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

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9 a.m.–12:30 p.m.

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

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Presidential Documents

Title 3—

The President

Memorandum of May 4, 2010

Delegation of Authority Relating To Certain Functions Under Section 201 (B) of the United States-india Nuclear Cooperation Approval And Nonproliferation Enhancement Act (Public Law 110–369)

Memorandum for the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the certification and reporting functions conferred upon the President by section 201 (b) of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act (Public Law 110–369).

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 4, 2010

[FR Doc. 2010–11725
Filed 5–13–10; 8:45 am]
Billing code 6450–01–P

Presidential Documents

Memorandum of May 11, 2010

Improving the Federal Recruitment and Hiring Process

Memorandum for the Heads of Executive Departments and Agencies

To deliver the quality services and results the American people expect and deserve, the Federal Government must recruit and hire highly qualified employees, and public service should be a career of choice for the most talented Americans. Yet the complexity and inefficiency of today's Federal hiring process deters many highly qualified individuals from seeking and obtaining jobs in the Federal Government.

I therefore call on executive departments and agencies (agencies) to overhaul the way they recruit and hire our civilian workforce. Americans must be able to apply for Federal jobs through a commonsense hiring process and agencies must be able to select high-quality candidates efficiently and quickly. Moreover, agency managers and supervisors must assume a leadership role in recruiting and selecting employees from all segments of our society. Human resource offices must provide critical support for these efforts. The ability of agencies to perform their missions effectively and efficiently depends on a talented and engaged workforce, and we must reform our hiring system to further strengthen that workforce.

By the authority vested in me as President by the Constitution and the laws of the United States, including section 3301 of title 5, United States Code, I hereby direct the following:

Section 1. *Directions to Agencies.* Agency heads shall take the following actions no later than November 1, 2010:

(a) consistent with merit system principles and other requirements of title 5, United States Code, and subject to guidance to be issued by the Office of Personnel Management (OPM), adopt hiring procedures that:

(1) eliminate any requirement that applicants respond to essay-style questions when submitting their initial application materials for any Federal job;

(2) allow individuals to apply for Federal employment by submitting resumes and cover letters or completing simple, plain language applications, and assess applicants using valid, reliable tools; and

(3) provide for selection from among a larger number of qualified applicants by using the "category rating" approach (as authorized by section 3319 of title 5, United States Code), rather than the "rule of 3" approach, under which managers may only select from among the three highest scoring applicants;

(b) require that managers and supervisors with responsibility for hiring are:

(1) more fully involved in the hiring process, including planning current and future workforce requirements, identifying the skills required for the job, and engaging actively in the recruitment and, when applicable, the interviewing process; and

(2) accountable for recruiting and hiring highly qualified employees and supporting their successful transition into Federal service, beginning with the first performance review cycle starting after November 1, 2010;

(c) provide the OPM and the Office of Management and Budget (OMB) timelines and targets to:

(1) improve the quality and speed of agency hiring by:

(i) reducing substantially the time it takes to hire mission-critical and commonly filled positions;

(ii) measuring the quality and speed of the hiring process; and

(iii) analyzing the causes of agency hiring problems and actions that will be taken to reduce them; and

(2) provide every agency hiring manager training on effective, efficient, and timely ways to recruit and hire well-qualified individuals;

(d) notify individuals applying for Federal employment through USAJOBS, an OPM-approved Federal web-based employment search portal, about the status of their application at key stages of the application process; and

(e) identify a senior official accountable for leading agency implementation of this memorandum.

Sec. 2. *Directions to the OPM.* The OPM shall take the following actions no later than 90 days after the date of this memorandum:

(a) establish a Government-wide performance review and improvement process for hiring reform actions described in section 1 of this memorandum, including:

(1) a timeline, benchmarks, and indicators of progress;

(2) a goal-focused, data-driven system for holding agencies accountable for improving the quality and speed of agency hiring, achieving agency hiring reform targets, and satisfying merit system principles and veterans' preference requirements; and

(b) develop a plan to promote diversity in the Federal workforce, consistent with the merit system principle (codified at 5 U.S.C. 2301(b)(1)) that the Federal Government should endeavor to achieve a workforce from all segments of society;

(c) evaluate the Federal Career Intern Program established by Executive Order 13162 of July 6, 2000, provide recommendations concerning the future of that program, and propose a framework for providing effective pathways into the Federal Government for college students and recent college graduates;

(d) provide guidance or propose regulations, as appropriate, to streamline and improve the quality of job announcements for Federal employment to make sure they are easily understood by applicants;

(e) evaluate the effectiveness of shared registers used in filling positions common across multiple agencies and develop a strategy for improving agencies' use of these shared registers for commonly filled Government-wide positions;

(f) develop a plan to increase the capacity of USAJOBS to provide applicants, hiring managers, and human resource professionals with information to improve the recruitment and hiring processes; and

(g) take such further administrative action as appropriate to implement sections 1 and 2 of this memorandum.

Sec. 3. *Senior Administration Officials.* Agency heads and other senior administration officials visiting university or college campuses on official business are encouraged to discuss career opportunities in the Federal Government with students.

Sec. 4. *Reporting.* (a) The OPM, in coordination with the OMB and in consultation with other agencies, shall develop a public human resources website to:

(1) track key human resource data, including progress on hiring reform implementation; and

(2) assist senior agency leaders, hiring managers, and human resource professionals with identifying and replicating best practices within the Federal Government for improving new employee quality and the hiring process.

(b) Each agency shall regularly review its key human resource performance and work with the OPM and the OMB to achieve timelines and targets for correcting agency hiring problems.

(c) The OPM shall submit to the President an annual report on the impact of hiring initiatives set forth in this memorandum, including its recommendations for further improving the Federal Government's hiring process.

Sec. 5. *General Provisions.* (a) Except as expressly stated herein, nothing in this memorandum shall be construed to impair or otherwise affect:

(1) authority granted by law or Executive Order to an agency, or the head thereof; or

(2) functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of the OPM, in consultation with the OMB, may grant an exception to any of the requirements set forth in section 1 of this memorandum to an agency that demonstrates that exceptional circumstances prevent it from complying with that requirement.

Sec. 6. *Publication.* The Director of the OPM is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 11, 2010

[FR Doc. 2010–11733
Filed 5–13–10; 8:45 am]
Billing code 6325–01–P

Presidential Documents

Presidential Determination No. 2010–07 of May 4, 2010

Determination On the Proposed Agreement Between the Government of the United States of America And the Government of Australia Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] the Secretary of Energy

I have considered the proposed Agreement between the Government of the United States of America and the Government of Australia Concerning Peaceful Uses of Nuclear Energy, along with the views, recommendations, and statements of the interested departments and agencies.

I have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed Agreement and authorize the Secretary of State to arrange for its execution.

The Secretary of State is authorized to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 4, 2010

[FR Doc. 2010–11727
Filed 5–13–10; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2010–08 of May 10, 2010

Agreement Between the Government of the United States of America And the Government of the Russian Federation for Cooperation In the Field of Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State [and] Secretary of Energy

I have considered the proposed Agreement Between the Government of the United States of America and the Government of the Russian Federation for Cooperation in the Field of Peaceful Uses of Nuclear Energy, signed in Moscow on May 6, 2008, along with the views, recommendations, and statements of the interested departments and agencies.

I approve the proposed Agreement and have determined that the performance of the Agreement will promote, and will not constitute an unreasonable risk to, the common defense and security.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register*.

THE WHITE HOUSE,
Washington, May 10, 2010

[FR Doc. 2010–11730
Filed 5–13–10; 8:45 am]
Billing code 4710–01–P

Rules and Regulations

Federal Register

Vol. 75, No. 93

Friday, May 14, 2010

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

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1410

RIN 0560–AH80

Conservation Reserve Program; Transition Incentives Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the Conservation Reserve Program (CRP) regulations to add provisions for incentives to retired or retiring owners or operators to transition land enrolled in CRP to a beginning or socially disadvantaged farmer or rancher for production. The Transition Incentives Program involves new and mandatory provisions for CRP authorized by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). Retired or retiring owners or operators of land enrolled in an expiring CRP contract who sell or lease their expiring CRP land to a beginning or socially disadvantaged farmer or rancher for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods in compliance with the required conservation plan will, if otherwise approved for the Transition Incentives Program, receive CRP payments for an additional 2 years after the contract expires if the new or socially disadvantaged farmer is not a family member.

DATES: *Effective Date:* This rule is effective May 14, 2010.

Comment Date: We will consider comments that we receive by July 13, 2010.

ADDRESSES: We invite you to submit comments on this interim rule. In your comment, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *E–Mail: cepdmail@wdc.usda.gov.*
- *Fax:* 202–720–4619.
- *Mail:* Director, Conservation and Environmental Programs Division (CEPD), USDA Farm Service Agency (FSA) CEPD, STOP 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the FSA home page at *http://www.fsa.usda.gov/*.

FOR FURTHER INFORMATION CONTACT: Beverly J. Preston, CRP Program Manager, telephone 202–720–9563 or e-mail: *cepdmail@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at 202–720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

CRP was first authorized in the Food Security Act of 1985 (16 U.S.C. 3830–3835a, commonly known as the 1985 Farm Bill). This rule amends the CRP regulations in 7 CFR part 1410 to implement provisions for the Transition Incentives Program as specified in section 2111 of the 2008 Farm Bill (Pub. L. 110–246). The 2008 Farm Bill requires other changes to the CRP program, several of which were published in a previous interim rule (74 FR 30907–30912) and others that will be implemented separately. This interim rule amends the CRP regulations to add the provisions needed to implement the Transition Incentives Program, including definitions and eligibility requirements.

Section 2111 of the 2008 Farm Bill amends Section 1235 of the 1985 Farm Bill (16 U.S.C. 3835) to authorize CRP contract modifications—

to facilitate a transition of land subject to the contract from a retired or retiring owner or operator to a beginning farmer or rancher or a socially disadvantaged farmer or rancher for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods.

Section 2111 further authorizes that "in the case of a contract modification approved in order to facilitate the transfer" that the Secretary of Agriculture will:

- Allow conservation and land improvements to be made;
- Allow the certification process under the Organic Foods Production Act of 1990 (7 U.S.C. 6501) to begin;
- Require the retired or retiring owner to sell or lease the land subject to the contract for production purposes;
- Require the beginning or socially disadvantaged farmer or rancher to develop and implement a conservation plan;
- Provide the beginning or socially disadvantaged farmer or rancher the opportunity to enroll in the Conservation Stewardship Program or the Environmental Quality Incentives Program;
- Provide the beginning or socially disadvantaged farmer or rancher with the option to reenroll any applicable partial field conservation practice that is eligible for enrollment under the continuous signup requirement of CRP, if part of an approved conservation plan; and
- Continue to make annual payments to the retired or retiring owner or operator for not more than an additional 2 years after the termination of the contract, if the beginning or socially disadvantaged farmer or rancher is not a family member.

Section 2701 of the 2008 Farm Bill, by amendment to Section 1241 of the 1985 Farm Bill, requires that to the maximum extent practicable, $25 million in CCC funds be used for the Transition Incentives Program for fiscal years 2009 to 2012.

The purpose of CRP is to cost-effectively assist producers in conserving and improving soil, water, wildlife, and other natural resources by converting environmentally-sensitive acreage generally devoted to the production of agricultural commodities to a long-term vegetative cover and to address issues raised by State, regional, and national conservation initiatives. Participants enroll land in CRP contracts for 10 to 15 years in exchange for annual rental payments and

financial assistance to install certain conservation practices and to maintain approved vegetative, tree, or other appropriate covers. The purpose and scope of CRP are not changing with this rule.

This rule will allow retired or retiring CRP participants with land enrolled in an expiring CRP contract to amend their CRP contracts during the last year of the CRP contract to be permitted to transition that land to beginning or socially disadvantaged farmers or ranchers for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods (also referred to as "sustainable farming"). The rule provides a general definition of what would, for these purposes, be considered to be sustainable farming. Also, there is an allowance for incentive payments for CRP contracts that ended after the 2008 Farm Bill became law but before the publication of this rule. As an incentive, such CRP participants may be eligible for 2 additional years of CRP payments provided the retired or retiring owner or operator is not a family member of the beginning or socially disadvantaged farmer or rancher.

The 2008 Farm Bill defines "family member" as it is defined in 7 U.S.C. 1308–1 (part of the 1985 Farm Bill), which defines it as an individual to whom another family member in the farming operation is related as a lineal ancestor, lineal descendent, sibling, spouse, or otherwise by marriage. This definition, which FSA and CCC use in many other programs, has been clarified in 7 CFR part 718 to include a specific list of individuals who are considered family members. To provide clarity and consistency with other FSA and CCC programs, the definition from 7 CFR part 718 will be used. Therefore, a "family member" will mean an individual to whom a person is related as spouse, lineal ancestor, lineal descendant, or sibling, including a:

(1) Great grandparent;

(2) Grandparent;

(3) Parent;

(4) Child, including a legally adopted child;

(5) Grandchild;

(6) Great grandchildren;

(7) Sibling of the family member in the farming operation; and

(8) Spouse of a person listed in items 1 through 7.

Contracts on over 15 million acres of land enrolled in CRP are scheduled to expire between 2010 and October 2012.

The goal of the CRP Transition Incentives Program is to assist beginning or socially disadvantaged farmers and ranchers get a start in farming. Any beginning or socially disadvantaged farmer or rancher is eligible to participate.

The program provides an opportunity for beginning or socially disadvantaged farmers or ranchers to prepare the land enrolled in an expiring CRP contract for production using sustainable grazing or crop production methods up to one year before they farm the land. This program allows such farmers or ranchers to make conservation and land improvements or begin the process for organic certification during the last year of the expiring CRP contract. The program provides a financial incentive to increase the likelihood that land enrolled in an expiring CRP contract will be returned to production in a sustainable manner by providing additional CRP payments to retired or retiring owners and operators who sell or lease land for those purposes. This program, by offering an incentive to retired or retiring owners or operators of land enrolled in an expiring CRP contract, provides a significant opportunity to promote sustainable and organic farming.

Definitions

This rule amends section 1410.2, "Definitions," to add definitions for "beginning farmer or rancher," "retired or retiring owner or operator," and "socially disadvantaged farmer or rancher."

The 2008 Farm Bill gives the term "beginning farmer or rancher" for conservation programs the meaning given under the section 343(a)(8) of the Consolidated Farm Rural Development Act (7 U.S.C. 1991(a)(8)), which in turn gives the Secretary discretion to define the term. That term has been defined in farm loan programs. This rule uses the same definition except for necessary modifications to reflect the different program involved. Under the adopted definition, the individual or entity must, as determined by CCC:

(1) Have operated a farm or ranch for 10 years or less,

(2) Have substantial involvement in the operation of the farm or ranch, and

(3) If an entity, be an entity where 50 percent of the members or stockholders of such entity meet the previous two requirements.

