SEIOSNOSE. The FAA will need to make a determination regarding the continued need for this regulation.

14 CFR part 129 - Operations: foreign air carriers and foreign operators of U.S.-registered aircraft engaged in common carriage

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE because this part does not impact domestic entities

14 CFR part 150 - Airport noise compatibility planning

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 151 - Federal aid to airports

- Section 610: The Agency conducted a Section 610 Review of this part and found there have not been any amendments to part 151 since the Regulatory Flexibility Act was enacted.

14 CFR part 152 - Airport aid program

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 153 - Airport operations

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 155 - Release of airport property from surplus property disposal restrictions

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 156 - State block grant pilot program

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

**Year 2 (2009) List of rules analyzed and summary of results**

14 CFR part 133 - Rotorcraft external-load operations

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 135 - Operating requirements: Commuter and on demand operations and rules governing persons on board such aircraft

- Section 610: The Agency conducted a Section 610 Review of this part and found three amendments that could have a SEIOSNOSE.

**Amendment No. 135-42**

Amendment No. 135-42 revised the operating rules for air taxi and commercial operators by requiring that all turbine-powered (rather than just turbojet) airplanes with 10 or more seats be equipped with an approved ground proximity warning system.

*Original FAA finding:* The FAA certified that this amendment may have a SEIOSNOSE because the annual cost that would be imposed on small part 135 operators to install a ground proximity warning system on turbine-powered

airplanes would exceed the significant impact criteria in place when the rule was promulgated. The FAA concluded after analysis, however, that there were no viable alternatives to the provisions of the amendment and issued the rule in final.

*Finding of this 5 U.S.C. section 610 analysis and review*: Between the period of January 2003 and December 2008, the period beyond the analysis period of this final rule, there were no cases of affected parties seeking relief from the provisions of the amendment. The original finding of a possible SEIOSNOSE should be fully diminished, as the compliance date was 16 years ago.

**Amendment No. 135-66 (61 FR 69302)**

Amendment No. 135-66 (61 FR 69302) was one part of an overall strategy to further reduce the impact of aircraft noise on the park environment and to assist the National Park Service in achieving its statutory mandate to provide the substantial restoration of natural quiet and experience in Grand Canyon National Park (GCNP).

*Original FAA finding*: The FAA found that this amendment would have a SEIOSNOSE. This amendment affected commercial sightseeing operators conducting flight over the GCNP under part 135. This amendment was unique in that most of the economic impact fell upon small businesses.

*Finding of this 5 U.S.C. section 610 analysis and review*: Consistent with the spirit and intent of the RFA, the FAA chose a regulatory alternative that tailored most requirements to the size of the firm. In doing so, the Agency believed that the regulatory requirements in this amendment provided the least burdensome way for small entities to accomplish the goals of the final rule-restore natural quiet and preserve the opportunity for the public to enjoy air tours at the GCNP. In addition, the FAA proposed to take further action that would phase out noisier aircraft from air tour service prior to the 2008 deadline imposed by the statute.

**Amendment No. 135-107**

Amendment No. 135-107 set safety and oversight rules for a broad variety of sightseeing and commercial air tour flights. The intended effect of this amendment was to standardize requirements for air tour operators and consolidate air tour safety standards within part 135.

*Original FAA finding:* The FAA determined that there would be a SEIOSNOSE. The FAA estimated that part 135 commercial air tour operators would incur 82 percent of the costs of the rule. The FAA noted that helicopter operators would incur much higher costs than airplane operators due to the requirement to equip their aircraft with floats if they conducted operations over water and to the requirement to prepare helicopter performance plans. The FAA believed, however, that the only way to accomplish the commercial air tour safety needs for helicopter operations was to impose the higher standards on those entities.

*Finding of this 5 U.S.C. section 610 analysis and review:* A review of the petition for exemption and petition for rulemaking records since this amendment was issued found that no entities sought relief from the float equipage requirement. The cost impacts from the original estimates remain valid. However, absent requests for relief from the regulated community, the notion espoused by the FAA that a number of options were available to operators to avoid or minimize the costs, may have merit. The FAA noted, for example, that some operators may alter their air tour routes to avoid the compliance costs. The Agency added that others may elect to only equip part of their fleet to ensure the affordability to their business. This analysis concludes that there continues to be a SEIOSNOSE, but there is no evidence to suggest that small businesses are suffering a hardship.

14 CFR part 136 - Commercial air tours and national parks air tour management

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 137 - Agricultural aircraft operations

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 139 - Certification of airports

- Section 610: The Agency conducted a Section 610 Review of this part and found one amendment with a SEIOSNOSE.

**Amendment No. 139-94**

Amendment No. 139-94 established certification requirements for airports serving scheduled air carrier operations in aircraft designed for more than 9 passenger seats but less than 31 passenger seats.

*Original FAA finding*: The FAA determined that this amendment would have a SEIOSNOSE. The FAA stated that under SBA's definition of a ''small'' public entity, there were more than 200 small entity airports that would be affected by this rule action. For each small entity, the FAA estimated the average initial hours required to set up a recordkeeping system, as mandated by this amendment, would be 70 hours and expected a continuing paperwork requirement of about 90 hours annually. Having sought possible alternatives to mitigate the costs on small entities, the FAA, in consultation with industry, concluded that there existed a need to require at least some minimum level of both risk reduction and accident mitigation measures at airports during operations of smaller air carrier airplanes. The FAA believed that the chosen alternative was the only one that was relatively affordable and would achieve the safety objectives of the rule. The Agency recognized the need, however, to provide some flexibility in the implementation of certain safety measures at airports with infrequent air carrier service or where local resources were severely limited. The FAA added that other measures at its disposal to mitigate impacts on small airport operators included its authority to permit alternative means of compliance to accommodate local conditions and the use of its statutory authority to grant exemptions from part 139 requirements, as appropriate. Other methods the FAA identified as ways small entity airports could mitigate the economic impact of this amendment included Airport Improvement Program (AIP) funding, which was available for certain capital expenditures that could be required by this amendment. Examples of these requirements were firefighting equipment, airport marking, and signs. Another potential source

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of revenue to assist small airports in meeting the regulatory requirements of this amendment was the Essential Air Service (EAS) Program. The FAA believed that, ultimately, most of the costs of these amendments would be borne by the Federal Government through increased subsidies.

*Finding of this 5 U.S.C. section 610 analysis and review:* The original funding still holds true. The flexibility that the FAA afforded airport operators in meeting the requirements of this amendment, combined with numerous avenues for funding support that were and still are available to airport operators, substantially mitigate the impact of this amendment on small entities.

14 CFR part 157 - Notice of construction, alteration, activation, and deactivation of airports

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 158 - Passenger facility charges (PFCs)

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 161 - Notice and approval of airport noise and access restrictions

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

14 CFR part 169 - Expenditure of Federal funds for nonmilitary airports or air navigation facilities thereon

- Section 610: The Agency conducted a Section 610 Review of this part and found no amendments with a SEIOSNOSE.

## FEDERAL HIGHWAY ADMINISTRATION
## SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | None | 2008 | 2009 |
| 2 | 23 CFR parts 1 through 260 | 2009 | 2010 |
| 3 | 23 CFR parts 420 through 470 | 2010 | 2011 |
| 4 | 23 CFR part 500 | 2011 | 2012 |
| 5 | 23 CFR parts 620 through 637 | 2012 | 2013 |
| 6 | 23 CFR parts 645 through 669 | 2013 | 2014 |
| 7 | 23 CFR parts 710 through 924 | 2014 | 2015 |
| 8 | 23 CFR parts 940 through 973 | 2015 | 2016 |
| 9 | 23 CFR parts 1200 through 1252 | 2016 | 2017 |
| 10 | New parts and subparts | 2017 | 2018 |

**Federal-Aid Highway Program**

The FHWA has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-Aid Highway Program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter I of title 23 of the U.S.C. Section 145 of title 23 expressly provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to the requirements that States must meet to receive Federal funds for the construction and other work related to highways. Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

**Year 2 (fall 2009) List of rules that will be analyzed during the next year**

23 CFR part 1 - General
23 CFR part 140 - Reimbursement
23 CFR part 172 - Administration of engineering and design-related service contracts
23 CFR part 180 - Credit assistance for Surface Transportation projects
23 CFR part 190 - Incentive payments for controlling outdoor advertising on the Interstate system
23 CFR part 192 - Drug offender's driver's license suspension
23 CFR part 200 - Title VI program and related statutes-implementation and review procedures
23 CFR part 230 - External programs
23 CFR part 260 - Education and training programs

## FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION
## SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR parts 372, subpart A, and 381 | 2008 | 2009 |
| 2 | 49 CFR parts 386, 389, and 395 | 2009 | 2010 |
| 3 | 49 CFR parts 325, 388, 350, and 355 | 2010 | 2011 |
| 4 | 49 CFR parts 380 and 382 to 385 | 2011 | 2012 |
| 5 | 49 CFR parts 390 to 393 and 396 to 399 | 2012 | 2013 |
| 6 | 49 CFR parts 356, 367, 369 to 371, 372, subparts B-C | 2013 | 2014 |

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## FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION (Continued)
## SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 7 | 49 CFR parts 373, 374, 376, and 379 | 2014 | 2015 |
| 8 | 49 CFR parts 360, 365, 366, and 368 | 2015 | 2016 |
| 9 | 49 CFR parts 377, 378, and 387 | 2016 | 2017 |
| 10 | 49 CFR parts 303, 375, and new parts and subparts | 2017 | 2018 |

**Year 1 (fall 2008) List of rules analyzed and a summary of results**

49 CFR part 372, subpart A - Exemptions
- Section 610: There is no SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FMCSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 381 - Waivers, exemptions, and pilot programs
- Section 610: There is no SEIOSNOSE. No small entities are affected.
- General: These regulations are cost effective and impose the least burden. FMCSA's plain language review of these rules indicates no need for substantial revision.

**Year 2 (fall 2009) List of rules that will be analyzed during the next year**

49 CFR part 386 - Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings
49 CFR part 389 - Rulemaking procedures—Federal motor carrier safety regulations
49 CFR part 395 - Hours of service of drivers

## NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
## SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR 571.223 through 571.500 and parts 575 and 579 | 2008 | 2009 |
| 2 | 23 CFR parts 1200 and 1300 | 2009 | 2010 |
| 3 | 49 CFR parts 501 through 526 and 571.213 | 2010 | 2011 |
| 4 | 49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222 | 2011 | 2012 |
| 5 | 49 CFR 571.101 through 571.110, and 571.135, 571.138 and 571.139 | 2012 | 2013 |
| 6 | 49 CFR parts 529 through 578, except parts 571 and 575 | 2013 | 2014 |
| 7 | 49 CFR 571.111 through 571.129 and parts 580 through 588 | 2014 | 2015 |
| 8 | 49 CFR 571.201 through 571.212 | 2015 | 2016 |
| 9 | 49 CFR 571.214 through 571.219, except 571.217 | 2016 | 2017 |
| 10 | 49 CFR parts 591 through 595 and new parts and subparts | 2017 | 2018 |

**Year 1 (fall 2008) List of rules analyzed and a summary of the results**

49 CFR part 571.223 - Rear impact guards
- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.224 - Rear impact protection
- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.225 - Child restraint anchorage systems
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.301 - Fuel system integrity
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.302 - Flammability of interior materials
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.303 - Fuel system integrity of compressed natural gas vehicles
- Section 610: No SEIOSNOSE. No small entities are affected.

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- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.304 - Compressed natural gas fuel container integrity
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.305 - Electric-powered vehicles: electrolyte spillage and electrical shock protection
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.401 - Interior trunk release
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.403 - Platform lift systems for motor vehicles
- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.404 - Platform lift installations in motor vehicles
- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 571.500 - Low-speed vehicles
- Section 610: No SEIOSNOSE. No economically significant impact on small business.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 575 - Consumer information
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

49 CFR part 579 - Reporting of information and communications about potential defects
- Section 610: No SEIOSNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. NHTSA's plain language review of these rules indicates no need for substantial revision.

**Year 2 (fall 2009) List of rules that will be analyzed during the next year**

23 CFR part 1200 - Uniform procedures for State highway safety programs
23 CFR part 1204 - [Reserved]
23 CFR part 1205 - Highway safety programs; determinations of effectiveness
23 CFR part 1206 - Rules of procedure for invoking sanctions under the Highway Safety Act of 1966
23 CFR part 1208 - National minimum drinking age
23 CFR part 1210 - Operation of motor vehicles by intoxicated minors
23 CFR part 1215 - Use of safety belts-compliance and transfer-of-funds procedures
23 CFR part 1225 - Operation of motor vehicles by intoxicated persons
23 CFR part 1235 - Uniform system for parking for persons with disabilities
23 CFR part 1240 - Safety incentive grants for use of seat belts-allocations based on seat belt use rates
23 CFR part 1250 - Political subdivision participation in State highway safety programs
23 CFR part 1251 - State highway safety agency
23 CFR part 1252 - State matching of planning and administration costs
23 CFR part 1270 - Open container laws
23 CFR part 1275 - Repeat intoxicated driver laws

FEDERAL RAILROAD ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR parts 200 and 201 | 2008 | 2009 |
| 2 | 49 CFR parts 207, 209, 211, 215, 238, and 256 | 2009 | 2010 |
| 3 | 49 CFR parts 210, 212, 214, 217, and 268 | 2010 | 2011 |
| 4 | 49 CFR part 219 | 2011 | 2012 |
| 5 | 49 CFR parts 218, 221, 241, and 244 | 2012 | 2013 |
| 6 | 49 CFR parts 216, 228, and 229 | 2013 | 2014 |
| 7 | 49 CFR parts 223 and 233 | 2014 | 2015 |
| 8 | 49 CFR parts 224, 225, 231, and 234 | 2015 | 2016 |

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## FEDERAL RAILROAD ADMINISTRATION (Continued)
## SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 9 | 49 CFR parts 222, 227, 235, 236, 250, 260, and 266 | 2016 | 2017 |
| 10 | 49 CFR parts 213, 220, 230, 232, 239, 240, and 265 | 2017 | 2018 |

**Year 1 (Fall 2008) List of rules analyzed and a summary of results**

49 CFR part 200 - Informal rules of practice for passenger service

- Section 610: There is no SEIOSNOSE.
- General: The rule prescribes procedures under which applications are received and heard and by which rules and orders are issued primarily affecting the Class I railroads and Amtrak, none of which are small entities. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 201 - Formal rules of practice for passenger service

- Part 201 was removed from the CFR on May 27, 2009.

**Year 2 (Fall 2009) List of rule(s) that will be analyzed during next year**

49 CFR part 207 - Informal rules of practice for passenger safety
49 CFR part 209 - Railroad safety enforcement procedures
49 CFR part 211 - Rules of practice
49 CFR part 215 - Railroad freight car safety standards
49 CFR part 238 - Passenger equipment safety standards
49 CFR part 256 - Passenger assistance for railroad passenger terminals

## FEDERAL TRANSIT ADMINISTRATION
## SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 49 CFR parts 604, 605, and 633 | 2008 | 2009 |
| 2 | 49 CFR parts 661 and 665 | 2009 | 2010 |
| 3 | 49 CFR part 633 | 2010 | 2011 |
| 4 | 49 CFR parts 609 and 611 | 2011 | 2012 |
| 5 | 49 CFR parts 613 and 614 | 2012 | 2013 |
| 6 | 49 CFR part 622 | 2013 | 2014 |
| 7 | 49 CFR part 630 | 2014 | 2015 |
| 8 | 49 CFR part 639 | 2015 | 2016 |
| 9 | 49 CFR parts 659 and 663 | 2016 | 2017 |
| 10 | 49 CFR part 665 | 2017 | 2018 |

**Year 1 (fall 2008) List of rules analyzed and summary of results**

49 CFR part 604 - Charter service

- Section 610: The Agency has determined that the rule will not have a significant effect on a substantial number of small entities.
- General: This rule clarifies and sets forth provisions to protect private charter operators from unfair competition by public transit agencies. The rule was drafted using plain language techniques.

49 CFR part 661 - Buy America

- Section 610: The Agency has determined that the rule will not have a significant effect on a substantial number of small entities.
- General: This rulemaking amends FTA's Buy America requirements by adding bi-metallic rail to the list of traction power equipment. The rule was drafted using plain language techniques.

**Year 2 (fall 2009) List of rules that will be analyzed during the next year**

49 CFR part 605 - School bus operations
49 CFR part 633 - Program management oversight
49 CFR part 665 - Bus testing

## MARITIME ADMINISTRATION
## SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 46 CFR parts 201 through 205 | 2008 | 2009 |
| 2 | 46 CFR parts 221 through 232 | 2009 | 2010 |
| 3 | 46 CFR parts 249 through 296 | 2010 | 2011 |

**DOT**

MARITIME ADMINISTRATION (Continued)
SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 4 | 46 CFR part 298 | 2011 | 2012 |
| 5 | 46 CFR parts 307 through 309 | 2012 | 2013 |
| 6 | 46 CFR part 310 | 2013 | 2014 |
| 7 | 46 CFR parts 315 through 340 | 2014 | 2015 |
| 8 | 46 CFR parts 345 through 381 | 2015 | 2016 |
| 9 | 46 CFR parts 382 through 389 | 2016 | 2017 |
| 10 | 46 CFR parts 390 through 393 | 2017 | 2018 |

**Year 1 (fall 2008) List of rules analyzed and a summary of the results**

46 CFR part 201 - Rules of practice and procedure

- Section610: No SEIOSNOSE. Some small entities may be affected, but the economicimpact on small entities will not be significant.
- General: Nochanges are needed. Where confusing or wordy language has been identified,revisions will be made.

46 CFR part 202 - Procedures relating to review by Secretary of Transportation of actions by Maritime Subsidy Board

- Section610: No SEIOSNOSE. Some small entities may be affected, but the economicimpact on small entities will not be significant.
- General: Nochanges are needed. Where confusing or wordy language has been identified,revisions will be made.

46 CFR part 203 - Procedures relating to conduct of certain hearings under the Merchant Marine Act, 1936

- Section610: No SEIOSNOSE. Some small entities may be affected, but the economicimpact on small entities will not be significant.
- General: Nochanges are needed. Where confusing or wordy language has been identified,revisions will be made.

46 CFR part 204 - Claims against the Maritime Administration under the Federal Tort Claim Act

- Section610: No SEIOSNOSE. Some small entities may be affected, but the economicimpact on small entities will not be significant.
- General: Nochanges are needed. Where confusing or wordy language has been identified,revisions will be made.

46 CFR part 205 - Audit appeals; policy and procedure

- Section610: No SEIOSNOSE. Some small entities may be affected, but the economicimpact on small entities will not be significant.
- General: Nochanges are needed. Where confusing or wordy language has been identified,revisions will be made.

**Year 2 (fall 2009) List of rules that will be analyzed during the next year**

46 CFR part 221 - Regulated transactions involving documented vessels and other maritime interests

46 CFR part 232 - Uniform financial reporting requirements

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)
SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | part 178 | 2008 | 2009 |
| 2 | parts 178 through 180 | 2009 | 2010 |
| 3 | parts 172 and 175 | 2010 | 2011 |
| 4 | sections 171.15 and 171.16 | 2011 | 2012 |
| 5 | parts 106, 107, 171, 190, and 195 | 2012 | 2013 |
| 6 | parts 174, 177, 191, and 192 | 2013 | 2014 |
| 7 | parts 176 and 199 | 2014 | 2015 |
| 8 | parts 172 through 178 | 2015 | 2016 |
| 9 | parts 172, 173, 174, 176, 177, and 193 | 2016 | 2017 |
| 10 | parts 173 and 194 | 2017 | 2018 |

**Year 1 (fall 2008) List of rules with ongoing analysis**

49 CFR part 178 - Specifications for packaging

**Year 2 (fall 2009) List of rules that will be analyzed during the next year**

49 CFR part 178 - Specifications for packagings

49 CFR part 179 - Specifications for tank cars

49 CFR part 180 - Continuing qualification and maintenance of packagings

## DOT

### RESEARCH AND INNOVATIVE TECHNOLOGY ADMINISTRATION (RITA)
### SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 14 CFR part 241, form 41 | 2008 | 2009 |
| 2 | 14 CFR part 241, schedule T-100, and part 217 | 2009 | 2010 |
| 3 | 14 CFR part 298 | 2010 | 2011 |
| 4 | 14 CFR part 241, section 19-7 | 2011 | 2012 |
| 5 | 14 CFR part 291 | 2012 | 2013 |
| 6 | 14 CFR part 234 | 2013 | 2014 |
| 7 | 14 CFR part 249 | 2014 | 2015 |
| 8 | 14 CFR part 248 | 2015 | 2016 |
| 9 | 14 CFR part 250 | 2016 | 2017 |
| 10 | 14 CFR part 374a, ICAO | 2017 | 2018 |

**Year 1 (fall 2008) List of rules with ongoing analysis**

14 CFR part 241 - Uniform system of accounts and reports for large certificated air carriers, form 41

**Year 2 (fall 2009) List of rules that will be analyzed during the next year**

14 CFR part 217 - Reporting traffic statistics by foreign air carriers in civilian scheduled, charter, and nonscheduled services

14 CFR part 241 - Uniform system of accounts and reports for large certificated air carriers, Schedule T-100

### SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
### SECTION 610 AND OTHER REVIEWS

| Year | Regulations To Be Reviewed | Analysis Year | Review Year |
|---|---|---|---|
| 1 | 33 CFR parts 401 through 403 | 2008 | 2009 |

**Year 1 (fall 2008) List of rules with ongoing analysis**

33 CFR part 401 - Seaway Regulations and Rules

33 CFR part 402 - Tariff of Tolls

33 CFR part 403 - Rules of Procedure of the Joint Tolls Review Board

### Office of the Secretary—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 235 | Use of the Seat-Strapping Method for Carrying a Wheelchair on an Aircraft | 2105–AD87 |
| 236 | +Enhancing Airline Passenger Protections—Part 2 | 2105–AD92 |
| 237 | Procedures for Transportation Workplace Drug and Alcohol Testing Programs | 2105–AD95 |

+ DOT-designated significant regulation

### Federal Aviation Administration—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 238 | +Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers | 2120–AJ00 |
| 239 | +Air Ambulance and Commercial Helicopter Operations; Safety Initiatives and Miscellaneous Amendments | 2120–AJ53 |
| 240 | +Flight and Duty Time Limitations and Rest Requirements | 2120–AJ58 |
| 241 | +Operation and Certification of Small Unmanned Aircraft Systems (sUAS) | 2120–AJ60 |
| 242 | +Repair Stations | 2120–AJ61 |

+ DOT-designated significant regulation

## DOT

### Federal Aviation Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 243 | +Automatic Dependent Surveillance—Broadcast (ADS-B) Equipage Mandate To Support Air Traffic Control Service | 2120–AI92 |

+ DOT-designated significant regulation

### Federal Aviation Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 244 | +Commuter Operations in Very Light Jets (VLJs) | 2120–AI84 |
| 245 | +Activation of Ice Protection | 2120–AJ43 |

+ DOT-designated significant regulation

### Federal Aviation Administration—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 246 | +Flight Crewmember Duty Limitations and Rest Requirements | 2120–AI93 |

+ DOT-designated significant regulation

### Federal Motor Carrier Safety Administration—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 247 | +Unified Registration System | 2126–AA22 |
| 248 | +Drivers of Commercial Vehicles: Restricting the Use of Cellular Phones **(Section 610 Review)** | 2126–AB29 |

+ DOT-designated significant regulation

### Federal Motor Carrier Safety Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 249 | +National Registry of Certified Medical Examiners | 2126–AA97 |
| 250 | +Commercial Driver's License Testing and Commercial Learner's Permit Standards | 2126–AB02 |
| 251 | +Cargo Insurance for Property Loss or Damage | 2126–AB21 |

+ DOT-designated significant regulation

### Federal Motor Carrier Safety Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 252 | +Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States | 2126–AA35 |

+ DOT-designated significant regulation

## DOT

### Federal Motor Carrier Safety Administration—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 253 | Interstate Van Operations | 2126–AA98 |

### National Highway Traffic Safety Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 254 | +Ejection Mitigation | 2127–AK23 |
| 255 | +Passenger Car and Light Truck Corporate Average Fuel Economy Standards MYs 2012 to 2016 | 2127–AK50 |

+ DOT-designated significant regulation

### Federal Railroad Administration—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 256 | +Hours of Service—Passenger Train Employees **(Rulemaking Resulting From a Section 610 Review)** | 2130–AC15 |

+ DOT-designated significant regulation

### Federal Railroad Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 257 | +Positive Train Control | 2130–AC03 |

+ DOT-designated significant regulation

### Pipeline and Hazardous Materials Safety Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 258 | +Hazardous Materials: Revisions to Requirements for the Transportation of Lithium Batteries | 2137–AE44 |

+ DOT-designated significant regulation

### Maritime Administration—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 259 | +Cargo Preference—Compromise, Assessment, Mitigation, Settlement, and Collection of Civil Penalties | 2133–AB75 |

+ DOT-designated significant regulation

## Department of Transportation (DOT) — Proposed Rule Stage
## Office of the Secretary (OST)

### 235. USE OF THE SEAT–STRAPPING METHOD FOR CARRYING A WHEELCHAIR ON AN AIRCRAFT

**Legal Authority:** The Department has authority and responsibility under the ACAA (49 USC 41705) to ensure that US and foreign air carriers do not discriminate against air travelers on the basis of disability

**Abstract:** This rulemaking would address whether or not carriers should be allowed to utilize the seat-strapping method to stow a passenger's wheelchair in the aircraft cabin.

## DOT—OST

## Proposed Rule Stage

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–9342
TDD Phone: 202 755–7687
Fax: 202 366–7152
Email: blane.workie@ost.dot.gov

**RIN:** 2105–AD87

### 236. +ENHANCING AIRLINE PASSENGER PROTECTIONS—PART 2

**Legal Authority:** 49 USC 41712; 49 USC 40101(a)(4); 49 USC 40101(a)(9); 49 USC 41702

**Abstract:** This rulemaking would enhance airline passenger protections by addressing the following areas: (1) Contingency plans for lengthy tarmac delays; (2) reporting of tarmac delay data; (3) customer service plans; (4) notification to passengers of flight status changes; (5) inflation adjustment for denied boarding compensation; (6) alternative transportation for passengers on canceled flights; (7) opt-out provisions (e.g. travel insurance); (8) contract of carriage provisions; (9) baggage fees disclosure; and (10) full fare advertising.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–9342
TDD Phone: 202 755–7687
Fax: 202 366–7152
Email: blane.workie@ost.dot.gov

**RIN:** 2105–AD92

### 237. • PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

**Legal Authority:** 40 USC 102; 40 USC 301; 40 USC 322; 40 USC 5331; 40 USC 20140; 40 USC 31306; 40 USC 31306; 40 USC 54101

**Abstract:** This rulemaking would propose to amend certain provisions of its drug and alcohol testing procedures that will address collection and testing of urine specimens. These changes would affect the role and standards applying to collectors and Medical Review Officers (MROs). The proposed changes are intended to create consistency with requirements established by the U.S. Department of Health and Human Services.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/04/10 | 75 FR 5772 |
| NPRM Comment Period End | 04/05/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Habib Azarsina, Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–1965
Email: habib.azarsina@dot.gov

**RIN:** 2105–AD95

BILLING CODE 4910—9X—S

## Department of Transportation (DOT)
## Federal Aviation Administration (FAA)

## Proposed Rule Stage

### 238. +QUALIFICATION, SERVICE, AND USE OF CREWMEMBERS AND AIRCRAFT DISPATCHERS

**Legal Authority:** 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 44912; 49 USC 46105

**Abstract:** This rulemaking would amend the regulations for crewmember and dispatcher training programs in domestic, flag, and supplemental operations. The rulemaking would enhance traditional training programs by requiring the use of flight simulation training devices for flight crewmembers and including additional training requirements in areas that are critical to safety. The rulemaking would also reorganize and revise the qualification and training requirements. The changes are intended to contribute significantly to reducing aviation accidents.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/12/09 | 74 FR 1280 |
| Proposed Rule; Notice of Public Meeting | 03/12/09 | 74 FR 10689 |
| NPRM Comment Period Extended | 04/20/09 | 74 FR 17910 |
| NPRM Comment Period End | 05/12/09 | |
| NPRM Extended Comment Period End | 08/10/09 | |
| Supplemental NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Nancy L Claussen, Federal Aviation Administration, Department of Transportation, Federal Aviation Administration, 800 Independence Ave, SW, Washington, DC 20591
Phone: 202 267–8166
Email: nancy.claussen@faa.gov

**RIN:** 2120–AJ00

### 239. +AIR AMBULANCE AND COMMERCIAL HELICOPTER OPERATIONS; SAFETY INITIATIVES AND MISCELLANEOUS AMENDMENTS

**Legal Authority:** 49 USC 106(g); 49 USC 1155; 49 USC 40101 to 40103; 49 USC 40120; 49 USC 41706; 49 USC 41721; 49 USC 44101; 49 USC 44106; 49 USC 44111; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506; 49 USC 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

**Abstract:** This rulemaking would change equipment and operating requirements for commercial helicopter operations, including many specifically for helicopter air ambulance operations. This rulemaking is necessary to increase crew, passenger, and patient safety. The intended effect is to implement the National Transportation

## DOT—FAA — Proposed Rule Stage

Safety Board, Aviation Rulemaking Committee, and internal FAA recommendations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lawrence Buehler, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267–8452

**RIN:** 2120–AJ53

### 240. +FLIGHT AND DUTY TIME LIMITATIONS AND REST REQUIREMENTS

**Legal Authority:** 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44705; 49 USC 44709; 49 USC 44710; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 45101; 49 USC 45102; 49 USC 45103; 49 USC 45104; 49 USC 45105; 49 USC 46105

**Abstract:** This rulemaking would establish one set of flight time limitations, duty period limits, and rest requirements for pilots. The rulemaking is necessary to ensure that pilots have the opportunity to obtain sufficient rest to perform their duties. The objective of the rule is to contribute to and to improve aviation safety. This rulemaking is related to the following: an NPRM (RIN 2120-AF63), and a Withdrawal (RIN 2120-AI93).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Nancy L Claussen, Federal Aviation Administration, Department of Transportation, Federal Aviation Administration, 800 Independence Ave, SW, Washington, DC 20591
Phone: 202 267–8166
Email: nancy.claussen@faa.gov

**RIN:** 2120–AJ58

### 241. ● +OPERATION AND CERTIFICATION OF SMALL UNMANNED AIRCRAFT SYSTEMS (SUAS)

**Legal Authority:** 49 USC 44701

**Abstract:** This rulemaking would enable small unmanned aircraft to safely operate in limited portions of the national airspace system (NAS). This action is necessary because it addresses the novel legal or policy issues about the minimum safety parameters for operating recreational remote control model and toy aircraft in the NAS. The intended effect of this action is to develop requirements and standards to ensure that risks are adequately mitigated, such that, safety is maintained for the entire aviation community.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stephen A Glowacki, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591
Phone: 202 385–4898
Email: stephen.a.glowacki@faa.gov

**RIN:** 2120–AJ60

### 242. ● +REPAIR STATIONS

**Legal Authority:** 49 USC 44701; 49 USC 44702

**Abstract:** This rulemaking would update and revise the regulations for repair stations. The action is necessary because many portions of the current regulations do not reflect current repair station business practices, aircraft maintenance practices, or advances in aircraft technology.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John J Goodwin, Department of Transportation, Federal Aviation Administration, 950 L'Enfant Plaza North, SW, Washington, DC 20024
Phone: 202 385–6417
Email: john.j.goodwin@faa.gov

**RIN:** 2120–AJ61

## Department of Transportation (DOT) — Final Rule Stage
## Federal Aviation Administration (FAA)

### 243. +AUTOMATIC DEPENDENT SURVEILLANCE—BROADCAST (ADS–B) EQUIPAGE MANDATE TO SUPPORT AIR TRAFFIC CONTROL SERVICE

**Legal Authority:** 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531; 49 USC 106(g); Articles 12 and 29 of 61 stat.1180; 49 USC 46507

**Abstract:** This rulemaking would add equipage requirements and performance standards for Automatic Dependent Surveillance—Broadcast (ADS-B) Out avionics on aircraft operating in specified classes of airspace within the U.S. National Airspace System. This action facilitates the use of ADS-B for aircraft surveillance by FAA and Department of Defense (DOD) air traffic controllers to safely and efficiently accommodate aircraft operations and the expected increase in demand for air transportation. This rule would also provide aircraft operators with a platform for additional flight applications and services.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/05/07 | 72 FR 56947 |
| NPRM Comment Period End | 11/19/07 | |
| NPRM Comment Period Extended | 01/03/08 | |
| Comment Period End | 03/03/08 | |

## DOT—FAA — Final Rule Stage

| Action | Date | FR Cite |
|---|---|---|
| Reopened for comments on ARAC recommendation | 10/02/08 | 73 FR 57270 |
| Comment Period End | 11/03/08 | |
| Final Rule | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Vincent Capezzuto, Federal Aviation Administration, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591
Phone: 202 385–8637
Email: vincent.capezzuto@faa.gov

**RIN:** 2120–AI92

## Department of Transportation (DOT) — Long-Term Actions
## Federal Aviation Administration (FAA)

### 244. +COMMUTER OPERATIONS IN VERY LIGHT JETS (VLJS)

**Legal Authority:** 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40119; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44912; 49 USC 46105; 49 USC 46306; 49 USC 46316; 49 USC 46504; 49 USC 46506; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531; 49 USC 44702; 49 USC 44904; 49 USC 46507

**Abstract:** This rulemaking would establish a rule to allow passenger-carrying commuter operations to be conducted under the provisions of part 135 using multiengine turbojets, certificated under either part 23 or part 25, configured with 9 or fewer passenger seats. The rulemaking would allow multiengine turbojet operators to provide commuter service to the traveling public, thus accommodating new technologies and a new generation of turbojet airplanes that otherwise would not be allowed in part 135 commuter service. Since 1995, turbojets used in scheduled operations must operate under the provisions of part 121. This current rulemaking resulted, in part, from recommendations from the Aviation Rulemaking Committee for parts 14 CFR 135/125 and covers pilot crew, equipment, training, and dispatch requirements for the safe operation of this new generation airplane. The previous internet report listed this item as an NPRM with a scheduled publication date of 10/20/09. FAA is now reconsidering what action to take with respect to this rulemaking.

**Timetable:** Next Action Undetermined

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alberta Brown, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591
Phone: 202 267–8321

**RIN:** 2120–AI84

### 245. +ACTIVATION OF ICE PROTECTION

**Legal Authority:** 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44912; 49 USC 46105; 49 USC 44702; 49 USC 44717; 49 USC 44904

**Abstract:** This rulemaking would amend the regulations applicable to operators of certain airplanes used in air carrier service and certificated for flight in icing conditions. The standards would require either the installation of ice detection equipment or changes to the Airplane Flight Manual to ensure timely activation of the airframe ice protection system. This regulation is the result of information gathered from a review of icing accidents and incidents, and it is intended to improve the level of safety when airplanes are operated in icing conditions.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/23/09 | 74 FR 61055 |
| NPRM Comment Period End | 02/22/10 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jerry Ostronic, Air Carrier Operations Branch, AFS 220, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591
Phone: 202 267–8166
Fax: 202 267–5229
Email: jerry.c.ostronic@faa.gov

**RIN:** 2120–AJ43

## Department of Transportation (DOT) — Completed Actions
## Federal Aviation Administration (FAA)

### 246. +FLIGHT CREWMEMBER DUTY LIMITATIONS AND REST REQUIREMENTS

**Legal Authority:** 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44703; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44712; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44912; 49 USC 44904

**Abstract:** This rulemaking would withdraw a previously published NPRM (RIN 2120-AF63) that proposed to establish one set of duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The NPRM also proposed to establish consistent and clear duty period limitations, flight time limitations, and rest requirements for domestic, flag, supplemental, commuter and on-demand operations. This action is necessary, because (1) the NPRM is outdated and (2) there were many significant issues commenters raised.

## DOT—FAA

## Completed Actions

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/30/95 | 60 FR 65951 |
| NPRM Comment Period End | 03/19/96 | |
| Withdrawn | 11/23/09 | 74 FR 61067 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Larry Youngblut, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20951
Phone: 202 267–9360
Email: larry.youngblut@faa.gov

**RIN:** 2120–AI93

BILLING CODE 4910—13—S

## Department of Transportation (DOT)
## Federal Motor Carrier Safety Administration (FMCSA)

## Proposed Rule Stage

### 247. +UNIFIED REGISTRATION SYSTEM

**Legal Authority:** PL 104–88; 109 Stat. 803, 888 (1995); 49 USC 13908; PL 109–159, sec 4304

**Abstract:** This rulemaking would replace three current identification and registration systems: the US DOT number identification system, the commercial registration system, and the financial responsibility system, with an online Federal unified registration system (URS). This program would serve as a clearinghouse and depository of information on, and identification of, brokers, freight forwarders, and others required to register with the Department of Transportation. The Agency is revising this rulemaking to address amendments directed by SAFETEA-LU. The replacement system for the Single State Registration System, which the ICC Termination Act originally directed be merged under URS, will be addressed separately.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 08/26/96 | 61 FR 43816 |
| ANPRM Comment Period End | 10/25/96 | |
| NPRM | 05/19/05 | 70 FR 28990 |
| NPRM Comment Period End | 08/17/05 | |
| Supplemental NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Valerie Height, Management Analyst, Department of Transportation, Federal Motor Carrier Safety Administration, Office of Policy Plans and Regulation (MC–PRR), 1200 New Jersey Avenue, SE., Washington, DC 20590
Phone: 202 366–0901
Email: valerie.height@dot.gov

**RIN:** 2126–AA22

### 248. ● +DRIVERS OF COMMERCIAL VEHICLES: RESTRICTING THE USE OF CELLULAR PHONES (SECTION 610 REVIEW)

**Legal Authority:** PL 98–554

**Abstract:** This rulemaking would restrict the use of cell phones while operating a commercial motor vehicle. This rulemaking is in response to Federal Motor Carrier Safety Administration-sponsored studies that analyzed safety incidents and distracted drivers. This rulemaking would also address the National Transportation Safety Board's ''Most Wanted List'' of safety recommendations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Undetermined

**Agency Contact:** Mike Huntley, Chief, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590
Phone: 202 366–9209
Email: michael.huntley@dot.gov

**RIN:** 2126–AB29

## Department of Transportation (DOT)
## Federal Motor Carrier Safety Administration (FMCSA)

## Final Rule Stage

### 249. +NATIONAL REGISTRY OF CERTIFIED MEDICAL EXAMINERS

**Legal Authority:** PL 109–59 (2005), sec 4116

**Abstract:** This rulemaking would establish training, testing, and certification standards for medical examiners responsible for certifying that interstate commercial motor vehicle drivers meet established physical qualifications standards; provide a database (or National Registry) of medical examiners that meet the prescribed standards for use by motor carriers, drivers, and Federal and State enforcement personnel in determining whether a medical examiner is qualified to conduct examinations of interstate truck and bus drivers; and require medical examiners to transmit electronically to FMCSA the name of the driver and a numerical identifier for each driver that is examined. The rulemaking would also establish the process by which medical examiners that fail to meet or maintain the minimum standards would be removed from the National Registry. This action is in response to section 4116 of Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/01/08 | 73 FR 73129 |
| NPRM Comment Period End | 01/30/09 | |
| Final Rule | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dr. Mary D. Gunnels, Director, Office of Medical Programs, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590
Phone: 202 366–4001

## DOT—FMCSA — Final Rule Stage

Email: maggi.gunnels@dot.gov

**RIN:** 2126–AA97

### 250. +COMMERCIAL DRIVER'S LICENSE TESTING AND COMMERCIAL LEARNER'S PERMIT STANDARDS

**Legal Authority:** PL 109–347, sec 703; 49 USC 31102; PL 105–178, 112 stat 414 (1998); PL 99–570, title XII, 100 stat 3207 (1086); PL 102–240, sec 4007(a)(1), stat 1914, 2151; PL 109–59 (2005), sec 4122; 49 USC 31136

**Abstract:** This rulemaking would establish revisions to the commercial driver's license knowledge and skills testing standards as required by section 4019 of TEA-21, implement fraud detection and prevention initiatives at the State driver licensing agencies as required by the SAFE Port Act of 2006, and establish new minimum Federal standards for States to issue commercial learner's permits (CLPs), based in part on the requirements of section 4122 of SAFETEA-LU. In addition, to ensuring the applicant has the appropriate knowledge and skills to operate a commercial motor vehicle, this rule would establish the minimum information that must be on the CLP document and the electronic driver's record. The rule would also establish maximum issuance and renewal periods, establish a minimum age limit, address issues related to a driver's State of Domicile, and incorporate previous regulatory guidance into the Federal regulations. This rule would also address issues raised in the SAFE Port Act.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/09/08 | 73 FR 19282 |
| NPRM Comment Period Extended | 06/09/08 | 73 FR 32520 |
| NPRM Comment Period End | 06/09/08 | |
| NPRM Comment Period End Extended to | 07/09/08 | |
| Final Rule | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Robert Redmond, Senior Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590
Phone: 202 366–5014
Email: robert.redmond@dot.gov

**RIN:** 2126–AB02

### 251. ● +CARGO INSURANCE FOR PROPERTY LOSS OR DAMAGE

**Legal Authority:** 49 USC 13906

**Abstract:** This final rule would eliminate the requirement for most for-hire motor carriers of property and freight forwarders to maintain cargo insurance in prescribed minimum amounts and file evidence of this insurance with FMCSA. Household goods motor carriers and household goods freight forwarders would continue to be subject to this cargo insurance requirement. This rule was split from RIN 2126-AA22.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dorothea Grymes, Lead Transportation Specialist, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590
Phone: 202 385–2405
Email: dorothea.grymes@dot.gov

**RIN:** 2126–AB21

## Department of Transportation (DOT) — Long-Term Actions

## Federal Motor Carrier Safety Administration (FMCSA)

### 252. +SAFETY MONITORING SYSTEM AND COMPLIANCE INITIATIVE FOR MEXICO–DOMICILED MOTOR CARRIERS OPERATING IN THE UNITED STATES

**Legal Authority:** PL 107–87, sec 350; 49 USC 113; 49 USC 31136; 49 USC 31144; 49 USC 31502; 49 USC 504; 49 USC 5113; 49 USC 521(b)(5)(A)

**Abstract:** This rule would implement a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico-domiciled carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. It also would establish suspension and revocation procedures for provisional Certificates of Registration and operating authority, and incorporate criteria to be used by FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. The interim rule included requirements that were not proposed in the NPRM but which are necessary to comply with the FY-2002 DOT Appropriations Act. On January 16, 2003, the Ninth Circuit Court of Appeals remanded this rule, along with two other NAFTA-related rules, to the agency, requiring a full environmental impact statement and an analysis required by the Clean Air Act. On June 7, 2004, the Supreme Court reversed the Ninth Circuit and remanded the case, holding that FMCSA is not required to prepare the environmental documents. FMCSA originally planned to publish a final rule by November 28, 2003. FMCSA will determine the next steps to be taken after enactment of any pending legislation authorizing cross border trucking.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/03/01 | 66 FR 22415 |
| NPRM Comment Period End | 07/02/01 | |
| Interim Final Rule | 03/19/02 | 67 FR 12758 |
| Interim Final Rule Comment Period End | 04/18/02 | |
| Interim Final Rule Effective* | 05/03/02 | |
| Notice of Intent To Prepare an EIS | 08/26/03 | 68 FR 51322 |
| EIS Public Scoping Meetings | 10/08/03 | 68 FR 58162 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dominick Spataro, Chief, Borders Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 266–2995
Email: dom.spataro@dot.gov

**RIN:** 2126–AA35

## Department of Transportation (DOT) — Completed Actions
## Federal Motor Carrier Safety Administration (FMCSA)

### 253. INTERSTATE VAN OPERATIONS

**Legal Authority:** PL 109–59 (2005), Sec 4136

**Abstract:** This rulemaking would make the requirements concerning driver qualifications; driving of CMVs; parts and accessories necessary for safe operations; hours of service; and inspection, repair, and maintenance applicable to the operation of vehicles designed or used to transport between 9 and 15 passengers (including the driver) for direct compensation, in interstate commerce, regardless of the distance traveled. Currently the safety regulations apply to such vans when the vehicle is operated beyond a 75-air-mile radius of the driver's work reporting location. This action is in response to SAFETEA-LU.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 02/01/10 | 75 FR 4996 |
| Final Rule Effective | 05/03/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Thomas Yager, Driver and Carrier Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590
Phone: 202 366–4325
Email: tom.yager@dot.gov

**RIN:** 2126–AA98

BILLING CODE 4910—EX—S

## Department of Transportation (DOT) — Final Rule Stage
## National Highway Traffic Safety Administration (NHTSA)

### 254. +EJECTION MITIGATION

**Legal Authority:** 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322; delegation of authority at 49 CFR 1.50

**Abstract:** This rulemaking would create a new Federal Motor Vehicle Safety Standard (FMVSS) for reducing occupant ejection. Currently, there are over 52,000 annual ejections in motor vehicle crashes, and over 10,000 ejected fatalities per year. This rulemaking would propose new requirements for reducing occupant ejection through passenger vehicle side widows. The requirement would be an occupant containment requirement on the amount of allowable excursion through passenger vehicle side windows. The SAFETEA-LU legislation requires that: ''[t]he Secretary shall also initiate a rulemaking proceeding to establish performance standards to reduce complete and partial ejections of vehicle occupants from outboard seating positions. In formulating the standards the Secretary shall consider various ejection mitigation systems. The Secretary shall issue a final rule under this paragraph no later than October 1, 2009.'' The SAFETEA-LU legislation also requires that if the Secretary determines that the subject final rule deadline cannot be met, the Secretary shall notify and provide an explanation to the Senate Committee on Commerce, Science and Transportation and the House of Representatives Committee on Energy and Commerce of the delay. On September 24, 2009, the Secretary provided appropriate notification to Congress that the final rule will be delayed until January 31, 2011.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/02/09 | 74 FR 63180 |
| NPRM Comment Period End | 02/01/10 | |
| Final Action | 01/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Louis Molino, Safety Standards Engineer, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–1833
Fax: 202 366–4329
Email: louis.molino@dot.gov

**RIN:** 2127–AK23

### 255. +PASSENGER CAR AND LIGHT TRUCK CORPORATE AVERAGE FUEL ECONOMY STANDARDS MYS 2012 TO 2016

**Legal Authority:** 49 USC 32902; delegation of authority at 49 CFR 1.50

**Abstract:** This rulemaking would address Corporate Average Fuel Economy (CAFE) standards for light trucks and passenger cars for model years 2012-2016. CAFE standards must be set at least 18 months prior to the start of a model year. The NPRM for this rulemaking was inadvertently published under RIN 2127-AK90.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/28/09 | 74 FR 49453 |
| NPRM Comment Period End | 11/27/09 | |
| Final Rule | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stephen Wood, Director, Rulemaking Division, Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–2992
Email: steve.wood@nhtsa.dot.gov

**RIN:** 2127–AK50

BILLING CODE 4910—59—S

## Department of Transportation (DOT) — Proposed Rule Stage
## Federal Railroad Administration (FRA)

### 256. +HOURS OF SERVICE—PASSENGER TRAIN EMPLOYEES (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

**Legal Authority:** PL 110–432, div A, 122 stat 4848 et seq; Rail Safety Improvement Act of 2008; sec 108(e) (49 USC 21109)

**Abstract:** This rulemaking would establish hours of service requirements for train employees engaged in commuter and intercity passenger rail transport.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kathryn Shelton, Trial Attorney, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 493–6063
Email: kathryn.shelton@fra.dot.gov

**RIN:** 2130–AC15

## Department of Transportation (DOT) — Final Rule Stage
## Federal Railroad Administration (FRA)

### 257. +POSITIVE TRAIN CONTROL

**Legal Authority:** PL 110–432, sec 104 (Codified at 49 USC 20157); Rail Safety Improvement Act of 2008

**Abstract:** This rulemaking would regulate the submission of Positive Train Control plans; the implementation of the Positive Train Control Systems; and the qualification, installation, maintenance and use of the these systems required under 49 USC 20157 or specifically required by the Federal Railroad Administration.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/21/09 | 74 FR 35950 |
| NPRM Comment Period End | 08/20/09 | |
| Final Rule | 01/15/10 | 75 FR 2598 |
| Final Rule Effective | 03/16/10 | |
| Final Rule; Response to Comments | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kathryn Shelton, Trial Attorney, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 493–6063
Email: kathryn.shelton@fra.dot.gov

**RIN:** 2130–AC03

BILLING CODE 4910—06—S

## Department of Transportation (DOT) — Final Rule Stage
## Pipeline and Hazardous Materials Safety Administration (PHMSA)

### 258. +HAZARDOUS MATERIALS: REVISIONS TO REQUIREMENTS FOR THE TRANSPORTATION OF LITHIUM BATTERIES

**Legal Authority:** 49 USC 5101 et seq

**Abstract:** This rulemaking would amend the Hazardous Materials Regulations to comprehensively address the safe transportation of lithium cells and batteries. The intent of the rulemaking is to strengthen the current regulatory framework by imposing more effective safeguards, including design testing to address risks related to internal short circuits, and enhanced packaging, hazard communication, and operational measures for various types and sizes of lithium batteries in specific transportation contexts. The rulemaking responds to several recommendations issued by the National Transportation Safety Board.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/11/10 | 75 FR 1302 |
| NPRM Comment Period End | 03/12/10 | |
| Final Rule | 01/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kevin Leary, Transportation Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–8553
Email: kevin.leary@dot.gov

**RIN:** 2137–AE44

BILLING CODE 4910—60—S

## Department of Transportation (DOT) — Proposed Rule Stage
## Maritime Administration (MARAD)

### 259. +CARGO PREFERENCE—COMPROMISE, ASSESSMENT, MITIGATION, SETTLEMENT, AND COLLECTION OF CIVIL PENALTIES

**Legal Authority:** PL 110–417

**Abstract:** This rulemaking would establish part 383 of the Cargo Preference regulations. This rulemaking would cover Public Law 110-417, Section 3511 National Defense Authorization Act for FY 2009 statutory changes to the cargo preference rules, which have not been substantially revised since 1971. The rulemaking also would include compromise, assessment, mitigation, settlement, and collection of civil penalties.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Christine Gurland, Department of Transportation, Maritime

**DOT—MARAD** **Proposed Rule Stage**

Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590
Phone: 202 366–5157
Email: christine.gurland@dot.gov

**RIN:** 2133–AB75

[FR Doc. 2010–8987 Filed 04–23–10; 8:45 am]
BILLING CODE 4910–81–S

Federal Register

Monday,
April 26, 2010

Part XIII

# Department of the Treasury

Semiannual Regulatory Agenda

# DEPARTMENT OF THE TREASURY (TREAS)

## DEPARTMENT OF THE TREASURY

### 31 CFR Subtitle A, Chs. I and II

### Semiannual Agenda

**AGENCY:** Department of the Treasury.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This notice is given pursuant to the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980) and Executive Order 12866 (''Regulatory Planning and Review''), which require the publication by the Department of a semiannual agenda of regulations.