Also, Section 2111 of the 2008 Farm Bill uses the term "retired or retiring owner or operator," but does not define it. This rule defines a retired or retiring owner or operator as a CRP participant who has stopped farming or expects to stop farming within five years of contract modification.

Generally, the incentive will apply only to contracts expiring after the publication of this rule. There is an exception, however. The exception is for CRP contracts that expired after the effective date of the 2008 Farm Bill (June 18, 2008), but before the publication of this rule if transfer to the eligible new holder of the property will take place only after the approval of the modification, and if the contract modification becomes effective by September 30, 2010. The requirement that the transfer follow the modification reflects that this is an incentive program. The deadline is to reflect that the exception is intended to address only those situations where the finalization of a transfer may have been awaiting the publication of a rule.

The 2008 Farm Bill specifies that this program use the definition of "socially disadvantaged farmer and rancher" given under 7 U.S.C. 2279(e)(2), which is the definition used for other FSA and CCC farm programs. Accordingly and consistent with other FSA and CCC farm program regulations through which the 2008 Farm Bill has been implemented, socially-disadvantaged persons are defined in this rule to be any person of the following groups of persons: African Americans, American Indians, Alaskan Natives, Hispanics, Asian Americans and Pacific Islanders.

Contract Modifications

This rule amends the regulations in § 1410.33, "Contract Modifications," to provide that retired or retiring owners and operators can be permitted to modify their CRP contract if it is due to expire within one year to facilitate the transition of the land enrolled in that expiring CRP contract to a beginning or socially disadvantaged farmer or rancher for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods. The limited exception for contracts that expired prior to this rule has been mentioned. This allows maximum benefit from the 2008 Farm Bill for CRP contracts that were in existence at the time the 2008 Farm Bill was enacted. Generally, the timing of the modification will mean that the CRP contract may be modified so that the transition activities may be initiated during the last year of the contract without violating the CRP contract. For example, activities to improve the land or to obtain organic certification beginning up to one year before the expiration date of the CRP contract will be allowed under such a modified contract.

Eligibility Requirements

This rule adds a new section § 1410.64, "Transition Incentives Program," to specify eligibility provisions for the incentive. There are separate eligibility requirements for retired or retiring owners and operators with land enrolled in an expiring, or in limited cases, expired CRP contract and for beginning or socially disadvantaged farmers and ranchers.

In the case of unexpired contracts, the retired or retiring CRP owner or operator with land enrolled in an expiring CRP contract must allow the beginning or socially disadvantaged farmer or rancher to install conservation practices consistent with the conservation plan on the land during the last year of the contract, or begin the organic certification process under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6523). (The Agriculture Marketing Service (AMS) implements that certification.)

Both the retired or retiring owner or operator and the beginning or socially disadvantaged farmer or rancher must jointly apply for the Transition Incentives Program. To be eligible for the Transition Incentives Program, the beginning or socially disadvantaged farmer or rancher must obtain and implement a conservation plan and certify that they are buying or leasing (under a qualifying lease) the expiring CRP land to return some or all of it into production using sustainable grazing or crop production methods.

For the transfer, the retiring or retired owner or operator may either:

(1) Sell,

(2) Have a contract to sell, or

(3) Lease under a nonrevocable long-term lease (at least 5 years), with or without an option to purchase the land.

Benefits to Participants

Retired or retiring owners or operators are eligible to receive 2 years of additional CRP rental payments as an incentive to participate in the Transition Incentives Program if the land is not sold or leased to a family member.

The Transition Incentives Program does not provide payments to beginning or socially disadvantaged farmers or ranchers for participation in this program. It provides indirect benefit to those farmers by paying eligible retired or retiring owners or operators to sell or lease eligible land to the beginning or socially disadvantaged farmer or rancher.

The beginning or socially-disadvantaged farmer or rancher will be provided the opportunity to enroll otherwise eligible land obtained through this program in various USDA conservation programs, including CRP, beginning the day after the CRP contract expires or after the transfer, whichever is later. This assumes that the land is still eligible and that the beginning or socially disadvantaged farmer has a sufficient long-term interest in the program to sustain a 10 year contract. This rule changes the CRP regulations to provide an exception to make the new or disadvantaged farmer otherwise eligible to reenroll the land in CRP as required by the 2008 Farm Bill. This is a direct benefit for the beginning or socially disadvantaged farmer or rancher, because as currently specified in § 1410.5, "Eligible Persons," an owner or operator must have owned or operated the land for at least 12 months before it can be enrolled in CRP. This rule adds a paragraph to § 1410.5 to specify that the 12 month ownership provisions do not apply to eligible Transition Incentives Program participants. In addition, the beginning or socially-disadvantaged farmer or rancher will be able to enroll all or part of the transitioned land in the Conservation Stewardship Program (CSP) or the Environmental Quality Incentives Program (EQIP) authorized under the regulations in 7 CFR parts 1470 and 1466, respectively. Again, this only applies if the conditions for those programs are otherwise met.

Program Operation

CCC will implement this program through FSA county offices. CCC and FSA will not establish a formal program to match retired or retiring CRP landowners and operators with beginning or socially disadvantaged farmers or ranchers. However, FSA county offices will publicize the program to local FSA and CCC customers, and coordinate with Farm Loan Program personnel to provide program outreach to potentially eligible farmers and ranchers. Similarly, FSA will coordinate with the Natural Resources Conservation Service (NRCS) to help eligible beginning and socially disadvantaged farmers and ranchers obtain the required conservation plan and apply for enrollment in other conservation programs, and coordinate with AMS to provide outreach about the organic certification process.

One new form will be created for this program, which we anticipate will be a one-page agreement that both parties will sign and file with the FSA county office.

Notice and Comment

CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. CCC is authorized by section 2904 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The cost benefit analysis is summarized below and is available from the contact information listed above.

Summary of Economic Impacts

The 2008 Farm Bill authorizes $25 million for incentive payments to retired or retiring owners and operators with expiring CRP contracts, who sell or long-term lease their former CRP land to beginning or socially disadvantaged farmers or ranchers that are not family members. The retired or retiring owner or operator will receive CRP rental payments for 2 additional years beyond contract expiration to encourage participation. Targeted farmers or ranchers who purchase or lease the former CRP land are required to obtain a conservation plan and follow sustainable livestock and crop production practices.

CRP Transitions Incentives Program participants are allowed to begin to make conservation and land improvements in the final CRP contract year. They also will be eligible for enrollment in three USDA conservation programs and may begin the organic certification process during the CRP contract's final year. Members of the retired or retiring owner or operator's family may participate in the CRP Transitions Incentives Program in order to obtain eligibility for enrollment in certain conservation programs, but the 2 additional years of rental payments would not be paid.

If fully subscribed, an estimated 400 to 1,800 beginning or socially disadvantaged farmers or ranchers would benefit. With an average CRP rental payment of $39 per acre to $49 per acre for 2 years, obligations are estimated at between $5.1 million and $17.1 million. These cost estimates reflect the total obligation for fiscal years 2010–2012; payments would be made over a number of years, depending on when contracts expire. Due to the limited amount of eligible farmable quality CRP acreage likely to be offered for sale or lease, and the location of beginning and socially disadvantaged farmers relative to the location of eligible CRP lands, participation and costs are expected to be closer to the

lower end of this range than the high end.

Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC is not required to publish a notice of proposed rulemaking for this rule. CCC is authorized by section 2904 of the 2008 Farm Bill to issue an interim rule effective on publication with an opportunity for comment.

Environmental Evaluation

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The revisions to CRP regulations in 7 CFR part 1410 to implement certain changes related to the transition incentive for beginning and socially disadvantaged farmers and ranchers as provided by the 2008 Farm Bill that are identified in this interim rule are authorized to expend $25 million for this incentives program to the extent practicable. Furthermore, this program only applies to land that will be committed to sustainable, conservation-friendly practices and applies to land transitions out of the CRP that otherwise would be uncontrolled. These incentives focus on changing ownership of eligible lands, but are not intended to require or facilitate current land practice or land management changes. In response to public comments received during the scoping period for the Supplemental Environmental Impact Statement on CRP (74 FR 45606–45607), and the limited potential for significant environmental or socioeconomic impacts identified in the Cost Benefit Analysis, FSA has determined that the implementation of these changes related to the transition incentives for beginning and socially disadvantaged farmers and ranchers would not have any significant individual or cumulative impacts on the quality of the human environment. Therefore, no environmental impact statement will be prepared on this regulatory action.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule the administrative appeal provisions of 7 CFR parts 11, 614, and 780 must be exhausted.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.

Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) for State, local, or tribal governments, or the private sector. In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance program in the Catalog of Federal Domestic Assistance to which this rule applies is the Conservation Reserve Program—10.069.

Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 2904 of the 2008 Farm Bill, which provides that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1410

Administrative practice and procedure, Agriculture, Environmental protection, Grant programs—Agriculture, Natural resources, Reporting and recordkeeping requirements, Soil conservation, Technical assistance, Water resources, Wildlife.

■ For the reasons discussed above, this rule amends 7 CFR part 1410 as follows:

PART 1410—CONSERVATION RESERVE PROGRAM

■ 1. The authority citation for 7 CFR part 1410 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

■ 2. In § 1410.2 add definitions in paragraph (b), in alphabetical order, for the terms: "Beginning farmer or rancher," "Retired or retiring owner or operator," and "Socially disadvantaged farmer or rancher," as set forth below.

§ 1410.2 Definitions.

* * * * *

(b) * * *

Beginning farmer or rancher means, as determined by CCC, a person or entity who:

(1) Has not been a farm or ranch operator or owner for more than 10 years,

(2) Materially and substantially participates in the operation of the farm or ranch involved in the CRP contract modification, and

(3) If an entity, is an entity in which 50 percent of the members or stockholders of the entity meet the first two requirements of this definition.

* * * * *

Retired or retiring owner or operator means an owner or operator of land enrolled in a CRP contract who has ended active labor in farming operations as a producer of agricultural crops or expects to do so within 5 years of the CRP contract modification.

* * * * *

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Gender is not included as a covered group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

(1) American Indians or Alaskan Natives,

(2) Asians or Asian-Americans,

(3) Blacks or African Americans,

(4) Hispanics, and

(5) Native Hawaiians or other Pacific Islanders.

* * * * *

■ 3. In § 1410.5, add paragraph (c) to read as set forth below:

§ 1410.5 Eligible persons.

* * * * *

(c) The provisions of this section do not apply to beginning or socially disadvantaged farmers or ranchers who are eligible participants in the Transition Incentives Program as specified in § 1410.64.

■ 4. Amend § 1410.33 as follows:

■ a. In paragraph (a)(3), remove the word "or",

■ b. Redesignate current paragraph (a)(4) as (a)(5), and

■ c. Add a new paragraph (a)(4) to read as set forth below.

§ 1410.33 Contract modifications.

(a) * * *

(4) During the final year of the CRP contract's term, facilitate a transition of land subject to the contract from a retired or retiring owner or operator to a beginning or socially-disadvantaged farmer or rancher for the purpose of returning some or all of the land into production using sustainable grazing or crop production methods; provided that for this purpose "sustainable grazing and crop production methods" will be considered, as determined by the Deputy Administrator, to be methods that would be designed as part of an overall plan defined on an ecosystem level to be useful in the creation of integrated systems of plant and animal production practices that have a site specific application that would:

(i) Meet human needs for food and fiber;

(ii) Enhance the environment and the natural resource base;

(iii) Use nonrenewable resources efficiently; and

(iv) Sustain the economic viability of farming operation; or

* * * * *

■ 5. In § 1410.62, add paragraph (g) as follows:

§ 1410.62 Miscellaneous.

* * * * *

(g) As determined by CCC, incentives may be authorized to foster opportunities for beginning and socially disadvantaged farmers and ranchers and to enhance long-term environmental goals.

■ 6. Add § 1410.64 to read as set forth below:

§ 1410.64 Transition Incentives Program.

(a) To be eligible for the Transition Incentives Program, the retired or retiring owner or operator must, except as specified in paragraph (f) of this section:

(1) Have land that is expiring under an existing CRP contract with a 50 percent or greater interest as provided at § 1410.42 (c);

(2) Sell or lease (under a qualifying nonrevocable lease of at least 5 years in length) expiring CRP land to a beginning or socially disadvantaged farmer or rancher who will return some or all of the land to production using sustainable grazing or crop production methods;

(3) Modify the CRP contract in accordance with § 1410.33(a)(4);

(4) Allow the beginning or socially disadvantaged farmer or rancher to begin the organic certification process under the Organic Foods Production Act of 1990 during the last year of the contract, if requested by that farmer or rancher;

(5) Allow the beginning or socially disadvantaged farmer or rancher to develop a conservation plan for the land; and

(6) Allow the beginning or socially disadvantaged farmer or rancher to install conservation practices and initiate land improvements that are consistent with the conservation plan during the last year of the contract.

(b) To be eligible for participation in the Transition Incentives Program, the beginning or socially disadvantaged farmers or ranchers must:

(1) Certify that they meet the definition in § 1410.2 of either a beginning farmer or rancher or a socially disadvantaged farmer or rancher;

(2) Obtain and implement a conservation plan; and

(3) Implement sustainable grazing or crop production in compliance with the conservation plan by the time specified in the plan.

(c) Eligible beginning or socially disadvantaged farmers or ranchers will be eligible immediately to reenroll partial field conservation practices in CRP, in accordance with the conservation plan and the provisions of this part, following the expiration of the CRP contract of the qualified retired or retiring owner or operator, provided that the beginning or socially disadvantaged farmer or rancher has control of the property and meets all other qualifying conditions of CRP, as specified in this part.

(d) Eligible beginning or socially disadvantaged farmers or ranchers will be eligible to enroll land in the Conservation Stewardship Program or the Environmental Quality Incentives Program, as specified in parts 1470 and 1466 of this chapter, provided that their offer to enroll otherwise meets all program conditions, and provided that the CRP contract of the retired or retiring owner or operator has expired and the beginning or socially disadvantaged farmer or rancher has sufficient control of the property.

(e) As an incentive for selling or leasing land to a beginning or socially disadvantaged farmer or rancher who is not a family member, CCC will pay 2 years of additional CRP annual rental payments at the same contract rate to a retired or retiring owner or operator. The retired or retiring owner or operator must certify that the beginning or socially disadvantaged farmer or rancher is not a family member.