**FOR FURTHER INFORMATION CONTACT:** The Agency contact identified in the item relating to that regulation.

**SUPPLEMENTARY INFORMATION:** The semiannual regulatory agenda includes regulations that the Department has issued or expects to issue and rules currently in effect that are under departmental or agency review. Beginning with the fall 2007 edition, the Internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov and www.regulations.gov in a format that offers users an enhanced ability to obtain information from the Agenda database. Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), Treasury's printed agenda entries include only:

(1) Rules that are in the regulatory flexibility agenda in accordance with the Regulatory Flexibility Act because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rule that has been identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. The semiannual agenda of the Department of the Treasury conforms to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

**Dated:** February 26, 2010.

**Richard G. Lepley,**

*Deputy Assistant General Counsel for General Law and Regulation.*

## Financial Crimes Enforcement Network—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 260 | Amendment to the Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access | 1506–AB07 |

## Comptroller of the Currency—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 261 | S.A.F.E. Mortgage Licensing Act | 1557–AD23 |

## Comptroller of the Currency—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 262 | Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act | 1557–AC80 |

## Internal Revenue Service—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 263 | Regulations Governing Practice Before the IRS—Tax Return Preparers | 1545–BJ17 |

## Department of the Treasury (TREAS) — Proposed Rule Stage
## Financial Crimes Enforcement Network (FINCEN)

### 260. ● AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—DEFINITIONS AND OTHER REGULATIONS RELATING TO PREPAID ACCESS

**Legal Authority:** 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5314; 31 USC 5316 to 5332

**Abstract:** The Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of the Treasury (Treasury), is proposing to revise the Bank Secrecy Act (BSA) regulations applicable to Money Services Businesses to include stored value or prepaid access. In this proposed rulemaking, we are reviewing the stored value/prepaid access regulatory framework with a focus on developing appropriate BSA regulatory oversight without impeding continued development of the industry, as well as improving the ability of FinCEN, other regulators and law enforcement to safeguard the U.S. financial system from the abuses of terrorist financing, money laundering, and other financial crime.

The proposed changes are intended to address regulatory gaps that have resulted from the proliferation of prepaid innovations over the last 10 years and their increasing use as an accepted payment method. If these gaps are not addressed, there is increased potential for the use of prepaid access as a means for furthering money laundering, terrorist financing, and other illicit transactions through the financial system. This would significantly undermine many of the efforts previously taken by government and industry to safeguard the financial system through the application of BSA requirements to other areas of the financial sector.

While seeking to address vulnerabilities existing currently in the prepaid industry, FinCEN also intends for this proposed rule to provide the necessary flexibility to address new developments in technology, markets, and consumer behavior. This is important, in order to avoid creating artificial limits on a mechanism that can be an avenue to meet the financial services needs of the unbanked and the underbanked.

This rule proposes to subject certain providers of prepaid access to a comprehensive BSA regime. To make BSA reports and records valuable and meaningful, the proposed changes impose obligations on the party within any given prepaid access transaction chain with predominant oversight and control, as well as others in a unique position to provide meaningful information to regulators and law enforcement. More specifically, the proposed changes include the following: (1) Renaming ''stored value'' as ''prepaid access'' and defining that term; (2) deleting the terms ''issuer and redeemer'' of stored value; (3) imposing registration, suspicious activity reporting and customer information recordkeeping requirements on providers of prepaid access, and new transactional recordkeeping requirements on both providers and sellers of prepaid access; and (4) exempting certain categories of prepaid access products and services posing lower risks of money laundering and terrorist financing from certain requirements.

FinCEN recognizes that the Credit CARD Act of 2009 mandated the increased regulation of prepaid access, as well as the consideration of the issue of international transport, and we will address these mandates, either through regulatory text or solicitation of comment in this rulemaking. In the course of our regulatory research into the operation of the prepaid industry, we have encountered a number of distinct issues, such as the appropriate obligations of payment networks and financial transparency at the borders, and we anticipate future rulemakings in these areas. We will seek to phase in any additional requirements, however, as the most prudent course of action for an evolving segment of the money services business (MSB) community.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Elizbzeth Baltierra, Regulatory Policy Project Officer, Department of the Treasury, Financial Crimes Enforcement Network, PO Box 39, Vienna, VA 22183
Phone: 703 905–5132
Email: elizabeth.baltierra@fincen.gov

Koko (Nettie) Ives, Department of the Treasury, Financial Crimes Enforcement Network, Suite 4600, 1099 14th Street NW., Washington, DC 20005
Phone: 202 354–6014
Email: koko.ives@fincen.gov

**RIN:** 1506–AB07

BILLING CODE 4810—33—S

## Department of the Treasury (TREAS) — Final Rule Stage
## Comptroller of the Currency (OCC)

### 261. S.A.F.E. MORTGAGE LICENSING ACT

**Legal Authority:** 12 USC 1 et seq; 12 USC 29; 12 USC 93a; 12 USC 371; 12 USC 1701j–3; 12 USC 1828(o); 12 USC 3331 et seq

**Abstract:** These regulations implement the Federal registration requirement imposed by the S.A.F.E. Mortgage Licensing Act, title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat. 2654 (2008)) with respect to national banks and their operating subsidiaries. They are being issued by the OCC, FRB, FDIC, OTS, NCUA, and Farm Credit Administration.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/09/09 | 74 FR 27386 |
| NPRM Comment Period End | 07/09/09 | |
| Final Action | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Heidi M. Thomas, Special Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW., Washington, DC 20219
Phone: 202 874–5090
Fax: 202 874–4889
Email: heidi.thomas@occ.treas.gov

**RIN:** 1557–AD23

## Department of the Treasury (TREAS)
## Comptroller of the Currency (OCC)

**Completed Actions**

### 262. INTERAGENCY PROPOSAL FOR MODEL PRIVACY FORM UNDER THE GRAMM–LEACH–BLILEY ACT

**Legal Authority:** 12 USC 93a; 15 USC 6801 et seq

**Abstract:** Pursuant to section 728 of the Financial Services Regulatory Relief Act, the OCC, FRB, FDIC, OTS, NCUA, FTC, CFTC, and SEC jointly amended their rules that implement sections 502 and 503 of the Gramm-Leach-Bliley Act to allow financial institutions to provide a safe harbor model privacy form and remove the sample clauses contained in these rules as of December 1, 2011.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Final Action | 12/01/09 | 74 FR 62890 |
| Final Action Effective | 12/31/09 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Heidi M. Thomas
Phone: 202 874–5090
Fax: 202 874–4889
Email: heidi.thomas@occ.treas.gov

**RIN:** 1557–AC80

BILLING CODE 4830—01—S

## Department of the Treasury (TREAS)
## Internal Revenue Service (IRS)

**Proposed Rule Stage**

### 263. ● REGULATIONS GOVERNING PRACTICE BEFORE THE IRS—TAX RETURN PREPARERS

**Legal Authority:** 31 USC 330

**Abstract:** These proposed regulations modify the general standards of practice for tax return preparers under Circular 230.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Matthew S. Cooper, Attorney, Department of the Treasury, Internal Revenue Service, Room 5111, 1111 Constitution Avenue NW., Washington, DC 20224
Phone: 202 622–4570
Fax: 202 622–7330
Email: matthew.s.cooper@irscounsel.treas.gov

**RIN:** 1545–BJ17

[FR Doc. 2010–8939 Filed 04–23–10; 8:45 am]

BILLING CODE 4830–01–S

Federal Register

Monday,
April 26, 2010

# Part XIV

# Environmental Protection Agency

## Semiannual Regulatory Agenda

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Ch. I**

**[FRL-9134-3]**

**EPA-HQ-OA-2007-1172**

**EPA-HQ-OW-2010-0169**

**EPA-HQ-OW-2010-0166**

**EPA-HQ-OAR-2010-0052**

### Spring 2010 Regulatory Agenda

**AGENCY:** Environmental Protection Agency.

**ACTION:** Semiannual regulatory flexibility agenda and semiannual regulatory agenda.

**SUMMARY:** The Environmental Protection Agency (EPA) publishes the semiannual regulatory agenda online (the e-Agenda) at www.reginfo.gov to update the public about:

- Regulations and major policies currently under development,
- Reviews of existing regulations and major policies, and
- Rules and major policymakings completed or canceled since the last agenda.

*Definitions:*

''E-Agenda,'' ''online regulatory agenda,'' and ''semiannual regulatory agenda'' all refer to the same comprehensive collection of information that used to be published in the **Federal Register** but which now are only available through an online database.

''Regulatory Flexibility Agenda'' refers to a document that contains information about regulations that may have a significant impact on a substantial number of small entities. This continues to be published in the **Federal Register** because of a requirement of the Regulatory Flexibility Act.

''Monthly Action Initiation List'' (AIL) refers to a list that EPA posts online each month of the regulations newly approved for development.

''Unified Regulatory Agenda'' refers to the collection of all agencies' agendas with an introduction prepared by the Regulatory Information Service Center.

''Regulatory Agenda preamble'' refers to the document you are reading now. It appears as part of the Regulatory Flexibility Agenda and introduces both the Regulatory Flexibility Agenda and the e-Agenda.

''Rulemaking Gateway'' refers to a new portal to EPA's priority rules with earlier and more concise information about Agency regulations. More information about the Rulemaking Gateway appears in section H of this preamble.

**FOR FURTHER INFORMATION CONTACT:** If you have questions or comments about a particular action, please get in touch with the agency contact listed in each agenda entry. If you have general questions about the semiannual regulatory agenda, please contact: Phil Schwartz (schwartz.philip@epa.gov; 202-564-6564) or Caryn Muellerleile (muellerleile.caryn@epa.gov; 202-564-2855).

**TO BE PLACED ON AN AGENDA MAILING LIST:** If you would like to receive an e-mail with a link to new semiannual regulatory agendas as soon as they are published, please send an e-mail message with your name and address to: nscep@bps-lmit.com and put ''E-Regulatory Agenda: Electronic Copy'' in the subject line.

If you would like to regularly receive information about the rules newly approved for development, sign up for our monthly Action Initiation List by going to http://www.epa.gov/lawsregs/search/ail.html#notification and completing the five steps listed there. You may also track progress on EPA's priority rulemakings by visiting the Rulemaking Gateway (www.epa.gov/rulemaking/) or signing up for RSS feeds at http://yosemite.epa.gov/opei/RuleGate.nsf/content/getalerts.html?opendocument.

If you would like to receive a hard copy of the semiannual agenda about 2 to 3 months after publication, call 800-490-9198 or send an e-mail with your name and complete address to: nscep@bps-lmit.com and put ''Regulatory Agenda Hard Copy'' in the subject line.

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|---|---|---|
| Semiannual Regulatory Agenda | www.reginfo.gov/, www.regulations.gov, and http://www.epa.gov/lawsregs/search/regagenda.html | Not in FR |
| Semiannual Regulatory Flexibility Agenda | www.reginfo.gov/, www.regulations.gov, and http://www.epa.gov/lawsregs/search/regagenda.html | Part XII of today's issue |

## EPA

| Type of Information | Online Locations | Federal Register Location |
|---|---|---|
| Monthly Action Initiation List | http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=EPA-HQ-OA-2008-0265 and http://www.epa.gov/lawsregs/search/ail.html | Not in FR |
| Rulemaking Gateway | www.epa.gov/rulemaking/ | Not in FR |

**B. What Are EPA's Regulatory Goals, and What Key Principles, Statutes, and Executive Orders Guide Our Rule and Policymaking Process?**

In outlining her agenda for the environment, Administrator Jackson has outlined seven themes to focus the work of EPA. These key goals shape everything we do.

**Taking Action on Climate Change:** Last year saw historic progress in the fight against climate change, with a range of greenhouse gas (GHG) reduction initiatives. We are continuing this critical effort and ensuring compliance with the law. We continue to support the President and Congress in enacting clean energy and climate legislation. Using the Clean Air Act, we will finalize our mobile source rules and provide a framework for continued improvements in that sector. EPA is building on the success of ENERGY STAR to expand cost-saving energy conservation and efficiency programs. Additionally, we continue to develop common-sense solutions for reducing GHG emissions from large stationary sources like power plants. EPA recognizes that climate change will affect other parts of its core mission, such as protecting air and water quality, and includes those considerations in our future plans.

**Improving Air Quality:** American communities face serious health and environmental challenges from air pollution. There are already proposed stronger ambient air quality standards for ozone, which will help millions of Americans breathe more easily and live more healthy lives. Building on that, EPA will develop a comprehensive strategy for a cleaner and more efficient power sector, with strong but achievable emission reduction goals for SO2, NOx, mercury, and other air toxics. We will strengthen our ambient air quality standards for pollutants such as PM, SO2, and NO2, and will achieve additional reductions in air toxics from a range of industrial facilities. Improved monitoring, permitting, and enforcement will be critical building blocks for air quality improvement.

**Assuring the Safety of Chemicals:** One of EPA's highest priorities is to make significant progress in assuring the safety of chemicals in our products, our environment, and our bodies. Last year, Administrator Jackson announced principles for modernizing the Toxic Substances Control Act. Separately, we are shifting EPA's focus to address high-concern chemicals and filling data gaps on widely produced chemicals in commerce. EPA has released the first-ever chemical management plans for five groups of substances, and more plans are underway. Using our streamlined Integrated Risk Information System, we will continue strong progress toward rigorous, peer-reviewed health assessments on dioxins, arsenic, formaldehyde, TCE, and other substances of concern.

**Cleaning Up Our Communities:** EPA has made strong cleanup progress by accelerating our Superfund program and confronting significant local environmental challenges like the asbestos public health emergency in Libby, Montana, and the coal ash spill in Kingston, Tennessee. Using all the tools at our disposal, including enforcement and compliance efforts, we will continue to focus on making communities safer and healthier. EPA is maximizing the potential of the brownfields program to spur environmental cleanup and job creation, particularly in disadvantaged communities. We are also developing enhanced strategies for risk reduction in our Superfund program and developing stronger partnerships with stakeholders affected by our cleanups.

**Protecting America's Waters:** America's waterbodies are imperiled as never before. Water quality and enforcement programs face complex challenges, from nutrient loadings and stormwater runoff to invasive species and drinking water contaminants. These challenges demand both traditional and innovative strategies. EPA continues its work on comprehensive watershed protection programs for the Chesapeake Bay and Great Lakes. We have initiated measures to address post-construction runoff, water quality impairment from surface mining, and stronger drinking water protection. Recovery Act funding is expanding construction of water infrastructure, and we are working with states to develop nutrient limits.

**Expanding the Conversation on Environmentalism and Working for Environmental Justice:** We have begun a new era of outreach and protection for communities historically underrepresented in EPA decisionmaking. EPA seeks strong working relationships with tribes, communities of color, economically distressed cities and towns, young people, and others. It is our goal to include environmental justice principles in all of our decisions. The protection of vulnerable subpopulations is a top priority, especially with regard to children.

**Building Strong State and Tribal Partnerships:** States and tribal nations bear important responsibilities for the day-to-day mission of environmental protection, but declining tax revenues and fiscal challenges are pressuring State agencies and tribal governments to do more with fewer resources. Strong partnerships and accountability are more important than ever. EPA supports State and tribal capacity and, through strengthened oversight, is working to ensure that programs are consistently delivered nationwide. Where appropriate, we use our expertise and capacity to bolster State and tribal efforts.

EPA's strength has always been our ability to adapt to the constantly changing face of environmental protection as our economy and society

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evolve, and science teaches us more about how humans interact with and affect the natural world. Now, more than ever, EPA must be innovative and forward looking because the environmental challenges faced by Americans all across our country are unprecedented.

Besides the fundamental environmental laws authorizing EPA actions such as the Clean Air Act and Clean Water Act, there are legal requirements that apply to the issuance of regulations that are generally contained in the Administrative Procedure Act, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, and the Congressional Review Act. We also must meet a number of requirements contained in Executive Orders 12866 (Regulatory Planning and Review; 58 FR 51735; October 4, 1993), 12898 (Environmental Justice; 59 FR 7629; February 16, 1994), 13045 (Children's Health Protection; 62 FR 19885; April 23, 1997), 13132 (Federalism; 64 FR 43255; August 10, 1999), 13175 (Consultation and Coordination with Indian Tribal Governments; 65 FR 67249; November 9, 2000), 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; 66 FR 28355; May 22, 2001).

### C. How Can You Be Involved in EPA's Rule and Policymaking Process?

You can make your voice heard by getting in touch with the contact person provided in each agenda entry. We urge you to participate as early in the process as possible. You may also participate by commenting on proposed rules that we publish in the **Federal Register** (FR).

Information on submitting comments to the rulemaking docket is provided in each of our Notices of Proposed Rulemaking (NPRMs), and we always accept comments through the www.regulations.gov electronic docket. To be most effective, comments should contain information and data that support your position, and you also should explain why we should incorporate your suggestion in the rule or nonregulatory action. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternatives.

We believe our actions will be more cost-effective and protective if our development process includes stakeholders working with us to identify the most practical and effective solutions to problems, and we stress this point most strongly in all of our training programs for rule and policy developers. Democracy gives real power to individual citizens, but with that power comes responsibility. We urge you to become involved in EPA's rule and policymaking process. For more information about public involvement in EPA activities, please visit www.epa.gov/publicinvolvement.

### D. What Actions Are Included in the E-Agenda and the Regulatory Flexibility Agenda?

EPA includes regulations and certain major policy documents in the e-Agenda. However, there is no legal significance to the omission of an item from the agenda, and we generally do not include minor amendments or the following categories of actions:

- Administrative actions such as delegations of authority, changes of address, or phone numbers;
- Under the Clean Air Act: Revisions to State Implementation Plans; Equivalent Methods for Ambient Air Quality Monitoring; Deletions from the New Source Performance Standards source categories list; Delegations of Authority to States; Area Designations for Air Quality Planning Purposes;
- Under the Federal Insecticide, Fungicide, and Rodenticide Act: Registration-related decisions, actions affecting the status of currently registered pesticides, and data call-ins;
- Under the Federal Food, Drug, and Cosmetic Act: Actions regarding pesticide tolerances and food additive regulations;
- Under the Resource Conservation and Recovery Act: Authorization of State solid waste management plans; hazardous waste delisting petitions;
- Under the Clean Water Act: State Water Quality Standards; deletions from the section 307(a) list of toxic pollutants; suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES); delegations of NPDES authority to States;
- Under the Safe Drinking Water Act: Actions on State underground injection control programs.

The Regulatory Flexibility Agenda normally includes:

- Actions likely to have a significant economic impact on a substantial number of small entities.
- Rules the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act. There are three rules for 610 review in spring 2010.

### E. How Is the E-Agenda Organized?

You can now choose how both the www.reginfo.gov and www.regulations.gov versions of the e-Agenda are organized. Current choices include: EPA subagency; stage of rulemaking, explained below; alphabetically by title; and by the Regulation Identifier Number (RIN), which is assigned sequentially when an action is added to the agenda.

Stages of rulemaking include:

1. Prerulemaking—Prerulemaking actions are generally intended to determine whether EPA should initiate rulemaking. Prerulemakings may include anything that influences or leads to rulemaking, such as Advance Notices of Proposed Rulemaking (ANPRMs), significant studies or analyses of the possible need for regulatory action, announcement of reviews of existing regulations required under section 610 of the Regulatory Flexibility Act, requests for public comment on the need for regulatory action, or important preregulatory policy proposals.
2. Proposed Rule—This section includes EPA rulemaking actions that are within a year of proposal (publication of Notices of Proposed Rulemakings (NPRMs)).
3. Final Rule—This section includes rules that will be issued as a final rule within a year.
4. Long-Term Actions—This section includes rulemakings for which the next scheduled regulatory action is after April 2011.
5. Completed Actions—This section contains actions that have been promulgated and published in the **Federal Register** since publication of the fall 2009 agenda. It also includes actions that EPA is no longer considering. If an action appears in the completed section, it will not appear in future agendas unless we decide to initiate action again, in which case it will appear as a new entry. EPA also announces the results

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of the Regulatory Flexibility Act section 610 reviews in this section of the agenda.

**F. What Information Is in the Regulatory Flexibility Agenda and the E-Agenda?**

Regulatory Flexibility Agenda entries include:

Sequence Number, RIN, Title, Description, Statutory Authority, Section 610 Review, if applicable, Regulatory Flexibility Analysis Required, Schedule, Contact Person.

E-Agenda entries include:

*Title:* Titles for new entries (those that have not appeared in previous agendas) are preceded by a bullet (•). The notation ''Section 610 Review'' follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 610).

*Priority:* Entries are placed into one of five categories described below. OMB reviews all significant rules including both of the first two categories, ''economically significant'' and ''other significant.''

Economically Significant: Under E.O. 12866, a rulemaking action that may 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.

Other Significant: A rulemaking that is not economically significant but is considered significant for other reasons. This category includes rules that may:

1. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
2. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or
3. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

Substantive, Nonsignificant: A rulemaking that has substantive impacts but is not Significant, Routine and Frequent, or Informational/Administrative/Other.

Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations (e.g., certain State Implementation Plans, National Priority List updates, Significant New Use Rules, State Hazardous Waste Management Program actions, and Tolerance Exemptions). If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget under E.O. 12866, then we would classify the action as either ''Economically Significant'' or ''Other Significant.''

Informational/Administrative/Other: An action that is primarily informational or pertains to an action outside the scope of E.O. 12866.

Also, if we believe that a rule may be ''Major'' as defined in the Congressional Review Act (5 U.S.C. 801, *et seq.* ) because it is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in this law, we indicate this under the ''Priority'' heading with the statement ''Major under 5 USC 801.''

*Legal Authority:* The sections of the United States Code (USC), Public Law (PL), Executive Order (EO), or common name of the law that authorizes the regulatory action.

*CFR Citation:* The sections of the Code of Federal Regulations that would be affected by the action.

*Legal Deadline:* An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a Notice of Proposed Rulemaking, a Final Action, or some other action.

*Abstract:* A brief description of the problem the action will address.

*Timetable:* The dates (and citations) that documents for this action were published in the **Federal Register** and, where possible, a projected date for the next step. Projected publication dates frequently change during the course of developing an action. The projections in the agenda are our best estimates as of the date we submit the agenda for publication. For some entries, the timetable indicates that the date of the next action is ''to be determined.''

*Regulatory Flexibility Analysis Required:* Indicates whether EPA has prepared or anticipates that it will be preparing a regulatory flexibility analysis under section 603 or 604 of the RFA. Generally, such an analysis is required for proposed or final rules subject to the RFA that EPA believes may have a significant economic impact on a substantial number of small entities.

*Small Entities Affected:* Indicates whether we expect the rule to have any effect on small businesses, small governments, or small nonprofit organizations.

*Government Levels Affected:* Indicates whether we expect the rule to have any effect on levels of government and, if so, whether the governments are State, local, tribal, or Federal.

*Federalism Implications:* Indicates whether the action is expected to 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.

*Unfunded Mandates:* Section 202 of the Unfunded Mandates Reform Act generally requires an assessment of anticipated costs and benefits if a rule includes a mandate that may result in expenditures of more than $100 million in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If we expect to exceed this $100 million threshold, we note it in this section.

*Energy Impacts:* Indicates whether the action is a significant energy action under E.O. 13211.

*International Trade Impacts*: Indicates whether the action is likely to have international trade or investment effects, or otherwise be of international interest.

*Agency Contact:* The name, address, phone number, and e-mail address, if available, of a person who is knowledgeable about the regulation.

*SAN Number:* An identification number that EPA uses to track rulemakings and other actions under development.

*URLs:* For some of our actions, we include the Internet addresses for reading copies of rulemaking documents, submitting comments on proposals, and getting more information about the rulemaking and the program of which it is a part. (Note: To submit comments on proposals, you can go to our electronic docket, which is at www.regulations.gov. Once there, follow the online instructions to access

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the docket and submit comments. A docket identification (ID) number will assist in the search for materials. We include this number in the additional information section of many of the agenda entries that have already been proposed.)

*RIN:* The Regulation Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN stand for the EPA office with lead responsibility for developing the action.

### G. How Can I Find Out About Rulemakings That Start Up After the Regulatory Agenda Is Signed?

EPA posts monthly information of new rulemakings that the Agency's senior managers have decided that we should develop. We also distribute this list via e-mail. You can see the current list, which we call the Action Initiation List at http://www.epa.gov/lawsregs/search/ail.html where you will also find information about how to get an e-mail notification when a new list is posted.

### H. What Tools for Mining Regulatory Agenda Data and for Finding More About EPA Rules and Policies Are Available at Reginfo.gov, EPA.gov, and Regulations.gov?

#### 1. The http://www.reginfo.gov/ Searchable Database

The Regulatory Information Service Center and Office of Information and Regulatory Affairs have revised a Federal regulatory dashboard and continue to allow users to view the Regulatory Agenda database (http://www.reginfo.gov/public/do/eAgendaMain), which includes powerful search, display and data transmission options. At that site you can:

1. *See the preamble.* At the URL listed above for the Unified Agenda and Regulatory Plan, find ''Current Agenda Agency Preambles.'' Environmental Protection Agency is listed alphabetically under ''Other Executive Agencies.''
2. *Get a complete list of EPA's entries in the current edition of the Agenda.* Use the drop-down menu in the ''Select Agency'' box to find Environmental Protection Agency and ''Submit.''
3. *View the contents of all of EPA's entries in the current edition of the Agenda.* Choose ''Agenda/Regulatory Plan Search'' in the top right corner. Within the ''Agenda/Regulatory Plan Search'' screen, open ''Advanced Search,'' then ''Continue.'' Select ''Environmental Protection Agency'' and ''Continue.'' Select ''Search,'' then ''View All RIN Data (Max 350).''
4. *Get a listing of entries with specified characteristics.* Follow the procedure described immediately above for viewing the contents of all entries, but on the screen entitled ''Advanced Search - Select Additional Fields,'' choose the characteristics you are seeking before ''Search.'' For example, if you wish to see a listing of all economically significant actions that may have a significant economic impact on a substantial number of small businesses, you would check ''Economically Significant'' under ''Priority'' and ''Business'' under ''Regulatory Flexibility Analysis Required.''

*5. Download the results of your searches in XML format.*

#### 2. Subject Matter EPA Web sites

Some actions listed in the Agenda include a URL that provides additional information.

#### 3. Public Dockets

When EPA publishes either an Advanced Notice of Proposed Rulemaking (ANPRM) or a NPRM in the **Federal Register**, the Agency typically establishes a docket to accumulate materials throughout the development process for that rulemaking. The docket serves as the repository for the collection of documents or information related to a particular Agency action or activity. EPA most commonly uses dockets for rulemaking actions, but dockets may also be used for Regulatory Flexibility Act section 610 reviews of rules with significant economic impacts on a substantial number of small entities and for various nonrulemaking activities, such as **Federal Register** documents seeking public comments on draft guidance, policy statements, information collection requests under the Paperwork Reduction Act, and other non-rule activities. Docket information should be in that action's agenda entry. All of EPA's public dockets can be located at www.regulations.gov.

#### 4. EPA's Rulemaking Gateway

EPA's newly released online Rulemaking Gateway (www.epa.gov/rulemaking/) serves as a portal to EPA's priority rules, providing you with earlier and more concise information about Agency regulations. It also allows users to search for EPA rules that relate to specific interests, including impacts on small business; children's health; environmental justice; and State, local, and tribal government. The Rulemaking Gateway provides information as soon as work begins and provides updates on a monthly basis as new information becomes available. Time-sensitive information, such as notice of public meetings, is updated on a daily basis. Not all of EPA's regulatory agenda entries appear on the Rulemaking Gateway; only priority rulemakings can be found on the Gateway. You may access a definition of ''priority rulemakings'' here:

http://yosemite.epa.gov/opei/RuleGate.nsf/content/about.html?opendocument

### I. Reviews of Rules With Significant Impacts on a Substantial Number of Small Entities

Section 610 of the RFA requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities. EPA has three rules scheduled for 610 review in spring 2010.

| Rule Being Reviewed | RIN | Docket ID |
|---|---|---|
| National Primary Drinking Water Regulations: Radionuclides (Section 610 Review) | 2040–AF19 | EPA-HQ-OW-2010-0166 |
| Effluent Guidelines and Standards for the Centralized Waste Treatment Industry (Section 610 Review) | 2040–AF18 | EPA-HQ-OW-2010-0169 |

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| Rule Being Reviewed | RIN | Docket ID |
|---|---|---|
| Tier II Light-Duty Vehicle and Light-Duty Truck Emission Standards and Gasoline Sulfur Standards (Section 610 Review) | 2060–AQ12 | EPA-HQ-OAR-2010-0052 |

EPA has established official public dockets for these 610 Reviews under the docket dentification (ID) numbers as indicated above. All documents in the dockets are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available; e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the applicable program (Water or Air) docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., 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. Unless otherwise indicated, please direct your comments to the identified docket ID number for the specific 610 Review item. For these 610 Reviews, please DO NOT submit CBI or information that is otherwise protected by statute. You may submit comments using one of the following methods:

1. *Electronically.* Go directly to www.regulations.gov and find ''Advanced Docket Search.'' Enter the appropriate docket ID number. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. If you do submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

2. *By Mail* . Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Docket # [insert applicable docket number], 1200 Pennsylvania Avenue NW., Washington, DC 20460.

3. *By Hand Delivery or Courier.* Deliver your comments, identified by the Docket # [insert applicable docket number], to: EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744. Such deliveries are only accepted during the docket center's normal hours of operation as identified above. For more information on EPA's docket center, please visit http://www.epa.gov/epahome/dockets.htm.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. For this action, please DO NOT submit CBI or information that is otherwise protected by statute.

### J. What Other Special Attention Do We Give to the Impacts of Rules on Small Businesses, Small Governments, and Small Nonprofit Organizations?

For each of our rulemakings, we consider whether there will be any adverse impact on any small entity. We attempt to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation.

Under RFA/SBREFA (the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act), the Agency must prepare a formal analysis of the potential negative impacts on small entities, convene a Small Business Advocacy Review Panel (proposed rule stage), and prepare a Small Entity Compliance Guide (final rule stage) unless the Agency certifies a rule will not have a significant economic impact on a substantial number of small entities. For more detailed information about the Agency's policy and practice with respect to implementing RFA/SBREFA, please visit the RFA/SBREFA Web site at http://www.epa.gov/sbrefa/.

For a list of the rules under development for which a Regulatory Flexibility Analysis will be required and for a list of rules under development that may affect small entities, but not significantly affect a substantial number of them, go to: http://www.regulations.gov/fdmspublic/component/main?main=UnifiedAgenda.

### K. Thank You for Collaborating With Us

Finally, we would like to thank those of you who choose to join with us in solving the complex issues involved in protecting human health and the environment. Collaborative efforts such as EPA's open rulemaking process are a valuable tool for addressing the problems we face, and the regulatory agenda is an important part of that process.

**Dated:** February 25, 2010.

**Louise Wise,**

*Deputy Associate Administrator, Office of Policy, Economics, and Innovation.*

## EPA

### CLEAN AIR ACT—Prerule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 264 | SAN No. 5432 Tier II Light-Duty Vehicle and Light-Duty Truck Emission Standards and Gasoline Sulfur Standards **(Section 610 Review)** | 2060–AQ12 |

### CLEAN AIR ACT—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 265 | SAN No. 4884 National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers | 2060–AM44 |
| 266 | National Emission Standards for Hazardous Air Pollutants for Major Source Industrial, Commercial, and Institutional Boilers and Process Heaters | 2060–AQ25 |

### CLEAN AIR ACT—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 267 | SAN No. 5250 Renewable Fuels Standard Program | 2060–AO81 |

### FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 268 | SAN No. 5007 Pesticides; Competency Standards for Occupational Users | 2070–AJ20 |
| 269 | SAN No. 5006 Pesticides; Agricultural Worker Protection Standard Revisions | 2070–AJ22 |

### TOXIC SUBSTANCES CONTROL ACT (TSCA)—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 270 | SAN No. 5380 Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program | 2070–AJ57 |

### TOXIC SUBSTANCES CONTROL ACT (TSCA)—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 271 | SAN No. 5379 Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program | 2070–AJ55 |

### CLEAN WATER ACT—Prerule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 272 | SAN No. 5444 Effluent Guidelines and Standards for the Centralized Waste Treatment Industry **(Section 610 Review)** | 2040–AF18 |

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### SAFE DRINKING WATER ACT (SDWA)—Prerule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 273 | SAN No. 5445 National Primary Drinking Water Regulations: Radionuclides **(Section 610 Review)** | 2040–AF19 |

### SAFE DRINKING WATER ACT (SDWA)—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 274 | SAN No. 2281 National Primary Drinking Water Regulations: Radon | 2040–AA94 |

## Environmental Protection Agency (EPA) — Prerule Stage

## Clean Air Act

### 264. ● TIER II LIGHT–DUTY VEHICLE AND LIGHT–DUTY TRUCK EMISSION STANDARDS AND GASOLINE SULFUR STANDARDS (SECTION 610 REVIEW)

**Legal Authority:** 5 USC 610

**Abstract:** On February 10, 2000 (65 FR 6698), EPA promulgated a regulation to require emission standards for light-duty vehicles and light-duty trucks through lowering tailpipe emission standards. Specifically, EPA sought to reduce emissions of nitrogen oxides and non-methane hydrocarbons, pollutants which contribute to ozone pollution. The rulemaking also provided limitations on the sulfur content of gasoline available nationwide. Sulfur in gasoline has a detrimental impact on catalyst performance and could be a limiting factor in the introduction of advanced technologies on motor vehicles. Pursuant to section 610 of the Regulatory Flexibility Act, on February 19, 2010, EPA initiated a review of this rule to determine if it should be continued without change, or should be rescinded or amended to minimize adverse economic impacts on small entities (75 FR 7426). As part of this review, EPA is considering, and has solicited comments on, the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. The results of EPA's review will be summarized in a report and placed in the docket EPA-HQ-OAR-2010-0052. This docket can be accessed at www.regulations.gov.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 02/10/00 | 65 FR 6698 |
| Begin Review | 02/19/10 | 75 FR 7426 |
| End Comment Period | 03/22/10 | |
| End Review | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Tad Wysor, Environmental Protection Agency, Air and Radiation, USEPA, Ann Arbor, MI 48105
Phone: 734 214–4332
Fax: 734 214–4816
Email: wysor.tad@epamail.epa.gov

Tom Eagles, Environmental Protection Agency, Air and Radiation, 6103A, Washington, DC 20460
Phone: 202 564–1952
Fax: 202 564–1554
Email: eagles.tom@epamail.epa.gov

**RIN:** 2060–AQ12

## Environmental Protection Agency (EPA) — Proposed Rule Stage

## Clean Air Act

### 265. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AREA SOURCES: INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS

**Legal Authority:** Clean Air Act sec 112

**Abstract:** Section 112 of the Clean Air Act (CAA) outlines the statutory requirements for EPA's stationary source air toxics program. Section 112 mandates that EPA develop standards for hazardous air pollutants (HAP) for both major and area sources listed under section 112(c). This regulatory action will develop emission standards for boilers located at area sources. Section 112(k) requires development of standards for area sources, which account for 90 percent of the emissions in urban areas of the 30 urban (HAP) listed in the Integrated Urban Air Toxics Strategy. These area source standards can require control levels which are equivalent to either MACT or generally available control technology (GACT). The Integrated Air Toxics Strategy lists industrial boilers and commercial/institutional boilers as area source categories for regulation pursuant to Section 112(c). Industrial boilers and institutional/commercial boilers are on the list of section 112(c)(6) source categories. In this rulemaking, EPA will develop standards for these source categories.

## EPA—Clean Air Act — Proposed Rule Stage

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |
| Final Action | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jim Eddinger, Environmental Protection Agency, Air and Radiation, C439–01, Research Triangle Park, NC 27711
Phone: 919 541–5426
Email: eddinger.jim@epamail.epa.gov

RobertJ Wayland, Environmental Protection Agency, Air and Radiation, D243–01, RTP, NC 27711
Phone: 919 541–1045
Fax: 919 541–5450
Email: wayland.robertj@epamail.epa.gov

**RIN:** 2060–AM44

### 266. • NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR MAJOR SOURCE INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

**Legal Authority:** Clean Air Act sec 112

**Abstract:** Section 112 of the Clean Air Act (CAA) outlines the statutory requirements for EPA's stationary source air toxics program. Section 112 mandates that EPA develop standards for hazardous air pollutants (HAP) for both major and area sources listed under section 112(c). This regulatory action will develop emission standards for boilers and process heaters located at major sources. Section 112(d)(2) requires that emission standards for major sources be based on the maximum achievable control technology (MACT). Industrial boilers and institutional/commercial boilers are on the list of section 112(c)(6) source categories. In this rulemaking, EPA will develop standards for these source categories.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |
| Final Action | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James Eddinger, Environmental Protection Agency, Air and Radiation, C439–01, Research Triangle Park, NC 27711
Phone: 919 541–5426
Fax: 919 541–5450
Email: eddinger.jim@epa.gov

Robert J. Wayland, Environmental Protection Agency, Air and Radiation, C439–01, RTP, NC 27711
Phone: 919 541–1045
Fax: 919 541–5450
Email: wayland.robertj@epamail.epa.gov

**RIN:** 2060–AQ25

## Environmental Protection Agency (EPA) — Completed Actions

## Clean Air Act

### 267. RENEWABLE FUELS STANDARD PROGRAM

**Legal Authority:** Clean Air Act sec 211(o)

**Abstract:** This rulemaking will implement provisions in title II of the 2007 Energy Independence and Security Act (EISA) that amend section 211(o) of the Clean Air Act. The amendments revise the National Renewable Fuels Standard Program in the United States, increasing the national requirement to a total of 36 billion gallons of total renewable fuel in 2022. Application of the new standards now apply to diesel fuel producers in addition to gasoline producers and to nonroad fuels in addition to highway fuels. The new requirements also establish new renewable fuel categories and specific volume standards for cellulosic and advanced renewable fuels, biomass based diesel and total renewable fuels. Further, the amendments establish new eligibility requirements for meeting the renewable fuel standards including application of a specific definition for biomass, restrictions on what land feedstocks can come from and establish minimum lifecycle greenhouse gas reduction thresholds for the various categories of renewable fuels.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/26/09 | 74 FR 24903 |
| NPRM Comment Period Extended | 07/07/09 | 74 FR 32091 |
| NPRM Comment Period End | 07/27/09 | |
| NPRM Comment Period Extended To | 09/25/09 | |
| Final Action | 03/26/10 | 75 FR 14670 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Paul Argyropoulos, Environmental Protection Agency, Air and Radiation, 6520J ARN, Washington, DC 20460
Phone: 202 564–1123
Fax: 202 564–1686
Email: argyropoulos.paul@epa.gov

David Korotney, Environmental Protection Agency, Air and Radiation, AAFC, Ann Arbor, MI 48105
Phone: 734 214–4507
Email: korotney.david@epamail.epa.gov

**RIN:** 2060–AO81

## Environmental Protection Agency (EPA) — Long-Term Actions

## Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

### 268. PESTICIDES; COMPETENCY STANDARDS FOR OCCUPATIONAL USERS

**Legal Authority:** 7 USC 136; 7 USC 136i; 7 USC 136w

**Abstract:** The EPA is proposing to change the Federal regulations under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) that guide the certified pesticide applicator program (40 CFR 171). Change is sought to strengthen the regulations to better protect pesticide applicators and the public and the environment from harm due to pesticide exposure. The possible need for change arose from EPA discussions with key stakeholders. EPA has been in extensive discussions with stakeholders since 1997 when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. Throughout these extensive interactions with stakeholders, EPA has learned of the potential need for changes to the regulation.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kathy Davis, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7506P, Washington, DC 20460
Phone: 703 308–7002
Fax: 703 308–2962
Email: davis.kathy@epa.gov

Richard Pont, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7506P, Washington, DC 20460
Phone: 703 305–6448
Fax: 703 308–2962
Email: pont.richard@epa.gov

**RIN:** 2070–AJ20

### 269. PESTICIDES; AGRICULTURAL WORKER PROTECTION STANDARD REVISIONS

**Legal Authority:** 7 USC 136; 7 USC 136w

**Abstract:** The EPA is developing a proposal under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to revise the federal regulations guiding agricultural worker protection (40 CFR 170). The changes under consideration are intended to improve agricultural workers' ability to protect themselves from potential exposure to pesticides and pesticide residues. In addition, EPA is proposing to make adjustments to improve and clarify current requirements and facilitate enforcement. Other changes sought are to establish a right-to-know Hazard Communication program and make improvements to pesticide safety training, with improved worker safety the intended outcome. The potential need for change arose from EPA discussions with key stakeholders beginning in 1996 and continuing through 2004. EPA held nine public meetings throughout the country during which the public submitted written and verbal comments on issues of their concern. In 2000 through 2004, EPA held meetings where invited stakeholders identified their issues and concerns with the regulations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kathy Davis, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7506P, Washington, DC 20460
Phone: 703 308–7002
Fax: 703 308–2962
Email: davis.kathy@epa.gov

Richard Pont, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7506P, Washington, DC 20460
Phone: 703 305–6448
Fax: 703 308–2962
Email: pont.richard@epa.gov

**RIN:** 2070–AJ22

## Environmental Protection Agency (EPA) — Proposed Rule Stage

## Toxic Substances Control Act (TSCA)

### 270. LEAD; CLEARANCE AND CLEARANCE TESTING REQUIREMENTS FOR THE RENOVATION, REPAIR, AND PAINTING PROGRAM

**Legal Authority:** 15 USC 2601(c); 15 USC 2682(c)(3); 15 USC 2684; 15 USC 2686; 15 USC 2687

**Abstract:** EPA intends to propose several revisions to the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule that established accreditation, training, certification, and recordkeeping requirements as well as work practice standards for persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. Current requirements include training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. EPA is particularly concerned about dust lead hazards generated by renovations because children, especially younger children, are at risk for high exposures of lead-based paint dust via hand-to-mouth exposure. For this particular action, EPA will consider whether to establish additional requirements to ensure that renovation work areas are adequately cleaned after renovation work is finished and before the areas are re-occupied. These additional requirements may include dust wipe testing after renovations and ensuring that renovation work areas meet clearance standards before re-occupancy.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |
| Final Action | 07/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Cindy Wheeler, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7404T, Washington, DC 20460

## EPA—Toxic Substances Control Act (TSCA) — Proposed Rule Stage

Phone: 202 566–0484
Email: wheeler.cindy@epa.gov

Michelle Price, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7404T, Washington, DC 20460
Phone: 202 566–0744
Email: price.michelle@epa.gov

**RIN:** 2070–AJ57

## Environmental Protection Agency (EPA) — Final Rule Stage
## Toxic Substances Control Act (TSCA)

### 271. LEAD; AMENDMENT TO THE OPT–OUT AND RECORDKEEPING PROVISIONS IN THE RENOVATION, REPAIR, AND PAINTING PROGRAM

**Legal Authority:** 15 USC 2601(c); 15 USC 2682(c)(3); 15 USC 2684; 15 USC 2686; 15 USC 2687

**Abstract:** As part of a lawsuit settlement, EPA agreed to propose several revisions to the 2008 Lead Renovation, Repair, and Painting Program (RRP) rule that established accreditation, training, certification, and recordkeeping requirements as well as work practice standards on persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. In October of 2008, EPA proposed amendments to the opt-out provision that currently exempts a renovator from the training and work practice requirements of the rule when he or she obtains a certification from the owner of a residence he or she occupies that no child under age 6 or pregnant women resides in the home and the home is not a child-occupied facility. EPA also proposed revisions that involve renovation firms providing the owner with a copy of the records they are currently required to maintain to demonstrate compliance with the training and work practice requirements of the RRP rule and, if different, providing the information to the occupant of the building being renovated or the operator of the child-occupied facility. In addition to the proposed amendments, EPA considered various minor amendments to the regulations concerning training provider accreditations, renovator certifications and State and tribal program requirements.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/28/09 | 74 FR 55506 |
| NPRM Comment Period End | 11/27/09 | |
| Final Action | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Marc Edmonds, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7404T, Washington, DC 20460
Phone: 202 566–0758
Email: edmonds.marc@epa.gov

Michelle Price, Environmental Protection Agency, Office of Prevention, Pesticides and Toxic Substances, 7404T, Washington, DC 20460
Phone: 202 566–0744
Email: price.michelle@epa.gov

**RIN:** 2070–AJ55

## Environmental Protection Agency (EPA) — Prerule Stage
## Clean Water Act

### 272. • EFFLUENT GUIDELINES AND STANDARDS FOR THE CENTRALIZED WASTE TREATMENT INDUSTRY (SECTION 610 REVIEW)

**Legal Authority:** 5 USC 610

**Abstract:** In December 2000, EPA promulgated effluent limitations for the Centralized Waste Treatment (CWT) Point Source Category at 40 CFR 437 (65 FR 81241, December 22, 2000). A CWT facility treats or recovers hazardous or non-hazardous industrial waste, wastewater, or used material from off-site. The regulation established wastewater discharge standards for three major types of wastes: metal-bearing, oily, and organic. EPA issued a Small Entity Compliance Guide, which provides easy-to-read descriptions of the regulations and other helpful information on how to comply such as a question and answer section.

EPA announces this new action, pursuant to Section 610 of the Regulatory Flexibility Act, to initiate a review of the rule to determine if it should be continued without change, or should be rescinded or amended to minimize adverse economic impacts on small entities. As part of this review, EPA will consider, and solicits comments on, the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule. Comments must be received by 90 days from this publication. In submitting comments, please reference Docket ID number EPA-HQ-OW-2010-0169, and follow the instructions provided in an earlier section of the preamble to this issue of the Regulatory Agenda. EPA will summarize the results of this review in a report and place that report in the rulemaking docket referenced above. You can access that docket at www.regulations.gov.

EPA continues to view the effluent limitations for the CWT category as a necessary component of the comprehensive program to restore and maintain the quality of our Nation's waters. EPA intends to continue to require compliance with the regulation. Until and unless the Agency modifies the rule, the discharges described in 40 CFR 437.1 remain subject to the final rules.

## EPA—Clean Water Act — Prerule Stage

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 12/22/00 | 65 FR 81241 |
| Begin Review | 04/00/10 | |
| End Comment Period | 07/00/10 | |
| End Review | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Erik Helm, Environmental Protection Agency, 4303T, Washington, DC 20460
Phone: 202 566–1049
Fax: 202 566–1053
Email: helm.erik@epa.gov

**RIN:** 2040–AF18

## Environmental Protection Agency (EPA) — Prerule Stage
## Safe Drinking Water Act (SDWA)

### 273. ● NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADIONUCLIDES (SECTION 610 REVIEW)

**Legal Authority:** 5 USC 610

**Abstract:** On December 7, 2000 (65 FR 76708), EPA promulgated final revised and/or new national primary drinking water regulations (NPDWRs) for non-radon radionuclides as authorized by the Safe Drinking Water Act. In this action, referred to as the Radionuclides Rule, EPA promulgated maximum contaminant level goals (MCLGs), maximum contaminant levels (MCLs), monitoring, reporting, and public notification requirements for gross alpha particle activity, combined radium-226 and 228, beta particle and photon activity and uranium. The Radionuclides Rule became effective on December 8, 2003. EPA developed a Final Regulatory Flexibility Analysis for the Radionuclides Rule and took several steps to lessen the impacts on small entities (i.e., small systems). These steps included: (1) The selection of a less stringent MCL for uranium, (2) a reduction in the overall monitoring frequencies for systems with radionuclides levels less than the MCL, (3) allowance of grandfathered data and State monitoring discretion for determining the initial monitoring baseline, and (4) the exclusion of non-transient, non-community water systems from the radionuclides regulations. EPA continues to view the NPDWRs for radionuclides as important components to ensuring and protecting the health of consumers served by public drinking water systems and intends to continue to require compliance with these NPDWRs.

While EPA has taken steps to evaluate and mitigate impacts on small entities as part of the promulgation of the Radonuclides Rule, this new entry in the regulatory agenda announces that EPA will review the NPDWRs for radionuclides pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. Comments must be received within 90 days of this notice. In submitting comments, please reference Docket ID EPA-HQ-OW-2010-0166 and follow the instructions provided in the preamble to this issue of the Regulatory Agenda. This docket can be accessed at www.regulations.gov.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 12/07/00 | 65 FR 76708 |
| Begin Review | 04/00/10 | |
| End Comment Period | 07/00/10 | |
| End Review | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** No

**Agency Contact:** Sandy Evalenko, Environmental Protection Agency, Water, 4101M, Washington, DC 20460
Phone: 202 564–0264
Fax: 202 564–0194
Email: evalenko.sandy@epamail.epa.gov

Stephanie Flaharty, Environmental Protection Agency, Water, 4601M, Washington, DC 20460
Phone: 202 564–5072
Fax: 202 564–3753
Email: flaharty.stephanie@epamail.epa.gov

**RIN:** 2040–AF19

## Environmental Protection Agency (EPA) — Long-Term Actions
## Safe Drinking Water Act (SDWA)

### 274. NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

**Legal Authority:** 42 USC 300f et seq

**Abstract:** In 1999, EPA proposed regulations for radon which provide flexibility in how to manage the health risks from radon in drinking water. The proposal was based on the unique framework in the 1996 SDWA. The proposed regulation would provide for either a maximum contaminant level (MCL), or an alternative maximum contaminant level (AMCL) with a multimedia mitigation (MMM) program to address radon in indoor air. Under the proposal, public water systems in States that adopted qualifying MMM programs would be subject to the AMCL, while those in States that did not adopt such programs would be subject to the MCL.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 09/30/86 | 51 FR 34836 |
| NPRM original | 07/18/91 | 56 FR 33050 |
| Notice99 | 02/26/99 | 64 FR 9560 |
| NPRM | 11/02/99 | 64 FR 59246 |
| NPRM Comment Period End | 01/03/00 | |
| Final Action | To Be | Determined |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rebecca Allen, Environmental Protection Agency, Water, 4607M, Washington, DC 20460
Phone: 202 564–4689
Fax: 202 564–3760
Email: allen.rebeccak@epamail.epa.gov

Eric Burneson, Environmental Protection Agency, Water, 4607M, Washington, DC 20460
Phone: 202 564–5250
Email: burneson.eric@epa.gov

**RIN:** 2040–AA94

[FR Doc. 2010–8940 Filed 04–23–10; 8:45 am]

BILLING CODE 6560–50–S

Federal Register

Monday,
April 26, 2010

# Part XV

# General Services Administration

## Semiannual Regulatory Agenda

# GENERAL SERVICES ADMINISTRATION (GSA)

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Chs. 101, 102, 105, 300, 301, and 302

### 48 CFR Chs. 5 and 61

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** General Services Administration (GSA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the fall 2009 edition. This agenda was developed under the guidelines of Executive Order 12866 ''Regulatory Planning and Review.'' GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated. Proposed rules may be reviewed in their entirety at the Government's rulemaking website at http://www.regulations.gov.

Since the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), GSA's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet. In addition, for fall editions of the Agenda, the entireRegulatory Plan will continue to be printed in the **Federal Register**, as in past years, including GSA's regulatory plan.

**FOR FURTHER INFORMATION CONTACT:** Hada Flowers, Supervisor, Regulatory Secretariat Branch, at (202) 208-7282.

**Dated:** March 8, 2010.

**Michael Robertson,**

*Associate Administrator, Office of Governmentwide Policy.*

**Dated:** February 25, 2010.

**Al Matera,**

*Director, Acquisition Policy Division.*

**Dated:** February 25, 2010.

**Cheryl Paige,**

*Director, Office of Information Management.*

**Dated:** February 25, 2010.

**Margaret S. Pfunder,**

*Chief Counsel, Civilian Board of Contract Appeals.*

**Dated:** February 25, 2010.

**Sloan W. Farrell,**

*Team Leader, External Programs, Office of Civil Rights.*

**Dated:** February 25, 2010.

**Chris Giavis.**

*Office of Real Property Asset Management*

General Services Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 275 | General Services Administration Acquisition Regulation (GSAR) Case 2006-G522; Federal Supply Schedule Contracts—Recovery Purchasing by State and Local Governments Through Federal Supply Schedules | 3090–AI32 |
| 276 | GSAR Case 2008-G517; Cooperative Purchasing-Acquisition of Security and Law Enforcement Related Goods and Services (Schedule 84) by State and Local Governments Through Federal Supply Schedules | 3090–AI68 |
| 277 | General Services Administration Acquisition Regulation (GSAR) Case 2006-G507; Rewrite of Part 538, Federal Supply Schedule Contracting | 3090–AI77 |

General Services Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 278 | General Services Administration Acquisition Regulation (GSAR) Case 2005-G501; Federal Agency Retail Pharmacy Program | 3090–AI06 |

## General Services Administration (GSA) — Final Rule Stage

### OFFICE OF ACQUISITION POLICY

### 275. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2006–G522; FEDERAL SUPPLY SCHEDULE CONTRACTS—RECOVERY PURCHASING BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL SUPPLY SCHEDULES

**Legal Authority:** 40 USC 121(c); 40 USC 502(d)

**Abstract:** The rule is amending the General Services Administration Acquisition Regulation (GSAR) to implement section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 833 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President or to facilitate recovery from terrorism, or nuclear, biological, chemical, or radiological attack.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 02/01/07 | 72 FR 4649 |
| Interim Final Rule Comment Period End | 04/02/07 | |
| Final Rule | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hada Flowers, Supervisor, Regulatory Secretariat Branch, Office of Acquisition Policy, General Services Administration, 1800 F Street NW, Room 4041, Washington, DC 20405
Phone: 202 501–4755
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

**RIN:** 3090–AI32

### 276. GSAR CASE 2008–G517; COOPERATIVE PURCHASING–ACQUISITION OF SECURITY AND LAW ENFORCEMENT RELATED GOODS AND SERVICES (SCHEDULE 84) BY STATE AND LOCAL GOVERNMENTS THROUGH FEDERAL SUPPLY SCHEDULES

**Legal Authority:** 40 USC 121(c)

**Abstract:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to implement Public Law 110-248, The Local Preparedness Acquisition Act. The Act authorizes the Administrator of General Services to provide for the use by State or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Federal supply classification code group 84 or any amended or subsequent version of that Federal supply classification group).

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/19/08 | 73 FR 54334 |
| Interim Final Rule Comment Period End | 11/18/08 | |
| Final Rule | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hada Flowers, Supervisor, Regulatory Secretariat Branch, Office of Acquisition Policy, General Services Administration, 1800 F Street NW, Room 4041, Washington, DC 20405
Phone: 202 501–4755
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

**RIN:** 3090–AI68

### 277. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2006–G507; REWRITE OF PART 538, FEDERAL SUPPLY SCHEDULE CONTRACTING

**Legal Authority:** 40 USC 121(c)

**Abstract:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise sections of GSAR part 538 that provide requirements for Federal Supply Schedule Contracting actions. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/26/09 | 74 FR 4596 |
| NPRM Comment Period End | 03/27/09 | |
| Final Rule | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hada Flowers, Supervisor, Regulatory Secretariat Branch, Office of Acquisition Policy, General Services Administration, 1800 F Street NW, Room 4041, Washington, DC 20405
Phone: 202 501–4755
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

**RIN:** 3090–AI77

## OFFICE OF ACQUISITION POLICY

### 278. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION (GSAR) CASE 2005–G501; FEDERAL AGENCY RETAIL PHARMACY PROGRAM

**Legal Authority:** 40 USC 121(c)

**Abstract:** The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to add a new subpart and clause required by the Department of Veterans Affairs (VA), consistent with congressional intent under section 603 of the Veterans Health Care Act of 1992 (VHCA) and 38 U.S.C. 8126, that certain Federal agencies (i.e., VA, Department of Defense (DoD), Public Health Service (including the Indian Health Service), and the Coast Guard) have access to Federal pricing for pharmaceuticals purchased for their beneficiaries.

GSA is responsible for the schedules program and rules related to its operation. Under GSA's delegation of authority, the VA procures medical supplies under the VA Federal Supply Schedule program. VA and DoD seek this amendment. This new subpart adds a clause unique to the virtual depot system established by a Federal Agency Retail Pharmacy Program utilizing contracted retail pharmacies as part of a centralized pharmaceutical commodity management program. At this time, only DoD has a program in place, and the rule would facilitate DoD's access to Federal pricing on Federal Supply Schedule (FSS) pharmaceutical contracts for covered drugs purchased by DoD and dispensed to TRICARE beneficiaries through retail pharmacies in the TRICARE network.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/12/05 | 70 FR 19045 |
| NPRM Comment Period End | 06/13/05 | |
| Final Rule | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hada Flowers, Supervisor, Regulatory Secretariat Branch, Office of Acquisition Policy, General Services Administration, 1800 F Street NW, Room 4041, Washington, DC 20405
Phone: 202 501–4755
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

**RIN:** 3090–AI06

[FR Doc. 2010–8988 Filed 04–23–10; 8:45 am]

BILLING CODE 6820–27–S

Federal Register

Monday,
April 26, 2010

# Part XVI

# Small Business Administration

## Semiannual Regulatory Agenda

# SMALL BUSINESS ADMINISTRATION (SBA)

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Ch. I

### Semiannual Regulatory Agenda

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Regulatory Flexibility Act (RFA) and Executive Order 12866 require each agency to publish semiannually a regulatory agenda (agenda) that includes an inventory of all current and projected rulemakings, including regulations the agency expects to develop during the next 12 months and regulations completed since the last publication of the agency's agenda. SBA is publishing this agenda to provide the public with notice about SBA's regulatory activities and to provide specific information about those activities. This information will promote the public's participation in SBA's regulatory activities.

**FOR FURTHER INFORMATION CONTACT:** For additional information about specific regulatory actions listed in the agenda, you should direct your comments and inquiries to the appropriate agency contact identified in each entry. For general information about the agenda, you should direct your comments or inquiries to Martin ''Sparky'' Conrey, Assistant General Counsel for Legislation and Appropriations, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 619-0638, martin.conrey@sba.gov.

**SUPPLEMENTARY INFORMATION:** This agenda announces the proposed regulatory actions that SBA plans for the next 12 months and those that were completed since the fall 2009 edition of the agenda. As permitted by law, SBA is combining the publication of its agenda as required by statute and Executive order and conforming them to the Unified Agenda of Federal Regulatory and Deregulatory Actions format developed by the Regulatory Information Service Center.

The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, completed, or withdrawn by SBA. Accordingly, rulemaking action in SBA's agenda is grouped according to its stage of development. The stages of development are prerulemaking, proposed rules, final rules, and rulemaking actions completed since the fall 2009 agenda. The agenda is intended to facilitate comments and views by interested members of the public. SBA encourages public participation in its rulemaking process through various media including www.regulations.gov. This website allows SBA to place rules on the website and receive public comments through that medium. SBA also provides a link from www.sba.gov to that website.

SBA's regulations promote statutory mandates and Presidential directives, and are linked to SBA's goals to improve the economic environment for small business; drive business formation, job growth, and economic expansion, particularly in underserved markets; provide financial assistance to individuals and businesses affected by disaster; and operate and manage SBA's programs and resources efficiently and effectively.

Publication of proposed rulemaking actions in the agenda does not impose any obligation on SBA to take any final action with regard to any specific item. Furthermore, SBA is not precluded from rulemaking activities that are not listed in this agenda. The dates listed in the timetables for specific actions are estimates and not commitments to act on or by the particular date.

The complete Unified Agenda will be available online at www.reginfo.gov in a format that offers users a greatly enhanced ability to obtain information from the Agenda database. Publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602). SBA's printed agenda entries include rules that would be in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet.

**Dated:** March 2, 2010.

**Karen G. Mills,**

*Administrator.*

## Small Business Administration—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 279 | SBA Express Loan Program | 3245–AF85 |
| 280 | Implementation of Energy Independence and Security Act of 2007 | 3245–AF86 |
| 281 | Implementation of Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 | 3245–AF87 |
| 282 | Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Expedited Disaster Assistance Program | 3245–AF88 |
| 283 | Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Private Loan Disaster Program | 3245–AF99 |
| 284 | Women's Business Center Program | 3245–AG02 |
| 285 | Interest Rate—Resetting Fixed Interest Rate | 3245–AG03 |
| 286 | 504 Program Governance Regulations | 3245–AG04 |
| 287 | Small Business Size Standards for Loan, Investment, and Surety Programs | 3245–AG05 |
| 288 | Women-Owned Small Business Federal Contract Program | 3245–AG06 |
| 289 | Small Business Size Standards: Professional, Scientific and Technical Services | 3245–AG07 |

## SBA

### Small Business Administration—Proposed Rule Stage (Continued)

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 290 | Small Business Size Standards: Transportation and Warehousing Industries | 3245–AG08 |

### Small Business Administration—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 291 | Lender Oversight Program | 3245–AE14 |
| 292 | 8(a) Business Development | 3245–AF53 |
| 293 | Small Business, Small Disadvantaged Business, HUBZone, and Service-Disabled Veteran-Owned Protest and Appeal Regulations. | 3245–AF65 |
| 294 | Small Business Size Standards: Retail Trade Industries | 3245–AF69 |
| 295 | Small Business Size Standards: Other Services | 3245–AF70 |
| 296 | Small Business Size Standards: Accommodations and Food Service Industries | 3245–AF71 |
| 297 | Implementation of Small Business Disaster Response and Loan Improvement Act of 2008: Immediate Disaster Assistance Program | 3245–AG00 |

### Small Business Administration—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 298 | Small Business Development Centers (SBDC) Program Revisions | 3245–AE05 |

### Small Business Administration—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 299 | Women-Owned Small Business Federal Contract Assistance Procedures—Eligible Industries | 3245–AF80 |

## Small Business Administration (SBA) — Proposed Rule Stage

### 279. SBA EXPRESS LOAN PROGRAM

**Legal Authority:** 15 USC 636(a)(31)

**Abstract:** SBA plans to issue regulations for the SBA Express loan program codified in section 7(a)(31) of the Small Business Act. The SBA Express loan program reduces the number of Government mandated forms and procedures, streamlines the processing and reduces the cost of smaller, less complex SBA loans. Particular features of the SBA Express loan program include: (1) SBA Express loans carry a maximum SBA guaranty of 50 percent; (2) a response to an SBA Express loan application will be given within 36 hours; (3) lenders and borrowers can negotiate the interest rate, which may not exceed SBA maximums; and (4) qualified lenders may be granted authorization to make eligibility determinations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7562
Email: grady.hedgespeth@sba.gov.

**RIN:** 3245–AF85

### 280. IMPLEMENTATION OF ENERGY INDEPENDENCE AND SECURITY ACT OF 2007

**Legal Authority:** 15 USC 636(a)(32)

**Abstract:** SBA plans to issue regulations to implement the small business energy provisions in the Energy Independence and Security Act of 2007. The new regulations will provide guidance on several program changes, including larger 504 loan limits to help small businesses develop energy efficient technologies, investments in energy saving small businesses, and an energy saving debenture program.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James W. Hammersley, Deputy Assistant Administrator, Office of Policy and Strategic Planning, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–6490
Email: james.hammersley@sba.gov

**RIN:** 3245–AF86

## 281. IMPLEMENTATION OF MILITARY RESERVIST AND VETERAN SMALL BUSINESS REAUTHORIZATION AND OPPORTUNITY ACT OF 2008

**Legal Authority:** 15 USC 632(q); 15 USC 636(j)

**Abstract:** SBA plans to issue regulations to implement section 205 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act. This Act provides that any time limitation on any qualification, certification, or period of participation imposed under the Small Business Act on any program that is available to small business concerns shall be extended for a small business concern that is owned and controlled by a veteran who was called or ordered to active duty or a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military duty. These regulations will provide guidance on tolling of time limitations for veteran-owned small businesses.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dean R. Koppel, Assistant Director, Office of Policy and Research, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7322
Fax: 202 481–1540
Email: dean.koppel@sba.gov

**RIN:** 3245–AF87

## 282. IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: EXPEDITED DISASTER ASSISTANCE PROGRAM

**Legal Authority:** 15 USC 636(j)

**Abstract:** This proposed rule would establish and implement an expedited disaster assistance business loan program under which the SBA will guarantee short-term loans made by private lenders to eligible small businesses located in a catastrophic disaster area. The maximum loan amount is $150,000, and SBA will guarantee timely payment of principal and interest to the lender. The maximum loan term is 180 days, and the interest rate is limited to 300 basis points over the Federal funds rate.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James E. Rivera, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619–0005
Fax: 202 205–7728
Email: james.rivera@sba.gov

**RIN:** 3245–AF88

## 283. IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: PRIVATE LOAN DISASTER PROGRAM

**Legal Authority:** 15 USC 636

**Abstract:** This proposed rule would establish and implement a private disaster loan program under which SBA will guarantee loans made by qualified lenders to eligible small businesses and homeowners located in a catastrophic disaster area. Private disaster loans made under this programs will have the same terms and conditions as SBA's direct disaster loans. In addition, SBA will guarantee timely payment of principal and interest to the lender. SBA may guarantee up to 85 percent of any loan under this program and the maximum loan amount is $2 million.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James E. Rivera, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619–0005
Fax: 202 205–7728
Email: james.rivera@sba.gov

**RIN:** 3245–AF99

## 284. WOMEN'S BUSINESS CENTER PROGRAM

**Legal Authority:** 15 USC 656

**Abstract:** SBA plans to issue regulations for the Women's Business Center (WBC) Program. The WBC provides financial assistance to organizations that provide management and technical assistance to small business concerns owned and controlled by women, and to women wishing to start a small business. The purpose of this proposed rule is to codify a framework for the development, delivery, funding and measurement of management and technical assistance projects conducted by Women's Business Center program grantees.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ana Harvey, Assistant Administrator, Office of Women's Business Ownership, Small Business Administration, 409 3rd Street SW, Washington, DC 20416
Phone: 202 205–6677
Email: ana.harvey@sba.gov

**RIN:** 3245–AG02

## 285. INTEREST RATE—RESETTING FIXED INTEREST RATE

**Legal Authority:** 15 USC 634

**Abstract:** SBA currently offers either a fixed or variable interest rate for 7(a) loans. In addition to these rates, the Agency is working to develop a shorter term fixed interest rate with the ability to be re-set at periodic intervals. This

type of rate is currently available in the commercial market place and will help provide additional options for small business borrowers. By authorizing this option, SBA is recognizing a need to allow lenders to utilize market opportunities. For example, SBA recently revised its rules to allow the use of LIBOR.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7562
Email: grady.hedgespeth@sba.gov.

**RIN:** 3245–AG03

## 286. 504 PROGRAM GOVERNANCE REGULATIONS

**Legal Authority:** 15 USC 695 et seq

**Abstract:** The Small Business Investment Act of 1958 (the ''Act'') authorizes SBA to assist development company financings of small businesses in order to foster economic development and to create or preserve job opportunities in both urban and rural areas. SBA intends to propose a regulatory framework by analyzing the best CDC structure to improve the growth of CDC's and their ability to provide capital to small businesses by reducing the regulatory burden while maintaining appropriate controls to mitigate risk, and to encourage the expansion of CDC financings into communities not currently served. As part of this project, SBA will review existing regulations to determine what will be deleted or amended based upon the proposed regulatory framework. Also, SBA will review existing CDC loan program regulations unrelated to CDC corporate governance to identify any needed technical changes and appropriate clarifications.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Grady Hedgespeth, Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7562
Email: grady.hedgespeth@sba.gov.

**RIN:** 3245–AG04

## 287. SMALL BUSINESS SIZE STANDARDS FOR LOAN, INVESTMENT, AND SURETY PROGRAMS

**Legal Authority:** 15 USC 632, 634(b)(6), 636(b), 637, 644, 662(5); PL 105–135, sec. 401 et seq.

**Abstract:** SBA currently sets different size standards for participation in its financial assistance programs. 7(a) borrowers use the standards set out for procurement programs or a temporary alternate standard; 504 borrowers may use the 7(a) standards or an alternate standard; SBIC investment may be made to small businesses that qualify through another standard; and Surety Bond program participants must meet still different requirements. As part of an overall Agency program, SBA will review financial program eligibility regulations in order to update size eligibility requirements among these programs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Khem Sharma, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390
Email: khem.sharma@sba.gov

**RIN:** 3245–AG05

## 288. WOMEN–OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

**Legal Authority:** 15 USC 637(m)

**Abstract:** This proposed rule will establish regulations to implement the Women-Owned Small Business (WOSB) Federal Contract Assistance Program, authorized under section 8(m) of the Small Business Act. Section 8(m) was enacted as part of Public Law 106-554 to provide a targeted procurement mechanism to assist Federal agencies in achieving the statutory goal of 5 percent for contracting with WOSBs. In accordance with section 8(m), the new regulations would authorize contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement. Also consistent with section 8(m), the authority to restrict competition would be limited to contracts not exceeding $3 million, or $5 million in the case of manufacturing contracts. In implementing section 8(m) the proposed regulations would further provide: the eligible industries in which WOSBs are underrepresented or substantially underrepresented; the specific eligibility requirements for WOSBs to qualify for program participation; the procedures for concerns to certify their eligibility; the process for SBA to verify the continuing WOSB eligibility; the contractual and business development assistance available under the program; the relevant protest and appeal procedures; and the applicable penalties.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/04/10 | 75 FR 10030 |
| NPRM Comment Period End | 05/03/10 | |
| Final Action | 10/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dean R. Koppel, Assistant Director, Office of Policy and Research, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7322
Fax: 202 481–1540
Email: dean.koppel@sba.gov

**RIN:** 3245–AG06

## 289. ● SMALL BUSINESS SIZE STANDARDS: PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES

**Legal Authority:** 15 USC 632(a)

**Abstract:** The U.S. Small Business Administration (SBA) proposes to modify small business size standards for industries in the North American Industry Classification System (NAICS)

## SBA — Proposed Rule Stage

Sector 54, Professional, Scientific and Technical Services. As part of its ongoing initiative to review all size standards, SBA will evaluate each industry in Sector 54 to determine whether the existing size standards should be retained or revised. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its website at http://www.sba.gov/size, to this proposed rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–6390
Fax: 202 205–6390
Email: khem.sharma@sba.gov

**RIN:** 3245–AG07

### 290. • SMALL BUSINESS SIZE STANDARDS: TRANSPORTATION AND WAREHOUSING INDUSTRIES

**Legal Authority:** 15 USC 632(a)

**Abstract:** The U.S. Small Business Administration (SBA) proposes to modify small business size standards for industries in the North American Industry Classification System (NAICS) Sector 48-49, Transportation and Warehousing Industries. As part of its ongoing initiative to review all size standards, SBA will evaluate each industry in Sector 48-49 to determine whether the existing size standards should be retained or revised. This is one of a series of proposed rules that will examine industries grouped by an NAICS Sector. SBA has applied its ''Size Standards Methodology,'' which is available on its website at http://www.sba.gov/size, to this proposed rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Khem Sharma, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390
Email: khem.sharma@sba.gov

**RIN:** 3245–AG08

## Small Business Administration (SBA) — Final Rule Stage

### 291. LENDER OVERSIGHT PROGRAM

**Legal Authority:** 15 USC 634(5)(b)(6),(b)(7),(b)(14),(h) and note; 687(f),697(e)(c)(8), and 650.

**Abstract:** This rule implements the Small Business Administration's (SBA) statutory authority under the Small Business Reauthorization and Manufacturing Assistance Act of 2004 (Reauthorization Act) to regulate Small Business Lending Companies (SBLCs) and non-federally regulated lenders (NFRLs). It also conforms SBA rules for the section 7(a) Business Loan Program and the Certified Development Company (CDC) Program.

In particular, this rule: (1) Defines SBLCs and NFRLs; (2) clarifies SBA's authority to regulate SBLCs and NFRLs; (3) authorizes SBA to set certain minimum capital standards for SBLCs, to issue cease and desist orders, and revoke or suspend lending authority of SBLCs and NFRLs; (4) establishes the Bureau of Premier Certified Lender Program Oversight in the Office of Credit Risk management; (5) transfers existing SBA enforcement authority over CDCs from the Office of Financial Assistance to the appropriate official in the Office of Capital Access; and (6) defines SBA's oversight and enforcement authorities relative to all SBA lenders participating in the 7(a) and CDC programs and intermediaries in the Microloan program.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/31/07 | 72 FR 61752 |
| NPRM Comment Period Extended | 12/20/07 | 72 FR 72264 |
| NPRM Comment Period End | 02/29/08 | |
| Interim Final Rule | 12/11/08 | 73 FR 75498 |
| Interim Final Rule Comment Period End | 03/11/09 | |
| Interim Final Rule Effective | 01/12/09 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Bryan Hooper, Director, Office of Credit Risk Management, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–3049
Fax: 202 205–6831
Email: bryan.hooper@sba.gov

**RIN:** 3245–AE14

### 292. 8(A) BUSINESS DEVELOPMENT

**Legal Authority:** 15 USC 634(b)(6), 636(j), 637(a) and (d)

**Abstract:** This rule proposes to make a number of changes to the regulations governing the 8(a) Business Development (8(a) BD) Program and several changes to SBA's size regulations. Some of the changes involve technical issues, such as changing the term ''SIC code'' to ''NAICS code'' to reflect the national conversion to the North American Industry Classification System. SBA has learned through experience that certain of its rules governing the 8(a) BD program are too restrictive and serve to unfairly preclude firms from being admitted to the program. In other cases, SBA has determined that a rule is too expansive or indefinite and has sought to restrict or clarify that rule. Changes are also being proposed to correct past public or agency misinterpretation. Also, new situations have arisen that were not anticipated when the current rules were drafted and the proposed rule seeks to cover those situations. Finally, one of the changes, involving Native Hawaiian Organizations, implements recently enacted legislation.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/28/09 | 74 FR 55694 |
| NPRM Comment Period End | 12/28/09 | |
| NPRM Comment Period Extended | 12/09/09 | 74 FR 65040 |
| Hearing; Tribal Consultation | 12/07/09 | 74 FR 64026 |
| Hearing | 12/14/09 | 74 FR 66176 |
| Hearing | 01/11/10 | 75 FR 1296 |
| NPRM Comment Period End | 01/28/10 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Joe Loddo, Associate Administrator, Office of Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7550
Email: joe.loddo@sba.gov

**RIN:** 3245–AF53

## 293. SMALL BUSINESS, SMALL DISADVANTAGED BUSINESS, HUBZONE, AND SERVICE–DISABLED VETERAN–OWNED PROTEST AND APPEAL REGULATIONS.

**Legal Authority:** 15 USC 632; 15 USC 634

**Abstract:** SBA is proposing to standardize protest and appeal regulations across all small business programs and clarify the effect of a negative determination on the procurement in question. SBA's proposed rule will clarify that an award should not be made to an ineligible concern, and in cases where an award has been made prior to an SBA final decision finding a business to be ineligible, the contracting agency shall either terminate the contract, not exercise an option, or not award further task or delivery orders to the ineligible concern. SBA is also proposing to clarify how contracting officers select NAICS codes for multiple award task and delivery order contracts. The changes recommended were prompted by recent bid protest litigation, a survey of cases handled by SBA's Government Contracting Area Offices, and recent rulings by SBA's Office of Hearings and Appeals.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/01/10 | 75 FR 9129 |
| NPRM Comment Period End | 03/31/10 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Khem Sharma, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390
Email: khem.sharma@sba.gov

**RIN:** 3245–AF65

## 294. SMALL BUSINESS SIZE STANDARDS: RETAIL TRADE INDUSTRIES

**Legal Authority:** 15 USC 632(a)

**Abstract:** The U.S. Small Business Administration (SBA) proposes to increase small business size standards for 48 industries in North American Industry Classification System (NAICS) Sector 44-45, Retail Trade, and retain the current standards for the remaining 28 industries in the Sector. As part of its ongoing initiative to review all size standards, SBA has evaluated each industry in Sector 44-45 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA has established its ''Size Standards Methodology'' available on SBA's Web site at http://www.sba.gov/size. SBA has applied its ''Size Standards Methodology'' to this proposed rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/21/09 | 74 FR 53924 |
| NPRM Comment Period End | 12/21/09 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Khem Sharma, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390
Email: khem.sharma@sba.gov

**RIN:** 3245–AF69

## 295. SMALL BUSINESS SIZE STANDARDS: OTHER SERVICES

**Legal Authority:** 15 USC 632(a)

**Abstract:** The U.S. Small Business Administration (SBA) proposes to increase the small business size standards for 18 industries in North American Industry Classification System (NAICS) Sector 81, Other Services, and retain the current standards for the remaining 30 industries in the Sector. As part of its ongoing initiative to review all size standards, SBA has evaluated each industry in Sector 81 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA has established its ''Size Standards Methodology'' available on SBA's website at http://www.sba.gov/size. SBA has applied its ''Size Standards Methodology'' to this proposed rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/21/09 | 74 FR 53941 |
| NPRM Comment Period End | 12/21/09 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Khem Sharma, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390
Email: khem.sharma@sba.gov

**RIN:** 3245–AF70

## 296. SMALL BUSINESS SIZE STANDARDS: ACCOMMODATIONS AND FOOD SERVICE INDUSTRIES

**Legal Authority:** 15 USC 632(a)

**Abstract:** The U.S. Small Business Administration (SBA) proposes to increase small business size standards for five industries in North American Industry Classification System (NAICS) Sector 72, Accommodation and Food Services—namely NAICS 721110,

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Hotels and Motels, from $7.0 million to $30 million; NAICS 721120, Casino Hotels, from $7.0 million to $30 million; NAICS 722211, Limited Service Restaurants, from $7.0 million to $10 million; NAICS 722212, Cafeterias, from $7.0 million to $25.5 million; and NAICS 722310, Food Service Contractors, from $20.5 million to $35.5 million. As part of its ongoing initiative to review all size standards, SBA has evaluated each industry in Sector 72 to determine whether the existing size standards should be retained or revised. This proposed rule is one of a series of proposals that will examine industries grouped by an NAICS Sector. SBA has established its ''Size Standards Methodology'' available on SBA's Web site at http://www.sba.gov/size. SBA has applied its ''Size Standards Methodology'' to this proposed rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/21/09 | 74 FR 53913 |
| NPRM Comment Period End | 12/21/09 | |
| Final Action | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Khem Sharma, Division Chief, Division of Size Standards, Office of Government Contracting/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205–7189
Fax: 202 205–6390
Email: khem.sharma@sba.gov

**RIN:** 3245–AF71

### 297. IMPLEMENTATION OF SMALL BUSINESS DISASTER RESPONSE AND LOAN IMPROVEMENT ACT OF 2008: IMMEDIATE DISASTER ASSISTANCE PROGRAM

**Legal Authority:** 15 USC 636(b), 636(c), 636(d)

**Abstract:** This proposed rule would establish and implement an immediate disaster assistance bridge loan program under which SBA will guarantee loans made by private lenders to eligible businesses located in a disaster area that also apply for a loan under SBA's direct disaster loan program or new private disaster loan program. SBA may guarantee 85 percent of any loan under this program and the maximum loan amount is $25,000. SBA will process applications for immediate disaster assistance bridge loans within 36 hours of receipt.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 08/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** James E. Rivera, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 619–0005
Fax: 202 205–7728
Email: james.rivera@sba.gov

**RIN:** 3245–AG00

## Small Business Administration (SBA) — Long-Term Actions

### 298. SMALL BUSINESS DEVELOPMENT CENTERS (SBDC) PROGRAM REVISIONS

**Legal Authority:** 15 USC 634(b)(6); 15 USC 648

**Abstract:** This rule would update Small Business Deveopment Center (SBDC) program regulations. This rule would amend: (1) procedures for approving and funding of SBDCs; (2) approval procedures for travel outside the continental U.S. and U.S. territories; (3) procedures and requirements regarding findings and disputes resulting from financial exams, programmatic reviews, accreditation reviews, and other SBA oversight activities; (4) requirements for new and renewal applications for SBDC awards, including the requirements for electronic submission through the approved electronic Government submission facility; and (5) provisions regarding the collection and use of individual SBDC client data.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Antonio Doss
Phone: 202 205–6766
Email: antonio.doss@sba.gov

**RIN:** 3245–AE05

## Small Business Administration (SBA) — Completed Actions

### 299. WOMEN–OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROCEDURES—ELIGIBLE INDUSTRIES

**Legal Authority:** 15 USC 637(m)

**Abstract:** SBA plans to withdraw this proposed rule and promulgate a new rule in order to establish and implement an effective WOSB procurement program. The new rule, titled ''Women-Owned Small Business Federal Contract Program'' is identified as RIN 3245-AG06. SBA is committed to moving forward to implement a successful WOSB procurement program.

**Completed:**

| Reason | Date | FR Cite |
|---|---|---|
| Withdrawal and New Rule | 03/04/10 | 75 FR 10030 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Dean R. Koppel
Phone: 202 205–7322
Fax: 202 481–1540

Email: dean.koppel@sba.gov

**RIN:** 3245–AF80

[FR Doc. 2010–8943 Filed 04–23–10; 8:45 am]

BILLING CODE 8025–01–S

Federal Register

Monday,
April 26, 2010

Part XVII

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

## Federal Acquisition Regulation; Semiannual Regulatory Agenda

# DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Ch. 1**

**Semiannual Regulatory Agenda**

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 ''Regulatory Planning and Review.'' This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Regulatory Secretariat Branch has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

Published proposed rules may be reviewed in their entirety at the Government's rulemaking website at http://www.regulations.gov.

**FOR FURTHER INFORMATION CONTACT:** Hada Flowers, Supervisor, Regulatory Secretariat Branch, Room 4041, 1800 F Street NW., Washington, DC 20405, (202) 501-4755.

**SUPPLEMENTARY INFORMATION:** DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on the FAR website at http://www.acquisition.gov/far.

**Dated:** February 25, 2010.

**David A. Drabkin,**

*Senior Procurement Executive, Office of Acquisition Policy.*

DOD/GSA/NASA (FAR)—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 300 | FAR Case 2006-034, Socioeconomic Program Parity | 9000–AK92 |
| 301 | FAR Case 2006-005, HUBZone Program Revisions | 9000–AL18 |
| 302 | FAR Case 2009-009, American Recovery and Reinvestment Act of 2009 (the Recovery Act)—Reporting Requirements | 9000–AL21 |

## DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

**Final Rule Stage**

### 300. FAR CASE 2006–034, SOCIOECONOMIC PROGRAM PARITY

**Legal Authority:** 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

**Abstract:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are amending the Federal Acquisition Regulation (FAR) to ensure that the FAR reflects the Small Business Administration's (SBA) interpretation of the Small Business Act and SBA regulations with regard to the relationship among various small business programs.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. The rule is not a major rule under 5 U.S.C. 804.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/10/08 | 73 FR 12699 |
| NPRM Comment Period End | 05/09/08 | |
| Final Rule | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hada Flowers, Supervisor, Regulatory Secretariat, DOD/GSA/NASA (FAR), Room 4041, 1800 F Street NW, Washington, DC 20405

Phone: 202 208–7282
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

**RIN:** 9000–AK92

### 301. FAR CASE 2006–005, HUBZONE PROGRAM REVISIONS

**Legal Authority:** 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

**Abstract:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are amending the Federal Acquisition Regulation (FAR) to implement revisions to the Small Business Administration's HUBZone Program as a result of revisions to the

Small Business Administration's regulations. This was not a significant regulatory action and, therefore, was not subject to review under section 6 of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/13/09 | 74 FR 16823 |
| NPRM Comment Period End | 06/12/09 | |
| Final Rule | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hada Flowers, Supervisor, Regulatory Secretariat, DOD/GSA/NASA (FAR), Room 4041, 1800 F Street NW, Washington, DC 20405
Phone: 202 208–7282
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

**RIN:** 9000–AL18

## 302. FAR CASE 2009–009, AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (THE RECOVERY ACT)—REPORTING REQUIREMENTS

**Legal Authority:** 40 USC 121(c); 10 USC ch 137; 42 USC 2473(c)

**Abstract:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are amending the Federal Acquisition Regulation (FAR) to implement section 1512 of Division A of the American Recovery and Reinvestment Act of 2009, which requires contractors to report on their use of Recovery Act funds.

This is a significant regulatory action and, therefore, was subject to Office of Management and Budget (OMB) review under section 6(b) of Executive Order 12866 ''Regulatory Planning and Review,'' dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 03/31/09 | 74 FR 14639 |
| Interim Final Rule Comment Period End | 06/01/09 | |
| Final Rule | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hada Flowers, Supervisor, Regulatory Secretariat, DOD/GSA/NASA (FAR), Room 4041, 1800 F Street NW, Washington, DC 20405
Phone: 202 208–7282
Fax: 202 501–4067
Email: hada.flowers@gsa.gov

**RIN:** 9000–AL21

[FR Doc. 2010–8993 Filed 04–23–10; 8:45 am]

BILLING CODE 6820–27–S

Federal Register

Monday,
April 26, 2010

Part XVIII

# Federal Communications Commission

Semiannual Regulatory Agenda

# FEDERAL COMMUNICATIONS COMMISSION (FCC)

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Ch. I**

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Federal Communications Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. See 5 U.S.C. 602. The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Maura McGowan, Telecommunications Specialist, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554; (202) 418-0990.

**SUPPLEMENTARY INFORMATION:**

### Unified Agenda of Major and Other Significant Proceedings

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

*Docket Number*—assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (*e.g.*, Docket No. 96-1 or Docket No. 99-1). The abbreviation for the responsible bureau usually precedes the docket number, as in ''MM Docket No. 96-222,'' which indicates that the responsible bureau is the Mass Media Bureau (now the Media Bureau). A docket number consisting of only five digits (*e.g.*, Docket No. 29622) indicates that the docket was established before January 1, 1978.

*Notice of Inquiry (NOI)*—issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

*Notice of Proposed Rulemaking (NPRM)*—issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

*Further Notice of Proposed Rulemaking (FNPRM)*—issued by the Commission when additional comment in the proceeding is sought.