(f) Subject to all other program conditions, incentive payments may be allowed for contracts that have already expired if:

(1) The contract expired on or after June 18, 2008, and contract modification began on or before September 30, 2010;

(2) The transfer to the beginning or socially disadvantaged farmer or rancher will occur after the contract modification; and

(3) All other program conditions are otherwise met.

(g) Eligible retired or retiring owner or operator and eligible beginning or socially disadvantaged farmer or rancher must agree to be jointly and severally responsible, if the participant has a share of the payment greater than zero, with the other Transition Incentive Program agreement participants in compliance with the provisions of such Transition Incentive Program agreement and the provisions of this part and for any payment adjustments that may be required for violations of any of the terms or conditions of the Transition Incentive Program agreement and this part.

Signed at Washington, DC, on April 27, 2010.

Jonathan W. Coppess,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–11595 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–DET–0005]

RIN 1904–AB80

Energy Conservation Program for Consumer Products: Determination Concerning the Potential for Energy Conservation Standards for Non-Class A External Power Supplies

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final Rule.

SUMMARY: The U.S. Department of Energy (DOE or the Department) has determined, based on the best information currently available, that energy conservation standards for non-Class A external power supplies are technologically feasible and economically justified, and would result in significant energy savings. This determination initiates the process of establishing, by notice and comment rulemaking, energy conservation standards for these products.

DATES: This rule is effective June 14, 2010.

ADDRESSES: This rulemaking can be identified by docket number EERE–2009–BT–DET–0005 and/or Regulatory Identification Number (RIN) 1904–AB80.

Docket: For access to the docket to read background documents, the technical support document, or comments received go to the U.S. Department of Energy, Resource Room of the Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information about visiting the Resource Room. You may also obtain copies of certain documents in this proceeding from the Office of Energy Efficiency and Renewable Energy's Web site at *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Victor Petrolati, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–4549. *E-mail: Victor.Petrolati@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585. *Telephone:* (202) 586–8145. *E-mail: Michael.Kido@hq.doe.gov.*

For further information on how to review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone (202) 586–2945. *E-mail: Brenda.Edwards@ee.doe.gov.*

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I. Summary of the Determination

EPCA requires DOE to issue a final rule determining whether to issue energy efficiency standards for non-Class A external power supplies (EPSs). Consistent with this requirement, DOE has analyzed multiple candidate standard levels for non-Class A EPSs. These analyses indicate that it is technologically feasible to manufacture EPSs at some of these levels in large part because EPSs that meet these levels are already commercially available. DOE further determined that standards for all non-Class A EPSs that DOE analyzed could be set that would reduce the life-cycle cost (LCC) of ownership for the typical consumer. That is, any increase in equipment cost resulting from a standard would be more than offset by energy cost savings.

DOE's analyses also indicate that energy conservation standards would also likely be cost-effective from a national perspective. The national net present value (NPV) of energy conservation standards for non-Class A EPSs could be as much as $512 million in 2008$, assuming an annual discount rate of 3 percent. As a result, these analyses indicate that both individual consumers and the Nation as a whole would likely benefit economically from the imposition of energy conservation standards for non-Class A EPSs. Accordingly, DOE has positively determined that such standards are technologically feasible and economically justified, and would result in significant energy savings.

DOE notes that its forecast of projected savings and national NPV considers only the direct financial costs and benefits to consumers of standards, specifically, the increased equipment costs of EPSs purchased from 2013 to 2032 and the associated energy cost savings over the lifetimes of those products. In its determination analysis, DOE did not monetize or otherwise characterize any other potential costs and benefits of standards such as manufacturer impacts or power plant emission reductions. Such impacts will be examined in a future analysis of the economic feasibility of particular standard levels in the context of a standards rulemaking.

DOE's analysis also indicates that standards would result in significant energy savings—as much as 0.14 quads of energy over 30 years (2013 to 2042). This is equivalent to the annual electricity needs of 1.1 million U.S. homes.

Further documentation supporting the analyses described in today's final rule is contained in the notice of proposed determination, published in the **Federal Register** on November 3, 2009, (74 FR 56928) and the accompanying technical support document (TSD), available from the Office of Energy Efficiency and Renewable Energy's Web site at

www.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.

The nature of this document results from the specific statutory requirements that DOE issue this notice as a rule. In accordance with this requirement, DOE issued its November 2009 notice prior to today's final rule notice. In addition, DOE combined as appropriate the analysis required by the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007), with the analysis that DOE had already performed as a result of requirements added previously by the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58 (Aug. 8, 2005). EPACT 2005 required DOE to issue a determination analysis to address battery chargers and external power supplies; EISA 2007 subsequently amended this provision by focusing the analysis solely on external power supplies.

A. Background and Legal Authority

Title III of EPCA sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the "Energy Conservation Program for Consumer Products Other Than Automobiles." EPACT 2005 amended EPCA to require DOE to issue a final rule determining whether to issue efficiency standards for battery chargers (BCs) and EPSs. DOE initiated this determination analysis rulemaking in 2006, which included a scoping workshop on January 24, 2007, at DOE headquarters in Washington, DC. The determination was underway and on schedule for issuance by August 8, 2008, as originally required by EPACT 2005.

However, EISA 2007 also amended EPCA by setting efficiency standards for certain types of EPSs (Class A) and modifying the statutory provision that directed DOE to perform the determination analysis (42 U.S.C. 6295(u)(1)(E)(i)(I), as amended). EISA 2007 removed BCs from the determination, leaving only EPSs, and changed the allotted time to complete the determination.

In addition to the existing general definition of EPS, EISA 2007 amended EPCA to define a "Class A external power supply" (42 U.S.C. 6291(36)(C)) and set efficiency standards for those products (42 U.S.C. 6295(u)(3)). As amended by EISA 2007, the statute further directs DOE to publish a final rule by July 1, 2011 to evaluate whether the standards set for Class A EPSs should be amended and, if so, to include any amended standards as part of that final rule. (42 U.S.C. 6295(u)(3)(D)(i)) The statute further directs DOE to publish a second final rule by July 1, 2015, to again determine whether the standards in effect should be amended and to include any amended standards as part of that final rule. (42 U.S.C. 6295(u)(3)(D)(ii))

Because Congress has already set standards for Class A EPSs and separately required DOE through a separate statutory provision to perform two rounds of rulemakings to consider amending efficiency standards for Class A EPSs, *see* 42 U.S.C. 6295(u)(3), the determination analysis under 42 U.S.C. 6295(u)(1)(E)(i)(I) excluded these products from this analysis. Accordingly, the present determination concerns only EPSs falling outside of the Class A definition, *i.e.,* "non-Class A EPSs."

EISA 2007 amendments to EPCA also require DOE to issue a final rule prescribing energy conservation standards for BCs, if technologically feasible and economically justified, by July 1, 2011 (42 U.S.C. 6295(u)(1)(E)(i)(II)). The BC rulemaking has been bundled with the rulemaking for Class A EPSs, given the related nature of such products and the fact that these provisions share the same statutory deadline. DOE initiated the energy conservation standards rulemaking for BCs and Class A EPSs by publishing a framework document on June 4, 2009, and holding a public meeting at DOE headquarters on July 16, 2009. DOE is now developing its preliminary analysis of standards for BCs and Class A EPSs. With today's positive determination that standards are warranted for non-Class A EPSs, standards for these products also will be considered within the ongoing standards rulemaking.

The Department began the analysis for this determination by conducting testing and teardowns on commercially available non-Class A EPSs and by collecting information from manufacturers of non-Class A EPSs and original equipment manufacturers that use non-Class A EPSs. The Department shared its preliminary findings regarding efficiency improvements in its November 2009 notice of proposed determination (NOPD). 74 FR 56928. This notice was accompanied by a technical support document (TSD), which was published on the EERE Web site. Subsequently, the Department received written comments on the notice and TSD from the Power Tool Institute, Inc. (PTI); the Association of Home Appliance Manufacturers (AHAM); Pacific Gas and Electric Company (PG&E); a joint comment from the California Energy Commission (CEC), PG&E, San Diego Gas and Electric Company, Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, Northeast Energy Efficiency Partnerships, and Northwest Power and Conservation Council (hereafter referred to as the CEC comment); and the Consumer Electronics Association (CEA). (PTI, No. 5; AHAM, No. 6; PG&E, No. 7; CEC *et al.,* No. 8; and CEA, No. 9).

For more information about DOE rulemakings concerning BCs and EPSs, see the Office of Energy Efficiency and Renewable Energy's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.*

B. Scope

As explained in the NOPD, the scope of this determination covers all EPSs falling outside of Class A, which DOE identifies in this notice as non-Class A EPSs. EPCA, as amended by EPACT 2005, defines an EPS as "an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product." (42 U.S.C. 6291(36)(A)) EISA 2007 amended EPCA by, among other things, defining in 42 U.S.C. 6291(36)(C) a subset of external power supplies (*i.e.* a Class A EPS).

The analysis underlying DOE's NOPD focused on four EPS types: (1) *Multiple-voltage EPSs*—EPSs that can provide multiple output voltages simultaneously; (2) *high power EPSs*—EPSs with nameplate output power greater than 250 watts; (3) *medical EPSs*—EPSs that power medical devices and EPSs that are themselves medical devices; and (4) *EPSs for battery chargers (EPSs for BCs)*—EPSs that power the chargers of detachable battery packs or charge the batteries of products that are fully or primarily motor operated. 74 FR 56930.

1. DC–DC Power Supplies

CEA asked DOE to clarify whether DC–DC power supplies are outside the scope of the EPS definition. (CEA, No. 9 at p. 2) The statutory definition of an EPS is "an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product." (42 U.S.C. 6291(36)(A)) Household electric current is nominally 120 volts AC. Thus, under the statutory definition set by Congress, wall adapters with DC input power are not EPSs.

2. Basic Approaches to Regulating Wall Adapters for BCs

DOE has identified four possible approaches to regulating wall adapters for BCs. These four approaches, referred to as approaches A, B, C, and D, are explained in the framework document referred to in the notice of document availability DOE published in the **Federal Register** on June 4, 2009.[1] 74 FR 26816. Under Approach A, a wall adapter would be considered an EPS only if it lacked charge control (*i.e.,* a method to control the charge flowing to the battery). In addition, the EPS could be subject to both EPS and BC standards if it were also a part of a battery charging system. Under Approach B a wall adapter would not be considered an EPS as long as it powered a battery charger (the presence or absence of charge control being irrelevant). Approach C is similar to Approach A in that a wall adapter would be considered an EPS only if it lacked charge control; however, under Approach C the EPS would only be subject to EPS standards and not BC standards, even if it were also part of a battery charging system. Under Approach D a wall adapter that powers a battery charging system would always be considered an EPS regardless of the presence of charge control.

DOE received comments related to EPSs for BCs in response to the NOPD. Many of these comments revolved around two closely related questions: (1) When is a wall adapter an EPS and (2) When is an EPS considered part of a BC? Comments on this issue were submitted by parties representing a variety of interests, including industry and energy efficiency advocates. The following two paragraphs describe the comments DOE received related to these questions, while the third and fourth paragraphs that follow provide DOE's responses to those comments.

The first set of comments concerned the question of when a wall adapter should be categorized as an EPS. PG&E urged DOE to adopt Approach A as it is described in the framework document, claiming that this approach ensures a technically accurate, common sense approach to defining EPSs and battery chargers. (PG&E, No. 7 at p. 6) PG&E's comment echoed its earlier comment and those of several others, including FRIWO, PTI, Ecos Consulting, and Motorola, who stated their support for Approach A in written comments on the framework document and at the associated public meeting on July 16, 2009. (FRIWO, EERE–2008–BT–STD–0005 No. 21 at p. 1; Pub. Mtg. Tr., EERE–2008–BT–STD–0005 No. 14 at pp. 62, 116; Motorola, EERE–2008–BT–STD–0005 No. 25 at p. 1; PG&E *et al.,* EERE–2008–BT–STD–0005 No. 20 at p. 3) PTI reiterated its preference for Approach B and noted that if Approach B were not available, Approach A would be the next best option. (PTI, No. 5 at p. 2) AHAM urged DOE to accept a slight modification of Approach B and agreed with PTI that of the remaining approaches, Approach A would be the next best option. (AHAM, No. 6 at p. 4) The modification to Approach B that AHAM requested would also exclude from the set of EPSs all high power wall adapters that are used to charge batteries and all wall adapters that are used to charge batteries for medical devices. DOE indicated in its framework document that Approach B would be inconsistent when applied to the Class A EPS statutory definition, because DOE cannot limit the scope of the EPS definition by adding another exclusion to those already created by Congress. AHAM also asked DOE to address more fully its reasons for not selecting Approach B when applying it to non-Class A EPSs. (AHAM, No. 6 at p. 3)

The second set of comments concerned the closely related question of when an EPS should be considered part of a BC. AHAM and PTI expressed their opposition to overlapping standards, *i.e.,* requiring an EPS to comply with an EPS standard and the BC of which it is part to comply with a BC standard. (PTI, No. 5 at p. 1; AHAM, No. 6 at p. 2) Approaches A and D could potentially lead to the overlap that AHAM and PTI oppose. PTI reiterated its contention that "the proper way to deal with the efficiency of BCs is through a comprehensive standard that treats the charger as [a] whole, including the wall adapter (if one is part of the system)." (PTI, No. 5 at p. 1) AHAM agreed, stating that "we do not believe it is appropriate conceptually or technically to separate the testing of any parts of the battery recharging circuit in a test procedure for battery chargers." (AHAM, No. 6 at p. 2) AHAM proposed that DOE create a separate class of BCs called "appliance battery chargers" that would encompass both wall adapter-based and cord-connect-based appliance battery chargers and further noted that testing a wall adapter first as an EPS and then as a part of a battery charger system "would be an extreme burden on all manufacturers, but particularly on the small and medium sized enterprises and provide no benefit to consumers." (AHAM, No. 6 at p. 3)

DOE used Approach A to define the scope of its determination analysis. This is the approach that DOE identified in the framework document as its preferred approach to determining which wall adapters are EPSs. DOE also explained in the framework document that it considers Approach B legally unacceptable for Class A EPSs because it would create additional exclusions of products that would otherwise satisfy the statutory definition of a Class A EPS. Since Congress already established specific exclusions to the Class A EPS definition, DOE has tentatively taken the position that it does not retain the authority to create exclusions beyond that which Congress has established. See the Energy Conservation Standards Rulemaking Framework Document for Battery Chargers and External Power Supplies, at 32.