*Memorandum Opinion and Order (MO&O)*—issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

*Rulemaking (RM) Number*—assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

*Report and Order (R&O)*—issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

**Marlene H. Dortch,**

*Secretary, Federal Communications Commission.*

## CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 303 | Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996 (CC Docket Nos. 96-146, 93-22) | 3060–AG42 |
| 304 | Implementation of the Subscriber Selection Changes Provision of the Telecommunications Act of 1996 (CC Docket No. 94-129) | 3060–AG46 |
| 305 | Implementation of the Telecommunications Act of 1996; Access to Telecommunications Service, Telecommunications Equipment, and Customer Premises Equipment by Persons With Disabilities | 3060–AG58 |
| 306 | Telecommunications Relay Services, the Americans With Disabilities Act of 1990, and the Telecommunications Act of 1996 (CC Docket No. 90-571) | 3060–AG75 |
| 307 | Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02-278) | 3060–AI14 |
| 308 | Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03-123) | 3060–AI15 |
| 309 | Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CG Docket No. 04-53) | 3060–AI20 |
| 310 | Rules and Regulations Implementing Minimum Customer Account Record Exchange (CARE) Obligations on All Local and Interexchange Carriers (CG Docket No. 02-386) | 3060–AI58 |
| 311 | Consumer Information and Disclosure and Truth in Billing and Billing Format | 3060–AI61 |
| 312 | Closed Captioning of Video Programming **(Section 610 Review)** | 3060–AI72 |

## FCC

### OFFICE OF ENGINEERING AND TECHNOLOGY—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 313 | Revision of the Rules Regarding Ultra-Wideband Transmission | 3060–AH47 |
| 314 | New Advanced Wireless Services (ET Docket No. 00-258) | 3060–AH65 |
| 315 | Exposure to Radiofrequency Electromagnetic Fields | 3060–AI17 |
| 316 | Unlicensed Operation in the TV Broadcast Bands (ET Docket No. 04-186) | 3060–AI52 |
| 317 | Unlicensed Devices and Equipment Approval (ET Docket No. 03-201) | 3060–AI54 |

### OFFICE OF ENGINEERING AND TECHNOLOGY—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 318 | Transfer of the 3650 Through 3700 MHz Band From Federal Government Use (WT Docket No. 05-96; ET Docket No. 02-380) | 3060–AH75 |
| 319 | Unlicensed Operation of the 3650-3700 Band (ET Docket No. 04-151) | 3060–AI50 |

### INTERNATIONAL BUREAU—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 320 | Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures (IB Docket No. 95-117) | 3060–AD70 |
| 321 | Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band (IB Docket No. 95-91; GEN Docket No. 90-357) | 3060–AF93 |
| 322 | Allocate & Designate: Spec for Fixed-Sat Srv (37.5-38.5, 40.5-41.5 & 48.2-50.2 GHz Bands); Allocate: Fixed & Mobile 40.5-42.5 GHz; Wireless 46.9-47 GHz; Gov Oper 37-38 & 40-40.5 GHz (IB Docket No. 97) | 3060–AH23 |
| 323 | Streamlining Earth Station Licensing Rules (IB Docket No. 00-248) | 3060–AH60 |
| 324 | Space Station Licensing Reform (IB Docket No. 02-34) | 3060–AH98 |
| 325 | Mitigation of Orbital Debris (IB Docket No. 02-54) | 3060–AI06 |
| 326 | Amendment of the Commission's Rules (IB Docket No. 04-47) | 3060–AI41 |
| 327 | Reporting Requirements for U.S. Providers of International Telecommunications Services (IB Docket No. 04-112) | 3060–AI42 |
| 328 | Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands (IB Docket No. 02-364) | 3060–AI44 |
| 329 | Amendment of the Commission's Rules To Allocate Spectrum and Adopt Service Rules and Procedures To Govern the Use of Vehicle-Mounted Earth Stations (IB Docket No. 07-101) | 3060–AI90 |

### MEDIA BUREAU—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 330 | Cable Television Rate Regulation | 3060–AF41 |
| 331 | Cable Television Rate Regulation: Cost of Service | 3060–AF48 |
| 332 | Cable Home Wiring | 3060–AG02 |
| 333 | Competitive Availability of Navigation Devices (CS Docket No. 97-80) | 3060–AG28 |
| 334 | Cable Horizontal and Vertical Ownership Limits (MM Docket No. 92-264) | 3060–AH09 |
| 335 | Digital Audio Broadcasting Systems (MM Docket No. 99-325) | 3060–AH40 |
| 336 | Second Periodic Review of Rules and Policies Affecting the Conversion to DTV | 3060–AH54 |
| 337 | Direct Broadcast Public Interest Obligations (MM Docket No. 93-25) | 3060–AH59 |
| 338 | Revision of EEO Rules and Policies (MM Docket No. 98-204) | 3060–AH95 |
| 339 | Broadcast Multiple and Cross-Ownership Limits | 3060–AH97 |
| 340 | Establishment of Rules for Digital Low Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03-185) | 3060–AI38 |
| 341 | Joint Sales Agreements in Local Television Markets (MB Docket No. 04-256) | 3060–AI55 |
| 342 | Significantly Viewed Out-of-Market Broadcast Stations (MB Docket No. 05-49) | 3060–AI56 |

**FCC**

## MEDIA BUREAU—Long-Term Actions (Continued)

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 343 | Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services (MB Docket No. 05-210) | 3060–AI63 |
| 344 | Digital Television Distributed Transmission System Technologies (MB Docket No. 05-312) | 3060–AI68 |
| 345 | Implementation of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992 (MB Docket No. 05-311) | 3060–AI69 |
| 346 | Program Access Rules—Sunset of Exclusive Contracts Prohibition and Examination of Programming Tying Arrangements (MB Docket Nos. 07-29, 07-198) | 3060–AI87 |
| 347 | Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07-91) | 3060–AI89 |
| 348 | Broadcast Localism (MB Docket No. 04-233) | 3060–AJ04 |
| 349 | Creating a Low Power Radio Service (MM Docket NO. 99-25) | 3060–AJ07 |
| 350 | Sponsorship Identification Rules and Embedded Advertising (MB Docket No. 08-90) | 3060–AJ10 |
| 351 | An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification (MM Docket No. 93-177) | 3060–AJ17 |
| 352 | Amendment of Parts 73 and 74 of the Commission's Rules To Establish Rules for Replacement Digital Low Power Television Translator Stations (MB Docket No. 08-253) | 3060–AJ18 |
| 353 | Policies To Promote Rural Radio Service and To Streamline Allotment and Assignment Procedures (MB Docket No. 09-52) | 3060–AJ23 |
| 354 | Promoting Diversification of Ownership in the Broadcast Services (MB Docket No. 07-294) | 3060–AJ27 |

## MEDIA BUREAU—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 355 | DTV Consumer Education Initiative (MB Docket No. 07-148) | 3060–AI96 |

## OFFICE OF MANAGING DIRECTOR—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 356 | Assessment and Collection of Regulatory Fees | 3060–AI79 |

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 357 | Revision of the Rules To Ensure Compatibility With Enhanced 911 Emergency Calling Systems | 3060–AG34 |
| 358 | Enhanced 911 Services for Wireline | 3060–AG60 |
| 359 | In the Matter of the Communications Assistance for Law Enforcement Act | 3060–AG74 |
| 360 | Development of Operational, Technical, and Spectrum Requirements for Public Safety Communications Requirements | 3060–AG85 |
| 361 | 1998 Biennial Regulatory Review—Review of Accounts Settlement in Maritime Mobile and Maritime Mobile-Satellite Radio Services (IB Docket No. 98-96) | 3060–AH30 |
| 362 | Implementation of 911 Act | 3060–AH90 |
| 363 | Commission Rules Concerning Disruptions to Communications | 3060–AI22 |
| 364 | E911 Requirements for IP-Enabled Service Providers | 3060–AI62 |
| 365 | Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks | 3060–AI78 |
| 366 | Stolen Vehicle Recovery System (SVRS) | 3060–AJ01 |
| 367 | Commercial Mobile Alert System | 3060–AJ03 |
| 368 | Emergency Alert System | 3060–AJ33 |

## FCC

### WIRELESS TELECOMMUNICATIONS BUREAU—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 369 | Implementation of the Communications Act, Amendment of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap | 3060–AG21 |
| 370 | Service Rules for the 746 to 764 and 776 to 794 MHz Bands, and Revisions to the Commission's Rules | 3060–AH32 |
| 371 | Amendment of Parts 13 and 80 of the Commission's Rules Governing Maritime Communications | 3060–AH55 |
| 372 | Competitive Bidding Procedures | 3060–AH57 |
| 373 | 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services | 3060–AH81 |
| 374 | In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets | 3060–AH82 |
| 375 | Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers | 3060–AH83 |
| 376 | Amendments of Various Rules Affecting Wireless Radio Services (WT Docket No. 03-264) | 3060–AI30 |
| 377 | Facilitating the Provision of Spectrum-Based Services to Rural Areas | 3060–AI31 |
| 378 | Improving Public Safety Communications in the 800 MHz Band Industrial/Land Transportation and Business Channels | 3060–AI34 |
| 379 | Review of Part 87 of the Commission's Rules Concerning Aviation (WT Docket No. 01-289) | 3060–AI35 |
| 380 | Implementation of the Commercial Spectrum Enhancement Act (CSEA) and Modernization of the Commission's Competitive Bidding Rules and Procedures (WT Docket No. 05-211) | 3060–AI88 |
| 381 | Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands | 3060–AJ12 |
| 382 | Amendment of the Rules Regarding Maritime Automatic Identification Systems (WT Docket No. 04-344) | 3060–AJ16 |
| 383 | Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band | 3060–AJ19 |
| 384 | Service Rules for Advanced Wireless Services in the 1915 to 1920 MHz, 1995 to 2000 MHz, 2020 to 2025 MHz, and 2175 to 2180 MHz Bands | 3060–AJ20 |
| 385 | Rules Authorizing the Operation of Low Power Auxiliary Stations in the 698-806 MHz Band, WT Docket No. 08-166; Public Interest Spectrum Coalition, Petition for Rulemaking Regarding Low Power Auxiliary | 3060–AJ21 |
| 386 | Amendment of the Commission's Rules To Improve Public Safety Communications in the 800 MHz Band, and To Consolidate the 800 MHz and 900 MHz Business and Industrial/Land Transportation Pool Channels | 3060–AJ22 |
| 387 | Amendment of Part 101 to Accommodate 30 MHz Channels in the 6525-6875 MHz Band and Provide Conditional Authorization on Channels in the 21.8-22.0 and 23.0-23.2 GHz Band (WT Docket No. 04-114) | 3060–AJ28 |
| 388 | In the Matter of Service Rules for the 698 to 746, 747 to 762 and 777 to 792 MHz Bands | 3060–AJ35 |
| 389 | In the Matter of Effects of Communications Towers on Migratory Birds | 3060–AJ36 |
| 390 | Amendment of Part 90 of the Commission's Rules | 3060–AJ37 |

### WIRELESS TELECOMMUNICATIONS BUREAU—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 391 | Amendment of Part 90 of the Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems | 3060–AH12 |
| 392 | Fixed Satellite Service and Terrestrial System in the Ku-Band | 3060–AH17 |
| 393 | Implementation of the Communications Act of 1934 as Amended | 3060–AH33 |
| 394 | Year 2000 Biennial Review (WT Docket No. 01-108) | 3060–AI26 |
| 395 | Air-Ground Telecommunications Services | 3060–AI27 |

### WIRELINE COMPETITION BUREAU—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 396 | Implementation of the Universal Service Portions of the 1996 Telecommunications Act | 3060–AF85 |
| 397 | Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information | 3060–AG43 |
| 398 | Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 | 3060–AG50 |
| 399 | Local Telephone Networks That LECs Must Make Available to Competitors | 3060–AH44 |
| 400 | 2000 Biennial Regulatory Review—Telecommunications Service Quality Reporting Requirements | 3060–AH72 |
| 401 | Access Charge Reform and Universal Service Reform | 3060–AH74 |
| 402 | Numbering Resource Optimization | 3060–AH80 |
| 403 | National Exchange Carrier Association Petition | 3060–AI47 |
| 404 | IP-Enabled Services | 3060–AI48 |

## FCC

WIRELINE COMPETITION BUREAU—Long-Term Actions (Continued)

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 405 | Consumer Protection in the Broadband Era | 3060–AI73 |
| 406 | Establishing Just and Reasonable Rates for Local Exchange Carriers (WC Docket No. 07-135) | 3060–AJ02 |
| 407 | Jurisdictional Separations | 3060–AJ06 |
| 408 | Implementation of NET 911 Improvement Act | 3060–AJ09 |
| 409 | Local Number Portability Porting Interval and Validation Requirements (WC Docket No 07-244) | 3060–AJ32 |

## Federal Communications Commission (FCC) — Long-Term Actions

## Consumer and Governmental Affairs Bureau

### 303. POLICIES AND RULES GOVERNING INTERSTATE PAY–PER–CALL AND OTHER INFORMATION SERVICES PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 (CC DOCKET NOS. 96–146, 93–22)

**Legal Authority:** 47 USC 228

**Abstract:** The Commission received comments on proposed rules designed to implement the 1996 Telecommunications Act with respect to information services to prevent abusive and deceptive practices by entities that might try to circumvent the statutory requirements. The proposed rules address generally the use of dialing sequences other than the 900 service access code to provide information services. The Commission issued an NPRM on these issues July 16, 2004.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/26/96 | 61 FR 39107 |
| Order | 07/26/96 | 61 FR 39084 |
| NPRM Comment Period End | 09/16/96 | |
| Notice to Refresh Record | 03/27/03 | 68 FR 14939 |
| Comment Period End | 05/27/03 | |
| NPRM | 10/15/04 | 69 FR 61184 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Erica H. McMahon, Chief, Consumer Policy Division, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2512
Email: erica.mcmahon@fcc.gov

**RIN:** 3060–AG42

### 304. IMPLEMENTATION OF THE SUBSCRIBER SELECTION CHANGES PROVISION OF THE TELECOMMUNICATIONS ACT OF 1996 (CC DOCKET NO. 94–129)

**Legal Authority:** 47 USC 154; 47 USC 201; 47 USC 258

**Abstract:** In December 1998, the Commission established new rules and policies implementing section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, which makes it unlawful for any telecommunications carrier to ''submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe.'' The rules provide, among other things, that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to 150 percent of all charges paid by the subscriber after such violation. In April 2000, the Commission modified the slamming liability rules by giving victims of slamming adequate redress, ensuring that carriers that slam do not profit from their fraud, and allowing States to act as the primary administrator of slamming complaints. In May 2001, the Commission adopted streamlined procedures for the carrier-to-carrier sale or transfer of customer bases.

In February 2003, the Commission adopted a Reconsideration Order and Second FNPRM. The Reconsideration Order addresses, amongst other things, the requirement that a carrier's sales agent drop-off a carrier change request phone call once the customer has been connected to an independent third party verifier, and the applicability of our slamming rules to local exchange carriers. In the Second FNPRM, the Commission sought comment on rule modifications with respect to third party verifications.

On January 4, 2008, the Commission released an Order that confirmed that a LEC that is executing a carrier change on behalf of another carrier may not re-verify whether the person listed on the change order is actually authorized to do so.

On January 9, 2008, the Commission released a Fourth Report and Order that modified the slamming rules regarding the content of independent third party verifications of a consumer's intent to switch carriers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| MO&O on Recon and FNPRM | 08/14/97 | 62 FR 43493 |
| FNPRM Comment Period End | 09/30/97 | |
| Second R&O and Second FNPRM | 02/16/99 | 64 FR 7745 |
| First Order on Recon | 04/13/00 | 65 FR 47678 |
| Third R&O and Second Order on Recon | 11/08/00 | 65 FR 66934 |
| Third FNPRM | 01/29/01 | 66 FR 8093 |
| Order | 03/01/01 | 66 FR 12877 |
| First R&O and Fourth R&O | 06/06/01 | 66 FR 30334 |
| Second FNPRM | 03/17/03 | 68 FR 19176 |
| Third Order on Recon | 03/17/03 | 68 FR 19152 |
| Second FNPRM Comment Period End | 06/17/03 | |
| First Order on Recon & Fourth Order on Recon | 03/15/05 | 70 FR 12605 |

| Action | Date | FR Cite |
|---|---|---|
| Fifth Order on Recon | 03/23/05 | 70 FR 14567 |
| Order | 02/04/08 | 73 FR 6444 |
| Fourth R&O | 03/12/08 | 73 FR 13144 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Nancy Stevenson, Deputy Chief, Consumer Policy Div., Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2512
Fax: 202 418–1196
Email: nancy.stevenson@fcc.gov

**RIN:** 3060–AG46

## 305. IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996; ACCESS TO TELECOMMUNICATIONS SERVICE, TELECOMMUNICATIONS EQUIPMENT, AND CUSTOMER PREMISES EQUIPMENT BY PERSONS WITH DISABILITIES

**Legal Authority:** 47 USC 255; 47 USC 251(a)(2)

**Abstract:** This proceeding is initiated to implement the provisions of sections 255 and 251(a)(2) of the Communications Act and related sections of the Telecommunications Act of 1996 regarding the accessibility of telecommunications equipment and services to persons with disabilities.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| R&O | 08/14/96 | 61 FR 42181 |
| NOI | 09/26/96 | 61 FR 50465 |
| R&O | 11/19/99 | 64 FR 63235 |
| Further NOI | 11/19/99 | 64 FR 63277 |
| Public Notice | 01/07/02 | 67 FR 678 |
| R&O | 08/06/07 | 72 FR 43546 |
| NPRM | 11/21/07 | 72 FR 465494 |
| R&O | 05/07/08 | 73 FR 25566 |
| R&O | 06/12/08 | 73 FR 33324 |
| Public Notice | 08/01/08 | 73 FR 45008 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Cheryl J. King, Deputy Chief, Disability Rights Office, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2284
TDD Phone: 202 418–0416
Fax: 202 418–0037
Email: cheryl.king@fcc.gov

**RIN:** 3060–AG58

## 306. TELECOMMUNICATIONS RELAY SERVICES, THE AMERICANS WITH DISABILITIES ACT OF 1990, AND THE TELECOMMUNICATIONS ACT OF 1996 (CC DOCKET NO. 90–571)

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 225

**Abstract:** This item addresses the requirement that telecommunications relay services be capable of handling any type of call normally provided by common carriers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/04/90 | 55 FR 50037 |
| R&O and Request for Comments | 08/01/91 | 56 FR 36729 |
| Order on Recon & Second R&O | 03/03/93 | 58 FR 12175 |
| FNPRM | 03/30/93 | 58 FR 12204 |
| MO&O | 11/28/95 | 60 FR 58626 |
| Order | 09/08/97 | 62 FR 47152 |
| Second NPRM | 04/05/01 | 66 FR 18059 |
| Fifth R&O | 02/07/03 | 68 FR 6352 |
| Fifth R&O (Correction) | 02/24/03 | 68 FR 8553 |
| Public Notice | 08/27/04 | 69 FR 52694 |
| Petitions for Recon of Fifth R&O Denied | 09/01/04 | 69 FR 53346 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Thomas Chandler, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1475
Email: thomas.chandler@fcc.gov

**RIN:** 3060–AG75

## 307. RULES AND REGULATIONS IMPLEMENTING THE TELEPHONE CONSUMER PROTECTION ACT (TCPA) OF 1991 (CG DOCKET NO. 02–278)

**Legal Authority:** 47 USC 227

**Abstract:** On July 3, 2003, the Commission released a Report and Order establishing, along with the FTC, a national do-not-call registry. The Commission's Report and Order also adopted rules on the use of predictive dialers, the transmission of caller ID information by telemarketers, and the sending of unsolicited fax advertisements.

On September 21, 2004, the Commission released an Order amending existing safe harbor rules for telemarketers subject to the do-not-call registry to require such telemarketers to access the do-not-call list every 31 days, rather than every 3 months.

On April 5, 2006, the Commission adopted a Report and Order and Third Order on Reconsideration amending its facsimile advertising rules to implement the Junk Fax Protection Act of 2005. On October 14, 2008, the Commission released an Order on Reconsideration addressing certain issues raised in petitions for reconsideration and/or clarification of the Report and Order and Third Order on Reconsideration.

On January 4, 2008, the Commission released a Declaratory Ruling, clarifying that autodialed and prerecorded message calls to wireless numbers that are provided by the called party to a creditor in connection with an existing debt are permissible as calls made with the ''prior express consent'' of the called party.

Following a December 4, 2007 NPRM, on June 17, 2008, the Commission released a Report and Order amending its rules to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry indefinitely, unless the registration is cancelled by the consumer or the number is removed by the database administrator.

On January 22, 2010, the Commission released an NPRM proposing to require sellers and telemarketers to obtain written consent from recipients before making prerecorded telemarketing calls commonly known as ''robocalls,'' even when the caller has an established business relationship with the consumer. The proposals also would require that the prerecorded telemarketing calls include an automated, interactive mechanism by which a consumer may ''opt out'' of receiving future prerecorded messages from a seller or telemarketer.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/08/02 | 67 FR 62667 |
| NPRM Comment Period Extended | 11/29/02 | 67 FR 71126 |
| Reply Comment Period Extended | 12/26/02 | 67 FR 78763 |
| NPRM Comment Period End | 01/31/03 | |

| Action | Date | FR Cite |
|---|---|---|
| FNPRM | 04/03/03 | 68 FR 16250 |
| FNPRM Comment Period End | 05/05/03 | |
| Order | 07/25/03 | 68 FR 44144 |
| Order Effective | 08/25/03 | |
| Order on Recon | 08/25/03 | 68 FR 50978 |
| Order | 10/14/03 | 68 FR 59130 |
| FNPRM | 03/31/04 | 69 FR 16873 |
| Order | 10/08/04 | 69 FR 60311 |
| Order | 10/28/04 | 69 FR 62816 |
| Order on Recon | 04/13/05 | 70 FR 19330 |
| Order | 06/30/05 | 70 FR 37705 |
| NPRM | 12/19/05 | 70 FR 75102 |
| Public Notice | 04/26/06 | 71 FR 24634 |
| Order | 05/03/06 | 71 FR 25967 |
| NPRM | 12/14/07 | 72 FR 71099 |
| Declaratory Ruling | 02/01/08 | 73 FR 6041 |
| R&O | 07/14/08 | 73 FR 40183 |
| Order on Recon | 10/30/08 | 73 FR 64556 |
| NPRM (release date) | 01/22/10 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Erica H. McMahon, Chief, Consumer Policy Division, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2512
Email: erica.mcmahon@fcc.gov

**RIN:** 3060–AI14

## 308. RULES AND REGULATIONS IMPLEMENTING SECTION 225 OF THE COMMUNICATIONS ACT (TELECOMMUNICATIONS RELAY SERVICE) (CG DOCKET NO. 03–123)

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 225

**Abstract:** This proceeding established a new docket flowing from the previous telecommunications relay service (TRS) history, CC Docket No. 98-67. This proceeding continues the Commission's inquiry into improving the quality of TRS and furthering the goal of functional equivalency, consistent with Congress' mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. In this docket, the Commission explores ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/25/03 | 68 FR 50993 |
| R&O, Order on Recon | 09/01/04 | 69 FR 53346 |
| FNPRM | 09/01/04 | 69 FR 53382 |
| Public Notice | 02/17/05 | 70 FR 8034 |
| Declaratory Ruling/ Interpretation | 02/25/05 | 70 FR 9239 |
| Public Notice | 03/07/05 | 70 FR 10930 |
| Order | 03/23/05 | 70 FR 14568 |
| Public Notice/ Announcement of Date | 04/06/05 | 70 FR 17334 |
| Order | 07/01/05 | 70 FR 38134 |
| Order on Recon | 08/31/05 | 70 FR 51643 |
| R&O | 08/31/05 | 70 FR 51649 |
| Order | 09/14/05 | 70 FR 54294 |
| Order | 09/14/05 | 70 FR 54298 |
| Public Notice | 10/12/05 | 70 FR 59346 |
| R&O/Order on Recon | 12/23/05 | 70 FR 76208 |
| Order | 12/28/05 | 70 FR 76712 |
| Order | 12/29/05 | 70 FR 77052 |
| NPRM | 02/01/06 | 71 FR 5221 |
| Declaratory Ruling/Clarification | 05/31/06 | 71 FR 30818 |
| FNPRM | 05/31/06 | 71 FR 30848 |
| FNPRM | 06/01/06 | 71 FR 31131 |
| Declaratory Ruling/Dismissal of Petition | 06/21/06 | 71 FR 35553 |
| Clarification | 06/28/06 | 71 FR 36690 |
| Declaratory Ruling on Recon | 07/06/06 | 71 FR 38268 |
| Order on Recon | 08/16/06 | 71 FR 47141 |
| MO&O | 08/16/06 | 71 FR 47145 |
| Clarification | 08/23/06 | 71 FR 49380 |
| FNPRM | 09/13/06 | 71 FR 54009 |
| Final Rule; Clarification | 02/14/07 | 72 FR 6960 |
| Order | 03/14/07 | 72 FR 11789 |
| R&O | 08/06/07 | 72 FR 43546 |
| Public Notice | 08/16/07 | 72 FR 46060 |
| Order | 11/01/07 | 72 FR 61813 |
| Public Notice | 01/04/08 | 73 FR 863 |
| R&O/Declaratory Ruling | 01/17/08 | 73 FR 3197 |
| Order | 02/19/08 | 73 FR 9031 |
| Order | 04/21/08 | 73 FR 21347 |
| R&O | 04/21/08 | 73 FR 21252 |
| Order | 04/23/08 | 73 FR 21843 |
| Public Notice | 04/30/08 | 73 FR 23361 |
| Order | 05/15/08 | 73 FR 28057 |
| Declaratory Ruling | 07/08/08 | 73 FR 38928 |
| FNPRM | 07/18/08 | 73 FR 41307 |
| R&O | 07/18/08 | 73 FR 41286 |
| Public Notice | 08/01/08 | 73 FR 45006 |
| Public Notice | 08/05/08 | 73 FR 45354 |
| Public Notice | 10/10/08 | 73 FR 60172 |
| Order | 10/23/08 | 73 FR 63078 |
| 2nd R&O and Order on Recon | 12/30/08 | 73 FR 79683 |
| Order | 05/06/09 | 74 FR 20892 |
| Public Notice | 05/07/09 | 74 FR 21364 |
| NPRM | 05/21/09 | 74 FR 23815 |
| Public Notice | 05/21/09 | 74 FR 23859 |
| Public Notice Comment Period End | 06/08/09 | |
| Public Notice Comment Period End | 06/11/09 | |
| Public Notice | 06/12/09 | 74 FR 28046 |
| NPRM Comment Period End | 07/20/09 | |
| Order | 07/29/09 | 74 FR 37624 |
| Public Notice | 08/07/09 | 74 FR 39699 |
| Comment Period End | 08/10/09 | |
| Order | 09/18/09 | 74 FR 47894 |
| Order | 10/26/09 | 74 FR 54913 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Thomas Chandler, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1475
Email: thomas.chandler@fcc.gov

**RIN:** 3060–AI15

## 309. RULES AND REGULATIONS IMPLEMENTING THE CONTROLLING THE ASSAULT OF NON–SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003 (CG DOCKET NO. 04–53)

**Legal Authority:** 15 USC 7706; 15 USC 7712; PL 108–187

**Abstract:** The Commission has adopted rules to protect consumers from unwanted electronic mobile service messages to implement the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/31/04 | 69 FR 16873 |
| NPRM Comment Period End | 05/17/04 | |
| Order | 09/16/04 | 69 FR 55765 |
| Order | 03/25/05 | 70 FR 34665 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Julie Saulnier, Deputy Chief, Consumer Policy Div., Federal Communications Commission, Consumer and Government Affairs Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1598
Email: julie.saulnier@fcc.gov

**RIN:** 3060–AI20

### 310. RULES AND REGULATIONS IMPLEMENTING MINIMUM CUSTOMER ACCOUNT RECORD EXCHANGE (CARE) OBLIGATIONS ON ALL LOCAL AND INTEREXCHANGE CARRIERS (CG DOCKET NO. 02–386)

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 201 and 202; 47 USC 303(r)

**Abstract:** On December 20, 2002, the Commission issued a Public Notice directing interested parties to file comments on issues raised in a petition filed with the Commission by Americatel Corporation and on a separate petition filed by AT&T, Sprint, and MCI. The petitions asked the Commission to address problems relating to the exchange of customer account records between local and long distance telephone service providers. On March 25, 2004, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No. 02-386 seeking further comment on the two petitions and seeking comment as to whether to replace the current voluntary industry process for the exchange of customer account information between local and long distance service providers with mandatory, minimum standards applicable to all such providers.

On February 25, 2005, the Commission released a Report and Order and Further Notice of Proposed Rulemaking in CG Docket No. 02-386. The Report and Order adopted final rules governing the exchange of customer account information between local and long distance telephone service providers. The Commission adopted these rules to help to ensure that consumers' phone service bills are accurate and that their carrier selection requests are honored and executed without undue delay. In the Further Notice of Proposed Rulemaking (FNPRM), the Commission sought comment on the need for rules governing the exchange of customer account information between local telephone service providers.

On April 15, 2005, and June 15, 2005, a coalition of local and long distance carriers proposed minor modifications and clarifications to section 64.4002 of the Commission's CARE rules. On August 29, 2005, the Commission released a public notice requesting comment on the coalition's proposed clarifications and modifications. Notice of the proposed changes was published in the Federal Register on September 7, 2005 (70 FR 53137). The comment cycle established by the August 29 public notice closed October 3, 2005.

On September 13, 2006, the Commission released an Order on Reconsideration adopting the clarifications and technical corrections to the Report and Order, as proposed by the coalition of carriers.

On December 21, 2007, the Commission released a Report and Order declining to adopt mandatory data exchange requirements between local exchange carriers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/19/04 | 69 FR 20845 |
| NPRM Comment Period End | 06/18/04 | |
| R&O and FNPRM | 06/02/05 | 70 FR 32258 |
| FNPRM Comment Period End | 08/01/05 | |
| Public Notice | 08/29/05 | 70 FR 53137—01 |
| Public Notice Comment Period End | 10/03/05 | |
| Order on Recon | 12/13/06 | 71 FR 74819 |
| R&O | 01/08/08 | 73 FR 1297 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lisa Boehley, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7395
Fax: 202 418–0236
Email: lisa.boehley@fcc.gov

**RIN:** 3060–AI58

### 311. CONSUMER INFORMATION AND DISCLOSURE AND TRUTH IN BILLING AND BILLING FORMAT

**Legal Authority:** 47 USC 201; 47 USC 258

**Abstract:** In 1999, the Commission adopted truth-in-billing rules to address concerns that there is consumer confusion relating to billing for telecommunications services. On March 18, 2005, the Commission released an Order and FNPRM to further facilitate the ability of telephone consumers to make informed choices among competitive service offerings.

On August 28, 2009, the Commission released a Notice of Inquiry which asks questions about information available to consumers at all stages of the purchasing process for all communications services, including (1) choosing a provider; (2) choosing a service plan; (3) managing the service plan; and (4) deciding whether and when to switch an existing provider or plan.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| FNPRM | 05/25/05 | 70 FR 30044 |
| FNPRM Comment Period End | 06/24/05 | |
| R&O | 05/25/05 | 70 FR 29979 |
| NOI | 08/28/09 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Richard D. Smith, Special Counsel, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 717 338–2797
Fax: 717 338–2574
Email: richard.smith@fcc.gov

**RIN:** 3060–AI61

### 312. CLOSED CAPTIONING OF VIDEO PROGRAMMING (SECTION 610 REVIEW)

**Legal Authority:** 47 USC 613

**Abstract:** The Commission's closed captioning rules are designed to make video programming more accessible to deaf and hard of hearing Americans. This proceeding resolves some issues regarding the Commission's closed captioning rules that were raised for comment in 2005, and also seeks comment on how a certain exemption from the closed captioning rules should be applied to digital multicast broadcast channels.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/03/97 | 62 FR 4959 |
| NPRM Comment Period End | 02/28/97 | |
| R&O | 09/16/97 | 62 FR 48487 |
| NPRM | 09/26/05 | 70 FR 56150 |
| NPRM Comment Period End | 11/20/05 | |
| Comment Period Extended | 11/25/05 | 70 FR 71077 |
| Comment Period End | 12/16/05 | |
| Order on Recon | 10/28/98 | 63 FR 55959 |
| Order and Declaratory Ruling | 01/13/09 | 74 FR 1594 |

## FCC—Consumer and Governmental Affairs Bureau — Long-Term Actions

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/13/09 | 74 FR 1654 |
| NPRM Comment Period End | 02/12/09 | |
| Comment Period End | 02/27/09 | |
| Final Rule | 02/19/10 | 75 FR 7370 |
| Order | 02/19/10 | 75 FR 7368 |
| Order Suspending Effective Date | 02/19/10 | 75 FR 7369 |

Next Action Undetermined

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Amelia L. Brown, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2799
TDD Phone: 202 418–7804
Fax: 202 418–0037
Email: amelia.brown@fcc.gov

**RIN:** 3060–AI72

## Federal Communications Commission (FCC) — Long-Term Actions
## Office of Engineering and Technology

### 313. REVISION OF THE RULES REGARDING ULTRA–WIDEBAND TRANSMISSION

**Legal Authority:** 47 USC 154; 47 USC 302 to 304; 47 USC 307; 47 USC 544A

**Abstract:** The First Report and Order amends the Commission's rules to permit the marketing and operation of certain types of new products incorporating Ultra-Wideband (UWB) technology. UWB devices operate by employing very narrow or short duration pulses that result in very large or wideband transmission bandwidths. UWB technology holds great promise for a vast array of new applications that we believe will provide significant benefits for public safety, businesses and consumers. With appropriate technical standards, UWB devices can operate using spectrum occupied by existing radio services without causing interference, thereby permitting scarce spectrum resources to be used more efficiently.

The Memorandum Opinion and Order responded to fourteen petitions for reconsideration that were filed in response to the regulations for unlicensed ultra-wideband (UWB) operations. In general, this document does not make any significant changes to the existing UWB parameters as the Commission is reluctant to do so until it has more experience with UWB devices. The Commission believes that any major changes to the rules for existing UWB product categories at this early stage would be disruptive to current industry product development efforts.

The Further Notice of Proposed Rulemaking proposed new rules to address issues raised by some of the petitions for reconsideration that were outside the scope of the proceeding. New rules were proposed to address issues regarding the operation of low pulse repetition frequency UWB systems, including vehicular radars, in the 3.1-10.6 GHz band; and the operation frequency hopping vehicular radars in the 22-29 GHz band as UWB devices. The Commission also proposed new rules that would establish new peak power limits for wideband part 15 devices that do no operate as UWB devices and proposed to eliminate the definition of a UWB device.

The Second Report and Order and Second Memorandum Opinion and Order responds to two petitions for reconsideration that were filed in response to the Commission's decision to establish regulations for unlicensed UWB operation. It also responds to the rulemaking proposals contained in the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in this docket. The order establishes new rules for wideband unlicensed devices operating in the 5925-7250 MHz, 16.2-17.7 GHz, and 22.12-29 GHz bands.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/14/00 | 65 FR 37332 |
| NPRM Comment Period End | 10/12/00 | |
| First R&O | 05/16/02 | 67 FR 34852 |
| MO&O | 04/22/03 | 68 FR 19746 |
| FNPRM | 04/22/03 | 68 FR 19773 |
| Second R&O and Second MO&O | 02/09/05 | 70 FR 6771 |

Next Action Undetermined

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John Reed, Electronics Engineer, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2455
Fax: 202 418–1944
Email: jreed@fcc.gov

**RIN:** 3060–AH47

### 314. NEW ADVANCED WIRELESS SERVICES (ET DOCKET NO. 00–258)

**Legal Authority:** 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

**Abstract:** This proceeding explores the possible uses of frequency bands below 3 GHz to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Third Notice of Proposed Rulemaking discusses the frequency bands that are still under consideration in this proceeding and invites additional comments on their disposition. Specifically, it addresses the Unlicensed Personal Communications Service (UPCS) band at 1910-1930 MHz, the Multipoint Distribution Service (MDS) spectrum at 2155-2160/62 MHz bands, the Emerging Technology spectrum, at 2160-2165 MHz, and the bands reallocated from MSS 91990-2000 MHz, 2020-2025 MHz, and 2165-2180 MHz. We seek comment on these bands with respect to using them for paired or unpaired Advance Wireless Service (AWS) operations or as relocation spectrum for existing services.

The 7th Report and Order facilitates the introduction of Advanced Wireless Service (AWS) in the band 1710-1755 MHz—an integral part of a 90 MHz spectrum allocation recently reallocated to allow for such new and innovative wireless services. We largely adopt the proposals set forth in our recent AWS Fourth NPRM in this proceeding that

are designed to clear the 1710-1755 MHz band of incumbent Federal Government operations that would otherwise impede the development of new nationwide AWS services. These actions are consistent with previous actions in this proceeding and with the United States Department of Commerce, National Telecommunications and Information Administration (NTIA) 2002 Viability Assessment, which addressed relocation and reaccommodation options for Federal Government operations in the band.

The 8th Report and Order reallocated the 2155-2160 MHz band for Fixed and Mobile services and designates the 2155-2175 MHz band for Advanced Wireless Service (AWS) use. This proceeding continues the Commission's ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including Advanced Wireless Services.

The Order requires Broadband Radio Service (BRS) licensees in the 2150-2160/62 MHz band to provide information on the construction status and operational parameters of each incumbent BRS system that would be the subject of relocation.

The Notice of Proposed Rule Making requested comments on the specific relocation procedures applicable to Broadband Radio Service (BRS) operations in the 2150-2160/62 MHz band, which the Commission recently decided will be relocated to the newly restructured 2495-2690 MHz band. The Commission also requested comments on the specific relocation procedures applicable to Fixed Microwave Service (FS) operations in the 2160-2175 MHz band.

The Office of Engineering and Technology (OET) and the Wireless Telecommunications Bureau (WTB) set forth the specific data that Broadband Radio Service (BRS) licensees in the 2150-2160/62 MHz band must file along with the deadline date and procedures for filing this data on the Commission's Universal Licensing System (ULS). The data will assist in determining future AWS licensee's relocation obligations.

The 9th Report and Order established procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150-2160/62 MHz band, as well as for the relocation of Fixed Microwave Service (FS) operations from the 2160-2175 MHz band, and modified existing relocation procedures for the 2110-2150 MHz and 2175-2180 MHz bands. It also established cost-sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS operations in the 2110-2150 MHz and 2160-2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150-2160/62 MHz band. The Commission continues its ongoing efforts to promote spectrum utilization and efficiency with regard to the provision of new services, including AWS. The Order dismisses a petition for reconsideration filed by the Wireless Communications Association International, Inc. (WCA) as moot.

Two petitions for Reconsideration were filed in response to the 9th Report and Order.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/23/01 | 66 FR 7438 |
| NPRM Comment Period End | 03/09/01 | |
| Final Report | 04/11/01 | 66 FR 18740 |
| FNPRM | 09/13/01 | 66 FR 47618 |
| MO&O | 09/13/01 | 66 FR 47591 |
| First R&O | 10/25/01 | 66 FR 53973 |
| Petition for Recon | 11/02/01 | 66 FR 55666 |
| Second R&O | 01/24/03 | 68 FR 3455 |
| Third NPRM | 03/13/03 | 68 FR 12015 |
| Seventh R&O | 12/29/04 | 69 FR 7793 |
| Petition for Recon | 04/13/05 | 70 FR 19469 |
| Eighth R&O | 10/26/05 | 70 FR 61742 |
| Order | 10/26/05 | 70 FR 61742 |
| NPRM | 10/26/05 | 70 FR 61752 |
| Public Notice | 12/14/05 | 70 FR 74011 |
| Ninth R&O and Order | 05/24/06 | 71 FR 29818 |
| Petition for Recon | 07/19/06 | 71 FR 41022 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rodney Small, Economist, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2452
Fax: 202 418–1944
Email: rodney.small@fcc.gov

**RIN:** 3060–AH65

## 315. EXPOSURE TO RADIOFREQUENCY ELECTROMAGNETIC FIELDS

**Legal Authority:** 47 USC 151; 47 USC 302 and 303; 47 USC 309(j); 47 USC 336

**Abstract:** The Notice of Proposed Rulemaking (NPRM) proposed amendments to the FCC rules relating to compliance of transmitters and facilities with guidelines for human exposure to radio frequency (RF) energy.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/08/03 | 68 FR 52879 |
| NPRM Comment Period End | 12/08/03 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ira Keltz, Electronics Engineer, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0616
Fax: 202 418–1944
Email: ikeltz@fcc.gov

**RIN:** 3060–AI17

## 316. UNLICENSED OPERATION IN THE TV BROADCAST BANDS (ET DOCKET NO. 04–186)

**Legal Authority:** 47 USC 154(i); 47 USC 302; 47 USC 303(e) and 303(f); 47 USC 303(r); 47 USC 307

**Abstract:** The Commission adopted rules to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services (this unused TV spectrum is often termed ''white spaces''). This action will make a significant amount of spectrum available for new and innovative products and services, including broadband data and other services for businesses and consumers. The actions taken are a conservative first step that includes many safeguards to prevent harmful interference to incumbent communications services. Moreover, the Commission will closely oversee the development and introduction of these devices to the market and will take whatever actions may be necessary to avoid, and if necessary correct, any interference that may occur.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/18/04 | 69 FR 34103 |
| First R&O | 11/17/06 | 71 FR 66876 |
| FNPRM | 11/17/06 | 71 FR 66897 |
| R&O and MO&O | 02/17/09 | 74 FR 7314 |
| Petitions for Reconsideration | 04/13/09 | 74 FR 16870 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7506
Fax: 202 418–1944
Email: hugh.vantuyl@fcc.gov

**RIN:** 3060–AI52

## 317. UNLICENSED DEVICES AND EQUIPMENT APPROVAL (ET DOCKET NO. 03–201)

**Legal Authority:** 47 USC 154; 47 USC 302(a); 47 USC 303; 47 USC 306

**Abstract:** The Notice of Proposed Rulemaking (NPRM) proposed to update section 15.247 of the rules to allow the use of more efficient antenna technologies with unlicensed devices.

The Report and Order updates several technical rules for unlicensed radiofrequency devices in part 15 of the Commission's rules. The rule changes will allow device manufacturers to develop expanded applications for unlicensed devices and will allow unlicensed device operators, including Wireless Internet Service providers greater flexibility to modify or substitute parts as long as the overall system operation is unchanged. The changes are part of an ongoing process of updating our rules to promote more efficient sharing of spectrum used by unlicensed devices and remove unnecessary regulations that inhibit such sharing. The Commission received one petition for reconsideration in this proceeding.

The Second Report and Order amended the Commission's rules to provide for more efficient equipment authorization of both existing modular transmitter devices and emerging partitioned (or ''split'') modular transmitter devices. These rule changes will benefit manufacturers by allowing greater flexibility in certifying equipment and providing relief from the need to obtain a new equipment authorization each time the same transmitter is installed in a different final product. The rule changes will also enable manufacturers to develop more flexible and more advanced unlicensed transmitter technologies. The Commission further found that modular transmitter devices authorized in accordance with the revised equipment authorization procedures will not pose any increased risk of interference to other radio operations.

The Further NPRM, seeks comment on whether there is a need to require unlicensed transmitters operating in the 915 MHz band under sections 15.247 and 15.249 of the rules to comply with a spectrum etiquette requirement, and the impact that requiring an etiquette would have on the development and operation of unlicensed 915 MHz devices operating under those rule sections. The Commission also seeks comment on the particular etiquette suggested by Cellnet that would require digitally modulated spread spectrum transmitters operating in the 915 MHz band under section 15.247 of the rules to operate at less than the 1-watt maximum power if they are continuously silent less than 90 percent of the time within a 0.4 second interval. This etiquette would require that the maximum permitted power level decrease in accordance with a specified formula as the silent interval between transmission decreases. The Commission further seeks comment on alternatives to the etiquette suggested by Cellnet.

The Memorandum Opinion and Order dismissed two petitions for reconsideration of the rules adopted in the Report and Order, 69 FR 54027, September 7, 2004, in this proceeding. It dismissed a petition for reconsideration filed by Warren C. Havens and Telesaurus Holdings GB LLC (Havens) requesting that the Commission suspend the rule changes adopted for unlicensed devices in the 902-928 MHz (915 MHz) band until such time as it completes a formal inquiry with regard to the potential effect of such changes to Location and Monitoring Service (LMS) licensees in the band. The Commission also dismissed a petition for reconsideration filed by Cellnet Technology (Cellnet) requesting that the Commission adopt spectrum sharing requirements in the unlicensed bands, for example, a ''spectrum etiquette,'' particularly in the 915 MHz band.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/17/03 | 68 FR 68823 |
| NPRM Comment Period End | 01/09/04 | |
| R&O | 09/07/04 | 69 FR 54027 |
| Petition for Recon | 11/19/04 | 69 FR 67736 |
| Petition for Recon | 02/15/05 | 70 FR 7737 |
| Second R&O | 05/23/07 | 72 FR 28889 |
| FNPRM | 08/01/07 | 72 FR 42011 |
| FNPRM Comment Period End | 10/15/07 | |
| MO&O | 08/01/07 | 72 FR 41937 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7506
Fax: 202 418–1944
Email: hugh.vantuyl@fcc.gov

**RIN:** 3060–AI54

## Federal Communications Commission (FCC) — Completed Actions

## Office of Engineering and Technology

### 318. TRANSFER OF THE 3650 THROUGH 3700 MHZ BAND FROM FEDERAL GOVERNMENT USE (WT DOCKET NO. 05–96; ET DOCKET NO. 02–380)

**Legal Authority:** 47 USC 154; 47 USC 157; 47 USC 303; 47 USC 307; 47 USC 332

**Abstract:** This proceeding seeks to determine whether the 3650 to 3700 MHz band should be used for unlicensed devices or some or all of the band should be used for unlicensed options.

In January 1999, the 3650-3700 MHz band (3650 MHz band) was transferred from Government/non-Government shared use to a mixed-use band. In October 2000, in ET Docket No. 98-237, the FCC allocated the band to fixed and mobile terrestrial services on a co-primary basis, but in order to protect grandfathered Fixed Satellite Service (FSS) earth stations and Federal Government radiolocation operations, limited the mobile allocation to base stations use only. At this same time, the FCC proposed licensing and service rules for fixed and mobile operations in the band. Subsequently, in December 2002, in ET Docket No. 02-380, the FCC sought comment, in part, on the possibility of allowing unlicensed devices to operate in the 3650 MHz band. In April 2004, in ET Docket No. 04-151, the FCC followed-up on this inquiry by releasing a Notice of Proposed Rulemaking (NPRM) seeking comment on whether the 3650 MHz band should be used for unlicensed devices or part or all of the band should be used for licensed operations.

The NPRM proposes to allow unlicensed devices to operate in all, or part, of the 3650 MHz band at higher power levels than usually permitted for unlicensed services. These devices would be subject to smart (or cognitive) requirements and other safeguards designed to prevent interference to the licensed FSS earth stations now resident in the band. As with other unlicensed devices, these devices would not be permitted to cause interference to licensed services, such as the FSS earth stations, and would have to accept interference. The NPRM also seeks comment on other options for the band, including licensed use of the band by fixed and mobile services, or segmenting the 3650 MHz band to provide for a combination of unlicensed and licensed terrestrial services. The Notice seeks comment on issues related both to allocation changes necessary to set the relative priority between terrestrial and FSS licensed operations, and to licensing rule changes necessary to implement licensed terrestrial service operations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/16/00 | 65 FR 14230 |
| First R&O and Second NPRM | 11/17/00 | 65 FR 69612 |
| Petition for Recon | 03/28/01 | 66 FR 16940 |
| R&O | 02/27/02 | 67 FR 17038 |
| MO&O and Third R&O | 05/02/03 | 68 FR 38635 |
| Notice of Inquiry | 01/21/03 | 68 FR 2730 |
| NPRM | 05/14/04 | 69 FR 26790 |
| Final Rule | 05/11/05 | 70 FR 24712 |
| Final Rule | 07/20/05 | 70 FR 41631 |
| MO&O | 07/25/07 | 72 FR 40767 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeffrey Dygert, Electronics Engineer, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7300
Email: jeffrey.dygert@fcc.gov

**RIN:** 3060–AH75

### 319. UNLICENSED OPERATION OF THE 3650–3700 BAND (ET DOCKET NO. 04–151)

**Legal Authority:** 47 USC 154

**Abstract:** The notice of proposed rulemaking proposed to maximize the efficient use of the 3650-3700 MHz band. The proposal would allow unlicensed devices to operate in either all, or portions of, this radiofrequency (RF) band under flexible technical limitations with smart/cognitive features that should prevent interference to licensed satellite services. The proposal fostered the introduction of new and advanced services to the American public, especially in rural areas.

The Report and Order adopted rules that provide for nationwide, non-exclusive, licensing of terrestrial operations, utilizing technology with a contention-base protocol, in the 3650-3700 MHz band. The Commission also adopted a streamlined licensing mechanism with minimal regulatory entry requirements that will encourage multiple entrants and stimulate the rapid expansion of wireless broadband services—-especially in rural American and will also serve as a safeguard to protect incumbent satellite earth stations from harmful interference.

In the Memorandum Opinion and Order, the Commission addressed several petitions for reconsideration and an emergency motion for stay that were filed in response 3650 MHz Allocation Order in ET Docket No. 98-237.

In light of its full review of the refreshed record in this proceeding, and in light of the decisions made in the companion Report and Order, the Commission denied the aspects of the petitions that challenge and seek to reverse the allocation decisions made in the 3650 MHz Allocation Order.

The Commission denied the motion for stay. When the Commission established the November 30, 2000, filing deadline, it did so because it found that additional new FSS facilities permitted by the Freeze Memorandum Opinion and Order could affect the use of the 3650-3700 MHz band by the terrestrial services. By deciding in this Order to maintain the FSS allocation changes made in the 3650 MHz Allocation Order, the Commission, reaffirmed its conclusion that allowing additional primary FSS earth stations in the 3650 MHz band could negatively affect the prospects for viable FS/MS terrestrial operations.

The Memorandum Opinion and Order addressed petitions for reconsideration filed in response to the Commission's Report and Order relating to the 3650-3700 MHz band (3650 MHz band) proceeding. The Commission affirmed its previous decisions to create a spectrum environment that will encourage multiple entrants and stimulate the expansion of broadband service to rural and under served areas. To facilitate rapid deployment in the band, the Commission maintains the previously adopted, non-exclusive licensing scheme. The clarification and modification will facilitate operation of the widest variety of broadband technologies with minimal risk of interference in both the near and long terms. They should further reduce the potential for co-channel interference, provide additional protections to the multiple users in the band under the current licensing regime, and create incentives for the rapid development of broadly compatible contention technologies.

## FCC—Office of Engineering and Technology — Completed Actions

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/14/04 | 69 FR 26790 |
| NPRM Comment Period End | 07/28/04 | |
| R&O & MO&O | 05/11/05 | 70 FR 24712 |
| MO&O | 07/25/07 | 72 FR 40767 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeffrey Dygert, Electronics Engineer, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7300
Email: jeffrey.dygert@fcc.gov

**RIN:** 3060–AI50

## Federal Communications Commission (FCC) International Bureau — Long-Term Actions

### 320. STREAMLINING THE COMMISSION'S RULES AND REGULATIONS FOR SATELLITE APPLICATION AND LICENSING PROCEDURES (IB DOCKET NO. 95–117)

**Legal Authority:** 47 USC 4; 47 USC 154; 47 USC 303; 47 USC 554; 47 USC 701 to 744

**Abstract:** On February 10, 1997, the FCC adopted rules and policies that streamlined the application and licensing requirements of part 25 of its rules, which deals with communication satellites and earth stations. The streamlined rules waived the construction permit requirement for satellite space stations, changed the license term for temporary fixed earth stations; and adjusted or changed the rules concerning minor modifications and basic requirements for satellite service applications. The streamlined rules also resulted in the creation of a new application form, FCC Form 312. Form 312 eliminated from the International Bureau's use of the FCC Form 493, FCC Form 430, FCC Form 702, and FCC Form 704. Petitions for Reconsideration were filed in this matter. In March 1997, the Commission released a Public Notice concerning these petitions. The Commission addressed the issues in the Petitions for Reconsideration in an Order released on October 10, 2008. The docket in this proceeding is now closed.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/09/95 | 60 FR 46252 |
| R&O, Recon Pending | 02/10/97 | 62 FR 5924 |
| Public Notice/Petitions for Recon | 03/26/97 | 62 FR 14430 |
| Order on Reconsideration | 11/29/08 | 73 FR 70897 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Steven Spaeth, Assistant Division Chief, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1539
Fax: 202 418–0748
Email: steven.spaeth@fcc.gov

**RIN:** 3060–AD70

### 321. ESTABLISHMENT OF RULES AND POLICIES FOR THE DIGITAL AUDIO RADIO SATELLITE SERVICE IN THE 2310–2360 MHZ FREQUENCY BAND (IB DOCKET NO. 95–91; GEN DOCKET NO. 90–357)

**Legal Authority:** 47 USC 151; 47 USC 151(i); 47 USC 154(j); 47 USC 157; 47 USC 309(j)

**Abstract:** The Commission is proposing rules to govern satellite digital audio radio services (SDARS). The Commission adopted service rules for SDARS in 1997 and sought further comment on proposed rules governing the use of complementary terrestrial repeaters. The Commission released a second further notice of proposed rulemaking in January 2008 to consider new proposals for rules governing terrestrial repeaters and operations of Wireless Communications Service (WCS) devices in the 2305—2360 MHz band.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/15/95 | 60 FR 35166 |
| R&O | 03/11/97 | 62 FR 11083 |
| FNPRM | 04/18/97 | 62 FR 19095 |
| Second FNPRM | 01/15/08 | 73 FR 2437 |
| FNPRM Comment Period End | 03/17/08 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jay Whaley, Attorney, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7184
Fax: 202 418–0748
Email: jwhaley@fcc.gov

**RIN:** 3060–AF93

### 322. ALLOCATE & DESIGNATE: SPEC FOR FIXED–SAT SRV (37.5–38.5, 40.5–41.5 & 48.2–50.2 GHZ BANDS); ALLOCATE: FIXED & MOBILE 40.5–42.5 GHZ; WIRELESS 46.9–47 GHZ; GOV OPER 37–38 & 40–40.5 GHZ (IB DOCKET NO. 97)

**Legal Authority:** 47 USC 154(i); 47 USC 301 and 302; 47 USC 303(e) to 303(g); 47 USC 303(r); 47 USC 304; 47 USC 307

**Abstract:** This item adopts a plan for nongovernment operations in the 36.0-51.4 GHz portion of the V-band, establishing priorities for different services in different parts of this band.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/04/97 | 62 FR 16129 |
| R&O | 01/15/99 | 64 FR 2585 |
| Correction | 02/08/99 | 64 FR 6138 |
| Correction | 02/10/99 | 64 FR 6565 |
| Notice of Petition for Recon | 03/22/99 | 64 FR 13796 |
| Order on Recon | 12/01/99 | |
| FNPRM | 07/05/01 | 66 FR 35399 |
| Second R&O | 08/25/04 | 69 FR 52198 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Sean O'More, Attorney Advisor, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2453
Email: sean.omore@fcc.gov

**RIN:** 3060–AH23

### 323. STREAMLINING EARTH STATION LICENSING RULES (IB DOCKET NO. 00–248)

**Legal Authority:** 47 USC 701 to 744

**Abstract:** The Commission has found several cases in which modifying or eliminating rules could facilitate licensing of earth stations, thereby expediting the provision of useful satellite services to the public, without unreasonably increasing the risk of harmful interference to existing earth station or space station operators, or terrestrial wireless operators in shared frequency bands.