However, DOE did not rule out applying Approach B for non-Class A EPSs, an approach both AHAM and Wahl Clipper have requested DOE consider. (AHAM, EERE–2008–BT–STD–0005 No. 16 at pp. 2–3; Wahl Clipper, EERE–2008–BT–STD–0005 No. 23 at p. 1) When viewed in light of these and similar comments received earlier during the rulemaking process for these products, AHAM and PTI's objections to overlapping standards appear to focus on non-Class A EPSs, not Class A EPSs. If Approach A were used for Class A EPSs and Approach B were used for non-Class A EPSs, wall adapters that power the chargers of detachable battery packs or charge the batteries of products that are fully or primarily motor operated would not be subject to EPS standards while those wall adapters that power other battery charged applications (Class A EPSs) would be subject to EPS standards. Nevertheless, DOE is concerned that using Approach A for Class A EPSs and Approach B for non-Class A EPSs would create two distinct definitions of an EPS that would prevent one from readily identifying a particular wall adapter as being an EPS until it is known whether it powers the charger of a detachable battery pack or charges the battery of a product that is fully or primarily motor operated. DOE intends to make a decision on this issue as part of the standards rulemaking.

DOE acknowledges that if it applied Approach B to non-Class A EPSs, the total energy savings potential from non-Class A EPS standards would be less than under Approach A, as EPSs for BCs would not be covered. However, the reduction in savings would be small, as

[1] These approaches are explained in section 3.2.3.3 of DOE's framework document for the BC and EPS energy conservation standards rulemaking (available at *http://www.eere.energy.gov/buildings/appliance_standards/residential/battery_external_std_2008.html*). The approaches also address the related question of whether the wall adapter should be considered part of the BC.

EPSs for BCs account for less than 2 percent of the savings estimated in the present analysis. Furthermore, DOE believes that these savings would be captured by BC standards that would cover the devices of which the wall adapters were a part.

3. Specific Criteria for Identifying the Presence of Charge Control

PG&E and AHAM commented on the criteria for determining whether charge control is present in a wall adapter. PG&E strongly urged DOE to remain consistent with the criteria identified in the framework document that focus on electrical equivalency and battery charger functions. (PG&E, No. 7 at p. 3) PG&E cautioned against using a vague and undefined "constant voltage" criterion for identifying EPSs, citing research conducted by Ecos Consulting that examined the electrical characteristics of wall adapters that power the chargers of detachable battery packs or charge the batteries of products that are fully or primarily motor operated. This research found at least one wall adapter that was electrically equivalent to Class A EPSs that did not produce constant voltage output and at least one wall adapter that was not electrically equivalent to Class A EPSs that produced constant voltage output. (PG&E, No. 7 at pp. 4–5) As a result, PG&E recommended that DOE "rely on physical indications of charge control circuitry or functionality, such as a battery-charge indicator or chemistry-type selector switch" rather than "constant voltage" for determining whether charge control is present in a wall adapter. (PG&E, No. 7 at p. 7) AHAM asked that DOE state clearly the criteria that will be used to determine whether charge control is present in a wall adapter. (AHAM, No. 6 at p. 4) AHAM further urged DOE to accept the criteria for charge control that were discussed at the framework document public meeting on July 16, 2009, as doing so would lead to "the vast majority of AHAM battery chargers using wall adapters being treated as complete battery chargers." (AHAM, No. 6 at p. 6)

DOE has not yet established final criteria for determining which wall adapters are EPSs. In the framework document, DOE sought stakeholder comment on four possible criteria for identifying charge control in a wall adapter—short-circuit operation, voltage regulation, no-load voltage, and no-battery operation, but did not indicate which criteria it would use going forward. In the NOPD and today's notice, DOE used constant voltage output as a preliminary criterion for establishing the absence of charge control and thereby identifying EPSs. Comments submitted in response to the NOPD questioned whether constant voltage output would be an appropriate test when determining whether a particular product lacks charge control, and DOE is reconsidering this approach. The protocol for determining which wall adapters are EPSs will be finalized within the standards rulemaking.

4. Size of the EPS for BC Market

DOE received several comments on the size of the market for EPSs for BCs. Interested parties disagreed on the size of the market due to a difference of opinion as to what proportion of wall adapters for the BCs under consideration were EPSs. AHAM agreed with DOE's estimate that no more than 5 percent of wall adapters for cordless rechargeable floor care appliances provide constant voltage, adding that if this estimate is used as the basis for the determination, the same criteria used to arrive at this estimate must be used in the standards NOPR and Final Rule as well. (AHAM, No. 6 at p. 5) AHAM also agreed with DOE that wall adapters for rechargeable personal care appliances use charge control and, therefore, are not EPSs. (AHAM, No. 6 at p. 4) PTI agreed with DOE's estimate that approximately 5 percent of all wall adapters for powers tool BCs are true EPSs, adding that if the charge control criteria were significantly altered in the future, the validity of the determination could be eroded. (PTI, No. 5 at p. 2)

PG&E, however, commented that DOE greatly underestimated the number of EPSs for BCs. (PG&E, No. 7 at p. 7) CEC concurred and urged DOE to reconsider its methodology for calculating energy savings potential from EPSs for BCs, citing PG&E research that suggests the potential savings from this group of products is 20 times higher than DOE suggested. (CEC et al., No. 8 at p. 1)

Until the protocol for determining which wall adapters are EPSs is finalized, the number of EPSs for BCs cannot be accurately estimated. In light of the absence of this protocol, DOE conservatively estimated the size of the market for EPSs for BCs in the determination analysis. A larger market would only serve to increase the potential energy savings from standards for these products, which would serve as additional support for the positive determination that DOE has already reached using its more conservative approach.

II. Methodology

A. Purpose and Content

The Department analyzed the feasibility of achieving significant energy savings from energy conservation standards for non-Class A EPSs. The NOPD presented the results of this analysis. As part of the subsequent standards rulemaking, DOE will perform more robust analyses. These analyses will involve more precise and detailed information that the Department will develop and receive during the standards rulemaking process, and will detail the potential effects of proposed energy conservation standards for non-Class A EPSs.

To address EPCA requirements that DOE determine whether energy conservation standards for non-Class A EPSs would be technologically feasible and economically justified and result in significant energy savings, the Department's analysis consisted of six separate analyses: (1) A market assessment to better understand where and how non-Class A EPSs are used, (2) a technology assessment to better understand the technology options that can increase efficiency, (3) an engineering analysis to estimate how different design options affect efficiency and cost, (4) an energy use and end-use load characterization that describes how much energy non-Class A EPSs consume and for how long they operate, (5) an LCC analysis to estimate the costs and benefits to users from increased efficiency of non-Class A EPSs, and (6) a national impact analysis to estimate the potential energy savings and the economic costs and benefits on a national scale that would result from improving the energy efficiency of non-Class A EPSs. These separate analyses are briefly addressed later below.

B. Test Procedures

The test procedure for measuring the energy consumption of single-voltage EPSs, which applies to high power EPSs, medical EPSs, and EPSs for BCs, is codified in 10 CFR part 430, subpart B, appendix Z, "Uniform Test Method for Measuring the Energy Consumption of External Power Supplies." DOE modified this test procedure, pursuant to EISA 2007, to include standby and off modes.

DOE first proposed a test procedure for measuring the energy consumption of multiple-voltage EPSs in a NOPR published in the **Federal Register** on August 15, 2008. 73 FR 48054. PG&E suggested that DOE use an internal power supply test procedure, such as

the PG&E test procedure for computers,[2] to test multiple-voltage EPSs. (PG&E, No. 7 at p. 2) DOE recently proposed another test procedure for multiple-voltage EPSs on April 2, 2010. 75 FR 16958. The proposed test procedure, like its predecessor, is based, in part, on test procedures for internal power supplies.

C. Market Assessment

To understand the present and future market for non-Class A EPSs, DOE gathered data on these EPSs and their associated applications. DOE also examined the industry composition, distribution channels, and regulatory and voluntary programs for non-Class A EPSs. The market assessment provides important inputs to the LCC analysis and national impact analysis. DOE published the details of its market assessment in the NOPD and accompanying TSD.

PG&E and CEC both commented that the number of high power EPSs (those with nameplate output power greater than 250 watts) is likely to increase in the future as applications such as game consoles, fast chargers, and other home electronics demand increasing amounts of power. (PG&E, No. 7 at p. 2; CEC et al., No. 8 at p. 1) In its determination analysis, DOE assumed the high power EPS market would not change in size. While DOE recognizes that the market for high power EPSs may grow in the future, a no-growth assumption is sufficient to form a basis for the determination since growth in high power EPSs would only lend further support in favor of a positive determination. Nevertheless, DOE will continue to monitor the market and take such trends into account in the standards rulemaking.

AHAM requested more information on how the markups from efficiency-related materials cost to end-user product prices were calculated (AHAM, No. 6 at p. 5) Section 1.2 of the TSD indicates that the sources for the markups were interviews with EPS manufacturers, gross margin data for OEMs and retailers/distributors, and sales tax data. For each representative unit, DOE provides a figure that shows how the products get to market and a table listing the corresponding markups. DOE will explain its markup calculations in greater detail in the standards rulemaking.

In the NOPD, DOE stated that it was not aware of any non-motor operated applications with an EPS that powers the charger of a detachable battery pack and invited interested parties to provide information about any such applications. 74 FR 56933. CEA, however, identified what it believed were three such applications: bar code scanners, mobile computers, and wireless headphones. (CEA, No. 9 at p. 2) A bar code scanner is not a consumer product as defined by EPCA. (42 U.S.C. 6291(1)) The mobile computers that CEA is referring to may be consumer products, while wireless headphones very likely are consumer products. DOE will research these two potential EPS applications in the standards rulemaking.

D. Technology Assessment

The technology assessment examines the technology behind the design of non-Class A EPSs and focuses on the components and subsystems that have the biggest impact on energy efficiency. The technology assessment's key output is a list of technology options for consideration in the engineering analysis. DOE published the details of its technology assessment in the NOPD and accompanying TSD.

PG&E believed that cost-effective efficiency improvements already broadly implemented in the Class-A EPS marketplace can be easily incorporated into all non-Class A EPSs, particularly high-efficiency switched-mode power supply topologies and circuit designs that enable low power consumption in no-load mode. (PG&E, No. 7 at p. 1) Specifically, PG&E can find no technical justification for treating non-Class A EPSs sold with BCs differently than Class A EPSs sold with non-BC products. (PG&E, No. 7 at p. 4) In the NOPD, DOE described technology options applicable to Class A EPSs that were also applicable to non-Class A EPSs. DOE continues to believe that those technology options are applicable to non-Class A EPSs.

PG&E commented that U.S. Food and Drug Administration safety requirements are compatible with efficient EPS technology. (PG&E, No. 7 at p. 2) As indicated in the NOPD, DOE continues to believe that medical EPSs have the same potential for efficiency improvements as do Class A EPSs.

E. Engineering Analysis

The purpose of the engineering analysis is to determine the relationship between a non-Class A EPS's efficiency and its efficiency-related materials cost (ERMC). (The ERMC includes all of the efficiency-related raw materials listed in the bill of materials but not the direct labor and overhead needed to create the final product. The materials cost forms the basis for the price consumers eventually pay.) This relationship serves as the basis for the underlying costs and benefits to individual consumers and the Nation (life-cycle cost analysis and national impacts analysis). The output of the engineering analysis provides the ERMC at selected, discrete levels of efficiency for six non-Class A EPS "representative units". The engineering analysis methodology section in the NOPD details the development of the analysis and includes descriptions of the analysis structure, inputs, and outputs. Related supporting materials are also found in the TSD.

To develop this analysis, DOE gathered data by interviewing manufacturers, conducting independent testing and research, and commissioning EPS teardowns. Through interviews, manufacturers provided information on the relative popularity of EPS models and the cost of increasing their efficiency. To validate the information provided by manufacturers, DOE performed its own market research and testing. To independently establish the cost of some of the tested units, DOE contracted iSuppli Corporation (iSuppli), an industry leader in the field of electronics cost estimation.

DOE began the engineering analysis by identifying the representative product classes and selecting one representative unit for analysis from each of the representative product classes. Representative units are theoretical models of popular or typical devices described in terms of all characteristics, such as output power and output voltage, except for efficiency and cost. DOE evaluates each representative unit at different efficiency levels to determine the associated costs. Although the efficiency of power converters in the market ranges over an almost continuous spectrum, DOE focused its analysis at select candidate standard levels (CSLs). In the engineering analysis, DOE examined the cost of production at each CSL for each representative unit. The resulting relationship was termed an "engineering curve" or "cost-efficiency curve." The outputs of this analysis, presented in section III. A, are the cost-efficiency points that define those curves.

DOE received comments from AHAM and PTI regarding the cost-efficiency relationship described by the results of the engineering analysis. PTI asserted that it is unreasonable that cost appears to be independent of efficiency, and AHAM questioned the validity of a cost-efficiency curve that shows flat cost

[2] "Proposed Test Protocol for Calculating the Energy Efficiency of Internal Ac-Dc Power Supplies," Revision 6.2, California Energy Commission Public Interest Energy Research Program, November 2007.

with varying efficiency. (PTI, No. 5 at p. 2; AHAM, No. 6 at p. 6)

In the NOPD, DOE developed cost-efficiency curves for the six representative units. Four of the six cost-efficiency curves have a positive slope, indicating that an increase in efficiency is associated with an increase in cost. (For the 345 W high-power EPS representative unit, there is an increase in cost from CSL 1 to CSL 3, although the baseline CSL is the most expensive.) Because DOE's analyses identify a general link between increased efficiency and increased cost, DOE believes that PTI and AHAM were collectively referring to the two EPS-for-BC representative units included in the analysis. The cost-efficiency curves for these units projected an increase in cost from the baseline to CSL 1 but with no increase in cost from CSL 1 to CSL 3. As explained in the NOPD, the cost-efficiency relationship for these representative units is based on purchasing 12 EPS units, testing their efficiency, and estimating their costs through teardowns, of which three were performed by iSuppli and the remainder by DOE. There was no clear relationship among the 12 units, other than that unit #17, the lowest-efficiency linear EPS unit used to characterize the baseline cost, was cheaper than the average cost of the switched-mode EPS units used to characterize the higher CSLs.

Among the switched-mode EPSs, DOE attempted to hold all factors constant except for cost and efficiency. For instance, the nameplate output power ratings of the EPS test units ranged from 1.75 W to 5.2 W and the nameplate output voltage ratings ranged from 5 V to 5.2 V. DOE scaled the efficiencies of the units to the representative unit values for nameplate output power and nameplate output voltage. However, there may have been other differences between the EPSs that affected cost and efficiency that DOE was not able to normalize, which might affect the underlying relationship between cost and efficiency. The available data did not permit DOE to draw any conclusions regarding how these differences would affect the analysis. DOE believes that examining units already available in the market is a valid method for characterizing the cost-efficiency relationship, that the results for the units are accurate, and that the analysis is sufficient to support a positive determination. In the standards rulemaking, DOE will consider the comments from PTI and AHAM as it develops a more robust engineering analysis.