Specifically, this Notice of Proposed Rulemaking (NPRM) considers the following rule revisions: (1) Codifying streamlined procedures for case-by-case examination of earth stations using ''non-routine'' antennas, non-routine power levels, or both; (2) relaxing some current requirements, such as increasing power and power density limits, and allowing some temporary fixed earth stations to begin operation sooner than is now permitted; (3) streamlining the very small aperture terminal (VSAT) rules, and revising the Commission's power level rules to provide for various types of VSAT multiple access methods; (4) adopting a simplified license application form for ''routine'' earth stations; and (5) other miscellaneous rule revisions. The Commission also invites comment on extending these proposed rules to the KA-band.

On September 26, 2002, the Commission adopted a Further Notice of Proposed Rulemaking in this proceeding. This Further NPRM invited comment on refinements to the proposals in the NPRM to relax some earth station technical requirements, and on an alternative to the VSAT proposals in the NPRM. The Further NPRM also seeks comment on proposals made by commenters in response to the First NPRM.

In the First Report and Order in this proceeding, the Commission extended the license term for earth station licenses from 10 to 15 years.

In the Second Report and Order in this proceeding, the Commission adopted rules allowing unlicensed receive-only earth stations to receive transmissions from non-U.S.-licensed satellites on the Permitted List.

In the Third Report and Order in this proceeding, the Commission adopted a streamlined application form for certain earth station licenses, and adopted a mandatory electronic filing requirement for those earth station applications.

In the Fourth Report and Order in this proceeding, the Commission extended the mandatory electronic filing requirement to all earth station applications.

In the Fifth Report and Order in this proceeding, the Commission adopted the following proposals from the NPRM: (1) Codifying streamlined procedures for non-routine antennas; (2) relaxing power and power density limits, and allowing routine KU-band temporary fixed earth stations to begin operations sooner; (3) revising certain VSAT rules; and (4) other miscellaneous rule revisions. One petition for reconsideration was filed in response to this Order on July 5, 2005.

In the Sixth Report and Order in this proceeding, the Commission adopted revisions to the earth station antenna gain pattern requirements, as proposed in the Further Notice. Two petitions for reconsideration were filed in response to this Order on July 8, 2005.

In the Third Further Notice of Proposed Rulemaking, the Commission invited comment on adopting off-axis EIRP envelops for C-band and KU-band FSS earth stations.

In the Seventh Report and Order in this proceeding, the Commission considered and rejected its proposal in the NPRM to make revisions to part 23 of its rules.

In the Eighth Report and Order in this proceeding, the Commission adopted the proposals in the Third FNPRM, in large part. This proceeding is now closed.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/08/01 | 66 FR 1283 |
| First R&O | 03/19/02 | 67 FR 12485 |
| FNPRM | 12/24/02 | 67 FR 78399 |
| Second R&O (Release Date) | 06/20/03 | 68 FR 2247 |
| Second FNPRM | 09/12/03 | 68 FR 53702 |
| Third R&O | 11/12/03 | 68 FR 63994 |
| Fourth R&O | 08/06/04 | 69 FR 47790 |
| Fifth R&O | 06/02/05 | 70 FR 32249 |
| Sixth R&O | 06/08/05 | 70 FR 33373 |
| Third FNPRM | 06/08/05 | 70 FR 33426 |
| Seventh R&O | 09/28/05 | 70 FR 56580 |
| Public Notice/Petition for Recon | 10/26/05 | 70 FR 61825 |
| Eighth R&O | 11/24/08 | 73 FR 70897 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Steven Spaeth, Assistant Division Chief, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1539
Fax: 202 418–0748
Email: steven.spaeth@fcc.gov

**RIN:** 3060–AH60

### 324. SPACE STATION LICENSING REFORM (IB DOCKET NO. 02–34)

**Legal Authority:** 47 USC 154(i); 47 USC 157; 47 USC 303(c); 47 USC 303(g); . . .

**Abstract:** The Commission has adopted a Notice of Proposed Rulemaking (NPRM) to streamline its procedures for reviewing satellite license applications. Currently, the Commission uses processing rounds to review those applications. In a processing round, when an application is filed, the International Bureau (Bureau) issues a public notice establishing a cut-off date for other mutually exclusive satellite applications, and then considers all those applications together. In cases where sufficient spectrum to accommodate all the applicants is not available, the Bureau directs the applicants to negotiate a mutually agreeable solution. Those negotiations usually take a long time, and delay provision of satellite services to the public.

The NPRM invites comment on two alternatives for expediting the satellite application process. One alternative is to replace the processing round procedure with a ''first-come, first-served'' procedure that would allow the Bureau to issue a satellite license to the first party filing a complete, acceptable application. The other alternative is to streamline the processing round procedure by adopting one or more of the following proposals: (1) Placing a time limit on negotiations; (2) establishing criteria to select among competing applicants; (3) dividing the available spectrum evenly among the applicants.

In the First Report and Order in this proceeding, the Commission determined that different procedures were better-suited for different kinds of satellite applications. For most geostationary orbit (GSO) satellite applications, the Commission adopted a first-come, first-served approach. For

most non-geostationary orbit (NGSO) satellite applications, the Commission adopted a procedure in which the available spectrum is divided evenly among the qualified applicants. The Commission also adopted measures to discourage applicants from filing speculative applications, including a bond requirement, payable if a licensee misses a milestone. The bond amounts originally were $5 million for each GSO satellite, and $7.5 million for each NGSO satellite system. These were interim amounts. Concurrently with the First Report and Order, the Commission adopted an FNPRM to determine whether to revise the bond amounts on a long-term basis.

In the Second Report and Order, the Commission adopted a streamlined procedure for certain kinds of satellite license modification requests.

In the Third Report and Order in this proceeding, the Commission adopted a standardized application form for satellite licenses, and adopted a mandatory electronic filing requirement for certain satellite applications.

In the Fourth Report and Order in this proceeding, the Commission extended the mandatory electronic filing requirement to all satellite applications.

In the Fifth Report and Order in this proceeding, the Commission revised the bond amounts based on the record developed in response to FNPRM. The bond amounts are now $3 million for each GSO satellite, and $5 million for each NGSO satellite system.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/19/02 | 67 FR 12498 |
| NPRM Comment Period End | 07/02/02 | |
| Second R&O (Release Date) | 06/20/03 | 68 FR 62247 |
| Second FNPRM (Release Date) | 07/08/03 | 68 FR 53702 |
| Third R&O (Release Date) | 07/08/03 | 68 FR 63994 |
| FNPRM | 08/27/03 | 68 FR 51546 |
| First R&O | 08/27/03 | 68 FR 51499 |
| FNPRM Comment Period End | 10/27/03 | |
| Fourth R&O (Release Date) | 04/16/04 | 69 FR 67790 |
| Fifth R&O, First Order on Recon (Release Date) | 07/06/04 | 69 FR 51586 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Steven Spaeth, Assistant Division Chief, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1539
Fax: 202 418–0748
Email: steven.spaeth@fcc.gov

**RIN:** 3060–AH98

## 325. MITIGATION OF ORBITAL DEBRIS (IB DOCKET NO. 02–54)

**Legal Authority:** 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f) and 303(g); 47 USC 303(r)

**Abstract:** The Commission has adopted rules that require all entities seeking FCC authorization for satellite services to address orbital debris mitigation as part of their application for FCC authorization. Orbital debris consists of artificial objects orbiting the Earth that are not functional spacecraft. In addition, the Commission established requirements for the removal of geostationary spacecraft from operational orbits at the end of their useful lives and amended the Commission's rules regarding orbit-raising maneuvers, the use of inclined orbits, and orbital longitudinal tolerance station-keeping requirements. The Commission indicated that it will seek further comment on the application of the Commission's longitudinal tolerance station-keeping requirements for Fixed-Satellite space stations to space stations in the Mobile-Satellite Service and remote sensing services.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/03/02 | 67 FR 22376 |
| NPRM Comment Period End | 08/16/02 | |
| First R&O | 08/27/03 | 68 FR 59127 |
| Second R&O | 09/09/04 | 69 FR 54581 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Stephen Duall, Attorney, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1103
Fax: 202 418–0748
Email: stephen.duall@fcc.gov

**RIN:** 3060–AI06

## 326. AMENDMENT OF THE COMMISSION'S RULES (IB DOCKET NO. 04–47)

**Legal Authority:** 47 USC 34 to 39; 47 USC 151; 47 USC 161; 47 USC 201 to 205; . . .

**Abstract:** FCC amended several rules. Specifically, FCC: (1) Amended the procedures for discontinuing an international service; (2) allowed U.S. carriers to resell the U.S.-inbound service of foreign carriers; and (3) amended the submarine cable landing licensing procedures compliance with the Coastal Zone Management Act of 1972. The North American Submarine Cable Association filed a petition for reconsideration regarding the amendment to the submarine cable licensing procedures.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/22/04 | 69 FR 13276 |
| NPRM Comment Period End | 06/07/04 | |
| R&O | 09/25/07 | 72 FR 54363 |
| Petition for Recon | 01/02/08 | 73 FR 187 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** David Krech, Attorney Advisor, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1460
Fax: 202 418–2824
Email: david.krech@fcc.gov

**RIN:** 3060–AI41

## 327. REPORTING REQUIREMENTS FOR U.S. PROVIDERS OF INTERNATIONAL TELECOMMUNICATIONS SERVICES (IB DOCKET NO. 04–112)

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 201 to 205; . . .

**Abstract:** FCC is reviewing the reporting requirements to which carriers providing U.S. international services are subject under 47 CFR part 43. FCC proposes to amend 47 CFR 43.61 and 47 CFR 43.82 and to repeal 47 CFR 43.53.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/12/04 | |

## FCC—International Bureau — Long-Term Actions

| Action | Date | FR Cite |
|---|---|---|
| NPRM Comment Period End | 08/23/04 | 69 FR 29676 |

Next Action Undetermined

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** David Krech, Attorney Advisor, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1460
Fax: 202 418–2824
Email: david.krech@fcc.gov

**RIN:** 3060–AI42

### 328. REVIEW OF THE SPECTRUM SHARING PLAN AMONG NON–GEOSTATIONARY SATELLITE ORBIT MOBILE SATELLITE SERVICE SYSTEMS IN THE 1.6/2.4 GHZ BANDS (IB DOCKET NO. 02–364)

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 302(a); 47 USC 303(e); . . .

**Abstract:** This docket involves the spectrum sharing plan for the low earth orbit satellite systems in the 1.6 GHz and 2.4 GHz bands (Big LEOs). In November 2007, the Commission resolved the 1.6 GHz spectrum sharing plan between Globalstar Inc. and Iridium Satellite LLC, whereby Globalstar will have exclusive MSS use of 7.775 megahertz of spectrum at 1610-1617.775 MHz, Iridium will have exclusive MSS use of 7.775 megahertz of spectrum at 1618.725-1626.5 MHz, and the two Big LEO operators will share 0.95 megahertz of spectrum at 1617.775-1618.725 MHz. Separately, in April 2006, the Commission affirmed the spectrum sharing plan between Globalstar and the fixed and mobile (except aeronautical mobile) services in the 2495-2500 MHz band in order to accommodate the relocation of Broadband Radio Service Channel 1 to the 2496-2502 MHz band. (Iridium does not operate in the 2.4 GHz band.)

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/29/03 | 68 FR 33666 |
| R&O | 08/09/04 | 69 FR 48157 |
| FNPRM | 08/09/04 | 69 FR 48192 |
| Petitions for Recon | 10/12/04 | 69 FR 60626 |
| First Order on Recon | 06/19/06 | 71 FR 35178 |
| Petitions for Further Recon | 07/27/06 | 71 FR 44029 |
| Second Order on Recon and Second R&O | 12/13/07 | 72 FR 70807 |

Next Action Undetermined

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Howard Griboff, Deputy Chief, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0657
Fax: 202 418–1414
Email: howard.griboff@fcc.gov

**RIN:** 3060–AI44

### 329. AMENDMENT OF THE COMMISSION'S RULES TO ALLOCATE SPECTRUM AND ADOPT SERVICE RULES AND PROCEDURES TO GOVERN THE USE OF VEHICLE–MOUNTED EARTH STATIONS (IB DOCKET NO. 07–101)

**Legal Authority:** 47 USC 151; 47 USC 154(i) and (j); 47 USC 157(a); 47 USC 301; 47 USC 303 (c); 47 USC 303 (f); 47 USC 303 (g); 47 USC 303 (r); 47 USC 303 (y); 47 USC 308

**Abstract:** The Commission seeks comment on the proposed amendment of parts 2 and 25 of the Commission's rules to allocate spectrum for use with Vehicle-Mounted Earth Stations (VMES) in the Fixed-Satellite Service in the Ku-band uplink at 14.0-14.5 GHz and Ku-band downlink 11.72-12.2 GHz on a primary basis, and in the extended Ku-band downlink at 10.95-11.2 GHz and 11.45-11.7 GHz on a non-protected basis, and to adopt Ku-band VMES licensing and service rules modeled on the FCC's rules for Ku-band Earth Stations on Vessels (ESVs). The record in this proceeding will provide a basis for Commission action to facilitate introduction of this proposed service.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/08/07 | 72 FR 39357 |
| NPRM Comment Period End | 09/04/07 | |
| R&O | 11/04/09 | 74 FR 57092 |

Next Action Undetermined

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Howard Griboff, Deputy Chief, Federal Communications Commission, International Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0657
Fax: 202 418–1414
Email: howard.griboff@fcc.gov

**RIN:** 3060–AI90

## Federal Communications Commission (FCC) Media Bureau — Long-Term Actions

### 330. CABLE TELEVISION RATE REGULATION

**Legal Authority:** 47 USC 154; 47 USC 543

**Abstract:** The Commission has adopted rate regulations to implement section 623 of the 1992 Cable Act to ensure that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment. Reconsideration was requested. The Fourteenth Order on Reconsideration addresses petitions on issues governing regulated services by cable systems. In a subsequent notice, comment was sought on recalibrating the competitive differential between rates of systems subject to effective competition and noncompetitive systems. In addition, comment was sought as to whether there may be a different approach to establish reasonable rates on the basic service tier.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/04/93 | 58 FR 48 |
| R&O and FNPRM | 05/21/93 | 58 FR 29736 |
| MO&O and FNPRM | 08/18/93 | 58 FR 43816 |
| Third R&O | 11/30/93 | 58 FR 63087 |
| Order on Recon, Fourth R&O, and Fifth NPRM | 04/15/94 | 59 FR 17943 |
| Third Order on Recon | 04/15/94 | 59 FR 17961 |
| Fifth Order on Recon and FNPRM | 10/13/94 | 59 FR 51869 |
| Fourth Order on Recon | 10/21/94 | 59 FR 53113 |

| Action | Date | FR Cite |
|---|---|---|
| Sixth Order on Recon, Fifth R&O, and Seventh NPRM | 12/06/94 | 59 FR 62614 |
| Seventh Order on Recon | 01/25/95 | 60 FR 4863 |
| Ninth Order on Recon | 02/27/95 | 60 FR 10512 |
| Eighth Order on Recon | 03/17/95 | 60 FR 14373 |
| Sixth R&O and Eleventh Order on Recon | 07/12/95 | 60 FR 35854 |
| Thirteenth Order on Recon | 10/05/95 | 60 FR 52106 |
| Twelfth Order on Recon | 10/26/95 | 60 FR 54815 |
| Tenth Order on Recon | 04/08/96 | 61 FR 15388 |
| Order on Recon of the First R&O and FNPRM | 04/15/96 | 61 FR 16447 |
| MO&O | 02/12/97 | 62 FR 6491 |
| Report on Cable Industry Prices | 02/24/97 | 62 FR 8245 |
| R&O | 03/31/97 | 62 FR 15118 |
| Fourteenth Order on Recon | 10/15/97 | 62 FR 53572 |
| NPRM and Order | 09/05/02 | 67 FR 56882 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John Norton, Deputy Division Chief, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7037
TDD Phone: 202 418–7172
Fax: 202 418–1196
Email: john.norton@fcc.gov

**RIN:** 3060–AF41

## 331. CABLE TELEVISION RATE REGULATION: COST OF SERVICE

**Legal Authority:** 47 USC 154; 47 USC 543

**Abstract:** The Commission has established rules pursuant to which cable operators may set rates for regulated cable service in accordance with traditional cost-of-service principles, as modified to take account of unique characteristics of the cable industry. In the latest NPRM, comment was sought on rule changes that may be necessary or desirable in order to account for changes in the regulatory process resulting from the end of the Commission's statutory authority to regulate certain tiers of cable programming service.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/30/93 | 58 FR 40762 |
| R&O | 04/15/94 | 59 FR 17975 |
| Second NPRM | 04/15/94 | 59 FR 18066 |
| MO&O | 10/14/94 | 59 FR 52087 |
| Second R&O/First Order on Recon/FNPRM | 03/08/96 | 61 FR 9361 |
| Correction | 03/22/96 | 61 FR 11749 |
| NPRM and Order | 09/05/02 | 67 FR 56882 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John Norton, Deputy Division Chief, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7037
TDD Phone: 202 418–7172
Fax: 202 418–1196
Email: john.norton@fcc.gov

**RIN:** 3060–AF48

## 332. CABLE HOME WIRING

**Legal Authority:** 47 USC 544(i)

**Abstract:** On October 6, 1997, the FCC adopted a Report and Order and Second Notice of Proposed Rulemaking (FCC 97-376) that amends its cable inside wiring rules to enhance competition in the video distribution marketplace. The Second FNPRM seeks comment on, among other things, whether there are circumstances where the FCC should adopt restrictions on exclusive contracts in order to further promote competition in the multiple dwelling unit marketplace. The 2nd Report and Order addresses multiple dwelling units when the occupant charges video service providers. In the First Order on Reconsideration and the Second Report and Order, the Commission modified its rules in part. The United States Court of Appeals for the District of Columbia Circuit remanded a portion of the Commission decision back to the Commission for further consideration. In September 2004, the Commission issued an FNPRM in response to the courts decision. The subsequent Report and Order and Declaratory Ruling concluded that cable wiring behind sheet rock is physically inaccessible for determining the demarcation point.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/17/92 | 57 FR 54209 |
| R&O | 03/02/93 | 58 FR 11970 |
| NPRM | 02/01/96 | 61 FR 3657 |
| First Order on Recon & FNPRM | 02/16/96 | 61 FR 6210 |
| FNPRM | 09/03/97 | 62 FR 46453 |
| R&O and Second FNPRM | 11/14/97 | 62 FR 60165 |
| First Order on Recon and Second R&O | 03/21/03 | 68 FR 13850 |
| FNPRM | 10/15/04 | 69 FR 61193 |
| R&O and Declaratory Ruling | 08/30/07 | 72 FR 50074 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John Norton, Deputy Division Chief, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7037
TDD Phone: 202 418–7172
Fax: 202 418–1196
Email: john.norton@fcc.gov

**RIN:** 3060–AG02

## 333. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES (CS DOCKET NO. 97–80)

**Legal Authority:** 47 USC 549

**Abstract:** The Commission has adopted rules to address the mandate expressed in section 629 of the Communications Act to ensure the commercial availability of ''navigation devices,'' the equipment used to access video programming and other services from multichannel video programming systems.

Specifically, in 1998, the Commission required MVPDs to make available by July 1, 2000, a security element separate from the basic navigation device (e.g., cable set-top boxes, digital video recorders, and television receivers with navigation capabilities). The separation of the security element from the host device required by this rule (referred to as the ''integration ban'') was designed to enable unaffiliated manufacturers, retailers, and other vendors to commercially market host devices while allowing MVPDs to retain control over their system security. MVPDs were permitted to continue providing equipment with integrated security until January 1, 2005, so long as modular security

components, known as point-of-deployment modules, were also made available for use with host devices obtained through retail outlets. In April 2003, in response to requests from cable operators, the Commission extended the effective date of the integration ban until July 1, 2006. Then, in 2005, again at the urging of cable operators, the Commission extended that date until July 1, 2007. Also, in this proceeding, in April 2003, the Commission adopted unidirectional ''plug and play'' rules, to govern compatibility between MVPDs and navigation devices manufactured by consumer electronics manufacturers not affiliated with cable operators. In June 2007, the Commission solicited comment on proposed standards to ensure bidirectional compatibility of cable television systems and consumer electronics equipment.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/05/97 | 62 FR 10011 |
| R&O | 07/15/98 | 63 FR 38089 |
| Order on Recon | 06/02/99 | 64 FR 29599 |
| FNPRM & Declaratory Ruling | 09/28/00 | 65 FR 58255 |
| FNPRM | 01/16/03 | 68 FR 2278 |
| Order and FNPRM | 06/17/03 | 68 FR 35818 |
| Second R&O | 11/28/03 | 68 FR 66728 |
| FNPRM | 11/28/03 | 68 FR 66776 |
| Order on Recon | 01/28/04 | 69 FR 4081 |
| Second R&O | 06/22/05 | 70 FR 36040 |
| Third FNPRM | 07/25/07 | 72 FR 40818 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Brendan Murray, Attorney Advisor, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1573
Email: brendan.murray@fcc.gov

**RIN:** 3060–AG28

## 334. CABLE HORIZONTAL AND VERTICAL OWNERSHIP LIMITS (MM DOCKET NO. 92–264)

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 533

**Abstract:** Section 613 of the Communications Act requires the Commission to ''prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest.'' On October 8, 1999, the Commission issued a Third Report and Order, FCC 99-289, in this matter. The Commission revised the horizontal ownership rules as follows: (1) All multichannel video subscribers will be counted when calculating the 30 percent ownership limit; (2) actual subscriber numbers, rather than potential subscriber numbers, will be used for calculating an owner's share; and (3) the minority exception which allowed a 35 percent ownership limit for minority-owned entities under certain circumstances was eliminated. On March 2, 2001, the District of Columbia Circuit Court reversed and remanded the cable horizontal and vertical limits, as well as two aspects of the attribution rules used to determine compliance with these limits. (Time Warner Entertainment Co. v. FCC, 240 F.3d 1126 (DC cir. 2001)). Pursuant to the court's remand, the Commission solicited comment in a Further Notice of Proposed Rulemaking (September 2001) and a Second Further Notice of Proposed Rulemaking.

In the Fourth Report and Order, the Commission set the cable horizontal ownership limit at 30 percent. In the accompanying Further Notice of Proposed Rulemaking, comment was sought on issues regarding the cable attribution rules and appropriate channel occupancy limits.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Second MO&O on Recon and FNPRM | 07/14/98 | 63 FR 37790 |
| Third R&O | 12/01/99 | 64 FR 67198 |
| Order on Recon | 03/08/00 | 65 FR 12135 |
| MO&O | 06/08/00 | 65 FR 36382 |
| FNPRM | 10/11/01 | 66 FR 51905 |
| Second FNPRM | 06/18/05 | 70 FR 33680 |
| Fourth R&O and FNPRM | 02/29/08 | 73 FR 11048 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Mania K. Baghdadi, Deputy Division Chief, Industry Analysis Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2133
Email: mania.baghdadi@fcc.gov

**RIN:** 3060–AH09

## 335. DIGITAL AUDIO BROADCASTING SYSTEMS (MM DOCKET NO. 99–325)

**Legal Authority:** 47 USC 154; 47 USC 303

**Abstract:** The rulemaking proceeding was initiated to foster the development and implementation of terrestrial digital audio broadcasting (DAB). The transition to DAB promises the benefits that have generally accompanied digitalization—better audio fidelity, more robust transmission systems, and the possibility of new auxiliary services. In the First Report and Order, the Commission selected in-band, on-channel as the technology that will permit AM and FM radio broadcasters to introduce digital operations. Consideration of formal standard-setting procedures and related broadcasting licensing and service rule changes are addressed in a Further Notice of Proposed Rulemaking. Further technical guidance is provided in a Second Report and Order.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/09/99 | 64 FR 61054 |
| First R&O | 12/23/02 | 67 FR 78193 |
| FNPRM and NOI | 05/14/04 | 69 FR 27815 |
| Second R&O | 08/15/07 | 72 FR 45712 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Peter Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2700
Email: peter.doyle@fcc.gov

**RIN:** 3060–AH40

## 336. SECOND PERIODIC REVIEW OF RULES AND POLICIES AFFECTING THE CONVERSION TO DTV

**Legal Authority:** 47 USC 4(i) and 4(j); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 336

**Abstract:** On January 18, 2001, the Commission adopted a Report and Order (R&O) and Further Notice of Proposed Rulemaking, addressing a number of issues related to the conversion of the nation's broadcast television system from analog to digital television. The Second Report and Order resolved several major technical issues including the issue of receiver performance standards, DTV tuners, and revisions to certain components of

the DTV transmission standard. A subsequent NPRM commenced the Commission's second periodic review of the progress of the digital television conversion. The resulting R.O adopted a multi-step process to create a new DTV table of allotments and authorizations. Also in the R&O, the Commission adopted replication and maximization deadlines for DTV broadcasters and updated rules in recognition revisions to broadcast transmission standards.

The Second R&O adopts disclosure requirements for televisions that do not include a digital tuner.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/23/00 | 65 FR 15600 |
| R&O | 02/13/01 | 66 FR 9973 |
| MO&O | 12/18/01 | 66 FR 65122 |
| Third MO&O and Order on Recon | 10/02/02 | 67 FR 61816 |
| Second R&O and Second MO&O | 10/11/02 | 67 FR 63290 |
| NPRM | 02/18/03 | 68 FR 7737 |
| R&O | 10/04/04 | 69 FR 59500 |
| Second R&O | 05/10/07 | 72 FR 26554 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Eloise Gore, Associate Bureau Chief, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1066
TDD Phone: 202 418–7172
Fax: 202 418–1069
Email: eloise.gore@fcc.gov

**RIN:** 3060–AH54

## 337. DIRECT BROADCAST PUBLIC INTEREST OBLIGATIONS (MM DOCKET NO. 93–25)

**Legal Authority:** 47 USC 335

**Abstract:** The Commission adopted rules in 1998 that implement section 25 of the Cable Television Consumer Protection and Competition Act of 1992, as codified at section 335 of the Communications Act of 1934. Section 335 directs the Commission to impose certain public interest obligations on direct broadcast satellite providers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/08/93 | 58 FR 12917 |
| R&O | 02/08/99 | 64 FR 52399 |
| Order on Recon | 04/22/04 | 69 FR 21761 |
| Order on Recon | 04/28/04 | 69 FR 23155 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rosalee Chiara, Staff Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0754
Email: rchiara@fcc.gov

**RIN:** 3060–AH59

## 338. REVISION OF EEO RULES AND POLICIES (MM DOCKET NO. 98–204)

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 257; 47 USC 301; 47 USC 303; 47 USC 307 to 309; 47 USC 334; 47 USC 403; 47 USC 554

**Abstract:** FCC authority to govern Equal Employment Opportunity (EEO) responsibilities of cable television operators was codified in the Cable Communications Policy Act of 1984. This authority was extended to television broadcast licensees and other multi-channel video programming distributors in the Cable and Television Consumer Protection Act of 1992. In the Second Report and Order, the FCC adopted new EEO rules and policies. This action was in response to a decision of the U.S. Court of Appeals for the District of Columbia Circuit that found prior EEO rules unconstitutional. The Third Notice of Proposed Rulemaking (NPRM) requests comment as to the applicability of the EEO rules to part-time employees. The Third Report and Order adopted revised forms for broadcast station and MVPDs Annual Employment Report. In the Fourth NPRM, comment was sought regarding public access to the data contained in the forms.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/14/02 | 67 FR 1704 |
| Second R&O and Third NPRM | 01/07/03 | 68 FR 670 |
| Correction | 01/13/03 | 68 FR 1657 |
| Fourth NPRM | 06/23/04 | 69 FR 34986 |
| Third R&O | 06/23/04 | 69 FR 34950 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lewis Pulley, Asst. Chief, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1450
Email: lewis.pulley@fcc.gov

**RIN:** 3060–AH95

## 339. BROADCAST MULTIPLE AND CROSS–OWNERSHIP LIMITS

**Legal Authority:** 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309 and 310

**Abstract:** In 2002, the Commission undertook a comprehensive review of its broadcast multiple and cross-ownership limits examining: cross-ownership of TV and radio stations; local TV ownership limits; national TV cap; and dual network rule.

The Report and Order replaced the newspaper/broadcast cross-ownership and radio and TV rules with a tiered approach based on the number of television stations in a market. Petitions for Reconsideration are pending. Also, the Third Circuit Court of Appeals remanded portions of the Commission's decisions. In June 2006, the Commission adopted a Further Notice of Proposed Rulemaking initiating the 2006 review of the broadcast ownership rules. The further notice also sought comment on how to address the issues raised by the Third Circuit. Additional questions are raised for comment in a Second Further Notice of Proposed Rulemaking.

In the Report and Order and Order on Reconsideration, the Commission adopted rule changes regarding newspaper/broadcast cross-ownership, but otherwise generally retained the other broadcast ownership rules currently in effect.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/05/01 | 66 FR 50991 |
| R&O | 08/05/03 | 68 FR 46286 |
| Public Notice | 02/19/04 | 69 FR 9216 |
| FNPRM | 08/09/06 | 71 FR 4511 |
| Second FNPRM | 08/08/07 | 72 FR 44539 |
| R&O and Order on Recon | 02/21/08 | 73 FR 9481 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Mania K. Baghdadi, Deputy Division Chief, Industry Analysis Division, Federal Communications Commission, Media

Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2133
Email: mania.baghdadi@fcc.gov

**RIN:** 3060–AH97

### 340. ESTABLISHMENT OF RULES FOR DIGITAL LOW POWER TELEVISION, TELEVISION TRANSLATOR, AND TELEVISION BOOSTER STATIONS (MB DOCKET NO. 03–185)

**Legal Authority:** 47 USC 309; 47 USC 336

**Abstract:** This proceeding initiates the digital television conversion for low power television (LPTV) and television translator stations. The rules and policies adopted as a result of this proceeding provide the framework for these stations' conversion from analog to digital broadcasting. The Report and Order adopts definitions and permissible use provisions for digital TV translator and LPTV stations. Petitions for reconsideration of the Report and Order are pending.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/26/03 | 68 FR 55566 |
| NPRM Comment Period End | 11/25/03 | |
| R&O | 11/29/04 | 69 FR 69325 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Shaun Maher, Attorney Advisor, Federal Communications Commission, Mass Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2324
Fax: 202 418–2827
Email: shaun.maher@fcc.gov

**RIN:** 3060–AI38

### 341. JOINT SALES AGREEMENTS IN LOCAL TELEVISION MARKETS (MB DOCKET NO. 04–256)

**Legal Authority:** 47 USC 151 to 152(a); 47 USC 154(i); 47 USC 303; . . .

**Abstract:** A joint sales agreement (JSA) is an agreement with a licensee of a brokered station that authorizes a broker to sell some or all of the advertising time for the brokered station in return for a fee or percentage of revenues paid to the licensee. The Commission has sought comment on whether TV JSAs should be attributed for purposes of determining compliance with the Commission's multiple ownership rules.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/26/04 | 69 FR 52464 |
| NPRM Comment Period End | 09/27/04 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Mania K. Baghdadi, Deputy Division Chief, Industry Analysis Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2133
Email: mania.baghdadi@fcc.gov

**RIN:** 3060–AI55

### 342. SIGNIFICANTLY VIEWED OUT–OF–MARKET BROADCAST STATIONS (MB DOCKET NO. 05–49)

**Legal Authority:** 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 340

**Abstract:** Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 creates section 340 of the Communications Act, which provides satellite carries with the authority to offer Commission determined ''significantly viewed'' signals of out-of-market broadcast stations to subscribers. In the NPRM, comment was sought on implementation of section 340. The resulting Report and Order adopted a list of significantly viewed stations and procedures for stations to petition the Commission for inclusion on the list.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/08/05 | 70 FR 11314 |
| NPRM Comment Period End | 04/08/05 | |
| R&O | 12/27/05 | 70 FR 76504 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Evan Baranoff, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2120
Email: evan.baranoff@fcc.gov

**RIN:** 3060–AI56

### 343. REVISION OF PROCEDURES GOVERNING AMENDMENTS TO FM TABLE OF ALLOTMENTS AND CHANGES OF COMMUNITY OF LICENSE IN THE RADIO BROADCAST SERVICES (MB DOCKET NO. 05–210)

**Legal Authority:** 47 USC 154; 47 USC 303

**Abstract:** The rulemaking was initiated to reduce backlog in, and streamline, the FM allotment procedures and, to a lesser extent, streamline certain procedures pertaining to AM applications. Although the Commission has made important changes to streamline the processing of radio broadcast applications, the basic procedures for amending the Table have not changed since 1982. The Notice seeks comment on a number of specific rule and procedural changes in the handling of FM and AM applications and rulemaking petitions to amend the Table. In the area of applications procedures, the Notice seeks comments on various proposals designed to encourage only bona fide proponents to submit petitions and to limit the complexity of such petitions. If these changes are adopted, it will expedite the approval and implementation on new and upgraded radio service to the public. The Report and Order adopted the proposals from the notice. Petitions for reconsideration are pending.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/22/05 | 70 FR 44537 |
| NPRM Comment Period End | 10/03/05 | |
| R&O | 12/20/06 | 71 FR 76208 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Tom Nessinger, Attorney Advisor, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2709
Email: thomas.nessinger@fcc.gov

**RIN:** 3060–AI63

### 344. DIGITAL TELEVISION DISTRIBUTED TRANSMISSION SYSTEM TECHNOLOGIES (MB DOCKET NO. 05–312)

**Legal Authority:** 47 USC 151; 47 USC 154(i) to (j); 47 USC 157; 47 USC 301; . . .

**Abstract:** A digital television transmission system (DTS) employs multiple synchronized transmitters spread around a station's service area. Such distributed transmitters fill in unserved areas in the parent station's coverage area. The Notice of Proposed Rulemaking (NPRM) examines issues related to the use of DTS and proposes rules for future DTS operation. The Report and Order adopts the technical and licensing rules necessary to implement DTS service.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/07/05 | 70 FR 72763 |
| NPRM Comment Period End | 02/06/06 | |
| R&O | 12/05/08 | 73 FR 74047 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Evan Baranoff, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2120
Email: evan.baranoff@fcc.gov

**RIN:** 3060–AI68

## 345. IMPLEMENTATION OF THE CABLE COMMUNICATIONS POLICY ACT OF 1984 AS AMENDED BY THE CABLE TELEVISION CONSUMER PROTECTION AND COMPETITION ACT OF 1992 (MB DOCKET NO. 05–311)

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 541(a)(1); 47 USC 556(c)

**Abstract:** Section 621(a)(1) of the Communications Act of 1934, as amended, states in relevant part that ''a franchising authority . . .may not unreasonably refuse to award an additional competitive franchise.'' The Notice of Proposed Rulemaking (NPRM) solicits comment on implementation of section 621(a)(1)'s directive, and whether the franchising process unreasonably impedes the achievement of the interrelated Federal goals of enhanced cable competition and accelerated broadband deployment and, if so, how the Commission should act to address that problem.

The subsequent Report and Order found that certain actions by local franchising authorities constitute an unreasonable refusal to award a competitive franchise within the meaning of section 621(a)(1). The item included a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on how the findings should affect existing franchises.

In the Second Report and Order, a number of the rules promulgated in this docket are extended to incumbent cable operators.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/19/05 | 70 FR 73973 |
| NPRM Comment Period End | 02/13/06 | |
| R&O and FNPRM | 03/21/07 | 72 FR 13230 |
| FNPRM Comment Period End | 04/20/07 | |
| Second R&O | 11/23/07 | 72 FR 65670 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Holly Saurer, Attorney Advisor, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7283
Fax: 202 418–1069
Email: holly.saurer@fcc.gov

**RIN:** 3060–AI69

## 346. PROGRAM ACCESS RULES—SUNSET OF EXCLUSIVE CONTRACTS PROHIBITION AND EXAMINATION OF PROGRAMMING TYING ARRANGEMENTS (MB DOCKET NOS. 07–29, 07–198)

**Legal Authority:** 47 USC 548

**Abstract:** The program access provisions of the Communications Act (section 628) generally prohibit exclusive contracts for satellite delivered programming between programmers in which a cable operator has an attributable interest (vertically integrated programmers) and cable operators. This limitation was set to expire on October 5, 2007, unless circumstances in the video programming marketplace indicate that an extension of the prohibition continues ''to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' The October 2007 Report and Order concluded the prohibition continues to be necessary, and accordingly, retained it until October 5, 2012. The accompanying Notice of Proposed Rulemaking (NPRM) sought comment on revisions to the Commission's program access and retransmission consent rules. The associated Report and Order adopted rules to permit complainants to pursue program access claims regarding terrestrially delivered cable affiliated programming.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/01/07 | 72 FR 9289 |
| NPRM Comment Period End | 04/02/07 | |
| R&O | 10/04/07 | 72 FR 56645 |
| NPRM | 10/31/07 | 72 FR 61590 |
| NPRM Comment Period End | 11/30/07 | |
| R&O (release date) | 01/20/10 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** David Konczal, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2228
Email: david.konczal@fcc.gov

**RIN:** 3060–AI87

## 347. THIRD PERIODIC REVIEW OF THE COMMISSION'S RULES AND POLICIES AFFECTING THE CONVERSION TO DIGITAL TELEVISION (MB DOCKET NO. 07–91)

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 301 to 303; 47 USC 307 to 309; 47 USC 312; 47 USC 316; 47 USC 318 and 319; 47 USC 324 and 325; 47 USC 336 and 337

**Abstract:** Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. This proceeding is the Commission's third periodic review of the transition of the nation's broadcast television system from analog to digital television (DTV). The Commission conducts these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. In this review, the Commission considers how to ensure that broadcasters complete construction of their final post-transition (digital) facilities by the statutory deadline.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/09/07 | 72 FR 37310 |
| NPRM Comment Period End | 08/08/07 | |
| R&O | 01/30/08 | 73 FR 5634 |
| Order on Clarification | 07/10/08 | 73 FR 39623 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Evan Baranoff, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2120
Email: evan.baranoff@fcc.gov

**RIN:** 3060–AI89

## 348. BROADCAST LOCALISM (MB DOCKET NO. 04–233)

**Legal Authority:** 47 USC 154(i); 47 USC 303; 47 USC 532; 47 USC 536

**Abstract:** The concept of localism has been a cornerstone of broadcast regulation. The Commission has consistently held that as temporary trustee of the public's airwaves, broadcasters are obligated to operate their stations to serve the public interest. Specifically, broadcasters are required to air programming responsive to the needs and issues of the people in their licensed communities. The Commission opened this proceeding to seek input on a number of issues related to broadcast localism.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/13/08 | 73 FR 8255 |
| NPRM Comment Period End | 03/14/08 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** William Freedman, Associate Chief, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1415
Email: william.freedman@fcc.gov

**RIN:** 3060–AJ04

## 349. CREATING A LOW POWER RADIO SERVICE (MM DOCKET NO. 99–25)

**Legal Authority:** 47 USC 151 to 152; 47 USC 154(i); 47 USC 303; 47 USC 403; 47 USC 405

**Abstract:** This proceeding was initiated to establish a new noncommercial educational low power FM radio service for non-profit community organizations and public safety entities. In January 2000, the Commission adopted a Report and Order establishing two classes of LPFM stations, 100 watt (LP100) and 10 watt (LP10) facilities, with service radii of approximately 3.5 miles and 1-2 miles, respectively. The Report and Order also established ownership and eligibility rules for the LPFM service. The Commission generally restricted ownership to entities with no attributable interest in any other broadcast station or other media. To choose among entities filing mutually exclusive applications for LPFM licenses, the Commission established a point system favoring local ownership and locally-originated programming. The Report and Order imposed separation requirements for LPFM with respect to full power stations operating on co-, first- and second-adjacent and intermediate frequency (IF) channels. In December 2000, legislation was enacted that required the Commission to modify its rules to (i) prescribe LPFM station third-adjacent channel interference protection standards and (ii) prohibit any applicant from obtaining an LPFM station license if the applicant previously has engaged in the unlicensed operation of a station. In March 2001, the Commission adopted a Second Report and Order implementing this statute.

In a Further Notice issued in 2005, the Commission reexamined some of its rules governing the LPFM service, noting that the rules may adjustment in order to ensure that the Commission maximizes the value of the LPFM service without harming the interests of full-power FM stations or other Commission licensees. The Commission sought comment on a number of issues with respect to LPFM ownership restrictions and eligibility.

The Third Report and Order resolves issues raised in the Further Notice. The accompanying Second Further Notice of Proposed Rulemaking (FNPRM) considers rule changes to avoid the potential loss of LPFM stations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/16/99 | 64 FR 7577 |
| R&O | 02/15/00 | 65 FR 7616 |
| MO&O and Order on Recon | 11/09/00 | 65 FR 67289 |
| Second R&O | 05/10/01 | 66 FR 23861 |
| Second Order on Recon and FNPRM | 07/07/05 | 70 FR 3918 |
| Third R&O and Second FNPRM | 01/17/08 | 73 FR 3202 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Peter Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2700
Email: peter.doyle@fcc.gov

**RIN:** 3060–AJ07

## 350. SPONSORSHIP IDENTIFICATION RULES AND EMBEDDED ADVERTISING (MB DOCKET NO. 08–90)

**Legal Authority:** 47 USC 154(i) and (j); 47 USC 303(r); 47 USC 303(a); 47 USC 317; 47 USC 405; 47 USC 508

**Abstract:** The Commission undertook this proceeding to seek comment on the relationship between the Commission's sponsorship identification rules and the increasing reliance on industry by embedded advertising techniques. Due to recent technological changes that allow consumers to more easily bypass traditional commercial content, content providers may be turning to more subtle and sophisticated means of incorporating commercial messages into programming. The NPRM will seek to determine how embedded advertising affects the efficacy of the sponsorship identification rules in protecting the public's right to know who is paying to air commercials or other programming matter on broadcast outlets and cable television systems.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM and NOI | 07/24/08 | 73 FR 43194 |
| NPRM Comment Period End | 09/22/08 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Brendan Murray, Attorney Advisor, Policy Division, Federal Communications Commission, Media Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1573

Email: brendan.murray@fcc.gov

**RIN:** 3060–AJ10

### 351. AN INQUIRY INTO THE COMMISSION'S POLICIES AND RULES REGARDING AM RADIO SERVICE DIRECTIONAL ANTENNA PERFORMANCE VERIFICATION (MM DOCKET NO. 93–177)

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 303; 47 USC 308

**Abstract:** This proceeding is part of a streamlining initiative to simplify the Media Bureau's licensing procedures. The Report and Order in this proceeding simplified traditional proof of performance requirements for directional AM stations. The Second Report and Order further reduces regulatory burdens on AM broadcasters by permitting the use of computer modeling.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/27/99 | 64 FR 40539 |
| NPRM Comment Period End | 09/10/99 | |
| R&O | 04/25/01 | 66 FR 20752 |
| FNPRM | 04/25/01 | 66 FR 20779 |
| FNPRM Comment Period End | 07/09/01 | |
| Second R&O | 10/30/08 | 73 FR 64558 |
| Second FNPRM | 12/11/08 | 73 FR 75376 |
| Second FNPRM Comment Period End | 01/12/09 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ann Gallagher, Audio Division. Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2716
Email: ann.gallagher@fcc.gov

**RIN:** 3060–AJ17

### 352. AMENDMENT OF PARTS 73 AND 74 OF THE COMMISSION'S RULES TO ESTABLISH RULES FOR REPLACEMENT DIGITAL LOW POWER TELEVISION TRANSLATOR STATIONS (MB DOCKET NO. 08–253)

**Legal Authority:** 47 USC 151; 47 USC 154(i) and (j); 47 USC 157; 47 USC 301; 47 USC 302(a); 47 USC 303; 47 USC 307 to 309; 47 USC 312; 47 USC 316; 47 USC 318 and 319; 47 USC 324 and 325; 47 USC 336 and 337

**Abstract:** This proceeding was initiated to create a new digital television translator service to permit full-service television stations to continue to provide digital service to viewers within their coverage areas who have lost service as a result of the stations' digital transition.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/02/09 | 74 FR 61 |
| NPRM Comment Period End | 01/12/09 | |
| R&O | 06/02/09 | 74 FR 26300 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Barbara A. Kreisman, Chief, Video Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1600
Email: barbara.kreisman@fcc.gov

**RIN:** 3060–AJ18

### 353. POLICIES TO PROMOTE RURAL RADIO SERVICE AND TO STREAMLINE ALLOTMENT AND ASSIGNMENT PROCEDURES (MB DOCKET NO. 09–52)

**Legal Authority:** 47 USC 151 and 152; 47 USC 154(i); 47 USC 303; 47 USC 307 and 309(j)

**Abstract:** This proceeding was commenced to consider a number of changes to the Commission's rules and procedures to carry out the statutory goal of distributing radio service fairly and equitably, and to increase the transparency and efficiency of radio broadcast auction and licensing processes. In the NPRM, comment is sought on specific proposals regarding the procedures used to award commercial broadcast spectrum in the AM and FM broadcast bands. The accompanying Report and Order adopts rules that provide tribes a priority to obtain broadcast radio licenses in tribal communities. The Commission concurrently adopted a Further Notice of Proposed Rulemaking seeking comment on whether to extend the tribal priority to tribes that do not possess tribal land.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/13/09 | 74 FR 22498 |
| NPRM Comment Period End | 07/10/09 | |
| First R&O (release date) | 02/02/10 | |
| FNPRM (release date) | 02/03/10 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Peter Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2700
Email: peter.doyle@fcc.gov

**RIN:** 3060–AJ23

### 354. PROMOTING DIVERSIFICATION OF OWNERSHIP IN THE BROADCAST SERVICES (MB DOCKET NO. 07–294)

**Legal Authority:** 47 USC 151; 47 USC 152(a); 47 USC 154 i and (j); 47 USC 257; 47 USC 303(r); 47 USC 307 to 310; 47 USC 336; 47 USC 534 to 535

**Abstract:** Diversity and competition are longstanding and important Commission goals. The measures proposed, as well as those adopted in this proceeding, are intended to promote diversity of ownership of media outlets. In the Report and Order and third FNPRM, measures are enacted to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. In the Report and Order and fourth FNPRM, the Commission adopts improvements to its data collection in order to obtain an accurate and comprehensive assessment of minority and female broadcast ownership in the United States. The Memorandum Opinion & Order addressed petitions for Reconsideration of the rules, and also sought comment on a proposal to expand the reporting requirements to non attributable interests.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| R&O | 05/16/08 | 73 FR 28361 |
| 3rd FNPRM | 05/16/08 | 73 FR 28400 |
| R&O | 05/27/09 | 74 FR 25163 |
| 4th FNPRM | 05/27/09 | 74 FR 25305 |
| 5th NPRM (release date) | 10/16/09 | |
| MO&O | 10/30/09 | 74 FR 56131 |
| Next Action Undetermined | | |

## FCC—Media Bureau — Long-Term Actions

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kristi Thompson, Attorney, Industry Analysis Division Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1318
Email: kristi.thompson@fcc.gov

**RIN:** 3060–AJ27

## Federal Communications Commission (FCC) — Completed Actions
## Media Bureau

### 355. DTV CONSUMER EDUCATION INITIATIVE (MB DOCKET NO. 07–148)

**Legal Authority:** 47 USC 154(i); 47 USC 303(r); 47 USC 335 and 336

**Abstract:** Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. From the beginning of the digital transition, the Commission has been committed to working with representatives from industry, public interest groups, and Congress to make the significant benefits of digital broadcasting available to the public. The digital transition will make valuable spectrums available for both public safety uses and expanded wireless competition and innovation. It will also provide consumers with better quality television picture and sound, and make new services available through multicasting. These innovations, however, are dependent upon widespread consumer understanding of the benefits and the mechanics of the transition. While the Commission has been engaged in various DTV outreach efforts, this proceeding was initiated to seek public comment on whether there are additional steps relating to consumer education about the digital transition which the Commission should take.

The Report and Order found a clear and compelling need for educational efforts directed at consumers. Requirements were imposed on several participants in the DTV transition to provide information about the transition to consumers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/16/07 | 72 FR 46014 |
| NPRM Comment Period End | 09/17/07 | |
| R&O | 03/24/08 | 73 FR 15431 |
| FNPRM | 05/28/08 | 73 FR 30591 |
| FNPRM Comment Period End | 06/27/08 | |
| Order | 06/26/08 | 73 FR 36282 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lyle Elder, Policy Division, Media Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2120
Email: lyle.elder@fcc.gov

**RIN:** 3060–AI96

## Federal Communications Commission (FCC) — Long-Term Actions
## Office of Managing Director

### 356. ASSESSMENT AND COLLECTION OF REGULATORY FEES

**Legal Authority:** 47 USC 159

**Abstract:** Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, requires the FCC to recover the cost of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/06/06 | 71 FR 17410 |
| NPRM Comment Period End | 02/14/06 | |
| R&O | 08/02/06 | 71 FR 43842 |
| NPRM | 05/02/07 | 72 FR 24213 |
| NPRM Comment Period End | 05/03/07 | |
| R&O | 08/16/07 | 72 FR 45908 |
| FNPRM | 08/16/07 | 72 FR 46010 |
| FNPRM Comment Period End | 09/17/07 | |
| NPRM | 05/28/08 | 73 FR 30563 |
| NPRM Comment Period End | 05/30/08 | |
| R&O | 08/26/08 | 73 FR 50201 |
| FNPRM | 08/26/08 | 73 FR 50285 |
| FNPRM Comment Period End | 09/25/08 | |
| 2nd R&O | 05/12/09 | 74 FR 22104 |
| NPRM and Order | 06/02/09 | 74 FR 26329 |
| NPRM Comment Period End | 06/04/09 | |
| R&O | 08/11/09 | 74 FR 40089 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Daniel Daly, Attorney, Office of the Managing Director, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1832
Email: daniel.daly@fcc.gov

**RIN:** 3060–AI79

## Federal Communications Commission (FCC) — Long-Term Actions

## Public Safety and Homeland Security Bureau

### 357. REVISION OF THE RULES TO ENSURE COMPATIBILITY WITH ENHANCED 911 EMERGENCY CALLING SYSTEMS

**Legal Authority:** 47 USC 134(i); 47 USC 151; 47 USC 201; 47 USC 208; 47 USC 215; 47 USC 303; 47 USC 309

**Abstract:** In a series of orders in several related proceedings issued since 1996, the Federal Communications Commission has taken action to improve the quality and reliability of 911 emergency services for wireless phone users. Rules have been adopted governing the availability of basic 911 services and the implementation of enhanced 911 (E911) for wireless services.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| FNPRM | 08/02/96 | 61 FR 40374 |
| R&O | 08/02/96 | 61 FR 40348 |
| MO&O | 01/16/98 | 63 FR 2631 |
| Second R&O | 06/28/99 | 64 FR 34564 |
| Third R&O | 11/04/99 | 64 FR 60126 |
| Second MO&O | 12/29/99 | 64 FR 72951 |
| Fourth MO&O | 10/02/00 | 65 FR 58657 |
| FNPRM | 06/13/01 | 66 FR 31878 |
| Order | 11/02/01 | 66 FR 55618 |
| R&O | 05/23/02 | 67 FR 36112 |
| Public Notice | 07/17/02 | 67 FR 46909 |
| Order to Stay | 07/26/02 | |
| Order on Recon | 01/22/03 | 68 FR 2914 |
| FNPRM | 01/23/03 | 68 FR 3214 |
| Second R&O, Second FNPRM | 02/11/04 | 69 FR 6578 |
| Second R&O | 09/07/04 | 69 FR 54037 |
| NPRM | 06/20/07 | 72 FR 33948 |
| NPRM Comment Period End | 08/20/07 | |
| R&O | 02/14/08 | 73 FR 8617 |
| Public Notice | 09/25/08 | 73 FR 55473 |
| Public Notice | 11/18/09 | 74 FR 59539 |
| Comment Period End | 12/04/09 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Tom Beers, Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0952
Email: tom.beers@fcc.gov

**RIN:** 3060–AG34

### 358. ENHANCED 911 SERVICES FOR WIRELINE

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 201; 47 USC 222; 47 USC 251

**Abstract:** The rules generally will assist State governments in drafting legislation that will ensure that multi-line telephone systems are compatible with the enhanced 911 network.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/11/94 | 59 FR 54878 |
| FNPRM | 01/23/03 | 68 FR 3214 |
| Second FNPRM | 02/11/04 | 69 FR 6595 |
| R&O | 02/11/04 | 69 FR 6578 |
| Public Notice | 01/13/05 | 70 FR 2405 |
| Comment Period End | 03/29/05 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Tom Beers, Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0952
Email: tom.beers@fcc.gov

**RIN:** 3060–AG60

### 359. IN THE MATTER OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

**Legal Authority:** 47 USC 229; 47 USC 1001 to 1008

**Abstract:** All of the decisions in this proceeding thus far are aimed at implementation of provisions of the Communications Assistance for Law Enforcement Act.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/10/97 | 62 FR 63302 |
| Order | 01/13/98 | 63 FR 1943 |
| FNPRM | 11/16/98 | 63 FR 63639 |
| R&O | 01/29/99 | 64 FR 51462 |
| Order | 03/29/99 | 64 FR 14834 |
| Second R&O | 09/23/99 | 64 FR 51462 |
| Third R&O | 09/24/99 | 64 FR 51710 |
| Order on Recon | 09/28/99 | 64 FR 52244 |
| Policy Statement | 10/12/99 | 64 FR 55164 |
| Second Order on Recon | 05/04/01 | 66 FR 22446 |
| Order | 10/05/01 | 66 FR 50841 |
| Order on Remand | 05/02/02 | 67 FR 21999 |
| NPRM | 09/23/04 | 69 FR 56976 |
| First R&O | 10/13/05 | 70 FR 59704 |
| Second R&O | 07/05/06 | 71 FR 38091 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Tom Beers, Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0952
Email: tom.beers@fcc.gov

**RIN:** 3060–AG74

### 360. DEVELOPMENT OF OPERATIONAL, TECHNICAL, AND SPECTRUM REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS REQUIREMENTS

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 160; 47 USC 201 and 202; 47 USC 303; 47 USC 337(a); 47 USC 403

**Abstract:** This item takes steps toward developing a flexible regulatory framework to meet vital current and future public safety communications needs.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/09/97 | 62 FR 60199 |
| Second NPRM | 11/07/97 | 62 FR 60199 |
| First R&O | 11/02/98 | 63 FR 58645 |
| Third NPRM | 11/02/98 | 63 FR 58685 |
| MO&O | 11/04/99 | 64 FR 60123 |
| Second R&O | 08/08/00 | 65 FR 48393 |
| Fourth NPRM | 08/25/00 | 65 FR 51788 |
| Second MO&O | 09/05/00 | 65 FR 53641 |
| Third MO&O | 11/07/00 | 65 FR 66644 |
| Third R&O | 11/07/00 | 65 FR 66644 |
| Fifth NPRM | 02/16/01 | 66 FR 10660 |
| Fourth R&O | 02/16/01 | 66 FR 10632 |
| MO&O | 09/27/02 | 67 FR 61002 |
| NPRM | 11/08/02 | 67 FR 68079 |
| R&O | 12/13/02 | 67 FR 76697 |
| NPRM | 04/27/05 | 70 FR 21726 |
| R&O | 04/27/05 | 70 FR 21671 |
| NPRM | 04/07/06 | 71 FR 17786 |
| NPRM | 09/21/06 | 71 FR 55149 |
| Ninth NPRM | 01/10/07 | 72 FR 1201 |
| Ninth NPRM Comment Period End | 02/26/07 | |
| R&O and FNPRM | 05/02/07 | 72 FR 24238 |
| R&O and FNPRM Comment Period End | 05/23/07 | |
| Second R&O | 08/24/07 | 72 FR 48814 |
| Second FNPRM | 05/21/08 | 73 FR 29582 |
| Third FNPRM | 10/03/08 | 73 FR 57750 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeff Cohen, Senior Legal Counsel, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0799
Email: jeff.cohen@fcc.gov

**RIN:** 3060–AG85

### 361. 1998 BIENNIAL REGULATORY REVIEW—REVIEW OF ACCOUNTS SETTLEMENT IN MARITIME MOBILE AND MARITIME MOBILE–SATELLITE RADIO SERVICES (IB DOCKET NO. 98–96)

**Legal Authority:** 47 USC 154(i) and 154(j); 47 USC 201 to 205; 47 USC 303(r)

**Abstract:** The FCC seeks comment regarding Accounts Settlement in the Maritime Mobile and Maritime Mobile Satellite Service (MSS) Radio Services.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/24/98 | 63 FR 39800 |
| FNPRM | 07/28/99 | 64 FR 40808 |
| R&O | 07/28/99 | 64 FR 40774 |
| Comment Period Extended | 09/03/99 | 64 FR 48337 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Timothy Peterson, Chief of Staff, PSHSB, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1575

**RIN:** 3060–AH30

### 362. IMPLEMENTATION OF 911 ACT

**Legal Authority:** 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 157; 47 USC 160; 47 USC 202; 47 USC 208; 47 USC 210; 47 USC 214; 47 USC 251(e); 47 USC 301; 47 USC 303; 47 USC 308 to 309(j); 47 USC 310

**Abstract:** This proceeding is separate from the Commission's proceeding on Enhanced 911 Emergency Systems (E911) in that it is intended to implement provisions of the Wireless Communications and Public Safety Act of 1999 through the promotion of public safety by the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services. More specifically, a chief goal of the proceeding is to ensure that all emergency calls are routed to the appropriate local emergency authority to provide assistance. The E911 proceeding goes a step further and is aimed at improving the effectiveness and reliability of wireless 911 dispatchers with additional information on wireless 911 calls.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Fourth R&O, Third NPRM, and NPRM | 09/18/00 | 65 FR 5675 |
| Fifth R&O, First R&O, and MO&O | 01/14/02 | 67 FR 1643 |
| Final Rule | 01/25/02 | 67 FR 3621 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** David H. Siehl, Attorney, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1313
Fax: 202 418–2816
Email: david.siehl@fcc.gov

**RIN:** 3060–AH90

### 363. COMMISSION RULES CONCERNING DISRUPTIONS TO COMMUNICATIONS

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 303(r)

**Abstract:** The Report and Order extended the Commission's disruption reporting requirements to communications providers who are not wireline carriers. The Commission also streamlined compliance with the reporting requirements through electronic filing with a ''fill in the blank'' template and by simplifying the application of that rule. In addition, the Commission delegated authority to the Chief, Office of Engineering and Technology, to make the revisions to the filing system and template necessary to improve the efficiency of reporting and to reduce, where reasonably possible, the time for providers to prepare, and for the Commission staff to review, the communications disruption reports required to be filed. Such authority was subsequently delegated to the Chief of the Public Safety and Homeland Security Bureau. These actions will allow the Commission to obtain the necessary information regarding service disruptions in an efficient and expeditious manner and to achieve significant concomitant public interest benefits.

The Commission received nine petitions for reconsideration in this proceeding, which are pending.

The Further Notice of Proposed Rulemaking (NPRM) expands the record in the proceeding to focus specifically on the unique communications needs of airports, including wireless and satellite communications. In this regard, the Commission requested comment on the additional types of airport communications (e.g., wireless, satellite) that should be required to file service disruption reports—particularly from a homeland security and defense perspective. These types of airport communications may include, for example, communications that are provided by ARINC as well as commercial communications (e.g., air-to-ground and ground-to-air telephone communications) as well as intra-airline commercial links. The Commission also requested comment on whether the outage-reporting requirements for special facilities should be extended to cover general aviation airports (GA) and, if so, what the applicable threshold criteria should be.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/26/04 | 69 FR 15761 |
| FNPRM | 11/26/04 | 69 FR 68859 |
| R&O | 12/03/04 | 69 FR 70316 |
| Announcement of Effective Date and Partial Stay | 12/30/04 | 69 FR 78338 |
| Petition for Recon | 02/15/05 | 70 FR 7737 |
| Amendment of Delegated Authority | 02/21/08 | 73 FR 9462 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7452
Email: lisa.fowlkes@fcc.gov

**RIN:** 3060–AI22

### 364. E911 REQUIREMENTS FOR IP–ENABLED SERVICE PROVIDERS

**Legal Authority:** 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 251(e); 47 USC 303(r)

**Abstract:** The notice seeks comment on what additional steps the Commission should take to ensure that providers of voice-over Internet protocol services that interconnect with the public switched telephone network provide ubiquitous and reliable enhanced 911 service.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/29/05 | 70 FR 37307 |
| NPRM Comment Period End | 09/12/05 | |
| NPRM | 06/20/07 | 72 FR 33948 |
| NPRM Comment Period End | 09/18/07 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Tom Beers, Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0952
Email: tom.beers@fcc.gov

**RIN:** 3060–AI62

### 365. RECOMMENDATIONS OF THE INDEPENDENT PANEL REVIEWING THE IMPACT OF HURRICANE KATRINA ON COMMUNICATIONS NETWORKS

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 218; 47 USC 303(r)

**Abstract:** In the Order released June 8, 2007 (EB Docket No. 06-119 and WC Docket No. 06-63), the Commission directed the Public Safety and Homeland Security Bureau to implement several of the recommendations made by the Independent Panel reviewing the impact of Hurricane Katrina on Communications Networks (Independent Panel). The Commission also adopted rules requiring some communications providers to have emergency/backup power and requiring certain communications providers to conduct analyses and submit reports on the redundancy and resiliency of their 911 and E911 networks and/or systems. Finally, the Commission extended limited regulatory relief from Section 272 of the Communications Act of 1934, as amended, previously accorded by the Wireline Competition Bureau.

In an Order on Reconsideration released on October 4, 2007, the Commission considered six petitions for reconsideration and/or clarification of the June 2007 Order that adopted the backup power rule (section 12.2 of the Commission's rules). The Order on Reconsideration granted in part and denied in part the petitions. The Commission modified the backup power rule to address several meritorious issues raised by petitioners. This modification will facilitate carrier compliance and reduce the burden on local exchange carriers and commercial mobile radio service providers, while continuing to further important homeland security and public safety goals.

The wireless industry challenged the backup power rule in the U.S. Court of Appeals for the District of Columbia Circuit and, with some wireline providers, challenged the associated information collection before OMB. In February 2008, the Court issued a stay of the rule pending appeal, and, on July 8, 2008, the Court issued an order holding its decision on the challenge to the backup power rule in abeyance pending action by OMB on the information collection associated with the revised rule. In November 2008, OMB rejected the information collection.

As a result of the actions by the Court and OMB, the backup power rule has never gone into effect. In December 2008, the FCC's Office of General Counsel requested that the Court dismiss the pending appeals of the backup power rule and informed the Court that the Commission plans to issue an NPRM to develop a revised rule. On July 31, 2009, the Court dismissed the petitions for review as moot and ordered that the backup power rule by vacated and this mandate was issued until September 18, 2009.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/07/06 | 71 FR 38564 |
| NPRM Comment Period End | 08/07/06 | |
| Order | 07/11/07 | 72 FR 37655 |
| Delay of Effective Date of Rule | 08/10/07 | 72 FR 44978 |
| Petitions for Recon | 08/20/07 | 72 FR 46485 |
| Order on Recon | 10/11/07 | 72 FR 57879 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7452
Email: lisa.fowlkes@fcc.gov

**RIN:** 3060–AI78

### 366. STOLEN VEHICLE RECOVERY SYSTEM (SVRS)

**Legal Authority:** 47 USC 151 and 152; 47 USC 154(i); 47 USC 301 to 303

**Abstract:** The Report and Order amends 47 CFR 90.20(e)(6) governing stolen vehicle recovery system operations at 173.075 MHz, by increasing the radiated power limit for narrowband base stations; increasing the power output limit for narrowband base stations; increasing the power output limit for narrowband mobile transceivers; modifying the base station duty cycle; increasing the tracking duty cycle for mobile transceivers; and retaining the requirement for TV channel 7 interference studies and that such studies must be served on TV channel 7 stations.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/23/06 | 71 FR 49401 |
| NPRM Comment Period End | 10/10/06 | |
| R&O | 10/14/08 | 73 FR 60631 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Zenji Nakazawa, Assoc. Chief, Policy Division, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7949
Email: zenji.nakazaw@fcc.gov

**RIN:** 3060–AJ01

## FCC—Public Safety and Homeland Security Bureau — Long-Term Actions

### 367. COMMERCIAL MOBILE ALERT SYSTEM

**Legal Authority:** PL 109–347 title VI; EO 13407; 47 USC 151; 47 USC 154(i)

**Abstract:** In the Notice of Proposed Rulemaking (NPRM), the Commission initiated a comprehensive rulemaking to establish a commercial mobile alert system under which commercial mobile service providers may elect to transmit emergency alerts to the public. The Commission has issued three orders adopting CMAS rules as required by statute. Issues raised in an FNPRM regarding testing requirements for non-commercial educational and public broadcast television stations remain outstanding.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/03/08 | 73 FR 545 |
| NPRM Comment Period End | 02/04/08 | |
| First R&O | 07/24/08 | 73 FR 43009 |
| Second R&O | 08/14/08 | 73 FR 47550 |
| FNPRM | 08/14/08 | 73 FR 47568 |
| FNPRM Comment Period End | 09/15/08 | |
| Third R&O | 09/22/08 | 73 FR 54511 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Lisa Fowlkes, Deputy Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7452
Email: lisa.fowlkes@fcc.gov

**RIN:** 3060–AJ03

### 368. • EMERGENCY ALERT SYSTEM

**Legal Authority:** 47 USC 151; 47 USC 152; 47 USC 154(i); 47 USC 154(o); 47 USC 301; 47 USC 393(r); 47 USC 303(v); 47 USC 307; 47 USC 309; 47 USC 335; 47 USC 403; 47 USC 544(g); 47 USC 606; 47 USC 615

**Abstract:** This revision of 47 CFR part 11 provides for national-level testing of the Emergency Alert System.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/12/10 | 75 FR 4760 |
| NPRM Comment Period End | 03/30/10 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Eric Ehrenreich, Attorney Advisor, Federal Communications Commission, 445 12th Street SW.
Phone: 202 418–1726
Email: eric.ehrenreich@fcc.gov

**RIN:** 3060–AJ33

## Federal Communications Commission (FCC) Wireless Telecommunications Bureau — Long-Term Actions

### 369. IMPLEMENTATION OF THE COMMUNICATIONS ACT, AMENDMENT OF THE COMMISSION'S RULES—BROADBAND PCS COMPETITIVE BIDDING AND THE COMMERCIAL MOBILE RADIO SERVICE SPECTRUM CAP

**Legal Authority:** 47 USC 154(i); 47 USC 301 and 302; 47 USC 303(r); 47 USC 309(j); 47 USC 332

**Abstract:** NPRM to modify the competitive bidding rules for the Broadband PCS F Block. Report and Order, adopted June 21, 1996, modified the PCS/cellular rule and the cellular spectrum cap.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| O on Recon of Fifth MO&O and D, E, & F R&O | 11/15/00 | 65 FR 68927 |
| Final Rule | 03/02/01 | 66 FR 13022 |
| Final Rule | 06/04/01 | 66 FR 29911 |
| Third NPRM | 08/27/04 | 69 FR 52632 |
| Third NPRM Comment Period Extended | 10/04/04 | 69 FR 59166 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Audrey Bashkin, Staff Attorney, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7535
Email: abashkin@fcc.gov

**RIN:** 3060–AG21

### 370. SERVICE RULES FOR THE 746 TO 764 AND 776 TO 794 MHZ BANDS, AND REVISIONS TO THE COMMISSION'S RULES

**Legal Authority:** 47 USC 1; 47 USC 4(i); 47 USC 7; 47 USC 10; 47 USC 201 and 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 307 and 308; 47 USC 309(j) and 309(k); 47 USC 310 and 311; 47 USC 315; 47 USC 317; 47 USC 324; 47 USC 331 and 332; 47 USC 336

**Abstract:** The Report and Order in this proceeding adopts service rules for licensing and auction of commercial services in spectrum in the 700 MHz band to be vacated by UHF television licensees.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/07/99 | 64 FR 36686 |
| R&O | 01/20/00 | 65 FR 3139 |
| Second R&O | 04/04/00 | 65 FR 17594 |
| MO&O and FNPRM | 07/12/00 | 65 FR 42879 |
| Second MO&O | 02/06/01 | 66 FR 9035 |
| Third R&O | 02/14/01 | 66 FR 10204 |
| Second MO&O | 02/15/01 | 66 FR 10374 |
| Order on Recon of Third R&O | 10/10/01 | 66 FR 51594 |
| Third MO&O and Order | 07/30/02 | 67 FR 49244 |
| Second FNPRM | 05/21/08 | 73 FR 29582 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** William Huber, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2109
Fax: 202 418–0890
Email: whuber@fcc.gov

**RIN:** 3060–AH32

### 371. AMENDMENT OF PARTS 13 AND 80 OF THE COMMISSION'S RULES GOVERNING MARITIME COMMUNICATIONS

**Legal Authority:** 47 USC 302 to 303

**Abstract:** This matter concerns the amendment of the rules governing

maritime communications in order to consolidate, revise and streamline the regulations as well as address new international requirements and improve the operational ability of all users of marine radios.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/24/00 | 65 FR 21694 |
| NPRM | 08/17/00 | 65 FR 50173 |
| NPRM | 05/17/02 | 67 FR 35086 |
| Report & Order | 08/07/03 | 68 FR 46957 |
| Second R&O, Sixth R&O, Second FNPRM | 04/06/04 | 69 FR 18007 |
| Comments Due | 06/07/04 | |
| Reply Comments Due | 07/06/04 | |
| Second R&O and Sixth R&O | 11/08/04 | 69 FR 64664 |
| NPRM | 11/08/06 | 71 FR 65447 |
| Final Action | 01/25/08 | 73 FR 4475 |
| Petition for Reconsideration | 03/18/08 | 73 FR 14486 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0680
Email: jeff.tobias@fcc.gov

**RIN:** 3060–AH55

## 372. COMPETITIVE BIDDING PROCEDURES

**Legal Authority:** 47 USC 154; 47 USC 301 to 303; 47 USC 309; 47 USC 332

**Abstract:** This proceeding proposes resumption of installment payments for broadband Personal Communications Services (PCS), for example, for C and F Block, with payment deadline to be reinstated as of March 31, 1998. The proposal contemplates, inter alia, changes to the FCC's C Block rules to govern re-auction of surrendered spectrum in the C Block. The proposal was released on October 16, 1997, and published in the Federal Register.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Second R&O | 10/24/97 | 62 FR 55348 |
| FNPRM | 10/24/97 | 62 FR 55375 |
| Order on Recon of Second R&O | 04/08/98 | 63 FR 17111 |
| Fourth R&O | 09/23/98 | 63 FR 50791 |
| Second Order on Recon of Second R&O | 05/18/99 | 64 FR 26887 |
| Recon of Fourth R&O | 03/16/00 | 65 FR 14213 |
| FNPRM | 06/13/00 | 65 FR 37092 |
| Sixth R&O and Order on Recon | 09/05/00 | 65 FR 53620 |
| Order on Recon | 02/12/01 | 66 FR 9773 |
| Final Rule | 07/21/03 | 68 FR 42984 |
| Final Rule | 09/30/05 | 70 FR 57183 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Audrey Bashkin, Staff Attorney, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7535
Email: abashkin@fcc.gov

**RIN:** 3060–AH57

## 373. 2000 BIENNIAL REGULATORY REVIEW SPECTRUM AGGREGATION LIMITS FOR COMMERCIAL MOBILE RADIO SERVICES

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 161; 47 USC 303(g); 47 USC 303(r)

**Abstract:** The Commission has adopted a final rule in a proceeding reexamining the need for Commercial Mobile Radio Services spectrum aggregation limits.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/12/01 | 66 FR 9798 |
| NPRM Comment Period End | 05/14/01 | |
| Final Rule | 01/14/02 | 67 FR 1626 |
| Correction to Final Rule | 01/31/02 | 67 FR 4675 |
| Petition for Recon | 03/21/02 | 67 FR 13183 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Michael J. Rowan, Attorney–Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1883
Fax: 202 418–7447
Email: michael.rowan@fcc.gov

**RIN:** 3060–AH81

## 374. IN THE MATTER OF PROMOTING EFFICIENT USE OF SPECTRUM THROUGH ELIMINATION OF BARRIERS TO THE DEVELOPMENT OF SECONDARY MARKETS

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201 and 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 308 to 310

**Abstract:** The Commission has opened a proceeding to examine actions it may take to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/26/00 | 65 FR 81475 |
| NPRM Comment Period End | 01/29/01 | 66 FR 8149 |
| New NPRM Comment Period End | 02/09/01 | |
| NPRM | 11/25/03 | 68 FR 66232 |
| Final Rule | 11/25/03 | 68 FR 66252 |
| NPRM Comment Period End | 01/05/04 | |
| Final Rule | 02/12/04 | 69 FR 6920 |
| Final Rule | 02/25/04 | 69 FR 8569 |
| Final Rule | 11/15/04 | 69 FR 65544 |
| Final Rule | 12/27/04 | 69 FR 77522 |
| NPRM | 12/27/04 | 69 FR 77560 |
| Final Rule | 08/01/07 | 72 FR 41935 |
| Final Action | 01/26/09 | 74 FR 4344 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Paul D'Ari, Spectrum and Competition Policy Division, Wireless Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1550
Fax: 202 418–7447
Email: paul.dari@fcc.gov

**RIN:** 3060–AH82

## 375. REEXAMINATION OF ROAMING OBLIGATIONS OF COMMERCIAL MOBILE RADIO SERVICE PROVIDERS

**Legal Authority:** 47 USC 151; 47 USC 152(n); 47 USC 154(i) and 154(j); 47 USC 201(b); 47 USC 251(a); 47 USC 253; 47 USC 303(r); 47 USC 332(c)(1)(B); 47 USC 309

**Abstract:** This rulemaking considers whether the Commission should adopt an automatic roaming rule for Commercial Mobile Radio Services and sunset the current manual roaming requirement.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/21/00 | 65 FR 69891 |
| NPRM | 09/28/05 | 70 FR 56612 |
| NPRM | 01/19/06 | 71 FR 3029 |
| FNPRM | 08/30/07 | 72 FR 50085 |
| Final Rule | 08/30/07 | 72 FR 50064 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Christina Clearwater, Attorney, Federal Communications Commission, Wireless Telecom. Bureau, Auctions Division, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1893
Email: christina.clearwater@fcc.gov

Won Kim, Attorney, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1368
Email: won.kim@fcc.gov

**RIN:** 3060–AH83

## 376. AMENDMENTS OF VARIOUS RULES AFFECTING WIRELESS RADIO SERVICES (WT DOCKET NO. 03–264)

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 161; 47 USC 303(r)

**Abstract:** This rulemaking proposes to streamline and harmonize wireless radio service rules.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/23/04 | 69 FR 8132 |
| NPRM Comment Period End | 05/24/04 | |
| NPRM | 10/19/05 | 70 FR 60770 |
| NPRM Comment Period End | 12/19/05 | |
| Final Rule | 10/20/05 | 70 FR 61049 |
| Proposed Rule | 05/02/07 | 72 FR 24238 |
| Final Rule | 05/16/07 | 72 FR 27688 |
| Final Rule | 08/24/07 | 72 FR 48814 |
| Final Rule | 05/02/08 | 73 FR 24180 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Nina Shafran, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2781
Email: nina.shafran@fcc.gov

**RIN:** 3060–AI30

## 377. FACILITATING THE PROVISION OF SPECTRUM–BASED SERVICES TO RURAL AREAS

**Legal Authority:** Not Yet Determined

**Abstract:** This rulemaking will facilitate the provision of spectrum-based services to rural areas.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/12/03 | 68 FR 64050 |
| NPRM Comment Period End | 01/26/04 | |
| NPRM | 12/15/04 | 69 FR 75174 |
| NPRM Comment Period End | 01/14/05 | |
| Final Rule | 12/15/04 | 69 FR 75144 |
| Final Rule | 04/27/05 | 70 FR 21652 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Paul D'Ari, Spectrum and Competition Policy Division, Wireless Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1550
Fax: 202 418–7447
Email: paul.dari@fcc.gov

**RIN:** 3060–AI31

## 378. IMPROVING PUBLIC SAFETY COMMUNICATIONS IN THE 800 MHZ BAND INDUSTRIAL/LAND TRANSPORTATION AND BUSINESS CHANNELS

**Legal Authority:** 47 USC 154(i); 47 USC 303(f); 47 USC 303(r); 47 USC 332

**Abstract:** The Commission seeks to improve public safety communications in the 800 MHz band and consolidate the 800 MHz Industrial/Land Transportation and Business Pool channels.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/05/02 | 67 FR 16351 |
| NPRM Comment Period End | 05/06/02 | |
| Final Rule | 08/19/02 | 67 FR 53754 |
| Proposed Rule | 02/10/03 | 68 FR 6687 |
| Final Rule | 11/22/04 | 69 FR 67823 |
| Final Rule | 11/22/04 | 69 FR 67853 |
| Final Rule | 02/08/05 | 70 FR 6750 |
| Final Rule | 02/08/05 | 70 FR 6761 |
| Final Rule | 04/06/05 | 70 FR 17327 |
| Notice | 06/15/05 | 70 FR 34764 |
| Final Rule | 09/28/05 | 70 FR 56583 |
| Notice | 10/26/05 | 70 FR 61823 |
| Final Rule | 12/28/05 | 70 FR 76704 |
| Proposed Rule | 09/21/06 | 71 FR 55149 |
| Clarification | 06/20/07 | 72 FR 33914 |
| Final Rule | 07/20/07 | 72 FR 39756 |
| Final Rule; Correction | 09/28/07 | 72 FR 54847 |
| Notice | 09/28/07 | 72 FR 55208 |
| Final Rule; Clarification | 10/05/07 | 72 FR 56923 |
| Petition for Recon | 10/01/07 | 72 FR 557722 |
| Proposed Rule | 11/13/07 | 72 FR 63869 |
| Petition for Recon | 11/14/07 | 72 FR 65734 |
| Proposed Rule | 03/31/08 | 73 FR 16822 |
| Final Rule | 06/13/08 | 73 FR 33728 |
| Proposed Rule | 07/13/08 | 73 FR 40274 |
| Petition for Recon | 07/28/08 | 73 FR 4375 |
| Final Rule | 11/17/08 | 73 FR 67794 |
| Final Rule | 02/06/09 | 74 FR 6235 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Michael Wilhelm, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0870
Email: michael.wilhelm@fcc.gov

**RIN:** 3060–AI34

## 379. REVIEW OF PART 87 OF THE COMMISSION'S RULES CONCERNING AVIATION (WT DOCKET NO. 01–289)

**Legal Authority:** 47 USC 154; 47 USC 303; 47 USC 307(e)

**Abstract:** This proceeding is intended to streamline, consolidate and revise our part 87 rules governing the Aviation Radio Service. The rule changes are designed to ensure these rules reflect current technological advances.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/16/01 | 66 FR 64785 |
| NPRM Comment Period End | 03/14/02 | |
| R&O and FNPRM | 10/16/03 | |
| FNPRM | 04/12/04 | 69 FR 19140 |
| FNPRM Comment Period End | 07/12/04 | |
| R&O | 06/14/04 | 69 FR 32577 |
| NPRM | 12/06/06 | 71 FR 70710 |
| NPRM Comment Period End | 03/06/07 | |
| Final Rule | 12/06/06 | 71 FR 70671 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeff Tobias, Attorney Advisor, Federal Communications

Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0680
Email: jeff.tobias@fcc.gov

**RIN:** 3060–AI35

## 380. IMPLEMENTATION OF THE COMMERCIAL SPECTRUM ENHANCEMENT ACT (CSEA) AND MODERNIZATION OF THE COMMISSION'S COMPETITIVE BIDDING RULES AND PROCEDURES (WT DOCKET NO. 05–211)

**Legal Authority:** 15 USC 79; 47 USC 151; 47 USC 154(i) and (j); 47 USC 155; 47 USC 155(c); 47 USC 157; 47 USC 225; 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 309(j); 47 USC 325(e); 47 USC 334; 47 USC 336; 47 USC 339; 47 USC 554

**Abstract:** This proceeding implements rules and procedures needed to comply with the recently enacted Commercial Spectrum Enhancement Act (CSEA). It establishes a mechanism for reimbursing federal agencies out of spectrum auction proceeds for the cost of relocating their operations from certain ''eligible frequencies'' that have been reallocated from Federal to non-Federal use. It also seeks to improve the Commission's ability to achieve Congress's directives with regard to designated entities and to ensure that, in accordance with the intent of Congress, every recipient of its designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/14/05 | 70 FR 43372 |
| NPRM Comment Period End | 08/26/05 | |
| Declaratory Ruling | 06/14/05 | 70 FR 43322 |
| R&O | 01/24/06 | 71 FR 6214 |
| FNPRM | 02/03/06 | 71 FR 6992 |
| FNPRM Comment Period End | 02/24/06 | |
| Second R&O | 04/25/06 | 71 FR 26245 |
| Order on Recon of Second R&O | 06/02/06 | 71 FR 34272 |
| NPRM | 06/21/06 | 71 FR 35594 |
| NPRM Comment Period End | 08/21/06 | |
| Reply Comment Period End | 09/19/06 | |
| 2nd Order and Recon of 2nd R&O | 04/04/08 | 73 FR 18528 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kelly Quinn, Assistant Chief, Auctions and Spectrum Access Division, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7384
Email: kelly.quinn@fcc.gov

**RIN:** 3060–AI88

## 381. FACILITATING THE PROVISION OF FIXED AND MOBILE BROADBAND ACCESS, EDUCATIONAL AND OTHER ADVANCED SERVICES IN THE 2150–2162 AND 2500–2690 MHZ BANDS

**Legal Authority:** 47 USC 154; 47 USC 301 to 303; 47 USC 307; 47 USC 309; 47 USC 332; 47 USC 336 and 337

**Abstract:** The Commission seeks comment on whether to assign Educational Broadband Service (EBS) spectrum in the Gulf of Mexico. It also seeks comment on how to license unassigned and available EBS spectrum. Specifically, we seek comment on whether it would be in the public interest to develop a scheme for licensing unassigned EBS spectrum that avoids mutual exclusivity; we ask whether EBS eligible entities could participate fully in a spectrum auction; we seek comment on the use of small business size standards and bidding credits for EBS if we adopt a licensing scheme that could result in mutually exclusive applications; we seek comment on the proper market size and size of spectrum blocks for new EBS licenses; and we seek comment on issuing one license to a State agency designated by the Governor to be the spectrum manager, using frequency coordinators to avoid mutually exclusive EBS applications, as well as other alternative licensing schemes. The Commission must develop a new licensing scheme for EBS in order to achieve the Commission's goal of facilitating the development of new and innovative wireless services for the benefit of students throughout the nation.

The Commission also seeks comment on establishing a new deadline for new initial Broadband Radio Service (BRS) licensees to demonstrate substantial service.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/02/03 | 68 FR 34560 |
| NPRM Comment Period End | 09/08/03 | |
| FNPRM | 07/29/04 | 69 FR 72048 |
| FNPRM Comment Period End | 01/10/03 | |
| R&O | 07/29/04 | 69 FR 72020 |
| MO&O | 04/27/06 | 71 FR 35178 |
| FNPRM | 03/20/08 | 73 FR 26067 |
| FNPRM Comment Period End | 07/07/08 | |
| MO&O | 03/20/08 | 73 FR 26032 |
| MO&O | 09/28/09 | 74 FR 49335 |
| FNPRM | 09/28/09 | 74 FR 49356 |
| FNPRM Comment Period End | 10/13/09 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John Schauble, Deputy Chief, Broadband Division, WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0797
Email: john.schauble@fcc.gov

**RIN:** 3060–AJ12

## 382. AMENDMENT OF THE RULES REGARDING MARITIME AUTOMATIC IDENTIFICATION SYSTEMS (WT DOCKET NO. 04–344)

**Legal Authority:** 47 USC 154; 47 USC 302(a); 47 USC 303; 47 USC 306; 47 USC 307(e); 47 USC 332; 47 USC 154(i); 47 USC 161

**Abstract:** This action adopts additional measures for domestic implementation of Automatic Identification Systems (AIS), an advanced marine vessel tracking and navigation technology that can significantly enhance our nation's homeland security as well as maritime safety.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 01/29/09 | 74 FR 5117 |
| Final Rule Effective | 03/02/09 | |
| Petition for Recon | 04/03/09 | 74 FR 15271 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0680

Email: jeff.tobias@fcc.gov

**RIN:** 3060–AJ16

### 383. SERVICE RULES FOR ADVANCED WIRELESS SERVICES IN THE 2155–2175 MHZ BAND

**Legal Authority:** 47 USC 151 and 152; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 214; 47 USC 301

**Abstract:** This proceeding explores the possible uses of the 2155-2175 MHz frequency band (AWS-3) to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Notice of Proposed Rulemaking (NPRM) sought comment on what service rules should be adopted in the AWS-3 band. We requested comment on rules for licensing this spectrum in a manner that will permit it to be fully and promptly utilized to bring advanced wireless services to American consumers. Our objective is to allow for the most effective and efficient use of the spectrum in this band, while also encouraging development of robust wireless broadband services. We proposed to apply our flexible, market-oriented rules to the band in order to meet this objective.

Thereafter, the Commission released a Further Notice of Proposed Rulemaking (FNPRM), seeking comment on the Commission's proposed AWS-3 rules, which include adding 5 megahertz of spectrum (2175-80 MHz) to the AWS-3 band, and requiring licensees of that spectrum to provide—using up to 25 percent of its wireless network capacity—free, two-way broadband Internet service at engineered data rates of at least 768 kbps downstream.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/14/07 | 72 FR 64013 |
| NPRM Comment Period End | 01/14/08 | |
| FNPRM | 06/25/08 | 73 FR 35995 |
| FNPRM Comment Period End | 08/11/08 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Peter Daronco, Associate Div. Chief, Broadband Div., Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418–7235
Email: peter.daronco@fcc.gov

**RIN:** 3060–AJ19

### 384. SERVICE RULES FOR ADVANCED WIRELESS SERVICES IN THE 1915 TO 1920 MHZ, 1995 TO 2000 MHZ, 2020 TO 2025 MHZ, AND 2175 TO 2180 MHZ BANDS

**Legal Authority:** 47 USC 151 and 152; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 214; 47 USC 301; . . .

**Abstract:** This proceeding explores the possible uses of the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands (collectively AWS-2) to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

The Notice of Proposed Rulemaking (NPRM) sought comment on what service rules should be adopted in the AWS-2 band. We requested comment on rules for licensing this spectrum in a manner that will permit it to be fully and promptly utilized to bring advanced wireless services to American consumers. Our objective is to allow for the most effective and efficient use of the spectrum in this band, while also encouraging development of robust wireless broadband services.

Thereafter, the Commission released a Further Notice of Proposed Rulemaking (FNPRM), seeking comment on the Commission's proposed rules for the 1915-1920 MHz and 1995-2000 MHz bands. In addition, the Commission proposed to add 5 megahertz of spectrum (2175-80 MHz band) to the 2155-2175 MHz band, and would require the licensee of the 2155-2180 MHz band to provide—using up to 25 percent of its wireless network capacity—free, two-way broadband Internet service at engineered data rates of at least 768 kbps downstream.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/02/04 | 69 FR 63489 |
| NPRM Comment Period End | 01/24/05 | |
| FNPRM | 06/25/08 | 73 FR 35995 |
| FNPRM Comment Period End | 08/11/08 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Peter Daronco, Associate Div. Chief, Broadband Div., Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418–7235
Email: peter.daronco@fcc.gov

**RIN:** 3060–AJ20

### 385. RULES AUTHORIZING THE OPERATION OF LOW POWER AUXILIARY STATIONS IN THE 698–806 MHZ BAND, WT DOCKET NO. 08–166; PUBLIC INTEREST SPECTRUM COALITION, PETITION FOR RULEMAKING REGARDING LOW POWER AUXILIARY

**Legal Authority:** 47 USC 151 and 152; 47 USC 154(i) and 154(j); 47 USC 301 and 302(a); 47 USC 303; 47 USC 303(r); 47 USC 304; 47 USC 307 to 309; 47 USC 316; 47 USC 332; 47 USC 336 and 337

**Abstract:** In the Notice of Proposed Rulemaking and Order, to facilitate the DTV transition the Commission tentatively concludes to amend its rules to make clear that the operation of low power auxiliary stations within the 700 MHz Band will no longer be permitted after the end of the DTV transition. The Commission also tentatively concludes to prohibit the manufacture, import, sale, offer for sale, or shipment of devices that operate as low power auxiliary stations in the 700 MHz Band. In addition, for those licensees that have obtained authorizations to operate low power auxiliary stations in spectrum that includes the 700 MHz Band beyond the end of the DTV transition, the Commission tentatively concludes that it will modify these licenses so as not to permit such operations in the 700 MHz Band after February 17, 2009. The Commission also seeks comment on issues raised by the Public Interest Spectrum Coalition (PISC) in its informal complaint and petition for rulemaking.

The Commission also imposes a freeze on the filing of new license applications that seek to operate on any 700 MHz Band frequencies (698-806 MHz) after the end of the DTV transition, February 17, 2009, as well as on granting any request for equipment authorization of low power auxiliary station devices that would operate in any of the 700 MHz Band frequencies. The Commission also holds in abeyance, until the conclusion of this proceeding, any pending license applications and equipment authorization requests that involve operation of low power auxiliary devices on frequencies in the 700 MHz Band after the end of the DTV transition.

On January 15, 2010, the Commission released a Report and Order that prohibits the distribution and sale of wireless microphones that operate in the 700 MHz band (698-806 MHz, channels 52-69) and includes a number of provisions to clear these devices from that band. These actions help complete an important part of the digital television (DTV) transition by clearing the 700 MHz band to enable the rollout of communications services for public safety and the deployment of next generation wireless devices.

On January 15, 2010, the Commission also released a Further Notice of Proposed Rulemaking seeking comment on the operation of low power auxiliary stations, including wireless microphones, in the core TV bands (channels 2-51, excluding channel 37). Among the issues the Commission is considering in the Further Notice are revisions to its rules to expand eligibility for licenses to operate wireless microphones under part 74; the operation of wireless microphones on an unlicensed basis in the core TV bands under part 15; technical rules to apply to low power wireless audio devices, including wireless microphones, operating in the core TV bands on an unlicensed basis under Part 15 of the rules; and long term solutions to address the operation of wireless microphones and the efficient use of the core TV spectrum.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/03/08 | 73 FR 51406 |
| NPRM Comment Period End | 10/20/08 | |
| R&O | 01/22/10 | 75 FR 3622 |
| FNPRM | 01/22/10 | 75 FR 3682 |
| FNPRM Comment Period End | 03/15/10 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** G. William Stafford, Attorney, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0563
Fax: 202 418–3956
Email: bill.stafford@fcc.gov

**RIN:** 3060–AJ21

## 386. AMENDMENT OF THE COMMISSION'S RULES TO IMPROVE PUBLIC SAFETY COMMUNICATIONS IN THE 800 MHZ BAND, AND TO CONSOLIDATE THE 800 MHZ AND 900 MHZ BUSINESS AND INDUSTRIAL/LAND TRANSPORTATION POOL CHANNELS

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 303; 47 USC 309; 47 USC 332

**Abstract:** This action adopts rules that retain the current site-based licensing paradigm for the 900 MHz B/ILT ''white space''; adopts interference protection rules applicable to all licensees operating in the 900 MHz B/ILT spectrum; and lifts, on a rolling basis, the freeze placed on applications for new 900 MHz B/ILT licenses in September 2004—the lift being tied to the completion of rebanding in each 800 MHz National Public Safety Planning Advisory Committee (NPSPAC) region.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/18/05 | 70 FR 13143 |
| NPRM Comment Period End | 06/12/05 | 70 FR 23080 |
| Final Rule | 12/16/08 | 73 FR 67794 |
| Petition for Recon | 03/12/09 | 74 FR 10739 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Michael Connelly, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0132
Email: michael.connelly@fcc.gov

**RIN:** 3060–AJ22

## 387. AMENDMENT OF PART 101 TO ACCOMMODATE 30 MHZ CHANNELS IN THE 6525–6875 MHZ BAND AND PROVIDE CONDITIONAL AUTHORIZATION ON CHANNELS IN THE 21.8–22.0 AND 23.0–23.2 GHZ BAND (WT DOCKET NO. 04–114)

**Legal Authority:** 47 USC 151 and 152; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 214; 47 USC 301 to 303; 47 USC 307 to 310; 47 USC 319; 47 USC 324; 47 USC 332 and 333

**Abstract:** The Commission seeks comments on modifying its rules to authorize channels with bandwidths of as much as 30 MHz in the 6525-6875 MHz band. We also propose to allow conditional authorization on additional channels in the 21.8-22.0 and 23.0-23.2 GHz bands.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/29/09 | 74 FR 36134 |
| NPRM Comment Period End | 07/22/09 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** John Schauble, Deputy Chief, Broadband Division, WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0797
Email: john.schauble@fcc.gov

**RIN:** 3060–AJ28

## 388. • IN THE MATTER OF SERVICE RULES FOR THE 698 TO 746, 747 TO 762 AND 777 TO 792 MHZ BANDS

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 303(r); 47 USC 309

**Abstract:** This is one of several docketed proceedings involved in the establishment of rules governing wireless licenses in the 698-806 MHz Band (the 700 MHz Band). This spectrum is being vacated by television broadcasters in TV Channels 52-69. It is being made available for wireless services, including public safety and commercial services, as a result of the digital television (DTV) transition. This docket has to do with service rules for the commercial services, and is known as the 700 MHz Commercial Services proceeding.