AHAM commented on DOE's ERMC analysis and raised issues related to the scope of coverage of EPSs for BCs and the criteria used to define charge control. (AHAM, No. 6 at p. 5) First, AHAM noted that the ERMC analysis of cost is not applicable to most AHAM product wall adapters for BCs because the analysis does not include components used in charged control, making the CSLs not applicable to AHAM products. Second, AHAM does not believe the cost-efficiency curve for vacuum cleaners would be the same if applied to the 95 percent of wall adapters with charge control. Third, AHAM asked that DOE demonstrate how costs can be scaled using a base volume of 1,000,000 per year. Fourth, AHAM questioned whether the high-volume EPS ERMCs are applicable to custom designed, small quantity BCs.

DOE agrees with AHAM's first two comments that DOE's cost-efficiency curves do not apply to wall adapters that include charge control. Regarding AHAM's third comment, because DOE's analysis focused on EPSs that are interchangeable and do not have charge control, DOE evaluated their cost at high volumes that are typical of EPSs. Finally, as to AHAM's fourth comment, low volume EPS costs are inconsistent with the scope of EPSs for BCs as currently defined in this determination and, consequently, were not evaluated.

F. Energy Use and End-Use Load Characterization

The purpose of the energy-use and end-use load characterization is to identify how consumers use products and equipment, and thereby determine the change in EPS energy consumption related to different energy efficiency improvements. For EPSs, DOE's analysis focused on the consumer products they power and on how end-users operate these consumer products.

The energy-use and end-use load characterization estimates unit energy consumption (UEC), which represents the typical annual energy consumption of an EPS in the field. The UEC for EPSs is calculated by combining 1) usage profiles, which describe the time a device spends in each mode in one year; 2) load, which measures the power provided by the EPS to the consumer product in each mode; and 3) efficiency, which measures the power an EPS must draw from mains (*i.e.,* wall outlet) to power a given load. Outputs from this analysis feed into the LCC analysis and NIA.

DOE published the details of its energy use and end-use load characterization in the NOPD and accompanying TSD. In the one comment DOE received on this analysis, PTI agreed with the usage profiles DOE adopted for EPSs for power tool BCs. (PTI, No. 5 at p. 2) These usage profiles can be found in section 4.3.5 of the TSD.

G. Life-Cycle Cost and Payback Period Analyses

DOE performed a life-cycle cost and payback period analysis on each of the representative units to analyze the economic impacts of possible energy efficiency standards on individual consumers, as detailed in the NOPD. The effects of standards on individual consumers include a change in operating expenses (usually decreased) and a change in purchase price (usually increased). DOE used two metrics to determine the effect of potential standards on individual consumers:

- Life-cycle cost is the total consumer expense over the lifetime of an appliance, including the up-front cost (the total price paid by a consumer before the appliance can be operated) and all operating costs (including energy expenditures). DOE discounts future operating costs to the time of purchase.
- Payback period represents the number of years it would take the customer to recover the assumed higher purchase price of more energy efficient equipment through decreased operating expenses. Sometimes more energy-efficient equipment can have a lower purchase price than the less energy-efficient equipment that it replaces. In this case, the consumer realizes an immediate financial benefit and, thus, there is no payback period.

DOE categorized inputs to the LCC and PBP analysis as follows: (1) Inputs for establishing the consumer purchase price of an EPS and (2) inputs for calculating the operating cost. In this analysis, all dollar amounts are in 2008 dollars.

The primary inputs for establishing the consumer purchase price are:

- *ERMC* in 2008 dollars, which is based on the bill of materials cost of the efficiency-related components of the EPS; and
- *Markups* as scaling factors applied to the manufacturer production cost to create the final efficiency-related consumer purchase price. The primary inputs for calculating the operating cost are:
- *Unit energy consumption* in kilowatt-hours per year (kWh/year), which is the annual site energy use of the EPS;
- *Electricity prices* in 2008 dollars, which are the prices paid by consumers for electricity;
- *An electricity price trend,* which is applied to the 2008 electricity price to forecast electricity prices into the future;

• *Start year,* which is the year in which the EPS and its associated product are purchased (for the LCC and PBP analysis, DOE uses 2013 as the start year for all products);

• *Lifetime,* which is the age at which the EPS and its associated product are retired from service (lifetimes vary by product); and

• *Discount rate,* which is the rate at which DOE discounted future expenditures to establish their values in the start year.

Many of the LCC analysis's inputs are developed in previous analyses: market assessment, engineering analysis, markups, and energy use and end-use load characterization. Note that future expenditures are discounted for the LCC calculation and not the PBP calculation, as DOE uses a simple PBP.

DOE published the details of its life-cycle cost and payback period analysis in the NOPD and accompanying TSD. DOE did not receive comment on the life-cycle cost and payback period analysis.

H. National Impact Analysis

In its determination analysis, DOE estimated the potential for national energy savings from energy conservation standards for non-Class A EPSs, as well as the net present value of such standards.

To estimate national energy savings potential, DOE first calculated unit energy savings (UES), which is the difference between the UEC in the standards case and the UEC in the base case. Thus, the UES represents the reduced energy consumption of a single unit due to the higher efficiency generated by a standard. Once calculated, the UES was then multiplied by the national inventory of units to calculate national energy savings.

The national net present value of energy conservation standards is the difference between electricity cost savings and equipment cost increases. DOE calculated electricity cost savings for each year by multiplying energy savings by forecasted electricity prices. DOE assumed that all of the energy cost savings would accrue to consumers paying residential electricity rates. DOE calculated equipment cost increases for each year by taking the incremental price increase per unit between a base-case and a standards-case scenario and multiplying the difference by the national inventory. For each year, DOE took the difference between the savings and cost to calculate the net savings (if positive) or net cost (if negative). After calculating the net savings and costs, DOE discounted these annual values to the present time using discount rates of 3 percent and 7 percent and summed them to obtain the national net present value.

Additional detail on the national impact analysis can be found in the NOPD and accompanying TSD. DOE did not receive comment on the methodology employed in the national impact analysis.

III. Analysis Results

A. Engineering Analysis

Based on the methodology previously discussed, DOE developed cost-efficiency curves for each representative unit by estimating the cost to reach each CSL. The results of the engineering analysis for each representative unit are presented in Table III.1, Table III.2, Table III.3, Table III.4, Table III.5, and Table III.6. Additional detail is contained in the NOPD and accompanying TSD.

TABLE III.1—COST-EFFICIENCY POINTS FOR A 40-WATT MULTIPLE-VOLTAGE EPS FOR A MULTIFUNCTION DEVICE

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost 2008$	Basis
0	Less Than EISA 2007	81	0.5	2.66	Manufacturer interview data.
1	Current Market	86	0.45	2.98	Manufacturer interview data.
2	High Level	90	0.31	3.54	Manufacturer interview data.
3	Higher Level	91	0.2	3.67	Manufacturer interview data.

TABLE III.2—COST-EFFICIENCY POINTS FOR A 203-WATT MULTIPLE-VOLTAGE EPS FOR A VIDEO GAME CONSOLE

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost 2008$	Basis
0	Generic Replacement	82	12.33	6.06	Test and teardown data.
1	Manufacturer Provided	86	0.4	8.93	Test and teardown data.
2	EU Qualified Level	86	0.3	9.05	Manufacturer interview data.
3	Higher Level	89	0.3	12.16	Manufacturer interview data.

TABLE III.3—COST-EFFICIENCY POINTS FOR A 345-WATT HIGH-POWER EPS FOR A HAM RADIO

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost 2008$	Basis
0	Line Frequency	62	15.43	115.32	Test and teardown data.
1	Switched-Mode—Low Level	81	6.01	33.64	Test and teardown data.
2	Switched-Mode—Mid Level	84	1.50	36.64	Manufacturer interview data.
3	Switched-Mode—High Level	85	0.50	42.32	Manufacturer interview data.

TABLE III.4—COST-EFFICIENCY POINTS FOR AN 18-WATT MEDICAL DEVICE EPS FOR A NEBULIZER

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost 2008$	Basis
0	Less Than the IV Mark *	66.0	0.557	2.95	Scaled ERMC of EPS #130.
1	Meets the IV Mark	76.0	0.5	3.62	Average ERMC of switched-mode EPSs.
2	Meets the V Mark	80.3	0.3	3.62	Average ERMC of switched-mode EPSs.
3	Higher Level	85.0	0.15	5.70	Manufacturer interview data.

* As explained in section II.C.4 of the NOPD, the marks correspond to the International Efficiency Marking Protocol for External Power Supplies. (Energy Star. "International Efficiency Marking Protocol for External Power Supplies." 2008. *http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/International_Efficiency_Marking_Protocol.pdf).*

TABLE III.5—COST-EFFICIENCY POINTS FOR A 1.8-WATT EPS FOR BC FOR A VACUUM

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost 2008$	Basis
0	Less than the II Mark	24	1.85	$0.83	Scaled ERMC of EPS #17.
1	Meets the II Mark	45	0.75	0.95	Average of switched-mode test data.
2	Meets the IV Mark	55	0.50	0.95	Average of switched-mode test data.
3	Meets the V Mark	66	0.30	0.95	Average of switched-mode test data.

TABLE III.6—COST-EFFICIENCY POINTS FOR A 4.8-WATT EPS FOR BC FOR A DIY POWER TOOL

Level	Reference point for level	Minimum active-mode efficiency %	Maximum no-load power consumption W	Efficiency-related materials cost 2008$	Basis
0	Less than the II Mark	38	1.85	1.04	Scaled EPS #17 ERMC.
1	Meets the II Mark	56	0.75	1.19	Average of switched-mode test data.
2	Meets the IV Mark	64	0.50	1.19	Average of switched-mode test data.
3	Meets the V Mark	72	0.30	1.19	Average of switched-mode test data.

B. Life-Cycle Cost and Payback Period Analyses

Based on the methodology previously discussed, DOE conducted LCC and PBP analyses for all six of the EPS representative units in the residential sector. The results of these analyses for each representative unit are presented in Table III.7, Table III.8, Table III.9, Table III.10, Table III.11, and Table III.12.

TABLE III.7.—LCC AND PAYBACK PERIOD RESULTS FOR MULTIPLE-VOLTAGE 40-WATT EPS

Situation before standards							Standard at CSL	
Standard at CSL CSL	Conversion efficiency %	No-load power W	Percent of market already at CSL %	Consumer purchase price 2008$	Operating cost 2008$/year	LCC 2008$	Weighted-average life-cycle cost savings 2008$	Weighted-average payback period year
0	81	0.5	25	8.45	1.86	16.44	.....	.....
1	86	0.5	50	9.49	1.32	15.15	1.29	1.9
2	90	0.3	25	11.26	0.91	15.15	0.43	3.8
3	91	0.2	0	11.67	0.78	15.01	0.47	3.5

TABLE III.8—LCC AND PAYBACK PERIOD RESULTS FOR MULTIPLE-VOLTAGE 203-WATT EPS

Situation before standards							Standard at CSL	
Standard at CSL CSL	Conversion efficiency %	No-load power W	Percent of market already at CSL %	Consumer purchase price 2008$	Operating cost 2008$/year	LCC 2008$	Weighted-average life-cycle cost savings 2008$	Weighted-average payback period year
0	82	12.3	5	19.08	14.87	82.78	.....	.....
1	86	0.4	95	28.12	3.82	44.49	38.28	0.8
2	86	0.3	0	28.49	3.76	44.62	1.79	6.1

TABLE III.8—LCC AND PAYBACK PERIOD RESULTS FOR MULTIPLE-VOLTAGE 203-WATT EPS—Continued

Situation before standards							Standard at CSL	
Standard at CSL CSL	Conversion efficiency %	No-load power W	Percent of market already at CSL %	Consumer purchase price 2008$	Operating cost 2008$/year	LCC 2008$	Weighted-average life-cycle cost savings 2008$	Weighted-average payback period year
3	89	0.3	0	38.29	3.14	51.73	-5.32	14.2

TABLE III.9—LCC AND PAYBACK PERIOD RESULTS FOR HIGH POWER 345-WATT EPS

Situation before standards							Standard at CSL	
Standard at CSL CSL	Conversion efficiency %	No-load power W	Percent of market already at CSL %	Consumer purchase price 2008$	Operating cost 2008$/year	LCC 2008$	Weighted-average life-cycle cost savings 2008$	Weighted-average payback period year
0	62	15.4	60	208.10	16.20	331.75	.....	.....
1	81	6.0	40	60.71	6.17	107.81	223.95	N/A
2	84	1.5	0	66.12	5.09	104.93	137.24	N/A
3	85	0.5	0	76.37	4.50	110.68	131.49	N/A

TABLE III.10—LCC AND PAYBACK PERIOD RESULTS FOR MEDICAL 18-WATT EPS

Situation before standards							Standard at CSL	
Standard at CSL CSL	Conversion efficiency %	No-load power W	Percent of market already at CSL %	Consumer purchase price 2008$	Operating cost 2008$/year	LCC 2008$	Weighted-average life-cycle cost savings 2008$	Weighted-average payback period year
0	66	0.6	25	10.62	4.74	40.95	.....	.....
1	76	0.5	25	13.04	2.99	32.13	8.82	1.4
2	80	0.3	50	13.04	2.28	27.60	8.94	0.5
3	85	0.2	0	20.53	1.60	30.79	1.28	7.7

TABLE III.11—LCC AND PAYBACK PERIOD RESULTS FOR 1.8-WATT EPS FOR BCS

Situation before standards							Standard at CSL	
Standard at CSL CSL	Conversion efficiency %	No-load power W	Percent of market already at CSL %	Consumer purchase price 2008$	Operating cost 2008$/year	LCC 2008$	Weighted-average life-cycle cost savings 2008$	Weighted-average payback period year
0	24	1.9	30	3.07	2.15	12.27	.....	.....
1	45	0.8	50	3.52	0.84	7.11	5.17	0.3
2	55	0.5	20	3.52	0.55	5.89	3.15	0.1
3	66	0.3	0	3.52	0.35	5.03	3.38	0.1

TABLE III.12—LCC AND PAYBACK PERIOD RESULTS FOR A 4.8-WATT EPS FOR BCS

Situation before standards							Standard at CSL	
Standard at CSL CSL	Conversion efficiency %	No-load power W	Percent of market already at CSL %	Consumer purchase price 2008$	Operating cost 2008$/year	LCC 2008$	Weighted-average life-cycle cost savings 2008$	Weighted-average payback period year
0	38	1.9	25	4.32	0.81	7.81	.....	.....
1	56	0.8	50	4.94	0.39	6.61	1.19	1.5
2	64	0.5	25	4.94	0.27	6.11	0.90	0.4
3	72	0.3	0	4.94	0.19	5.75	1.03	0.3

C. National Impact Analysis

Based on the methodology previously discussed, DOE conducted national impact analyses of standards for each type of non-Class A EPS. DOE assessed two base cases, one in which the energy efficiency of non-Class A EPSs was assumed to improve over time due to factors other than a Federal standard and another in which energy efficiency was assumed not to improve over time. In the first case, factors expected to drive efficiency improvements are changing consumer preferences and spillover effects from Class A EPS standards. These two base cases provide a lower and upper bound, respectively, on DOE's energy savings and NPV estimates.

If a CSL is selected for each type of EPS to maximize energy savings, subject to the constraint that the NPV be non-negative, total primary energy savings across all types of non-Class A EPSs could be as much as 141 trillion Btu or 0.14 quads over 30 years. CSL 3 yields maximum energy savings and has a positive NPV (both at 3-percent and 7-percent discount rates) for all EPS types except for the multiple-voltage 203 watt EPS. For the latter, CSL 2 has a positive NPV in one base case but a negative NPV in the other. Thus, to estimate the energy savings potential across all types of non-Class A EPS, DOE selected CSL 1 for this one type of EPS. Table III.13 shows the contribution of each EPS type to total savings potential and the NPV of a standard set at the selected CSL. Notably, increasing the efficiency of EPSs for medical devices and multiple-voltage EPSs for multifunction devices yields the greatest amount of projected energy savings.

TABLE III.13—ENERGY SAVINGS POTENTIAL WHEN CSLS ARE SELECTED TO MAXIMIZE ENERGY SAVINGS

Type of EPS	CSL	Energy savings potential 2013 to 2042 (trillion BTU*)	Net present Value 2013 to 2042 ($million)	
			3% Discount rate	7% Discount rate
Multi-Voltage for Multifunction Devices	3	52.8–56.9	156–174	76–85
Multi-Voltage for Xbox 360	1	1.8–30.8	13–189	9–101
High Output Power (>250 W)	3	0.33–0.41	2.4–2.9	1.2–1.5
For Medical Devices	3	42.6–50.6	81–130	27–50
For Battery Chargers for Cordless Handheld Vacuums	3	1.09–1.41	8.0–10.1	4.5–5.6
For Battery Chargers for Power Tools	3	0.63–0.82	4.1–5.1	2.3–2.8
Total	.....	99–141	264–512	120–245

* 1 Quad = 1,000 trillion BTU.

D. Discussion

1. Significance of Energy Savings

EPCA requires the Department to determine whether to pursue energy conservation standards for non-Class A EPSs by finding the potential for significant energy savings. (42 U.S.C. 6295(u)(1)(E)(i)(I)) While the term "significant" is not defined, the U.S. Court of Appeals for the District of Columbia, indicated that Congress intended this term to refer to savings that were not "genuinely trivial." *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985) (addressing the meaning of the term "significant" within the context of setting energy conservation standards). Using the Department's analysis, the estimated energy savings is as much as 0.14 quads over a 30-year period for non-Class A EPSs. This is equivalent to the annual electricity needs of 1.1 million U.S. homes. The Department believes that the estimated energy savings for the non-Class A EPSs are not "genuinely trivial," and are, in fact, "significant."

2. Impact on Consumers

Using the methods and data described previously, the Department conducted an LCC analysis to estimate the net benefits to users from more efficient non-Class A EPSs. The Department then aggregated the results from the LCC analysis to the national level to estimate national energy savings and national economic impacts. Given the resultant energy savings and economic benefits, the Department concluded that there is also likely to be reduced emissions from decreased electricity generation, decreased demand for the construction of electricity power plants, and potentially net indirect employment benefits from shifting expenditures from the capital-intensive utility sector to consumer expenditures. While the Department did not quantify these potential benefits, it concluded that the benefits are likely to be positive based on the results of the Department's analyses of energy conservation standards for similar products. The Department will provide detailed estimates of such impacts as part of the standards rulemaking process that will result from this determination.

IV. Conclusion

A. Determination

Based on its analysis of the information now available, the Department has determined that energy conservation standards for non-Class A EPSs appear to be technologically feasible and economically justified, and are likely to result in significant energy savings. Consequently, the Department will initiate the development of energy conservation standards for non-Class A EPSs.

All design options addressed in today's determination document are technologically feasible. The Department's test and teardown data, as well as data provided by manufacturers during interviews, show that the considered technologies are available to all manufacturers. The candidate standard levels of efficiency examined in the Department's analysis show that there is the potential for significant energy savings of as much as 0.14 quads.

All of the scenarios evaluated would result in economic benefits to the Nation as shown by the positive NPV. While it is still uncertain whether further analyses will confirm these findings, the Department believes that standards for non-Class A EPSs appear economically justified based on a balanced consideration of the information and analysis available to the Department at this time.

The Department has not produced detailed estimates of the potential adverse impacts of a national standard on manufacturers or on individual categories of users. The Department is instead relying on the presence of currently available high-efficiency designs as an indicator of the probable economic feasibility for manufacturers

to exclusively produce high-efficiency designs if required by standards. During the course of the standards rulemaking process, the Department will perform a detailed analysis of the possible impacts of standards on manufacturers, as well as a more disaggregated assessment of their possible impacts on user-subgroups.

B. Future Proceedings

The Department will begin a proceeding to consider establishment of energy conservation standards for non-Class A EPSs. During the standards rulemaking, the Department will review and analyze the likely effects of industry-wide voluntary programs, such as ENERGY STAR. The Department will collect additional information about design options, inputs to the engineering and LCC analyses, and potential impacts on the manufacturers and consumers of non-Class A EPSs.

CEC and PG&E both encouraged DOE to implement standards for all four types of non-Class A EPSs. (CEC *et al.,* No. 8 at p. 1; PG&E, No. 7 at p. 1) PG&E expressed its desire for standards for multiple-voltage EPSs in particular to prevent potential backsliding by manufacturers in producing more efficient products. (PG&E, No. 7 at p. 2) PG&E s also noted that if standards are not created for high-power EPSs, manufacturers could opt to rate products higher than 250 W so that they fit into this category and, thereby, circumvent standards. (PG&E, No. 7 at p. 2) DOE will take these comments into account as it considers standards for all four types of non-Class A EPSs in the standards rulemaking.

PG&E commented that medical EPSs represent a considerable energy-saving opportunity, but acknowledged that due to the lengthy and expensive FDA approval process they may require special treatment. PG&E suggested two approaches that would avoid placing undue burden on manufacturers of medical EPSs: (1) DOE could place the effective date of standards for medical EPSs later than 2013 or 2014, or (2) DOE could grant an exemption from standards for EPSs manufactured after the effective date of the standard that are used with a medical device that received FDA approval before the effective date (or were submitted for approval before that date). (PG&E, No. 7 at p. 3)

In the standards rulemaking process, DOE will examine needs particular to medical EPSs and methods for addressing those needs when evaluating the potential for setting standards for these products. The Department will also evaluate any proposed standards for medical EPSs to determine whether they are technologically feasible and economically justified, and are likely to result in significant energy savings in accordance with the requirements of EPCA. (42 U.S.C. 6295(o)) Depending on the outcome of these analyses, as well as other factors DOE is required to consider, the agency will determine, what, if any, standards would be appropriate for these products.

V. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget has determined that today's regulatory action is not a "significant regulatory action" under section 3(f)(1) of Executive Order 12866. Therefore, this action is not subject to OIRA review under the Executive Order.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of General Counsel's Web site, *http://www.gc.doe.gov.*

DOE reviewed today's rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

Today's rule sets no standards; it only positively determines that future standards may be warranted and should be explored in an energy conservation standards rulemaking. Economic impacts on small entities would be considered in the context of such a rulemaking. On the basis of the foregoing, DOE certifies that the rule has no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rulemaking determines that the development of energy efficiency standards for non-Class A EPS is warranted and will impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

In this notice, DOE positively determines that future standards may be warranted and should be explored in an energy conservation standards rulemaking. DOE has determined that review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.;* NEPA) is not required at this time. NEPA review can only be initiated "as soon as environmental impacts can be meaningfully evaluated" (10 CFR 1021.213(b)). Because this rule only determines that future standards may be warranted, but does not itself propose to set any standard, DOE has determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires 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. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined today's rule and has determined that it does not preempt State law or 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*).

Today's rule does not result in expenditures of $100 million or more in a given year by the external power supply industries affected by this rulemaking. This is because today's rule sets no standards; it only positively determines that future standards may be warranted and should be explored in an energy conservation standards rulemaking. The rule also does not contain a Federal intergovernmental mandate. Thus, DOE is not required by UMRA to prepare a written statement assessing the costs, benefits, and other effects of the rule on the national economy.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule does not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this regulation does not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act of 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action determines that development of energy efficiency standards for non-Class A EPS is warranted and does not have a significant adverse effect on the supply, distribution, or use of energy. The OIRA Administrator has also not designated this rulemaking as a significant energy action. Therefore, DOE has determined that this rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664. (January 14, 2005) The Bulletin

establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are "influential scientific information." The Bulletin defines "influential scientific information" as "scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions." 70 FR 2667 (January 14, 2005).

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. The "Energy Conservation Standards Rulemaking Peer Review Report," dated February 2007, has been disseminated and is available at *http://www.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VI. Approval of the Office of the Assistant Secretary

The Assistant Secretary for Energy Efficiency and Renewable Energy has approved publication of this final rule.

Issued in Washington, DC, on May 7, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–11592 Filed 5–13–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–CRT–0017]

RIN 1904–AC10

Energy Conservation Program: Web-Based Compliance and Certification Management System

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule: provides a new means for manufacturers and third party representatives to prepare and submit compliance and certification reports to the Department of Energy (DOE) through an electronic Web-based tool, the Compliance and Certification Management System (CCMS), which will be the preferred mechanism for submitting compliance and certification reports; allows compliance and certification reports to be submitted via e-mail; and updates the address and contact information used to submit compliance statements and certification reports through certified mail to DOE.

DATES: *Effective Date:* This final rule is effective June 1, 2010.

ADDRESSES: For access to the docket and to read background material, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC, 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 286–2192. E-mail: *Charles.Llenza@ee.doe.gov*.

Ms. Betsy Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, Forrestal Building, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE establishes that compliance statements and certification reports may be submitted to DOE through any of the following means:

1. Compliance and Certification Management System (CCMS)—via the Web portal: *http://regulations.doe.gov/ccms.* Follow the instructions on the CCMS Web site for submitting compliance statements and certification reports. The CCMS is a tool for certification of compliance with applicable energy conservation standards. Submission of compliance statements and certification reports via the CCMS is preferred and will satisfy compliance and certification reporting requirements for DOE. For CCMS Help/Support Contact: Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–2192. E-mail: *Charles.Llenza@ee.doe.gov.*

2. E-mail—*send to: certification.report@ee.doe.gov* and indicate in the subject line the manufacturer, the third party representative if applicable, and the specific product or equipment for which the report is being submitted.

3. Certified Mail—*send to:* Charles Llenza, Appliances and Commercial Equipment Standards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program (EE–2J), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Include in the address the subject line: Compliance and Certification Management System.

Legislative Authority: Part A of Title III of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163, as amended, 42 U.S.C. 6291–6309, established the "Energy Conservation Program for Consumer Products Other Than Automobiles." Similarly, Part A–1 of Title III of EPCA, as amended, 42 U.S.C. 6311–6317, established an energy efficiency program for "Certain Industrial Equipment," which included certain commercial equipment.[1] EPCA requires each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency, energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use of such covered product and the economic impact of any proposed energy conservation standard, as DOE determines may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards for such product and to ensure compliance with the requirements. In so doing, DOE must consider existing public sources, including nationally recognized certification programs of trade associations. *See* 42 U.S.C. 6296(d). Further, the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA with respect to particular consumer products and commercial and industrial equipment by providing definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. EPACT 2005 also authorized DOE to require manufacturers of covered commercial and industrial equipment to submit information and reports for a variety of purposes, including ensuring

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A–1, respectively, in the United States Code.

compliance with applicable energy conservation standards. *See* 42 U.S.C. 6316(a) and (b).

Initially, the CCMS database will be used only for the submission of compliance statements and certification reports for covered consumer products. Section 430.62 of the Code of Federal Regulations stipulates the requirements for manufacturers of particular consumer products regarding the submission of compliance and certification data to the DOE. Specifically, each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) shall certify by means of a compliance statement and certification report that each basic model(s) meets the applicable energy or water conservation standard as prescribed in Section 325 of the Act. Additionally, DOE adopted a final rule on January 5, 2010 titled "Certification, Compliance, and Enforcement Requirements for Certain Consumer Products and Commercial and Industrial Equipment." 75 FR 652. This final rule adopted regulations to implement reporting requirements for energy conservation standards and energy use, and to address other matters, including compliance certification, prohibited actions, and enforcement procedures for specific consumer products (and commercial and industrial equipment) covered by EPACT 2005, as well as commercial heating, air-conditioning, and water heating equipment covered under EPACT 1992. In addition, DOE adopted provisions for manufacturer certification for distribution transformers (also a type of commercial equipment).

Discussion: This rulemaking: (1) Implements an electronic Web-based tool known as the Compliance and Certification Management System (CCMS) to facilitate the development and submission of compliance statements and certification reports; (2) adds e-mail as a new option for submitting compliance statements and certification reports; and (3) updates the address and contact information for submitting compliance statements and certification reports by certified mail to DOE.

The CCMS is a Web-based tool to facilitate the preparation, submission, and processing of compliance statements and certification reports. DOE prefers use of CCMS for submitting these documents. Submission of the documents through CCMS will satisfy reporting requirements for DOE. DOE believes that the CCMS will provide a convenient means for manufacturers and third party representatives to create, submit, and track the processing of compliance statements and certification reports and related information using customized, electronic product templates.

The electronic product templates will serve as a combined compliance statement and certification report and be available for covered consumer products for which compliance statements and certification reports are currently required. The CCMS database will be updated to allow for submission of compliance statements and certification reports required for other consumer products in the future, as well as for commercial and industrial equipment. User guides with step-by-step instructions and Helpdesk support will be provided to assist users of the CCMS. DOE believes the CCMS will streamline and reduce the burden of reporting requirements for manufacturers and third party representatives, as well as facilitate the processing of compliance/certification reports by DOE.