## FCC—Wireless Telecommunications Bureau — Long-Term Actions

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/03/06 | 71 FR 48506 |
| NPRM | 09/20/06 | |
| FNPRM | 05/02/07 | 72 FR 24238 |
| FNPRM Comment Period End | 05/23/07 | |
| R&O | 07/31/07 | 72 FR 48814 |
| Order on Recon | 09/24/07 | 72 FR 56015 |
| Second FNPRM | 05/14/08 | 73 FR 29582 |
| Second FNPRM Comment Period End | 06/20/08 | |
| Third FNPRM | 09/05/08 | 73 FR 57750 |
| Third FNPRM Comment Period End | 11/03/08 | |
| Second R&O | 02/20/09 | 74 FR 8868 |
| Final Rule | 03/04/09 | 74 FR 8868 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Paul D'Ari, Spectrum and Competition Policy Division, Wireless Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1550
Fax: 202 418–7447
Email: paul.dari@fcc.gov

**RIN:** 3060–AJ35

### 389. • IN THE MATTER OF EFFECTS OF COMMUNICATIONS TOWERS ON MIGRATORY BIRDS

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 303(q); 47 USC 303(r); 42 USC 4321 et seq

**Abstract:** On April 14, 2009, American Bird Conservancy, Defenders of Wildlife, and National Audubon Society filed a Petition for Expedited Rulemaking and Other Relief. The petitioners request that the Commission adopt on an expedited basis a variety of new rules, which they assert are necessary to comply with environmental statutes and their implementing regulations. This proceeding addresses the Petition for Expedited Rulemaking and Other Relief.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/22/06 | 71 FR 67510 |
| NPRM Comment Period End | 02/20/07 | |
| New NPRM Comment Period End | 05/23/07 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeff Steinberg, Deputy Chief, Spectrum and Competition Div, WTB, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0896

**RIN:** 3060–AJ36

### 390. • AMENDMENT OF PART 90 OF THE COMMISSION'S RULES

**Legal Authority:** 47 USC 154; 47 USC 303

**Abstract:** This proceeding considers rule changes impacting miscellaneous part 90 Private Land Mobile Radio rules.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/13/07 | 72 FR 32582 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rodney P Conway, Engineer, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418–2904
Fax: 202 418–1944
Email: rodney.conway@fcc.gov

**RIN:** 3060–AJ37

## Federal Communications Commission (FCC) — Completed Actions
## Wireless Telecommunications Bureau

### 391. AMENDMENT OF PART 90 OF THE RULES TO ADOPT REGULATIONS FOR AUTOMATIC VEHICLE MONITORING SYSTEMS

**Legal Authority:** 47 USC 154; 47 USC 251 and 252; 47 USC 303; 47 USC 309; 47 USC 332

**Abstract:** This Second Report and Order adopts rules and procedures governing competitive bidding for multilateration Location and Monitoring Service (LMS) frequencies.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/06/97 | 62 FR 52078 |
| NPRM Comment Period End | 11/20/97 | |
| Second R&O | 07/30/98 | 63 FR 40659 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Richard Arsenault, Chief Counsel, Mobility Division, WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0920
Email: richard.arsenault@fcc.gov

**RIN:** 3060–AH12

### 392. FIXED SATELLITE SERVICE AND TERRESTRIAL SYSTEM IN THE KU–BAND

**Legal Authority:** 47 USC 154; 47 USC 157; 47 USC 303

**Abstract:** The Memorandum Opinion and Order and 2nd Report and Order addressed petitions for reconsideration and established technical, service, and licensing rules for Multichannel Video Distribution and Data Service (MVDDS) in the 12 GHz band. MVDDS will facilitate the delivery of new communications services, such as video and broadband services, to a wide range of populations, including those that are unserved or underserved. These rules will allow MVDDS licensees to share the 12 GHz band with new operators on a com-primary basis, and non-harmful interference basis with incumbent Direct Broadcast Satellite service providers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/12/99 | 64 FR 1786 |
| Order | 02/16/99 | 64 FR 7577 |
| Public Notice | 12/15/99 | 64 FR 70028 |
| FNPRM | 01/24/01 | 66 FR 7607 |
| R&O | 02/16/01 | 66 FR 10601 |
| Petitions for Recon | 04/09/01 | 66 FR 18474 |
| Second R&O | 06/26/02 | 67 FR 43031 |
| Third R&O | 06/18/03 | 68 FR 42610 |
| Order To Deny | 07/25/03 | 68 FR 43942 |
| Final Rule | 05/18/04 | 69 FR 28062 |
| Final Rule | 06/07/04 | 69 FR 28062 |
| Correcting Amendment | 10/04/04 | 69 FR 59145 |

## FCC—Wireless Telecommunications Bureau — Completed Actions

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jennifer Mock, Program Analyst, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1890
Email: jennifer.mock@fcc.gov

**RIN:** 3060–AH17

### 393. IMPLEMENTATION OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED

**Legal Authority:** 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

**Abstract:** In the Fourth Memorandum Opinion and Order in WT Docket No. 99-87 (Fourth Memorandum Opinion and Order), the Federal Communications Commission (Commission or FCC) clarifies the Commission's Third Report and Order in this docket, and takes the opportunity to correct the inadvertent deletion of language in the rules regarding the schedule for Private Land Mobile Radio systems in the 150-174 MHz and 421-512 MHz bands to transition to narrowband kHz technology.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/03/99 | 64 FR 23571 |
| R&O | 01/02/01 | 66 FR 33 |
| MO&O | 05/16/02 | 67 FR 34848 |
| NPRM | 07/17/03 | 68 FR 42337 |
| R&O | 07/17/03 | 68 FR 42296 |
| Order | 04/06/04 | 69 FR 17959 |
| Final Rule | 06/15/05 | 70 FR 34666 |
| NPRM | 06/15/05 | 70 FR 34726 |
| Final Rule | 05/11/05 | 70 FR 24712 |
| Final Rule | 07/15/05 | 70 FR 41631 |
| Final Rule | 04/18/07 | 72 FR 19387 |
| Fourth MO&O | 06/17/08 | 73 FR 34201 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Roberto Mussenden, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1428
Email: roberto.mussenden@fcc.gov

**RIN:** 3060–AH33

### 394. YEAR 2000 BIENNIAL REVIEW (WT DOCKET NO. 01–108)

**Legal Authority:** 47 USC 151 and 154; 47 USC 303

**Abstract:** The year 2000 part 22 Biennial Review Report and Order and subsequent Order on Reconsideration examined whether certain rules should be modified or eliminated as a result of technological changes or increased competition.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Final Rule | 04/01/04 | 69 FR 17063 |
| Final Rule Effective | 06/01/04 | |
| Final Rule | 09/15/04 | 69 FR 55516 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Linda Chang, Attorney, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1339
Fax: 202 418–7447
Email: lchang@fcc.gov

**RIN:** 3060–AI26

### 395. AIR–GROUND TELECOMMUNICATIONS SERVICES

**Legal Authority:** 47 USC 151 and 151(i); 47 USC 161; 47 USC 303(r)

**Abstract:** Re-examination of rules governing air-ground telecommunications services on commercial airplanes. Revision/elimination of 47 CFR 22 non-cellular provisions.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/25/03 | 68 FR 44003 |
| NPRM Comment Period End | 10/23/03 | |
| Final Rule | 04/13/05 | 70 FR 19293 |
| NPRM | 04/13/05 | 70 FR 19377 |
| NPRM Comment Period End | 05/03/05 | |
| Final Rule Correction | 04/27/05 | 70 FR 21663 |
| Final Rule | 12/27/05 | 70 FR 76411 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Richard Arsenault, Chief Counsel, Mobility Division, WTB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0920
Email: richard.arsenault@fcc.gov

**RIN:** 3060–AI27

## Federal Communications Commission (FCC) — Long-Term Actions

## Wireline Competition Bureau

### 396. IMPLEMENTATION OF THE UNIVERSAL SERVICE PORTIONS OF THE 1996 TELECOMMUNICATIONS ACT

**Legal Authority:** 47 USC 151 et seq

**Abstract:** The goals of Universal Service, as mandated by the 1996 Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the Nation; advance the availability of such services to all consumers, including those in low income, rural, insular, and high-cost areas at rates that are reasonably comparable to those charged in urban areas. In addition, the 1996 Act states that all providers of telecommunications services should contribute to Federal universal service in some equitable and nondiscriminatory manner; there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service; all schools, classrooms, health care providers, and libraries should, generally, have access to advanced telecommunications services; and finally, that the Federal-State Joint Board and the Commission should determine those other principles that, consistent with the 1996 Act, are necessary to protect the public interest.

The goals of Universal Service, as mandated by the 1996 Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the Nation; advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably

comparable to those charged in urban areas. In addition, the 1996 Act states that all providers of telecommunications services should contribute to Federal universal service in some equitable and nondiscriminatory manner; there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service; all schools, classrooms, health care providers, and libraries should, generally, have access to advanced telecommunications services; and finally, that the Federal-State Joint Board and the Commission should determine those other principles that, consistent with the 1996 Act, are necessary to protect the public interest.

The goals of Universal Service, as mandated by the 1996 Act, are to promote the availability of quality services at just, reasonable, and affordable rates; increase access to advanced telecommunications services throughout the Nation; advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas. In addition, the 1996 Act states that all providers of telecommunications services should contribute to Federal universal service in some equitable and nondiscriminatory manner; there should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service; all schools, classrooms, health care providers, and libraries should, generally, have access to advanced telecommunications services; and finally, that the Federal-State Joint Board and the Commission should determine those other principles that, consistent with the 1996 Act, are necessary to protect the public interest.

On October 9, 2009, the Commission issued an Order and Notice of Proposed (NPRM) addressing the effect of line loss on universal service Local Switching Support (LSS) received by incumbent local exchange carriers (LECs) that are designated as eligible telecommunications carriers (ETCs). Under the Commission's rules, as an incumbent LEC ETC's access lines increase above certain thresholds, the amount of LSS it may receive decreases. The order denies the Coalition for Equity in Switching Support's petition seeking clarification that the Commission's rules allow an incumbent LEC ETC's local switching support to increase if the carrier's access lines decrease below those thresholds. In the NPRM, the Commission tentatively concludes that the LSS rules should be modified to permitincumbent LEC ETCs that lose lines to increase their LSS; and the Commission seeks comment on these proposed rule changes.

On November 5, 2009, the Commission issued a Notice of Proposed Rulemaking that proposes to revise the Commission's rules for the schools and libraries universal service support mechanism, also known as the E-rate program, to comply with the requirements of the Protecting Children in the 21st Century Act. The Protecting Children in the 21st Century Act added a new certification requirement for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program. The NPRM also proposes to revise related Commission rules to reflect existing statutory language more accurately.

On December 2, 2009, the Commission issued a Report and Order and Further Notice of Proposed Rulemaking (FNPRM) addressing and seeking comment on issues regarding the services eligible for funding under the schools and libraries universal service support mechanism, also known as the E-rate program. The order released the Funding Year 2010 E-rate Eligible Service List, concluding that interconnected voice over Internet protocol VoIP service is an eligible service and should continue to receive E-rate program funding. Additionally, the report and order clarifies the E-rate program eligibility of text messaging, video on-demand servers, Ethernet, web hosting, wireless local area network (LAN) controllers, and virtualization software. The FNPRM seeks comment on the eligibility of certain services in future funding years, as well as on proposed changes to the process for determining the services that will be eligible for support under the E-rate program.

On December 8, 2009, the Commission sought comment on a petition for rulemaking filed by the National Cable and Telecommunications Association (NCTA). NCTA proposes that the Commission establish procedures to reduce the amount of universal service high-cost support provided to carriers in those areas of the country where there is extensive, unsubsidized facilities-based voice competition and where government subsidies no longer are needed to ensure that service will be made available to consumers.

On December 15, 2009, the Commission issued a Further Notice of Proposed Rulemaking responding to the decision of the United States Court of Appeals for the Tenth Circuit in Qwest Communications International, Inc. v. FCC, in which the court remanded the Commission's rules for providing high-cost universal service support to non-rural carriers. The Commission tentatively concluded that it should not attempt wholesale reform of the non-rural high-cost mechanism at this time, but it sought comment on certain interim changes to address the court's concerns and changes in the marketplace. Specifically, the Commission sought comment on what changes should be made to the Commission's rules regarding the rate comparability review and certification process, whether the Commission should define ''reasonably comparable'' rural and urban rates in terms of rates for bundled local and long distance services, and whether the Commission should require carriers to certify that they offer bundled local and long distance services at reasonably comparable rural and urban rates.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Recommended Decision Federal–State Joint Board, Universal Service | 11/08/96 | 61 FR 63778 |
| First R&O | 05/08/97 | 62 FR 32862 |
| Second R&O | 05/08/97 | 62 FR 32862 |
| Order on Recon | 07/10/97 | 62 FR 40742 |
| R&O and Second Order on Recon | 07/18/97 | 62 FR 41294 |
| Second R&O, and FNPRM | 08/15/97 | 62 FR 47404 |
| Third R&O | 10/14/97 | 62 FR 56118 |
| Second Order on Recon | 11/26/97 | 62 FR 65036 |
| Fourth Order on Recon | 12/30/97 | 62 FR 2093 |
| Fifth Order on Recon | 06/22/98 | 63 FR 43088 |
| Fifth R&O | 10/28/98 | 63 FR 63993 |
| Eighth Order on Recon | 11/21/98 | |
| Second Recommended Decision | 11/25/98 | 63 FR 67837 |

| Action | Date | FR Cite |
|---|---|---|
| Thirteenth Order on Recon | 06/09/99 | 64 FR 30917 |
| FNPRM | 06/14/99 | 64 FR 31780 |
| FNPRM | 09/30/99 | 64 FR 52738 |
| Fourteenth Order on Recon | 11/16/99 | 64 FR 62120 |
| Fifteenth Order on Recon | 11/30/99 | 64 FR 66778 |
| Tenth R&O | 12/01/99 | 64 FR 67372 |
| Ninth R&O and Eighteenth Order on Recon | 12/01/99 | 64 FR 67416 |
| Nineteenth Order on Recon | 12/30/99 | 64 FR 73427 |
| Twentieth Order on Recon | 05/08/00 | 65 FR 26513 |
| Public Notice | 07/18/00 | 65 FR 44507 |
| Twelfth R&O, MO&O and FNPRM | 08/04/00 | 65 FR 47883 |
| FNPRM and Order | 11/09/00 | 65 FR 67322 |
| FNPRM | 01/26/01 | 66 FR 7867 |
| R&O and Order on Recon | 03/14/01 | 66 FR 16144 |
| NPRM | 05/08/01 | 66 FR 28718 |
| Order | 05/22/01 | 66 FR 35107 |
| Fourteenth R&O and FNPRM | 05/23/01 | 66 FR 30080 |
| FNPRM and Order | 01/25/02 | 67 FR 7327 |
| NPRM | 02/15/02 | 67 FR 9232 |
| NPRM and Order | 02/15/02 | 67 FR 10846 |
| FNPRM and R&O | 02/26/02 | 67 FR 11254 |
| NPRM | 04/19/02 | 67 FR 34653 |
| Order and Second FNPRM | 12/13/02 | 67 FR 79543 |
| NPRM | 02/25/03 | 68 FR 12020 |
| Public Notice | 02/26/03 | 68 FR 10724 |
| Second R&O and FNPRM | 06/20/03 | 68 FR 36961 |
| Twenty–Fifth Order on Recon, R&O, Order, and FNPRM | 07/16/03 | 68 FR 41996 |
| NPRM | 07/17/03 | 68 FR 42333 |
| Order | 07/24/03 | 68 FR 47453 |
| Order | 08/06/03 | 68 FR 46500 |
| Order and Order on Recon | 08/19/03 | 68 FR 49707 |
| Order on Remand, MO&O, FNPRM | 10/27/03 | 68 FR 69641 |
| R&O, Order on Recon, FNPRM | 11/17/03 | 68 FR 74492 |
| R&O, FNPRM | 02/26/04 | 69 FR 13794 |
| R&O, FNPRM | 04/29/04 | |
| NPRM | 05/14/04 | 69 FR 3130 |
| NPRM | 06/08/04 | 69 FR 40839 |
| Order | 06/28/04 | 69 FR 48232 |
| Order on Recon & Fourth R&O | 07/30/04 | 69 FR 55983 |
| Fifth R&O and Order | 08/13/04 | 69 FR 55097 |
| Order | 08/26/04 | 69 FR 57289 |
| Second FNPRM | 09/16/04 | 69 FR 61334 |
| Order & Order on Recon | 01/10/05 | 70 FR 10057 |
| Sixth R&O | 03/14/05 | 70 FR 19321 |
| R&O | 03/17/05 | 70 FR 29960 |
| MO&O | 03/30/05 | 70 FR 21779 |
| NPRM & FNPRM | 06/14/05 | 70 FR 41658 |
| Order | 10/14/05 | 70 FR 65850 |
| Order | 10/27/05 | |
| NPRM | 01/11/06 | 71 FR 1721 |
| Report Number 2747 | 01/12/06 | 71 FR 2042 |
| Order | 02/08/06 | 71 FR 6485 |
| FNPRM | 03/15/06 | 71 FR 13393 |
| R&O and NPRM | 07/10/06 | 71 FR 38781 |
| Order | 01/01/06 | 71 FR 6485 |
| Order | 05/16/06 | 71 FR 30298 |
| MO&O and FNPRM | 05/16/06 | 71 FR 29843 |
| R&O | 06/27/06 | 71 FR 38781 |
| Public Notice | 08/11/06 | 71 FR 50420 |
| Order | 09/29/06 | 71 FR 65517 |
| Public Notice | 03/12/07 | 72 FR 36706 |
| Public Notice | 03/13/07 | 72 FR 40816 |
| Public Notice | 03/16/07 | 72 FR 39421 |
| Notice of Inquiry | 04/16/07 | |
| NPRM | 05/14/07 | 72 FR 28936 |
| Recommended Decision | 11/20/07 | |
| Order | 02/14/08 | 73 FR 8670 |
| NPRM | 03/04/08 | 73 FR 11580 |
| NPRM | 03/04/08 | 73 FR 11591 |
| R&O | 05/05/08 | 73 FR 11837 |
| Public Notice | 07/02/08 | 73 FR 37882 |
| NPRM | 08/19/08 | 73 FR 48352 |
| Notice of Inquiry | 10/14/08 | 73 FR 60689 |
| Order on Remand, R&O, FNPRM | 11/12/08 | 73 FR 66821 |
| R&O | 05/22/09 | 74 FR 2395 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Nakesha Woodward, Program Support Assistant, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1502
Email: kesha.woodward@fcc.gov

**RIN:** 3060–AF85

## 397. TELECOMMUNICATIONS CARRIERS' USE OF CUSTOMER PROPRIETARY NETWORK INFORMATION AND OTHER CUSTOMER INFORMATION

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 222; 47 USC 272; 47 USC 303(r)

**Abstract:** The Commission adopted rules implementing the new statutory framework governing carrier use and disclosure of customer proprietary network information (CPNI) created by section 222 of the Communications Act of 1934, as amended. CPNI includes, among other things, to whom, where, and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent to which the service is used.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/28/96 | 61 FR 26483 |
| Public Notice | 02/25/97 | 62 FR 8414 |
| Second R&O and FNPRM | 04/24/98 | 63 FR 20364 |
| Order on Recon | 10/01/99 | 64 FR 53242 |
| Final Rule, Announcement of Effective Date | 01/26/01 | 66 FR 7865 |
| Clarification Order and Second NPRM | 09/07/01 | 66 FR 50140 |
| Third R&O and Third FNPRM | 09/20/02 | 67 FR 59205 |
| NPRM | 03/15/06 | 71 FR 13317 |
| NPRM | 06/08/07 | 72 FR 31782 |
| Final Rule, Announcement of Effective Date | 06/08/07 | 72 FR 31948 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Melissa Kirkel, Attorney–Advisor, WCB, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7958
Fax: 202 418–1413
Email: melissa.kirkel@fcc.gov

**RIN:** 3060–AG43

## 398. IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996

**Legal Authority:** 47 USC 151 to 155; 47 USC 157; 47 USC 201 to 205; 47 USC 207 to 209; 47 USC 218; 47 USC 251

**Abstract:** On August 8, 1996, the Commission adopted the Local Competition Second Report and Order (FCC 96-333), implementing the dialing parity, nondiscriminatory access, network disclosure, and numbering administration provisions of the Telecommunications Act of 1996. On July 19, 1999, the Commission released the First Order on Reconsideration (FCC 99-170), denying the petition for reconsideration of the Local Competition Second Report and Order filed by Beehive Telephone Company, Inc., which related to numbering administration.

On September 9, 1999, the Commission released the Second Order on Reconsideration (FCC 99-227), resolving petitions for reconsideration of rules

adopted in the Local Competition Second Report and Order to implement the requirement of 47 U.S.C. section 251(b)(3) that LECs provide non-discriminatory access to directory assistance, directory listing, and operator services. At the same time, the Commission released a Notice of Proposed Rulemaking (NPRM) (also FCC 99-227) seeking comment on issues related to developments in, and the convergence of, directory publishing and directory assistance.

On October 21, 1999, the Commission released the Third Order on Reconsideration (FCC 99-243), resolving the remaining petitions for reconsideration regarding numbering administration under 47 U.S.C. section 251(e)(1). On January 23, 2001, the Commission released a First Report and Order (FCC 01-27) resolving issues raised in the September 9, 1999 NPRM and concluding, among other things, that competing directory assistance (DA) providers that are certified as competitive local exchange carriers (competitive LECs), are agents of competitive LECs, or that offer call completion services are entitled to nondiscriminatory access to LEC local DA databases.

On January 9, 2002, the Commission released the Directory Assistance NPRM (FCC 01-384), in which the Commission solicited comment on whether there is sufficient competition in the retail DA market, and if not, what if any action the Commission should take to promote such competition. The Commission sought specific comment on whether alternative dialing methods would promote competition. Proposed methods include: (1) Presubscription to 411; (2) utilizing national 555 numbers; (3) utilizing carrier access codes (1010 numbers); and (4) utilizing 411XX numbers. The Commission also sought comment on whether the 411 dialing code should be eliminated. This proceeding is pending before the Commission.

On January 29, 2002, the Commission released an Order on Reconsideration (FCC 02-11) dismissing petitions for reconsideration or clarification of the Local Competition Second Report and Order regarding dialing parity under 47 U.S.C. section 251(b)(3) and network disclosure under 47 U.S.C. section 251(c)(5).

On May 3, 2005, the Commission released an Order on Reconsideration (FCC 05-93) resolving petitions for reconsideration of the Second Order on Reconsideration and the First Report and Order. The Commission clarified its rules regarding the use of DA data obtained pursuant to section 251(b)(3) of the Act, and denied BellSouth and SBC's joint petition for reconsideration which sought authority to place contractual restrictions on competing DA providers' use of DA information. The Commission reaffirmed that LECs are required to provide nondiscriminatory access to their entire local DA database including local DA data acquired from third parties. The Commission also accepted Qwest's request to withdraw its petition for reconsideration of the First Report and Order, and resolved SBC's petition for reconsideration of the Second Order on Reconsideration.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/25/96 | 61 FR 18311 |
| NPRM Reply Comment Period End | 06/03/96 | |
| Second R&O | 09/06/96 | 61 FR 47284 |
| Second Order on Recon | 09/27/99 | 64 FR 51910 |
| NPRM | 09/27/99 | 64 FR 51949 |
| Third Order on Recon | 11/18/99 | 64 FR 62983 |
| First R&O | 02/21/01 | 66 FR 10965 |
| NPRM | 02/14/02 | 67 FR 6902 |
| Order on Recon | 08/17/05 | 70 FR 48290 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rodney McDonald, Attorney–Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7513
Email: rodney.mcdonald@fcc.gov

**RIN:** 3060–AG50

## 399. LOCAL TELEPHONE NETWORKS THAT LECS MUST MAKE AVAILABLE TO COMPETITORS

**Legal Authority:** 47 USC 251

**Abstract:** The Commission adopted rules applicable to incumbent local exchange carriers (LECs) to permit competitive carriers to access portions of the incumbent LECs' networks on an unbundled basis. Unbundling allows competitors to lease portions of the incumbent LECs' network to provide telecommunications services. These rules are intended to accelerate the development of local exchange competition.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Second FNPRM | 04/26/99 | 64 FR 20238 |
| Fourth FNPRM | 01/14/00 | 65 FR 2367 |
| Errata Third R&O and Fourth FNPRM | 01/18/00 | 65 FR 2542 |
| Second Errata Third R&O and Fourth FNPRM | 01/18/00 | 65 FR 2542 |
| Supplemental Order | 01/18/00 | 65 FR 2542 |
| Third R&O | 01/18/00 | 65 FR 2542 |
| Correction | 04/11/00 | 65 FR 19334 |
| Supplemental Order Clarification | 06/20/00 | 65 FR 38214 |
| Public Notice | 02/01/01 | 66 FR 8555 |
| Public Notice | 03/05/01 | 66 FR 18279 |
| Public Notice | 04/10/01 | |
| Public Notice | 04/23/01 | |
| Public Notice | 05/14/01 | |
| NPRM | 01/15/02 | 67 FR 1947 |
| Public Notice | 05/29/02 | |
| Public Notice | 08/01/02 | |
| Public Notice | 08/13/02 | |
| NPRM | 08/21/03 | 68 FR 52276 |
| R&O and Order on Remand | 08/21/03 | 68 FR 52276 |
| Errata | 09/17/03 | |
| Report | 10/09/03 | 68 FR 60391 |
| Order | 10/28/03 | |
| Order | 01/09/04 | |
| Public Notice | 01/09/04 | |
| Public Notice | 02/18/04 | |
| Order | 07/08/04 | |
| Second R&O | 07/08/04 | 69 FR 43762 |
| Order on Recon | 08/09/04 | 69 FR 54589 |
| Interim Order | 08/20/04 | 69 FR 55111 |
| NPRM | 08/20/04 | 69 FR 55128 |
| Public Notice | 09/10/04 | |
| Public Notice | 09/13/04 | |
| Public Notice | 10/20/04 | |
| Order on Recon | 12/29/04 | 69 FR 77950 |
| Order on Remand | 02/04/04 | |
| Public Notice | 04/25/05 | 70 FR 29313 |
| Public Notice | 05/25/05 | 70 FR 34765 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Tim Stelzig, Associate Chief, Competition Policy Division, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0942
Email: tim.stelzig@fcc.gov

**RIN:** 3060–AH44

## 400. 2000 BIENNIAL REGULATORY REVIEW—TELECOMMUNICATIONS SERVICE QUALITY REPORTING REQUIREMENTS

**Legal Authority:** 47 USC 154(i) and 154(j); 47 USC 201(b); 47 USC 303(r); 47 USC 403

**Abstract:** This NPRM proposes to eliminate our current service quality reports (ARMIS Report 43-05 and 43-06) and replace them with a more consumer-oriented report. The NPRM proposes to reduce the reporting categories from more than 30 to 6, and addresses the needs of carriers, consumers, state public utility commissions, and other interested parties.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/04/00 | 65 FR 75657 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jeremy Miller, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1507
Fax: 202 418–1413
Email: jeremy.miller@fcc.gov

**RIN:** 3060–AH72

## 401. ACCESS CHARGE REFORM AND UNIVERSAL SERVICE REFORM

**Legal Authority:** 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 201 to 205; 47 USC 254; 47 USC 403

**Abstract:** On October 11, 2001, the Commission adopted an Order reforming the interstate access charge and universal service support system for rate-of-return incumbent carriers. The Order adopts three principal reforms. First, the Order modifies the interstate access rate structure for small carriers to align it more closely with the manner in which costs are incurred. Second, the Order removes implicit support for universal service from the rate structure and replaces it with explicit, portable support. Third, the Order permits small carriers to continue to set rates based on the authorized rate of return of 11.25 percent. The Order became effective on January 1, 2002, and the support mechanism established by the Order was implemented beginning July 1, 2002.

The Commission also adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking additional comment on proposals for incentive regulation, increased pricing flexibility for rate-of-return carriers, and proposed changes to the Commission's ''all-or-nothing'' rule. Comments on the FNPRM were due on February 14, 2002, and reply comments on March 18, 2002.

On February 12, 2004, the Commission adopted a Second Report and Order resolving several issues on which the Commission sought comment in the FNPRM. First, the Commission modified the ''all-or-nothing'' rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation. Second, the Commission granted rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. Third, the Commission merged Long Term Support (LTS) with Interstate Common Line Support (ICLS).

The Commission also adopted a Second FNPRM seeking comment on two specific plans that propose establishing optional alternative regulation mechanisms for rate-of-return carriers. In conjunction with the consideration of those alternative regulation proposals, the Commission sought comment on modification that would permit a rate-of-return carrier to adopt an alternative regulation plan for some study areas, while retaining rate-of-return regulation for other of its study areas. Comments on the Second FNPRM were due on April 23, 2004, and May 10, 2004.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 01/25/01 | 66 FR 7725 |
| NPRM Comment Period End | 02/26/01 | |
| FNPRM | 11/30/01 | 66 FR 59761 |
| FNPRM Comment Period End | 12/31/01 | |
| R&O | 11/30/01 | 66 FR 59719 |
| Second FNPRM | 03/23/04 | 69 FR 13794 |
| Second FNPRM Comment Period End | 04/23/04 | |
| Order | 05/06/04 | 69 FR 25325 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Douglas Slotten, Attorney–Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1572
Email: douglas.slotten@fcc.gov

**RIN:** 3060–AH74

## 402. NUMBERING RESOURCE OPTIMIZATION

**Legal Authority:** 47 USC 151; 47 USC 154; 47 USC 201 et seq; 47 USC 251(e)

**Abstract:** In 1999, the Commission released the Numbering Resource Optimization Notice of Proposed Rulemaking (Notice) in CC Docket 99-200. The Notice examined and sought comment on several administrative and technical measures aimed at improving the efficiency with which telecommunications numbering resources are used and allocated. It incorporated input from the North American Numbering Council (NANC), a Federal advisory committee, which advises the Commission on issues related to number administration.In the Numbering Resource Optimization First Report and Order and Further Notice of Proposed Rulemaking (NRO First Report and Order), released on March 31, 2000, the Commission adopted a mandatory utilization data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, and a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently. In addition, the Commission adopted a single system for allocating numbers in blocks of 1,000, rather than 10,000, wherever possible, and established a plan for national rollout of thousands-block number pooling. The Commission also adopted numbering resource reclamation requirements to ensure that unused numbers are returned to the North American Numbering Plan (NANP) inventory for assignment to other carriers. Also, to encourage better management of numbering resources, carriers are required, to the extent possible, to first assign numbering resources within thousands blocks (a form of sequential numbering).

In the NRO Second Report and Order, the Commission adopted a measure that requires all carriers to use at least 60 percent of their numbering resources before they may get additional numbers

in a particular area. That 60 percent utilization threshold increases to 75 percent over the next 3 years. The Commission also established a 5-year term for the national Pooling Administrator and an auditing program to verify carrier compliance with the Commission's rules. Furthermore, the Commission addressed several issues raised in the Notice, concerning area code relief. Specifically, the Commission declined to amend the existing Federal rules for area code relief or specify any new Federal guidelines for the implementation of area code relief. The Commission also declined to state a preference for either all-services overlays or geographic splits as a method of area code relief. Regarding mandatory nationwide ten-digit dialing, the Commission declined to adopt this measure at the present time. Furthermore, the Commission declined to mandate nationwide expansion of the ''D digit'' (the ''N'' of an NXX or central office code) to include 0 or 1, or to grant state commissions the authority to implement the expansion of the D digit as a numbering resource optimization measure at the present time.

In the NRO Third Report and Order, the Commission addressed national thousands-block number pooling administration issues, including declining to alter the implementation date for covered CMRS carriers to participate in pooling. The Commission also addressed Federal cost recovery for national thousands-block number pooling, and continued to require States to establish cost recovery mechanisms for costs incurred by carriers participating in pooling trials. The Commission reaffirmed the Months-To-Exhaust (MTE) requirement for carriers. The Commission declined to lower the utilization threshold established in the Second Report and Order, and declined to exempt pooling carriers from the utilization threshold. The Commission also established a safety valve mechanism to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources.

In the NRO Third Report and Order, the Commission lifted the ban on technology-specific overlays (TSOs), and delegated authority to the Common Carrier Bureau, in consultation with the Wireless Telecommunications Bureau, to resolve any such petitions. Furthermore, the Commission found that carriers who violate our numbering requirements, or fail to cooperate with an auditor conducting either a ''for cause'' or random audit, should be denied numbering resources in certain instances. The Commission also reaffirmed the 180-day reservation period, declined to impose fees to extend the reservation period, and found that State commissions should be allowed password-protected access to the NANPA database for data pertaining to NPAs located within their State.

The measures adopted in the NRO orders will allow the Commission to monitor more closely the way numbering resources are used within the NANP, and will promote more efficient allocation and use of NANP resources by tying a carrier's ability to obtain numbering resources more closely to its actual need for numbers to serve its customers. These measures are designed to create national standards to optimize the use of numbering resources by: (1) Minimizing the negative impact on consumers of premature area code exhausts; (2) ensuring sufficient access to numbering resources for all service providers to enter into or to compete in telecommunications markets; (3) avoiding premature exhaust of the NANP; (4) extending the life of the NANP; (5) imposing the least societal cost possible, and ensuring competitive neutrality, while obtaining the highest benefit; (6) ensuring that no class of carrier or consumer is unduly favored or disfavored by the Commission's optimization efforts; and (7) minimizing the incentives for carriers to build and carry excessively large inventories of numbers.

In NRO Third Order on Recon in CC Docket No. 99-200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No, 95-116, the Commission reconsidered its findings in the NRO Third Report and Order regarding the local Number portability (LNP) and thousands-block number pooling requirements for carriers in the top 100 Metropolitan Statistical areas (MSAs). Specifically, the Commission reversed its clarification that those requirements extend to all carriers in the largest 100 MSAs, regardless of whether they have received a request from another carrier to provide LNP. The Commission also sought comment on whether the Commission should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. The Commission also sought comment on whether all carriers in the top 100 MSAs should be required to participate in thousands-block number pooling, regardless of whether they are required to be LNP capable. In addition, the Commission sought comment on whether all MSAs included in Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs.

In the NRO Fourth Report and Order and Further Notice of Proposed Rulemaking, the Commission reaffirmed that carriers must deploy LNP in switches within the 100 largest Metropolitan Statistical Areas (MSAs) for which another carrier has made a specific request for the provision of LNP. The Commission delegated the authority to state commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case-by-case basis. The Commission concluded that all carriers, except those specifically exempted, are required to participate in thousands-block number pooling in accordance with the national rollout schedule, regardless of whether they are required to provide LNP, including commercial mobile radio service (CMRS) providers that were required to deploy LNP as of November 24, 2003. The Commission specifically exempted from the pooling requirement rural telephone companies and Tier III CMRS providers that have not received a request to provide LNP. The Commission also exempted from the pooling requirement carriers that are the only service provider receiving numbering resources in a given rate center. Additionally, the Commission sought further comment on whether these exemptions should be expanded to include carriers where there are only two service providers receiving numbering resources in the rate center. Finally, the Commission reaffirmed that the 100 largest MSAs identified in the 1990 U.S. Census reports as well as those areas included on any subsequent U.S. Census report of the 100 largest MSAs.

In the NRO Order and Fifth Further Notice of Proposed Rulemaking, the Commission granted petitions for delegated authority to implement mandatory thousands-block pooling filed by the Public Service Commission of West Virginia, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public Service Commission, and the Missouri Public Service Commission. In granting these petitions, the Commission permitted these states to optimize numbering resources and further extend the life of the specific numbering plan areas. In the Further Notice of Proposed Rulemaking, the Commission sought comment on whether it should delegate authority to all states to implement mandatory thousands-block number pooling consistent with the parameters set forth in the NRO Order.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/17/99 | 64 FR 32471 |
| R&O and FNPRM | 06/16/00 | 65 FR 37703 |
| Second R&O and Second FNPRM | 02/08/01 | 66 FR 9528 |
| Third R&O and Second Order on Recon | 02/12/02 | 67 FR 643 |
| Third O on Recon and Third FNPRM | 04/05/02 | 67 FR 16347 |
| Fourth R&O and Fourth NPRM | 07/21/03 | 68 FR 43003 |
| Order and Fifth FNPRM | 03/15/06 | 71 FR 13393 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Marilyn Jones, Attorney, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2357
Fax: 202 418–2345
Email: marilyn.jones@fcc.gov

**RIN:** 3060–AH80

## 403. NATIONAL EXCHANGE CARRIER ASSOCIATION PETITION

**Legal Authority:** 47 USC 151 and 152; 47 USC 201 and 202; . . .

**Abstract:** In a Notice of Proposed Rulemaking (NPRM) released on July 19, 2004, the Commission initiated a rulemaking proceeding to examine the proper number of end user common line charges (commonly referred to as subscriber line charges or SLCs) that carriers may assess upon customers that obtain derived channel T-1 service where the customer provides the terminating channelization equipment and upon customers that obtain Primary Rate Interface (PRI) Integrated Service Digital Network (ISDN) service.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/13/04 | 69 FR 50141 |
| NPRM Comment Period End | 11/12/04 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Douglas Slotten, Attorney–Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1572
Email: douglas.slotten@fcc.gov

**RIN:** 3060–AI47

## 404. IP–ENABLED SERVICES

**Legal Authority:** 47 USC 151 and 152; . . .

**Abstract:** The notice seeks comment on ways in which the Commission might categorize IP-enabled services for purposes of evaluating the need for applying any particular regulatory requirements. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services comprising each category constitute ''telecommunications services'' or ''information services'' under the definitions set forth in the Act. Finally, noting the Commission's statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.

On June 16, 2005, the Commission published in the Federal Register notice that public information collections set forth in the First Report and Order were being submitted for review to the office of management and budget.

On July 27, 2005, the Commission published in the Federal Register notice that the information collection requirements adopted in the First Report and Order were approved in OMB No. 3060-1085 and would become effective on July 29, 2005.

On August 31, 2005, the Commission published in the Federal Register notice of the comment cycle for three Petitions for Reconsideration and/or Clarification of the First Report and Order.On July 10, 2006, the Commission published in the Federal Register notice that it had adopted on June 21, 2006, rules that make interim modifications to the existing approach for assessing contributions to the Federal universal service fund (USF or Fund) in order to provide stability while the Commission continues to examine more fundamental reform.

On June 8, 2007, the Commission published in the Federal Register notice that it had adopted on April 2, 2007, an item strengthening the Commission's rules to protect the privacy of customer proprietary network information (CPNI) that is collected and held by providers of communications services, and a further notice of proposed rulemaking seeking comment on what steps the Commission should take, if any, to secure further the privacy of customer information.

On August 6, 2007, the Commission published in the Federal Register notice that it had adopted on May 31, 2007, and item extending the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers under section 255 of the Communications Act of 1934, as amended, to providers of ''interconnected voice over Internet Protocol (VoIP) services,'' as defined by the Commission, and to manufacturers of specially designed equipment used to provide those services. In addition, the Commission extended the Telecommunications Relay Services (TRS) requirements contained in its regulations to interconnected VoIP providers.

On August 7, 2007, the Commission published in the Federal Register a notice that a petition for reconsideration of the CPNI order described above had been filed.

On August 16, 2007, the Commission published in the Federal Register notice that it had adopted on August 2, 2007, an item amending the Commission's Schedule of Regulatory Fees by, inter alia, incorporating regulatory fee

payment obligations for interconnected VoIP service providers, which shall become effective November 15, 2007, which is 90 days from date of notification to Congress.

On November 1, 2007, the Commission gave notice that it granted in part, denied in part, and sought comment on petitions filed by the Voice on the Net Coalition, the United States Telecom Association, and Hamilton Telephone Company seeking a stay or waiver of certain aspects of the Commission's VoIP Telecommunications Relay Services (TRS) Order (72 FR 61813; 72 FR 61882).

On December 13, 2007, the Commission announced the effective date of its revised CPNI rules (72 FR 70808).

On December 6, 2007, OMB approved the public information collection pursuant to the Paperwork Reduction Act of 1995 for the Commission's CPNI rules (72 FR 72358).

On February 21, 2008, the Commission published in the Federal Register notice that the Commission adopted rules extending local number portability obligations and numbering administration support obligations to interconnected VoIP services. The Commission also explained it had responded to the District of Columbia Circuit Court of Appeals stay of the Commission's Intermodal Number Portability Order by publishing a Final Regulatory Flexibility Act (73 FR 9463; R&O 02/21/2008).

On February 21, 2008, the Commission published in the Federal Register notice that it sought comment on other changes to its LNP and numbering related rules, including whether to extend such rules to interconnected VoIP providers (73 FR 9507).

On August 6, 2007, the Commission published in the Federal Register notice that it had extended Telecommunications Relay Services (TRS) regulations to interconnected VoIP providers and extended certain disability access requirements to interconnected VoIP providers and to manufacturers of specially designed equipment used to provide such service (72 FR 43546).

On May 15, 2008, the Commission's Consumer and Governmental Affairs Bureau (CGB) published in the Federal Register notice that it had granted interconnected VoIP providers an extension of time to route 711-dialed calls to an appropriate telecommunications relay service (TRS) center in certain circumstances (73 FR 28057). On July 29, 2009, CGB published notice in the Federal Register that it was granting another extension. (74FR 37624)

On August 7, 2009, the Commission published a notice in the Federal Register that it had amended its rules so that providers of interconnected VoIP service must comply with the same discontinuance rules as domestic non-dominant telecommunications carriers. (74 FR 39551)

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/29/04 | 69 FR 16193 |
| NPRM Comment Period End | 07/14/04 | |
| First R&O | 06/03/05 | 70 FR 37273 |
| Public Notice | 06/16/05 | 70 FR 37403 |
| First R&O Effective | 07/29/05 | 70 FR 43323 |
| Public Notice | 08/31/05 | 70 FR 51815 |
| R&O | 07/10/06 | 71 FR 38781 |
| R&O and FNPRM | 06/08/07 | 72 FR 31948 |
| FNPRM Comment Period End | 07/09/07 | 72 FR 31782 |
| R&O | 08/06/07 | 72 FR 43546 |
| Public Notice | 08/07/07 | 72 FR 44136 |
| R&O | 08/16/07 | 72 FR 45908 |
| Public Notice | 11/01/07 | 72 FR 61813 |
| Public Notice | 11/01/07 | 72 FR 61882 |
| Public Notice | 12/13/07 | 72 FR 70808 |
| Public Notice | 12/20/07 | 72 FR 72358 |
| R&O | 02/21/08 | 73 FR 9463 |
| NPRM | 02/21/08 | 73 FR 9507 |
| Order | 05/15/08 | 73 FR 28057 |
| Order | 07/29/09 | 74 FR 37624 |
| R&O | 08/07/09 | 74 FR 39551 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Tim Stelzig, Associate Chief, Competition Policy Division, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–0942
Email: tim.stelzig@fcc.gov

**RIN:** 3060–AI48

## 405. CONSUMER PROTECTION IN THE BROADBAND ERA

**Legal Authority:** 47 USC 151 to 154; 47 USC 160; 47 USC 201 to 205; 47 USC 214; 47 USC 222; 47 USC 225; 47 USC 251 and 252; 47 USC 254 to 256; 47 USC 258; 47 USC 303(R)

**Abstract:** The Federal Communications Commission initiated this rulemaking in order to develop a framework that ensures that, as the telecommunications industry shifts from narrowband to broadband services, consumer protection needs are met by all providers of broadband Internet access service, regardless of the underlying technology providers use to offer the service. The Commission sought comment on whether adopting regulations, pursuant to its ancillary jurisdiction under Title I of the Communications Act, to address consumer privacy, unauthorized changes to service, truth-in-billing, network outage reporting, discontinuance of service, rate averaging, and enforcement concerns, would be desirable and necessary as a matter of public policy. The Commission also sought comment on whether it should instead rely on market forces to address some or all of these areas of potential concern. The rulemaking also explores whether there are other areas of consumer protection related to wireline broadband Internet access service for which the Commission should adopt regulations pursuant to its ancillary jurisdiction.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/17/05 | 70 FR 60259 |
| NPRM Comment Period End | 03/01/06 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** William Kehoe, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1580
Fax: 202 418–1413
Email: william.kehoe@fcc.gov

**RIN:** 3060–AI73

## 406. ESTABLISHING JUST AND REASONABLE RATES FOR LOCAL EXCHANGE CARRIERS (WC DOCKET NO. 07–135)

**Legal Authority:** Not Yet Determined

**Abstract:** The Federal Communications Commission (Commission) is examining whether its existing rules governing the setting of tariffed rates by local exchange carriers (LECs) provide incentives and opportunities for carriers to increase access demand endogenously with the result that the tariff rates are no longer just and

reasonable. The Commission tentatively concluded that it must revise its tariff rules so that it can be confident that tariffed rates remain just and reasonable even if a carrier experiences or induces significant increases in access demand. The Commission seeks comment on the types of activities that are causing the increases in interstate access demand and the effects of such demand increases on the cost structures of LECs. The Commission also seeks comment on several means of ensuring just and reasonable rates going forward. The NPRM invites comment on potential traffic stimulation by rate-of-return LECs, price cap LECs, and competitive LECs, as well as other forms of intercarrier traffic stimulation. Comments were received on December 17, 2007, and reply comments were received on January 16, 2008.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/15/07 | 72 FR 64179 |
| NPRM Comment Period End | 12/17/07 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Douglas Slotten, Attorney–Advisor, Federal Communications Commission, Wireline Competition Bureau, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–1572
Email: douglas.slotten@fcc.gov

**RIN:** 3060–AJ02

## 407. JURISDICTIONAL SEPARATIONS

**Legal Authority:** 47 USC 151; 47 USC 154(i) and 154(j); 47 USC 205; 47 USC 221(c); 47 USC 254; 47 USC 403; 47 USC 410

**Abstract:** Jurisdictional separations is the process, pursuant to part 36 of the Commission's rules, by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative changes, technological changes, and market changes warrant comprehensive reform of the separations process. In 2001, the Commission adopted the Federal-State Joint Board on Jurisdictional Separations' recommendation to impose an interim freeze of the part 36 category relationships and jurisdictional cost allocation factors for a period of five years, pending comprehensive reform of the part 36 separations rules. In 2006, the Commission adopted an Order and Further Notice of Proposed Rulemaking, which extended the separations freeze for a period of three years and sought comment on comprehensive reform. In 2009, the Commission adopted a Report and Order extending the separations process an additional year to June 2010.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 11/05/97 | 62 FR 59842 |
| NPRM Comment Period End | 12/10/97 | |
| Order | 06/21/01 | 66 FR 33202 |
| Order and FNPRM | 05/26/06 | 71 FR 29882 |
| Order and FNPRM Comment Period End | 08/22/06 | |
| Report and Order | 05/15/09 | 74 FR 23955 |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ted Burmeister, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7389
Email: theodore.burmeister@fcc.gov

**RIN:** 3060–AJ06

## 408. IMPLEMENTATION OF NET 911 IMPROVEMENT ACT

**Legal Authority:** PL 110–283

**Abstract:** On July 23, 2008, the New and Emerging Technologies Act was enacted.

On August 25, 2008, the Commission released an NPRM seeking comment on implementing the NET 911 Improvement Act.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 08/28/08 | 73 FR 50741 |
| NPRM Comment Period End | 09/09/08 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** R. Matthew Warner, Attorney Advisor, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–2419
Email: matthew.warner@fcc.gov

**RIN:** 3060–AJ09

## 409. • LOCAL NUMBER PORTABILITY PORTING INTERVAL AND VALIDATION REQUIREMENTS (WC DOCKET NO 07–244)

**Legal Authority:** 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 251; 47 USC 303(r)

**Abstract:** In 2007, the Commission released a Notice of Proposed Rulemaking in WC Docket No. 07-244. The Notice sought comment on whether the Commission should adopt rules specifying the length of the porting intervals or other details of the porting process. It also tentatively concluded that the Commission should adopt rules reducing the porting interval for wireline-to-wireline and intermodal simple port requests, specifically, to a 48-hour porting interval.