I. Procedural Requirements

A. Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Administrative Procedure Act

DOE finds good cause to waive notice and comment on these regulations pursuant to 5 U.S.C. 553(b)(3)(B), and the 30-day delay in effective date pursuant to 5 U.S.C. 553(d). Notice and comment are unnecessary and contrary to the public interest because this final rule does not require any new actions on the part of manufacturers and third-party representatives; rather it simply allows an alternative option for submission of information which is already required. A delay in effective date is unnecessary and contrary to the public interest for these same reasons. Therefore, these regulations are being published as final regulations and are effective June 1, 2010.

C. National Environmental Policy Act

DOE has determined that this rule falls into a class of actions that are categorically excluded from further review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. This rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion A5 found in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment, unless the agency certifies that the rule will have no significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov*. Because a notice of proposed rulemaking is not required under the Administrative Procedure Act or other applicable law, the Regulatory Flexibility Act does not require certification or the conduct of a regulatory flexibility analysis for this rule.

E. Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 1910–1400. Public reporting burden for submittals through CCMS is estimated to average 15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–

2192 and by e-mail to *Christine_Kymn@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For proposed regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed "significant intergovernmental mandate." UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be affected before establishing a requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*). Today's final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

G. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's rule would have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is unnecessary to prepare a Family Policymaking Assessment.

H. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. DOE has examined this final rule and determined that it would not preempt State law and would have no 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. Executive Order 13132 requires no further action.

I. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

J. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

L. Executive Order 12630

Pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 15, 1988), DOE has determined that this rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

M. Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice and the Federal Trade Commission concerning the impact of the commercial or industry standards on competition. This final rule to provide for use of the CCMS system, establish an e-mail address for the submission of e-mail compliance statements and certification reports, and update contact information does not require the use of any commercial standards. Therefore, no consultation with either DOJ or FTC is required.

N. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

II. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation test procedures, Household appliances.

Issued in Washington, DC, on May 7, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, chapter II of title 10, Code of Federal Regulations, part 430 is amended to read as set forth below.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: U.S.C. 6291–6309; 28 U.S.C. 2461, note.

■ 2. Section 430.62 is amended by revising paragraphs (a)(1), (b)(1), and (c) to read as follows:

§ 430.62 Submission of data.

(a) *Certification.* (1) Except as provided in paragraph (a)(2) of this section, each manufacturer or private labeler before distributing in commerce any basic model of a covered product subject to the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) set forth in subpart C of this part shall certify by means of a compliance statement and a certification report that each basic model(s) meets the applicable energy conservation standard or water conservation standard (in the case of faucets, showerheads, water closets, and urinals) as prescribed in section 325 of the Act. The compliance statement, signed by the company official submitting the statement, and the certification report(s) may be sent by certified mail to: U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Alternatively, the statement(s) may be submitted electronically at *http://www.regulations.doe.gov/ccms.*

* * * * *

(b) *Model Modifications.* (1) Any change to a basic model which affects energy consumption or water consumption (in the case of faucets, showerheads, water closets, and urinals) constitutes the addition of a new basic model. If such change reduces consumption, the new model shall be considered in compliance with the standard without any additional testing. If, however, such change increases consumption while still meeting the standard, all information required by paragraph (a)(4) of this section for the new basic model must be submitted, either by certified mail, to: U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or electronically to: *http://www.regulations.doe.gov/ccms.*

* * * * *

(c) *Discontinued model.* When production of a basic model has ceased and it is no longer being distributed, this shall be reported, either by certified mail, to: U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or electronically to: *http://www.regulations.doe.gov/ccms.* For each basic model, the report shall include: Product type, product class, the manufacturer's name, the private labeler name(s), if applicable, and the manufacturer's model number. If the reporting of discontinued models coincides with the submittal of a certification report, such information can be included in the certification report.

* * * * *

[FR Doc. 2010–11584 Filed 5–13–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 100205081–0149–01]

RIN 0694–AE86

Revisions to the Authorization for Validated End-User Applied Materials China, Ltd.

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to update the name of an existing validated end-user in the People's Republic of China (PRC) and revise the associated list of eligible items and facilities for that validated end-user. BIS previously approved Applied Materials China, Ltd. (Applied) as a validated end-user, authorizing exports, reexports and transfers (in-country) of certain items to four Applied facilities in the PRC under Authorization Validated End-User (VEU). In addition to updating Applied's name, this rule revises the names and addresses of Applied's four previously approved facilities. This rule also authorizes three additional Applied facilities, which are added to the list of Applied's eligible destinations. Finally, this rule revises the list of Export Control Classification Numbers (ECCNs) for items that may be exported, reexported or transferred (in-country) to the eligible Applied facilities.

DATES: This rule is effective May 14, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE86, by any of the following methods:

- *E-mail: publiccomments@bis.doc.gov.* Include "RIN 0694–AE86" in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by

calling (202) 482–2440, if you are faxing comments.

• *Mail or Hand Delivery/Courier:* Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, Attn: RIN 0694–AE86.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.*, RIN 0694–AE86)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Susan Kramer, Acting Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230; by telephone (202) 482–0117, or by e-mail to *skramer@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User (VEU): The List of Approved End-Users, Eligible Items and Destinations in the People's Republic of China

Consistent with U.S. Government policy to facilitate trade for civilian end-users in the PRC, BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646) by creating a new authorization for "validated end-users" located in eligible destinations to which eligible items may be exported, reexported or transferred under a general authorization instead of a license, in conformance with Section 748.15 of the EAR. Eligible items may include commodities, software and technology, except those controlled for missile technology or crime control reasons.

Authorization VEU is a mechanism to facilitate increased high-technology exports to companies in eligible destinations that have a verifiable record of civilian uses for such items. The validated end-users listed in Supplement No. 7 to Part 748 of the EAR were reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to Part 748 of the EAR. Currently, validated end-users are located in the People's Republic of China (PRC) and India. Validated end-users may obtain eligible items that are on the Commerce Control List without having to wait for their suppliers to obtain export licenses from BIS. A wide range of items are eligible for shipment under Authorization VEU. In addition to U.S. exporters, Authorization VEU may be used by foreign reexporters, and does not have an expiration date.

Revision to the Name of Validated End-User Applied Materials China, Ltd. and to the Related List of Respective "Eligible Items (By ECCN)" and "Eligible Destination"

This final rule amends Supplement No. 7 to Part 748 of the EAR to update the name of Applied Materials China, Ltd. to Applied Materials (China), Inc. (Applied). This rule also amends the related list of Export Control Classification Numbers (ECCNs) for items that may be exported, reexported or transferred (in-country) to eligible facilities of Applied in the PRC. This rule also updates the names and addresses of Applied's four previously approved facilities, and authorizes three additional Applied facilities. The revised information associated with Applied in Supplement No. 7 is as follows:

Validated End-User

Applied Materials (China), Inc.

ECCNs and Revised Respective Facility Names and Addresses

Items classified under ECCNs 2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.b, 3B001.c, 3B001.d, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to "software" specially designed for the "use" of stored program controlled items classified under ECCN 3B001) may be exported, reexported and transferred (in-country) to all Applied destinations below other than Applied Materials (Xi'an) Ltd.

Applied Materials South East Asia Pte. Ltd.—Shanghai Depot, c/o Shanghai Applied Materials Technical Service Center, No. 2667 Zuchongzhi Road, Shanghai, China 201203.

Applied Materials South East Asia Pte. Ltd.—Beijing Depot, c/o Beijing Applied Materials Technical Service Center, No. 1 North Di Sheng Street, BDA, Beijing, China 100176.

Applied Materials South East Asia Pte. Ltd.—Wuxi Depot, c/o Sinotrans Jiangsu Fuchang Logistics Co., Ltd., 1 Xi Qin Road, Wuxi Export Processing Zone, Wuxi, Jiangsu, China 214028.

Applied Materials South East Asia Pte. Ltd.—Wuhan Depot, c/o Wuhan Optics Valley Import & Export Co., Ltd., No. 101 Guanggu Road, East Lake High-Tec Development Zone, Wuhan, Hubei, China 430074.

Applied Materials (China), Inc.—Shanghai Depot, No. 2667 Zuchongzhi Road, Shanghai, China 201203.

Applied Materials (China), Inc.—Beijing Depot, No. 1 North Di Sheng Street, BDA, Beijing, China 100176.

Items classified under ECCNs 2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.b, 3B001.c, 3B001.d, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to "software" specially designed for the "use" of stored program controlled items classified under ECCN 3B001), and 3E001 (limited to "technology" according to the General Technology Note for the "development" or "production" of items controlled by ECCN 3B001) may be exported, reexported and transferred (in-country) to Applied destination Applied Materials (Xi'an) Ltd. only as listed below.

Applied Materials (Xi'an) Ltd., No. 28 Xin Xi Ave., Xi'an High Tech Park, Export Processing Zone, Xi'an, Shaanxi, China 710075.

Prior to this rule, facilities in the PRC cities of Shanghai, Beijing, Wuxi and Xi'an had been approved as eligible destinations for Applied. This rule modifies the addresses and names of the facilities in Shanghai, Beijing and Wuxi, and slightly modifies the name of the facility in Xi'an. Further, this rule authorizes three additional Applied facilities located in Beijing, Shanghai, and Wuhan to the list of eligible destinations associated with Applied under Authorization VEU. In addition, this rule expands the eligible items authorized for export, reexport, or transfer (in-country) to Applied's facilities to include items classified under ECCNs 2B006.b and 3B001.b, .c, and .f. The rule also adds items classified under ECCNs 2B350.i., 3B001.d, and certain items classified under ECCN 3D002. In addition, certain items classified under ECCN 3E001 are added to the list of eligible items for Applied's Xi'an facility only. These changes were made based on an application submitted to BIS, which was reviewed by the interagency End-User Review Committee.

Making the above-described changes for this validated end-user is expected to further facilitate exports to civil end-users in the PRC, and is expected to result in a significant savings of time and resources for suppliers and the eligible facilities. Authorization VEU will eliminate the burden on exporters and reexporters of preparing individual license applications, as exports, reexports and transfers (in-country) of eligible items to these facilities may now be made under general

authorization instead of under individual licenses. Exporters and reexporters may now supply validated end-users much more quickly, thus enhancing the competitiveness of the exporters, reexporters, and end-users in the PRC.

To ensure appropriate facilitation of exports and reexports, on-site reviews of the validated end-users may be warranted pursuant to paragraph 748.15(f)(2) and Section 7(iv) of Supplement No. 8 to Part 748 of the EAR. If such reviews are warranted, BIS will inform the PRC Ministry of Commerce.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009)), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

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

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves collections previously approved by the OMB under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization Validated End-User, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act and Office of Management and Budget control number 0694–0088 are not expected to increase significantly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(a)(1), notice of proposed rulemaking, the opportunity for public participation and a delay in effective date are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 748 of the Export Administrative Regulations (15 CFR Parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Supplement No. 7 to Part 748 is amended by revising the entry for Applied Materials China, Ltd., a validated end-user in "China (People's Republic of)" to read as follows:

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU); LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER AND ELIGIBLE DESTINATIONS

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination
*	*	* * *	* *
China (People's Republic of).	Applied Materials (China), Inc.	2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.b, 3B001.c, 3B001.d, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to "software" specially designed for the "use" of stored program controlled items classified under ECCN 3B001).	Applied Materials South East Asia Pte. Ltd.—Shanghai Depot c/o Shanghai Applied Materials Technical Service Center No. 2667 Zuchongzhi Road, Shanghai, China 201203. Applied Materials South East Asia Pte. Ltd.—Beijing Depot c/o Beijing Applied Materials Technical Service Center No. 1 North Di Sheng Street, BDA Beijing, China 100176. Applied Materials South East Asia Pte. Ltd.—Wuxi Depot c/o Sinotrans Jiangsu Fuchang Logistics Co., Ltd. 1 Xi Qin Road, Wuxi Export Processing Zone Wuxi, Jiangsu, China 214028. Applied Materials South East Asia Pte. Ltd.—Wuhan Depot c/o Wuhan Optics Valley Import & Export Co., Ltd. No. 101 Guanggu Road East Lake High-Tec Development Zone Wuhan, Hubei, China 430074.

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END-USER (VEU); LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER AND ELIGIBLE DESTINATIONS—Continued

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination
			Applied Materials (China), Inc.—Shanghai Depot No. 2667, Zuchongzhi Road Shanghai, China 201203. Applied Materials (China), Inc.—Beijing Depot No. 1 North Di Sheng Street, BDA Beijing, China 100176.
		2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.b, 3B001.c, 3B001.d, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to "software" specially designed for the "use" of stored program controlled items classified under ECCN 3B001), and 3E001 (limited to "technology" according to the General Technology Note for the "development" or "production" of items controlled by ECCN 3B001).	Applied Materials (Xi'an) Ltd. No. 28 Xin Xi Ave., Xi'an High Tech Park Export Processing Zone Xi'an, Shaanxi, China 710075.
*	*	*	* * * * *

Dated: May 6, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–11574 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA–H054A–2006–0064]

RIN 1218–AC43

Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor.

ACTION: Final rule; confirmation of effective date.

SUMMARY: OSHA is confirming the effective date of its direct final rule (DFR) revising the employee notification requirements in the exposure determination provisions of the standards for Hexavalent Chromium (Cr(VI)). In the March 17, 2010, DFR document, OSHA stated that the DFR would become effective on June 15, 2010, unless one or more significant adverse comments were submitted by April 16, 2010. OSHA did not receive significant adverse comments on the DFR, so by this document the Agency is confirming that the DFR will become effective on June 15, 2010.

DATES: The DFR published on March 17, 2010, becomes effective on June 15, 2010. For purposes of judicial review, OSHA considers May 14, 2010 as the date of promulgation.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries contact Ms. Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries, contact Maureen Ruskin, Office of Chemical Hazards—Metals, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1950; fax: (202) 693–1678.

Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice and other relevant documents are available at OSHA's Web page at *http://www.osha.gov.*

ADDRESSES: For purposes of 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of the direct final rule. Contact the Associate Solicitor at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–5445.

SUPPLEMENTARY INFORMATION:

I. Confirmation of Effective Date

On March 17, 2010, OSHA published a DFR in the **Federal Register** (75 FR 12681) amending the employee notification requirements in the exposure determination provisions of the Cr(VI) standards, 29 CFR 1910.1026, 29 CFR 1915.1026, and 29 CFR 1926.1126. As originally promulgated in 2006, the Cr(VI) standards required employers to notify employees of any exposure determinations indicating exposures in excess of the applicable permissible exposure limit (PEL). As amended, the standard requires employers to notify employees of all exposure determinations, whether above or below the PEL. Interested parties had until April 16, 2010, to submit comments on the DFR. The Agency stated that it would publish another notice confirming the effective date of the DFR if it received no significant adverse comments.