In the Local Number Portability Porting Interval and Validation Requirements First Report and Order and Further Notice of Proposed Rulemaking, released on May 13, 2009, the Commission reduced the porting interval for simple wireline and simple intermodal port requests, requiring all entities subject to its local number portability (LNP) rules to complete simple wireline-to-wireline and simple intermodal port requests within one business day. In a related Further Notice of Proposed Rulemaking (FNPRM), the Commission sought comment on what further steps, if any, the Commission should take to improve the process of changing providers. In addition, the Commission directed the North American Numbering Council to develop new LNP provisioning process flows that take into account this shortened porting interval. In developing these flows, the NANC must address how a ''business day'' should be construed for purposes of the porting interval, and generally how the porting time should be measured.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/21/08 | 73 FR 9507 |
| R&O and FNPRM | 07/02/09 | 74 FR 31630 |
| R&O and FNPRM Comment Period End | 08/01/09 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Melissa Kirkel, Attorney–Advisor, WCB, Federal

Communications Commission, 445 12th Street SW., Washington, DC 20554
Phone: 202 418–7958
Fax: 202 418–1413
Email: melissa.kirkel@fcc.gov

**RIN:** 3060–AJ32

[FR Doc. 2010–8968 Filed 04–23–10; 8:45 am]

BILLING CODE 6712–01–S

Federal Register

Monday,
April 26, 2010

Part XIX

# Federal Reserve System

## Semiannual Regulatory Agenda

# FEDERAL RESERVE SYSTEM (FRS)

## FEDERAL RESERVE SYSTEM

### 12 CFR Ch. II

### Semiannual Regulatory Flexibility Agenda

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period May 1, 2010, through October 31, 2010. The next agenda will be published in fall 2010.

**DATES:** Comments about the form or content of the agenda may be submitted any time during the next 6 months.

**ADDRESSES:** Comments should be addressed to Jennifer J. Johnson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**FOR FURTHER INFORMATION CONTACT:** A staff contact for each item is indicated with the regulatory description below.

**SUPPLEMENTARY INFORMATION:** The Board is publishing its spring 2010 agenda as part of the spring 2010 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. The complete Unified Agenda will be available to the public at the following website: www.reginfo.gov. Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into three sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. And a third section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. Matters begun and completed between issues of the agenda have not been included.

A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda and which the Board has not completed.

**Margaret McCloskey Shanks,**
*Associate Secretary of the Board.*

Federal Reserve System—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 410 | Regulation Z—Truth in Lending Act (Docket Number: R-1366) | 7100–AD33 |

## Federal Reserve System (FRS) — Proposed Rule Stage

### 410. REGULATION Z—TRUTH IN LENDING ACT (DOCKET NUMBER: R–1366)

**Legal Authority:** 15 USC 1601 et seq

**Abstract:** The Federal Reserve proposed for comment amendments to Regulation Z (Truth in Lending) that would revise disclosure requirements for closed-end loans secured by real property or a dwelling. The proposed rules would require creditors to provide certain disclosures at application about risky loan features and adjustable-rate mortgages. Three days after application, consumers would receive disclosures summarizing key loan features including the annual percentage rate and finance charge, which would be revised to be a more comprehensive measure of the cost of credit. Consumers would receive a final disclosure of loan terms three days before loan consummation. Certain new periodic disclosures would be required after consummation. In addition, the proposal would prohibit certain payments to mortgage brokers and loan officers that are based on the loan's terms and conditions, and prohibit steering consumers to transactions that are not in their interest to increase compensation received. New rules regarding eligibility restrictions and disclosures for credit insurance and similar products would apply to all closed-end and open-end credit transactions.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Board Requested Comment | 08/26/09 | 74 FR 43232 |
| Board Expects Further Action By | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kathleen Ryan, Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452–3667

**RIN:** 7100–AD33

[FR Doc. 2010–8941 Filed 04–23–10; 8:45 am]

BILLING CODE 6210–01–S

Federal Register

Monday,
April 26, 2010

# Part XX

# Federal Trade Commission

## Semiannual Regulatory Agenda

# FEDERAL TRADE COMMISSION (FTC)

## FEDERAL TRADE COMMISSION

### 16 CFR Ch. I

### Semiannual Regulatory Agenda

**AGENCY:** Federal Trade Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The following agenda of Commission proceedings is published in accordance with section 22(d)(1) of the Federal Trade Commission Act, 15 U.S.C. 57b-3(d)(1), and the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 to 612, as amended by the Small Business Regulatory Enforcement Fairness Act. The Commission's agenda follows guidelines and procedures issued January 15, 2010, by the Office of Management and Budget in accordance with the provisions of Executive Order No. 12866 ''Regulatory Planning and Review'' of September 30, 1993, 58 FR 51735 (Oct. 4, 1993).

Since the fall 2007 edition, the Internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at www.reginfo.gov. Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Commission's printed agenda entries include only: Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act. Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the Internet.

The Commission's agenda also references the Web site www.regulations.gov where appropriate. This is the Governmentwide Web site where members of the public can find, review, and submit comments on Federal rulemakings that are open for comment and published in the **Federal Register**.

The Commission has one rule that is a ''significant regulatory action'' under the definition in Executive Order 12866. This is the FACTA (or Fair and Accurate Credit Transactions Act of 2003) Risk-Based Pricing Final Rule, which the Commission issued jointly with the Federal Reserve on January 15, 2010 (75 FR 2724). There is further information about this in the Agenda abstract for FACTA rulemakings.

The Commission has responded to OMB's request that agencies discuss international effects of their rulemakings in The Regulatory Plan narrative. 74 FR 64137, 64366. The Commission has also responded to the optional information requirement to identify rulemakings that are likely to have some impact on small entities but are not subject to the requirements of the RFA. The current rulemakings that are likely to have some impact on small entities but are not subject to the requirements of the RFA are: (1) The Appliance Labeling Rule, 16 CFR 305; (2) the Automotive Fuel Ratings, Certification, and Posting Rule, 16 CFR 306; (3) the Smokeless Tobacco Rules, 16 CFR 307; (4) the Pay-Per-Call Rule (or ''the 1-900 Rule''), 16 CFR 308; (5) Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles, 16 CFR 309; (6) Telemarketing Sales Rule, 16 CFR 310; (7) Children's Online Privacy Protection Rule, 16 CFR 312; (8) Privacy of Consumer Financial Information, 16 CFR 313; (9) the Rulemaking With Respect to Mortgage Loans, to be codified at 16 CFR 321, 322; (10) Retail Food Store Advertising and Marketing Practices, 16 CFR 424; (11) the Negative Option Rule, 16 CFR 425; (12) the Cooling-Off Rule, 16 CFR 429; (13) the Amplifier Rule, 16 CFR 432; (14) the Holder-in-Due Course Rule, 16 CFR 433; (15) Mail or Telephone Order Merchandise Rule, 16 CFR 435; (15) the Business Opportunity Rule, to be codified at 16 CFR 437; (16) the Used Car Rule, 16 CFR 455; and (17) certain rules implementing the Fair and Accurate Credit Transactions Act of 2003 (FACTA), 16 CFR 602, 603, 604, 610, 611, 613, 614, 641, 642, 660, 680, 681, 682, and 698.

In addition, the Agency has responded to the optional information question that corresponds to Executive Order 13132 ''Federalism,'' of August 4, 1999, 64 FR 43255 (Aug. 10, 1999), which does not apply to independent regulatory agencies. The Commission believes to the extent that any of the rules in this agenda may 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'' within the meaning of E.O. 13132, it has consulted with the affected entities. The Commission continues to work closely with the States and other governmental units in its rulemaking process, which explicitly considers the effect of the Agency's rules on these governmental entities.

Some of the rulemakings listed in the agenda are being conducted as part of the Commission's plan to review and seek information every 10 years about all of its regulations and guides, including their costs and benefits and regulatory and economic impact. These reviews incorporate and expand upon the review required by the RFA and regulatory reform initiatives directing agencies to conduct a review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform.

Except for notice of completed actions, the information in this agenda represents the judgment of Commission staff, based upon information now available. Each projected date of action reflects an assessment by the FTC staff of the likelihood that the specified event will occur during the coming year. No final determination by the staff or the Commission respecting the need for, or the substance of, a trade regulation rule or any other procedural option should be inferred from the notation of projected events in this agenda. In most instances, the dates of future events are listed by month, not by a specific day. The acquisition of new information, changes of circumstances, or changes in the law may alter this information.

**FOR FURTHER INFORMATION CONTACT:** For information about specific regulatory actions listed in the agenda, call, e-mail, or write the contact person listed for each particular proceeding. General comments or questions about the agenda should be directed to G. Richard Gold, Attorney, telephone: (202) 326-3355; e-mail: rgold@ftc.gov, or Robert A. Nelson, Jr., Paralegal, telephone: (202) 326-2931; e-mail: rnelson@ftc.gov, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

## FTC

Federal Trade Commission—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 411 | Privacy of Consumer Financial Information | 3084–AA97 |

## Federal Trade Commission (FTC) — Completed Actions

### 411. PRIVACY OF CONSUMER FINANCIAL INFORMATION

**Legal Authority:** 15 USC 6801 et seq

**Abstract:** This rulemaking is related to RIN 3084-AA85. In 2000, the Commission, the banking agencies, and the Securities and Exchange Commission published rules (Privacy Rules) for the Gramm-Leach-Bliley Act (GLB Act) requirement that financial institutions provide a notice of its privacy policies and practices to its customers. The Privacy Rule does not specify any format or standardized wording for these notices. In response to concerns expressed by representatives of financial institutions, consumers, privacy advocates, and Members of Congress, the agencies conducted a workshop in December 2001 to consider how financial institutions could provide more useful privacy notices to consumers. Subsequently, the agencies published an advance notice of proposed rulemaking (ANPRM) and requested comments on a variety of subjects including the goals, elements, language, costs and benefits, and permissible aspects of alternative privacy notices. 68 FR 75164. The comment period ended on March 29, 2004. Six of these agencies (seven as of April 2006) thereafter funded consumer research and testing to inform the development of alternative privacy notices that are easier for consumers to understand and use.

As directed by section 728 of the Financial Services Relief Act of 2006, Public Law No. 109-351, which added section 503(e) to the GLB Act, the Commission, together with seven other Federal agencies (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission), must propose a model form that may be used at the option of financial institutions for the privacy notices required under GLB within 280 days after enactment, or by April 11, 2007. On March 29, 2007, the agencies published an NPRM proposing a model form of the prototype privacy notice developed during the consumer research testing project undertaken by first six, then seven, of these agencies. 72 FR 14940. Errata were published in the Federal Register on April 5, 2007. 72 FR 16875. The comment period ended on May 29, 2007. On November 17, 2009, the agencies announced a model privacy form that financial institutions may rely on as a safe harbor to provide disclosures under the privacy rules. 75 FR 62890. In addition, the agencies other than the SEC are eliminating the safe harbor permitted for notices based on the Sample Clauses currently contained in the privacy rules if the notice is provided after December 31, 2010.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Public Workshop | 12/04/01 | |
| ANPRM | 12/30/03 | 68 FR 75164 |
| ANPRM Comment Period End | 03/29/04 | |
| NPRM | 03/29/07 | 72 FR 14940 |
| Errata | 04/05/07 | 72 FR 16875 |
| NPRM Comment Period End | 05/29/07 | |
| Final Rule | 12/01/09 | 74 FR 62890 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Loretta Garrison, Senior Attorney, Federal Trade Commission, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW, Washington, DC 20580
Phone: 202 326–3043
Email: lgarrison@ftc.gov

**RIN:** 3084–AA97

[FR Doc. 2010–8982 Filed 04–23–10; 8:45 am]

BILLING CODE 6750–01–S

Federal Register

Monday,
April 26, 2010

Part XXI

# National Credit Union Administration

## Semiannual Regulatory Agenda

# NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

## NATIONAL CREDIT UNION ADMINISTRATION

**12 CFR Ch. VII**

### Semiannual Regulatory Agenda

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** Pursuant to its ongoing policy of reviewing regulations, NCUA is publishing a list of current and projected rulemakings, reviews of existing regulations, and completed actions as of February 24, 2010, to be included in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

**DATES:** This information is current as of February 24, 2010.

**ADDRESSES:** National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

**FOR FURTHER INFORMATION CONTACT:** For each regulation listed, the person(s) named in the listing, at the above address, unless otherwise noted, or listed telephone number.

**SUPPLEMENTARY INFORMATION:** The purpose of this agenda is to enable credit unions and the public to follow regulatory development and review at NCUA, and participate in that process more effectively. Entries for the agenda appear in one of five possible categories: prerule stage; proposed rule stage; final rule stage; completed/withdrawn actions; or long-term actions.

The agenda is published pursuant to NCUA Interpretive Ruling and Policy Statement Number 87-2, ''Developing and Reviewing Government Regulations,'' 54 FR 35231 (September 18, 1987), as amended by IRPS 03-2, 68 FR 31949 (May 29, 2003), which sets out NCUA's policy and procedures for developing and reviewing its regulations. NCUA's policy is to ensure that regulations impose only the minimum required burdens on credit unions, consumers, and the public; are appropriate for the size of the financial institution they regulate; are issued only after full public participation; and are clear and understandable. Further, NCUA undertakes to review all regulations every three years to clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.

Approved by the NCUA Board on February 24, 2010.

**Mary Rupp,**
*Secretary of the Board.*

National Credit Union Administration—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 412 | Privacy of Consumer Financial Information | 3133–AC84 |
| 413 | Confidentiality of Suspicious Activity Reports | 3133–AD61 |
| 414 | Unfair or Deceptive Acts or Practices; Clarifications | 3133–AD62 |

## National Credit Union Administration (NCUA) — Completed Actions

### 412. PRIVACY OF CONSUMER FINANCIAL INFORMATION

**Legal Authority:** 15 USC 6801 et seq

**Abstract:** NCUA issued an interagency rule on model privacy notices and ways financial institutions can make them clear and conspicuous.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 12/30/03 | 68 FR 75164 |
| ANPRM Comment Period End | 03/29/04 | |
| NPRM | 03/29/07 | 72 FR 14939 |
| Correction | 04/09/07 | 72 FR 16875 |
| NPRM Comment Period End | 05/29/07 | |
| ANPRM | 07/01/09 | 74 FR 31529 |
| ANPRM Comment Period End | 08/31/09 | |
| Final Action | 12/01/09 | 74 FR 62890 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518–6561
Fax: 703 518–6569
Email: rmetz@ncua.gov

**RIN:** 3133–AC84

### 413. CONFIDENTIALITY OF SUSPICIOUS ACTIVITY REPORTS

**Legal Authority:** 31 USC 5311 to 5330

**Abstract:** The agency has determined that it is unlikely to take further regulatory action concerning the scope of confidentiality applicable to filed Suspicious Activity Reports in the next year and is, therefore, removing this rule from the Regulatory Agenda.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Withdrawn | 02/24/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Ross P. Kendall, Trial Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518–6562
TDD Phone: 703 518–6332
Fax: 703 518–6569
Email: rkendall@ncua.gov

**RIN:** 3133–AD61

### 414. UNFAIR OR DECEPTIVE ACTS OR PRACTICES; CLARIFICATIONS

**Legal Authority:** 15 USC 45; 15 USC 57a

**Abstract:** NCUA is withdrawing the substantive requirements of the UDAP Rule as unnecessary due to the

enactment of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009 (Credit CARD Act) on May 22, 2009, and amendments to Regulation Z implementing the Credit CARD Act that will become effective on February 22, 2010. For procedural reasons, the substantive requirements of the UDAP Rule will be withdrawn effective July 1, 2010, but it is NCUA's intent that only the technical clarifications to part 706 become effective and that the substantive requirements will not take effect.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/05/09 | 74 FR 20804 |
| NPRM Comment Period End | 06/04/09 | |
| Final Action | 02/10/10 | 75 FR 6558 |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Moisette I. Green, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428
Phone: 703 518–6540
Fax: 703 518–6319
Email: mgreen@ncua.gov

**RIN:** 3133–AD62

[FR Doc. 2010–8979 Filed 04–23–10; 8:45 am]

BILLING CODE 7535–01–S

Federal Register

Monday,
April 26, 2010

# Part XXII

# Nuclear Regulatory Commission

## Semiannual Regulatory Agenda

# NUCLEAR REGULATORY COMMISSION (NRC)

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Ch. I

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is publishing its semiannual regulatory agenda in accordance with Public Law 96-354, ''The Regulatory Flexibility Act,'' and Executive Order 12866, ''Regulatory Planning and Review.'' The agenda is a compilation of all rules on which the NRC has recently completed action or has proposed or is considering action. This issuance updates any action occurring on rules since publication of the last semiannual agenda on December 7, 2009 (74 FR 64572).

**ADDRESSES:** Comments on any rule in the agenda may be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Comments may also be hand delivered to the One White Flint North Building, 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments received on rules for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closure dates specified in the agenda.

The agenda and any comments received on any rule listed in the agenda are available for public inspection and copying for a fee at the Nuclear Regulatory Commission's Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1F21, Rockville, MD.

The complete Unified Agenda will be available online at www.reginfo.gov, in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning NRC rulemaking procedures or the status of any rule listed in this agenda, contact: Michael T. Lesar, Chief, Rulemaking, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-492-3663 (e-mail: Michael.Lesar@nrc.gov). Persons outside the Washington, DC, metropolitan area may call, toll-free: 1-800-368-5642. For further information on the substantive content of any rule listed in the agenda, contact the individual listed under the heading ''Agency Contact'' for that rule.

**SUPPLEMENTARY INFORMATION:** The information contained in this semiannual publication is updated to reflect any action that has occurred on rules since publication of the last NRC semiannual agenda on December 7, 2009 (74 FR 64572). Within each group, the rules are ordered according to the Regulation Identifier Number (RIN).

The information in this agenda has been updated through February 24, 2010. The date for the next scheduled action under the heading ''Timetable'' is the date the rule is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The agenda is intended to provide the public early notice and opportunity to participate in the NRC rulemaking process. However, the NRC may consider or act on any rulemaking even though it is not included in the agenda.

The NRC agenda lists all open rulemaking actions. One rule affects small entities.

Dated at Rockville, Maryland, this 24th day of February 2010.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**

*Chief, Rulemaking and Directives Branch, Division of Administrative Services, Office of Administration.*

## Nuclear Regulatory Commission—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 415 | Distribution of Source Material To Exempt Persons and General Licensees and Revision of 10 CFR 40.22 General License [NRC-2009-0084] | 3150–AH15 |
| 416 | Revision of Fee Schedules; Fee Recovery for FY 2010 [NRC-2009-0333] | 3150–AI70 |

## Nuclear Regulatory Commission—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 417 | Controlling the Disposition of Solid Materials [NRC-1999-0002] | 3150–AH18 |

## Nuclear Regulatory Commission (NRC) — Proposed Rule Stage

### 415. DISTRIBUTION OF SOURCE MATERIAL TO EXEMPT PERSONS AND GENERAL LICENSEES AND REVISION OF 10 CFR 40.22 GENERAL LICENSE [NRC–2009–0084]

**Legal Authority:** 42 USC 2201; 42 USC 5841

**Abstract:** The proposed rule would amend the Commission's regulations to improve the control over the distribution of source material to exempt persons and to general licensees in order to make part 40 more risk-informed. The proposed rule also would govern the licensing of source material by adding specific requirements for licensing of and reporting by distributors of products and materials used by exempt persons and general licensees. Source material is used under general license and under various exemptions from licensing requirements in part 40 for which there is no regulatory mechanism for the Commission to obtain information to fully assess the resultant risks to public health and safety. Although estimates of resultant doses have been made, there is a need for ongoing information on the quantities and types of radioactive material distributed for exempt use and use under general license. Obtaining information on the distribution of source material is particularly difficult because many of the distributors of source material to exempt persons and generally licensed persons are not currently required to hold a license from the Commission. Distributors are often unknown to the Commission. No controls are in place to ensure that products and materials distributed are maintained within the applicable constraints of the exemptions. In addition, the amounts of source material allowed under the general license in section 40.22 could result in exposures above 1 mSv/year (100 mrem/year) to workers at facilities that are not required to meet the requirements of parts 19 and 20. Without knowledge of the identity and location of the general licensees, it would be difficult to enforce restrictions on the general licensees. This rule also would address PRM-40-27 submitted by the State of Colorado and Organization of Agreement States.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Gary C. Comfort, Jr., Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001
Phone: 301 415–8106
Email: gary.comfort@nrc.gov

**RIN:** 3150–AH15

### 416. REVISION OF FEE SCHEDULES; FEE RECOVERY FOR FY 2010 [NRC–2009–0333]

**Legal Authority:** 42 USC 2201; 42 USC 5841

**Abstract:** The proposed rule amends the Commission's licensing, inspection, and annual fees charged to U.S. Nuclear Regulatory Commission (NRC) licensees and applicants for an NRC license. The rulemaking is necessary to recover, through the assessment of fees, approximately 90 percent of the NRC's budget authority for fiscal year (FY) 2010, less the amounts appropriated from the Nuclear Waste Fund, amounts appropriated for Waste Incidental to Reprocessing, and amounts appropriated for generic homeland security activities, as required by the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), as amended.

Based on the Energy and Water Development and Related Agencies Appropriation Act, 2010, the NRC's required fee recovery amount for the FY 2010 budget is approximately $912.2 million. After accounting for billing adjustments (i.e., expected unpaid invoices, payments for prior year invoices), the total amount to be billed as fees is $911.1 million. The OBRA-90, as amended, requires that the fees for FY 2010 be collected by September 30, 2010.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/10/10 | 75 FR 11376 |
| NPRM Comment Period End | 04/09/10 | |
| Final Action | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rebecca I. Ericson, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555–0001
Phone: 301 415–7126
Email: rebecca.ericson@nrc.gov

**RIN:** 3150–AI70

## Nuclear Regulatory Commission (NRC) — Long-Term Actions

### 417. CONTROLLING THE DISPOSITION OF SOLID MATERIALS [NRC–1999–0002]

**Legal Authority:** 42 USC 2201; 42 USC 5841

**Abstract:** The staff provided a draft proposed rule package on Controlling the Disposition of Solid Materials to the Commission on March 31, 2005, which the Commission disapproved. The Commission's decision was based on the fact that the Agency is currently faced with several high priority and complex tasks, that the current approach to review specific cases on an individual basis is fully protective of public health and safety, and that the immediate need for this rule has changed due to the shift in timing for reactor decommissioning. The Commission has deferred action on this rulemaking.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | To Be Determined | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Kimyata Morgan Butler, Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Washington, DC 20555–0001
Phone: 301 415–0733
Email: kimyata.morganbutler@nrc.gov

**RIN:** 3150–AH18

[FR Doc. 2010–8980 Filed 04–23–10; 8:45 am]

BILLING CODE 7590–01–S

Federal Register

Monday,
April 26, 2010

Part XXIII

# Securities and Exchange Commission

Semiannual Regulatory Agenda

## SECURITIES AND EXCHANGE COMMISSION (SEC)

### SECURITIES AND EXCHANGE COMMISSION

**17 CFR Ch. II**

**[Release Nos. 33-9112, 34-61714, IA-3001, IC-29175, File No. S7-06-10]**

### Regulatory Flexibility Agenda

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Securities and Exchange Commission is publishing an agenda of its rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. No. 96-354, 94 Stat. 1164) (Sep. 19, 1980). Information in the agenda was accurate on March 12, 2010, the day on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of a Regulatory Flexibility Act analysis is required.

The Commission's complete RFA agenda will be available online at www.reginfo.gov.

**DATES:** Comments should be received on or before June 30, 2010.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form (http://www.sec.gov/rules/other.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-06-10 on the subject line; or
- Use the Federal eRulemaking Portal (http://www.regulations.gov). Follow the instructions for submitting comments.

*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. S7-06-10. This file number should be included on the subject line if e-mail is used. To help us 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/other.shtml). Comments are also available for website 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 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Anne Sullivan, Office of the General Counsel, 202-551-5019.

**SUPPLEMENTARY INFORMATION:** The RFA requires each Federal agency, during April and October of each year, to publish in the **Federal Register** an agenda identifying rules that the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

''Securities Act''—Securities Act of 1933

''Exchange Act''—Securities Exchange Act of 1934

''Investment Company Act''—Investment Company Act of 1940

''Investment Advisers Act''—Investment Advisers Act of 1940

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

**Dated:** March 16, 2010.

**Elizabeth M. Murphy,**

*Secretary.*

DIVISION OF CORPORATION FINANCE—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 418 | Voluntary Filers | 3235–AK59 |
| 419 | Risk Disclosures | 3235–AK58 |
| 420 | Revisions to Regulation D | 3235–AK52 |

## SEC

### DIVISION OF CORPORATION FINANCE—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 421 | Proxy Solicitation Enhancements | 3235–AK28 |

### DIVISION OF CORPORATION FINANCE—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 422 | Amendments to Rules Requiring Internet Availability of Proxy Materials | 3235–AK25 |

### DIVISION OF INVESTMENT MANAGEMENT—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 423 | Temporary Rule Regarding Principal Trades With Certain Advisory Clients | 3235–AJ96 |
| 424 | Indexed Annuities and Certain Other Insurance Contracts | 3235–AK49 |

### DIVISION OF INVESTMENT MANAGEMENT—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 425 | Amendments to Form ADV | 3235–AI17 |

### DIVISION OF INVESTMENT MANAGEMENT—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 426 | Custody of Funds or Securities of Clients by Investment Advisers | 3235–AK32 |
| 427 | Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act | 3235–AJ06 |

### DIVISION OF TRADING AND MARKETS—Proposed Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 428 | Amendments to Rule 17a-5 | 3235–AK56 |
| 429 | Publication or Submission of Quotations Without Specified Information | 3235–AH40 |

### DIVISION OF TRADING AND MARKETS—Final Rule Stage

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 430 | Proposed Amendment to Municipal Securities Disclosure | 3235–AJ66 |
| 431 | Nationally Recognized Statistical Rating Organizations | 3235–AK14 |

## SEC

### DIVISION OF TRADING AND MARKETS—Long-Term Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 432 | Rule 15c2-2: Confirmation of Transactions in Open-End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings | 3235–AJ11 |
| 433 | Rule 15c2-3: Point-of-Sale Disclosure of Purchases in Open-End Management Investment Company Shares, Unit Investment Trust Interests, and Municipal Fund Securities Used for Education Savings | 3235–AJ12 |
| 434 | Rule 15c-100: Schedule 15C | 3235–AJ13 |
| 435 | Rule 15c-101: Schedule 15D | 3235–AJ14 |
| 436 | Processing of Reorganization Events, Tender Offers, and Exchange Offers | 3235–AH53 |

### DIVISION OF TRADING AND MARKETS—Completed Actions

| Sequence Number | Title | Regulation Identifier Number |
|---|---|---|
| 437 | Amendments to Regulation SHO | 3235–AK35 |

## Securities and Exchange Commission (SEC) — Proposed Rule Stage
## Division of Corporation Finance

### 418. • VOLUNTARY FILERS

**Legal Authority:** Not Yet Determined

**Abstract:** The Division is considering recommending that the Commission propose amendments to require registrants who do not have a filing obligation under the Exchange Act to file any reports with the Commission in compliance with Commission rules.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 03/00/11 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Sean Harrison, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549 Phone: 202 551–3430

**RIN:** 3235–AK59

### 419. • RISK DISCLOSURES

**Legal Authority:** Not Yet Determined

**Abstract:** The Division is considering recommending that the Commission propose amendments to its rules and forms to consolidate and enhance the risk disclosures provided by registrants.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jennifer Zapraka, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20016 Phone: 202 551–3430

**RIN:** 3235–AK58

### 420. REVISIONS TO REGULATION D

**Legal Authority:** 15 USC 77b(a)(15); 15 USC 77b(b); 15 USC 77d; 15 USC 77r; 15 USC 77s; 15 USC 77s(a); 15 USC 77z–3

**Abstract:** The Division is considering recommending that the Commission propose revisions to Regulation D, including, among other things, revisions to the accredited investor eligibility standards.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Anthony G. Barone, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549 Phone: 202 551–3460

**RIN:** 3235–AK52

## Securities and Exchange Commission (SEC) — Final Rule Stage
## Division of Corporation Finance

### 421. PROXY SOLICITATION ENHANCEMENTS

**Legal Authority:** 15 USC 78n

**Abstract:** The Commission proposed amendments to its proxy rules to clarify the manner in which they operate and address issues that have arisen in the proxy solicitation process. The Division is considering recommending that the Commission adopt amendments relating to the proposals.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/17/09 | 74 FR 35076 |
| NPRM Comment Period End | 09/15/09 | |
| Final Action | 12/23/09 | 74 FR 68334 |

## SEC—Division of Corporation Finance — Final Rule Stage

Final Action Effective 02/28/10
Final Action 04/00/10

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Mark W. Green, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–0301
Phone: 202 551–3440
Email: greenm@sec.gov

**RIN:** 3235–AK28

## Securities and Exchange Commission (SEC) Division of Corporation Finance — Completed Actions

### 422. AMENDMENTS TO RULES REQUIRING INTERNET AVAILABILITY OF PROXY MATERIALS

**Legal Authority:** 15 USC 78c(b); 15 USC 78j; 15 USC 78m; 15 USC 78n; 15 USC 78o; 15 USC 78w(a); 15 USC 78mm; 15 USC 80a–20; 15 USC 80a–29; 15 USC 80a–37

**Abstract:** The Commission adopted revisions to the notice and access model for providing proxy materials to shareholders electronically.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 10/21/09 | 74 FR 53954 |
| NPRM Comment Period End | 11/20/09 | |
| Final Action | 02/27/10 | 75 FR 9074 |
| Final Action Effective | 03/29/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Steven Hearne, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–3430

**RIN:** 3235–AK25

## Securities and Exchange Commission (SEC) Division of Investment Management — Proposed Rule Stage

### 423. TEMPORARY RULE REGARDING PRINCIPAL TRADES WITH CERTAIN ADVISORY CLIENTS

**Legal Authority:** 15 USC 80b–6a; 15 USC 80b–11(a)

**Abstract:** The Commission adopted an interim final temporary rule that was set to expire on December 31, 2009, to provide an alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of section 206(3) of the Investment Advisers Act when acting in a principal capacity in transactions with certain of their advisory clients. In December 2009, the Commission extended the expiration date until December 2010.

As contemplated in the temporary rule release, the Division has been assessing the operation of the temporary rule as well as public comment letters, and will consider whether to propose to continue the rule beyond the revised sunset date and, if so, what if any modifications should be proposed to the rule.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 09/28/07 | 72 FR 55022 |
| Interim Final Rule Effective | 09/30/07 | |
| Interim Final Rule Comment Period End | 11/30/07 | |
| Interim Final Rule Extension | 12/30/09 | 74 FR 690009 |
| Interim Final Rule Effective | 12/30/09 | |
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Matthew Goldin, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6726
Fax: 202 772–9284
Email: goldinm@sec.gov

**RIN:** 3235–AJ96

### 424. INDEXED ANNUITIES AND CERTAIN OTHER INSURANCE CONTRACTS

**Legal Authority:** 15 USC 77c(a)(8); 15 USC 77s(a); 15 USC 78l(h); 15 USC 78o; 15 USC 78w(a); 15 USC 78mm

**Abstract:** A Federal appeals court issued an opinion on July 21, 2009, remanding SEC Rule 151A. A party has petitioned the court for panel rehearing, and that petition is currently pending. The Commission staff is evaluating what recommendation to make to the Commission on how to respond to the court's decision.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Michael Kosoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6754
Fax: 202 772–9285
Email: kosoffm@sec.gov

**RIN:** 3235–AK49

## Securities and Exchange Commission (SEC) — Final Rule Stage
## Division of Investment Management

### 425. AMENDMENTS TO FORM ADV

**Legal Authority:** 15 USC 80b–4, 80b–6(4), 80b–ll(a), 80b–3(c)(1); 15 USC 77s(a); 15 USC 78(wa), 78bb(e)(2); 15 USC 77sss(a); 15 USC 78a–37(a)

**Abstract:** The Commission proposed amendments to Form ADV part 2 to require registered investment advisers to deliver to clients and prospective clients a brochure written in plain English.

The amendments are designed to require advisers to provide clients and prospective clients with clear, current, and more meaningful disclosure of the business practices, conflicts of interest, and background of investment advisers and their advisory personnel. Under the proposal, advisers would file their brochures with the Commission electronically, and the brochures would be available to the public through the Commission's Web site.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/17/00 | 65 FR 20524 |
| NPRM Comment Period End | 06/03/00 | |
| Second NPRM | 03/14/08 | 73 FR 13958 |
| Second NPRM Comment Period End | 05/16/08 | |
| Final Action | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Sarah Ten Siethoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6729
Email: tensiethoffs@sec.gov

**RIN:** 3235–AI17

## Securities and Exchange Commission (SEC) — Completed Actions
## Division of Investment Management

### 426. CUSTODY OF FUNDS OR SECURITIES OF CLIENTS BY INVESTMENT ADVISERS

**Legal Authority:** 15 USC 80b–6(4); 15 USC 80b–4; 15 USC 80b–11; 15 USC 80b–3(c)(1)

**Abstract:** The Commission adopted amendments that revise the rule governing custody of funds or securities of clients by investment advisers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 05/27/09 | 74 FR 25354 |
| NPRM Comment Period End | 07/28/09 | |
| Final Action | 01/11/10 | 75 FR 1456 |
| Final Action Effective | 03/12/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Vivien Liu, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6728
Email: liuy@sec.gov

**RIN:** 3235–AK32

### 427. INTERAGENCY PROPOSAL FOR MODEL PRIVACY FORM UNDER THE GRAMM–LEACH–BLILEY ACT

**Legal Authority:** 15 USC 6804; 15 USC 78q and 78W; 15 USC 80a–30 and 80a–37; 15 USC 80b–4 and 80b–11

**Abstract:** The Commission, together with the Federal Reserve Board, Federal Deposit Insurance Corporation, Federal Trade Commission, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision and Commodity Futures Trading Commission (the Agencies), requested comment on whether the Agencies should consider amending the regulations that implement the privacy provisions of the Gramm-Leach-Bliley Act (''GLBA'') to allow or require financial institutions to provide alternative types of privacy notices that would be easier for consumers to understand.

Pursuant to the Financial Services Regulatory Relief Act, the Agencies proposed a model form that may be used at the option of financial institutions to comply with disclosures required under the privacy provision of GLBA. The Commission reopened the comment period on the proposed model privacy notice to solicit public comment on data and a report on consumer testing of a revised version of the proposed model privacy form. The Agencies published a final model privacy notice on November 16, 2009.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| ANPRM | 12/30/03 | 68 FR 75165 |
| ANPRM Comment Period End | 03/29/04 | |
| NPRM | 03/29/07 | 72 FR 14490 |
| NPRM Comment Period End | 05/29/07 | |
| Second NPRM | 04/20/09 | 74 FR 17925 |
| Second NPRM Comment Period End | 05/20/09 | |
| Final Action | 12/01/09 | 74 FR 62890 |
| Final Action Effective | 12/31/09 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Thoreau Adrian Bartmann, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–6792
Email: bartmannt@sec.gov

**RIN:** 3235–AJ06

## Securities and Exchange Commission (SEC) — Proposed Rule Stage
## Division of Trading and Markets

### 428. ● AMENDMENTS TO RULE 17A–5

**Legal Authority:** 15 USC 78q

**Abstract:** The Division is considering recommending that the Commission propose amendments to Rule 17a-5 dealing with, among other things, broker-dealer custody of assets.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/00/10 | |

## SEC—Division of Trading and Markets — Proposed Rule Stage

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Rebekah Goshorn, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5514
Fax: 202 772–9333
Email: goshornr@sec.gov

**RIN:** 3235–AK56

### 429. PUBLICATION OR SUBMISSION OF QUOTATIONS WITHOUT SPECIFIED INFORMATION

**Legal Authority:** 15 USC 78c; 15 USC 78j(b); 15 USC 78o(c); 15 USC 78o(g); 15 USC 78q(a); 15 USC 78w(a)

**Abstract:** As part of its efforts to respond to fraud and manipulation in the microcap securities market, the Commission proposed amendments to Rule 15c2-11. These amendments would limit the rule's piggyback provision and increase public availability of issuer information. The amendments would expand the information review requirements for non-reporting issuers and the documentation required for significant relationships between the broker-dealer and the issuer of the security to be quoted. Finally, the amendments would exclude from the rule securities of larger, more liquid issuers.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/25/98 | 63 FR 9661 |
| NPRM Comment Period End | 04/27/98 | |
| Second NPRM | 03/08/99 | 64 FR 11124 |
| Second NPRM Comment Period End | 04/07/99 | |
| Second NPRM Comment Period Extended | 04/14/99 | 64 FR 18393 |
| Comment Period End | 05/08/99 | |
| Third NPRM | 12/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Victoria L. Crane, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5744
Fax: 202 772–9355
Email: cranev@sec.gov

**RIN:** 3235–AH40

## Securities and Exchange Commission (SEC) — Final Rule Stage
## Division of Trading and Markets

### 430. PROPOSED AMENDMENT TO MUNICIPAL SECURITIES DISCLOSURE

**Legal Authority:** 15 USC 78b; 15 USC 78c(b); 15 USC 78j; 15 USC 78o(c); 15 USC 78o–4; 15 USC 78q; 15 USC 78w(a)(1)

**Abstract:** The Commission proposed amending Rule 15c2-12 under section 15 of the Exchange Act to improve the system of continuing disclosure previously established by Rule 15c2-12. The Division and the Division of Corporation Finance are considering recommending that the Commission publish an interpretive release for the municipal securities markets that would update previously published guidance to reflect changes in that market.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 07/24/09 | 74 FR 36832 |
| NPRM Comment Period End | 09/08/09 | |
| Final Action | 07/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Martha Mahan Haines, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5681
Fax: 703 772–9274
Email: hainesm@sec.gov

**RIN:** 3235–AJ66

### 431. NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS

**Legal Authority:** 15 USC 78o–7; 15 USC 89q

**Abstract:** The Commission adopted rule amendments that impose additional requirements on nationally recognized statistical rating organizations (''NRSROs'') in order to address concerns about the integrity of their credit rating procedures and methodologies at NRSROs. The Commission simultaneously proposed rule amendments and a new rule that would require an NRSRO to furnish a new annual report by the firm's designated compliance officers to disclose additional information about firm sources of revenue, and to make publicly available a consolidated report about revenues attributable to persons paying the NRSRO for the issuance or maintenance of a credit rating.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 06/25/08 | 73 FR 36212 |
| NPRM Comment Period End | 07/25/08 | |
| Final Rule | 02/09/09 | 74 FR 6465 |
| Second NPRM | 02/09/09 | 74 FR 6485 |
| Second NPRM Comment Period End | 03/26/09 | |
| Final Rule | 12/04/09 | 74 FR 63832 |
| Final Rule Effective | 02/01/10 | |
| Third NPRM | 12/04/09 | 74 FR 63866 |
| Third NPRM Comment Period End | 02/02/10 | |
| Final Action | 06/00/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Sheila Swartz, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5545
Fax: 202 772–9273
Email: swarts@sec.gov

**RIN:** 3235–AK14

## Securities and Exchange Commission (SEC) — Long-Term Actions

## Division of Trading and Markets

### 432. RULE 15C2–2: CONFIRMATION OF TRANSACTIONS IN OPEN–END MANAGEMENT INVESTMENT COMPANY SHARES, UNIT INVESTMENT TRUST INTERESTS, AND MUNICIPAL FUND SECURITIES USED FOR EDUCATION SAVINGS

**Legal Authority:** 15 USC 78j; 15 USC 78k; 15 USC 78o; 15 USC 78q; 15 USC 78w(a); 15 USC 78mm

**Abstract:** The Commission proposed new Rule 15c2-2 under the Exchange Act, together with accompanying Schedule 15C. The Commission also proposed related amendments to Rule 10b-10. Proposed Rule 15c2-2 and Schedule 15C would provide for improved confirmation disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and unit investment trusts. The amendments to Rule 10b-10 in part would reflect the new rule and would provide improved confirmation disclosure about certain callable securities. They also would clarify that the confirmation disclosure requirements do not determine broker-dealer disclosure obligations under other provisions of the law.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/10/04 | 69 FR 6438 |
| NPRM Comment Period End | 04/12/04 | |
| NPRM Comment Period Extended | 03/04/05 | 70 FR 10521 |
| NPRM Comment Period End | 04/04/05 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5618
Fax: 202 772–9270
Email: goldina@sec.gov

**RIN:** 3235–AJ11

### 433. RULE 15C2–3: POINT–OF–SALE DISCLOSURE OF PURCHASES IN OPEN–END MANAGEMENT INVESTMENT COMPANY SHARES, UNIT INVESTMENT TRUST INTERESTS, AND MUNICIPAL FUND SECURITIES USED FOR EDUCATION SAVINGS

**Legal Authority:** 15 USC 78j; 15 USC 78k; 15 USC 78o; 15 USC 78q; 15 USC 78w(a); 15 USC 78mm

**Abstract:** The Commission proposed new Rule 15c2-3 under the Exchange Act, together with accompanying Schedule 15D. Proposed Rule 15c2-3 and Schedule 15D would provide for pre-transaction ''point of sale'' disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and unit investment trusts.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/10/04 | 69 FR 6438 |
| NPRM Comment Period End | 04/12/04 | |
| NPRM Comment Period Extended | 03/04/05 | 70 FR 10521 |
| NPRM Comment Period End | 04/04/05 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5618
Fax: 202 772–9270
Email: goldina@sec.gov

**RIN:** 3235–AJ12

### 434. RULE 15C–100: SCHEDULE 15C

**Legal Authority:** 15 USC 78j; 15 USC 78k; 15 USC 78o; 15 USC 78q; 15 USC 78w(a); 15 USC 78mm

**Abstract:** The Commission proposed new Schedule 15C and Rules 15c2-2 and 15c2-3 under the Exchange Act, together with accompanying Schedule 15D. The Commission also proposed related amendments to Rule 10b-10. Proposed Rules 15c2-2 and 15c2-3 and Schedules 15C and 15D would provide for improved confirmation and pre-transaction ''point of sale'' disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and unit investment trusts. The amendments to Rule 10b-10 in part would reflect the new rules and would provide improved confirmation disclosure about certain callable securities. They also would clarify that the confirmation disclosure requirements do not determine broker-dealer disclosure obligations under other provisions of the law.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/10/04 | 69 FR 6438 |
| NPRM Comment Period End | 04/12/04 | |
| NPRM Comment Period Extended | 03/04/05 | 70 FR 10521 |
| NPRM Comment Period End | 04/04/05 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alicia Goldin, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5618
Fax: 202 772–9270
Email: goldina@sec.gov

**RIN:** 3235–AJ13

### 435. RULE 15C–101: SCHEDULE 15D

**Legal Authority:** 15 USC 78j; 15 USC 78k; 15 USC 78o; 15 USC 78q; 15 USC 78w(a); 15 USC 78mm

**Abstract:** The Commission proposed new Rule 15c2-3 under the Exchange Act, together with accompanying Schedule 15D. Proposed Rule 15c2-3 and Schedule 15D would provide for pre-transaction ''point of sale'' disclosure of distribution costs and conflicts of interest associated with transactions in mutual funds, municipal fund securities, and unit investment trusts.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 02/10/04 | 69 FR 6438 |
| NPRM Comment Period End | 04/12/04 | |
| NPRM Comment Period Extended | 03/04/05 | 70 FR 10521 |
| NPRM Comment Period End | 04/04/05 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Alicia Goldin, Division of Trading and Markets,

## SEC—Division of Trading and Markets — Long-Term Actions

Securities and Exchange Commission,
100 F Street NE, Washington, DC 20549
Phone: 202 551–5618
Fax: 202 772–9270
Email: goldina@sec.gov

**RIN:** 3235–AJ14

### 436. PROCESSING OF REORGANIZATION EVENTS, TENDER OFFERS, AND EXCHANGE OFFERS

**Legal Authority:** 15 USC 78b; 15 USC 78k–1(a)(1)(B); 15 USC 78n(d)(4); 15 USC 78o(c)(3); 15 USC 78o(c)(6); 15 USC 78q–1(a); 15 USC 78q–1(d)(1); 15 USC 78w(a)

**Abstract:** The Commission proposed amendments to Rule 17Ad-14 under the Exchange Act. The amendments would require the establishment of book-entry accounts in connection with reorganization events and would give securities depositories up to 3 business days after the expiration of a tender offer, exchange offer, or reorganization event to deliver physical securities certificates to the agents.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 09/04/98 | 63 FR 47209 |
| NPRM Comment Period End | 11/03/98 | |
| Next Action Undetermined | | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Jerry Carpenter, Division of Market Regulation, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5710
Fax: 202 772–9270
Email: carpenterj@sec.gov

**RIN:** 3235–AH53

## Securities and Exchange Commission (SEC) — Completed Actions

## Division of Trading and Markets

### 437. AMENDMENTS TO REGULATION SHO

**Legal Authority:** 15 USC 78j(a); 15 USC 78w(a)

**Abstract:** The Commission proposed two approaches to restrictions on short selling: Short sale price test restrictions that would apply on a market-wide and permanent basis, or short sale circuit breaker restrictions that would apply only to a particular security during severe market declines in the price of that security. It adopted a short sale circuit breaker that, if triggered, prohibits (with limited exceptions) short selling at any price that is at or below the national best bid (''short sale price test'' or ''short sale price test restriction'').

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| NPRM | 04/20/09 | 74 FR 18042 |
| NPRM Comment Period End | 06/19/09 | |
| NPRM Comment Period Reopened | 08/20/09 | 74 FR 42033 |
| NPRM Comment Period End | 09/21/09 | |
| Final Action | 03/10/10 | 75 FR 11232 |
| Final Action Effective | 05/10/10 | |

**Regulatory Flexibility Analysis Required:** Yes

**Agency Contact:** Josephine J. Tao, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549
Phone: 202 551–5720

**RIN:** 3235–AK35

[FR Doc. 2010–8964 Filed 04–23–10; 8:45 am]

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**H.R. 4851/P.L. 111–157**

Continuing Extension Act of 2010 (Apr. 15, 2010; 124 Stat. 1116)

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