Eight comments were submitted in response to the DFR. OSHA has determined that they are not significant adverse comments. Three of the comments were nonsubstantive and did not object to the planned amendments to the Cr(VI) standards. *See* OSHA–H054A–2006–0064–0003; OSHA–H054A–2006–0064–0004; OSHA–H054A–2006–0064–0005. Four commenters—the Building and Construction Trades Department, Ameren (an investor owned electric and natural gas utility), Public Citizen, and the AFL–CIO—strongly supported the DFR. *See* OSHA–H054A–2006–0064–0006; OSHA–H054A–2006–0064–0007; OSHA–H054A–2006–0064–0008; OSHA–H054A–2006–0064–0009. The eighth commenter was Edison Electric

Institute (EEI), the association of shareholder-owned electric companies. *See* OSHA–H054A–2006–0064–0010.

EEI supported the DFR, commenting: "EEI has no objection to informing employees of exposure determinations regardless of the results. Indeed, EEI members have long been sharing the results of exposure monitoring with their employees, regardless of whether overexposures have been revealed." EEI went on, however, to ask OSHA for clarification of the Cr(VI) standards' requirements that employers provide affected employees with notice of exposure determination results within 15 work days in general industry, and within 5 work days in construction. These deadlines for providing required notices were in the Cr(VI) standards as originally promulgated in 2006, and are not being changed in this direct final rulemaking. OSHA noted as much in the DFR notice. (*See* 75 FR at 12683 ("[T]he number of work days employers have to provide notice to employees will remain unchanged.").)

Because EEI's interpretive request is beyond the scope of this narrow direct final rulemaking, and EEI did not explain why the amendment to the scope of the notification requirement would be ineffective without clarification on the timing issue, the Agency has concluded that this is not a significant adverse comment. (*See* 75 FR at 12683 ("OSHA will not consider a comment recommending an additional amendment to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the addition.").) Moreover, because the issues raised by EEI are unrelated to this rulemaking, OSHA will not be addressing them in this notice. EEI may submit its inquiries to OSHA via a written request for a letter of interpretation from the Directorate of Enforcement Programs.

As the Agency did not receive any significant adverse comments, OSHA is hereby confirming that the DFR published on March 17, 2010, will become effective on June 15, 2010.

II. OMB Review Under the Paperwork Reduction Act of 1995

The DFR amends a notification requirement that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.,* and OMB's regulations at 5 CFR part 1320. The information collection requirements ("paperwork") currently contained in the Chromium VI (Cr(VI)) standards are approved by OMB (Information Collection Request (ICR), *Chromium (VI) Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126)*), under OMB Control number 1218–0252. The Department notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public is not required to respond to a collection of information requirement unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information requirement if the requirement does not display a currently valid OMB control number.

On June 22, 2009, OSHA published a preclearance **Federal Register** notice, Docket No. OSHA–2009–0015, as specified in PRA–95 (44 U.S.C. 3506(c)(2)(A)), allowing the public 60 days to comment on a proposal to extend OMB's approval of the information collection requirements in the Cr(VI) standards (74 FR 29517). This notice also informed the public that OSHA was considering revising the notification requirements in the Cr(VI) standards to require employers to notify employees of all exposure determination results. OSHA estimated the new burden hours and costs that would result from this amendment to the standard, and the public had 60 days to comment on those estimates in accordance with the PRA, 44 U.S.C. 3506(c)(2). OSHA estimated that a requirement to notify employees of all exposure determination results would result in an increase of 62,575 burden hours and would increase employer cost, in annualized terms, by $1,526,731.

The preclearance comment period closed on August 21, 2009. OSHA did not receive public comments on that notice. On October 30, 2009, OSHA published a **Federal Register** notice announcing that the Cr(VI) ICR had been submitted to OMB (74 FR 56216) for review and approval, and that interested parties had until November 30, 2009, to submit comments to OMB on that submission. No comments were received in response to that notice either. OMB approved the Cr(VI) ICR, but because this direct final rulemaking was still ongoing, the total burden hours approved did not include the additional burden that OSHA had estimated would need to be added to the ICR as a result this DFR (75 FR 13783, Mar. 23, 2010).

In the DFR published on March 17, 2010, OSHA provided an additional 30 days for the public to comment on the estimated paperwork implications of the revised notification requirements. The Agency did not receive any comments on paperwork in response to that notice.

On April 23, 2010, OSHA submitted a Change Worksheet to OMB requesting modification of the Cr(VI) ICR to reflect the additional paperwork burdens that need to be added as a result of this DFR. OMB approved OSHA's request on May 4, 2010.

List of Subjects

29 CFR Part 1910

Exposure determination, General industry, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

29 CFR Part 1915

Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health, Shipyard employment.

29 CFR Part 1926

Construction, Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this direct final rule. The Agency is issuing this rule under Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1911.

Signed at Washington, DC, on May 11, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–11586 Filed 5–13–10; 8:45 am]

BILLING CODE 4510–26–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in June 2010. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective June 1, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal Relay Service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: The regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates only the assumptions under the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during June 2010, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during June 2010.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for May 2010, these interest assumptions represent a decrease of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during June 2010, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 200, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*		*		*		*	
200	6–1–10	7–1–10	2.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 200, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*		*		*		*	
200	6–1–10	7–1–10	2.75	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 10th day of May 2010.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–11494 Filed 5–13–10; 8:45 am]

BILLING CODE 7709–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA–HQ–OAR–2003–0064, FRL–9151–3]

RIN 2060–AP80

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period on our proposed reconsideration of the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Aggregation (April 15, 2010). The EPA is extending the comment period that originally closed on May 17, 2010, by an additional 30 days. The comment period will now close on June 16, 2010. The EPA is extending the comment period because of the requests we received, which are contained in the docket for this rulemaking.

DATES: *Comments.* Comments on the proposed rule published April 15, 2010 (75 FR 19567) must be received on or before June 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0064, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epamail.epa.gov.*
- *Fax:* 202–566–1741.
- *Mail:* Attention Docket ID No. EPA–HQ–OAR–2003–0064, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, Northwest, Mailcode: 6102T, Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, Northwest, Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2003–0064. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0064. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general information, contact Dave Svendsgaard, Air Quality Policy Division, U.S. EPA, Office of Air Quality Planning and Standards (C504–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380, facsimile number (919) 541–5509, electronic mail e-mail address: *svendsgaard.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the

public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2003–0064.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this notice will also be available on the World Wide Web (WWW). Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr*.

Dated: May 10, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2010–11578 Filed 5–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0006; FRL–9150–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Ruston Foundry Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final Notice of Deletion of the Ruston Foundry Superfund Site (Site), located in Alexandria, Rapides Parish, Louisiana, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective July 13, 2010 unless EPA receives adverse comments by June 14, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1999–0006, by one of the following methods:

- *http://www.regulations.gov*. Follow on-line instructions for submitting comments.
- *E-mail:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 *coltrain.katrina@epa.gov.*
- *Fax:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 (6SF–RL) 214–665–6660.
- *Mail:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1999–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the docket are listed in the *http://www.regulations.gov index*. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424; Rapides Parish Public Library, 411 Washington Street, Alexandria, Louisiana 71301, (318) 442–1840; Louisiana Department of Environmental Quality Public Records Center, Galvez Building Room 127, 602 N. Fifth Street, Baton Rouge, Louisiana 70802, (225) 219–3168, *E-mail: publicrecords@la.gov*,

Web page: *http://www.deq.louisiana.gov/pubrecords*.

FOR FURTHER INFORMATION CONTACT:

Katrina Higgins-Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region 6 is publishing this direct final Notice of Deletion of the Ruston Foundry Superfund Site (Site), from the NPL. The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to section 105 of CERCLA of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund. As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective July 13, 2010, unless EPA receives adverse comments by June 14, 2010. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the "Proposed Rules" section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Ruston Foundry Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i Responsible parties or other persons have implemented all appropriate response actions required;

ii All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Based on confirmation sample results, hazardous substances above health based levels have been removed from the Ruston Foundry Superfund Site, which allows for unlimited use and unrestricted exposure of the Site property. Therefore, neither a policy nor a statutory review will be necessary for the Site to ensure that the remedy is, or will be, protective of human health and the environment. Pursuant to CERCLA section 121(c), 42 U.S.C. 9621(c), and as provided in the current guidance on Five-Year Reviews: EPA 540–R–01–007, OSWER No. 9355.7–03B–P, *Comprehensive Five-Year Review Guidance,* June 2001, EPA will not need to conduct a statutory five-year review for the Site.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of Louisiana, through the LDEQ, prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the "Proposed Rules" section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the LDEQ, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in the major local newspaper, Alexandria Town Talk. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

Ruston Foundry operated from 1908 until 1985. From the beginning of operation until October 1983, it was operated under the name Ruston Foundry and Machine Shops, Ltd and manufactured, bought, and sold hardware, articles of tin, copper, and

sheet iron, agricultural implements, castings of all kinds, furniture and other articles of wood; manufactured, repaired, bought, and sold locomotives, engines, machinery, and all kinds of railroad and mill supplies; and conducted general foundry and machinery operations. By the mid-1950s, Ruston Foundry and Machine Shops, Ltd., had added boiler, dragline, sugar mill, paper mill, saw mill, and oil refinery repairs; casting services for "grey iron and brass," including manhole covers and drainage grates; welding and "metalizing"; steel fabrication.; and the distribution of "Trussless Steel Wonder Buildings" to their business operations. In 1983, the facility was reincorporated and began operating under the name Ruston Foundry and Machine Shops, Inc. In November 1990, the Ruston Foundry and Machine Shops, Inc. corporation charter was revoked by the Louisiana Secretary of State for failure to file its corporate annual report.

The Ruston Foundry Superfund Site is located in an urban area with mixed development within the city limits of Alexandria, Louisiana. The Site encompasses approximately 6.6 acres, and prior to remedial action consisted primarily of dilapidated structures and building foundations overgrown with thick brush. The Site is bordered by a series of abandoned railroad tracks to the west, Chatlin Lake Canal to the northeast and east, and Mill Street Ditch to the south and southeast. Residential property is located to the north, south, and east of the Site. Historical and active industrialized areas lie further west and north of the Site.

During the 1990s, LDEQ and EPA conducted a series of Site investigations. On January 19, 1999 (64 FR 2950), the Site was proposed to the NPL, and on May 10, 1999 (64 FR 24949), EPA formally announced the addition of the Site to the NPL in the **Federal Register**. The EPA Site identification number is LAD985185107.

Foundry operations resulted in metals contaminated waste which was dispersed throughout the property as fill material. As a result of this disposal activity, foundry-derived process wastes (slag, foundry sand piles, metal scrap, and castings) covered most of the Site and had contaminated the soil. Also present at the Site was an underground storage tank (UST) with unknown contents, asbestos containing material (ACM), and slag waste identified as a characteristic hazardous waste because it exceeded toxicity characteristic leaching procedure (TCLP) criteria for lead. Elevated concentrations of lead, and organic compounds benzene, ethylbenzene, toluene, m-xylene, and oxylene were detected in samples collected from the sludge materials contained in drums. A Time-Critical Removal Action was performed on August 11, 1999, to transport and dispose of the drums offsite.

Through the Reuse Grant awarded by the Government in September 2000, the city of Alexandria developed a future reuse plan. It was anticipated that the selected remedy would provide community revitalization impacts because the implemented remedy would not result in hazardous substances, pollutants, or contaminants remaining onsite above levels that allow for unlimited use and unrestricted exposure. Therefore, five-year reviews, operation and maintenance, and institutional controls restricting Site use or access would not be required for this remedial action. This remedy would be compatible with Alexandria's Site reuse plan and allow for restoration of the Site to beneficial uses.

In support of the city's redevelopment plan, Kansas City Southern Railway (KCS), the potentially responsible party (PRP), has provided access to the 30-acre property adjacent to the Site with the intention of deeding the property to the city once the city has completed its investigation. On February 17, 2009, the city completed a Phase 1 investigation of this property. The city applied for and was granted a Brownfields Grant related to the 30-acre property on September 22, 2008. This grant will be used to assist with costs related to additional investigations of the 30-acre property and support future redevelopment activities for the area.

Remedial Investigation and Feasibility Study

The field investigation was considered a comprehensive approach that addressed the Site as one operable unit. The field activities included surface soil grid sampling, sampling of soil/sediment on transects across the canals, sampling of waste piles, air monitoring, sampling of surface soil hot spots, sampling of surface water and sediment in the canals, stratigraphic profiling with cone penetrometer testing, subsurface soil grid sampling with direct-push and conventional drilling, monitor well installation, ground water sampling, and aquifer testing.

Foundry operations resulted in metals contaminated waste which was dispersed throughout the property as fill material. As a result of this disposal activity, foundry-derived process wastes (slag, foundry sand piles, metal scrap, and castings) covered most of the Site and had contaminated the soil. When present, the material ranged in thickness from about 1 inch to about 5 ft in the southwest corner of the main Site area. Concentrations present in samples taken from the permanent ground water monitoring wells exceeded the screening criteria for one constituent [bis(2-ethyhexyl)phthalate], which is a common plasticiser used in well construction material and a common laboratory contaminant. Concentrations are most likely associated with Site monitoring well installation since the facility operated as a metals foundry. Currently, public water supply is provided to the Site vicinity and is expected to be provided onsite in the future. Ground water was not identified as a media of concern. The majority of surface soil samples contained visible foundry waste materials and, as a result, surface soil samples tended to demonstrate the highest concentrations of Site-related contaminants of concern. Also present at the Site was a UST with unknown contents, ACM, and slag waste identified as a characteristic hazardous waste because it exceeded lead TCLP criteria. Through the human health and ecological risk assessments, the identified contaminated media of most concern were surface soil and sediment that contain lead and antimony, and the exposure routes of most concern were direct contact and ingestion. Children were found to be the most sensitive and vulnerable to the effects of lead.

The EPA determined that it was appropriate to apply the presumptive remedy for metals in soil based on the soil and contaminant characteristics found at the Site and guidance provided in the directive, Presumptive Remedies for Metals-in-Soil Sites (EPA 540–F–98–054, OSWER–9355.0–72FS, September 1999). Following the guidance, the EPA has a goal of resource conservation, thereby making reclamation/recovery the preferred treatment technology for metals-in-soil sites. This approach was determined to be inappropriate for the Site. Slag waste is the primary contaminated media/matrix encountered throughout the Site, and reclamation/recovery is generally not effective for treatment of slag waste. The concentration of metals in the slag is too low to warrant reclamation and recovery, and the physical and chemical nature of the slag material that binds the metals would make reclamation or recovery of metal from the waste physically and economically impractical. Therefore, the second preferred treatment technology alternative of immobilization

(solidification/stabilization) was used. In addition to the presumptive remedies, the Feasibility study evaluated a no action alternative, as required by the NCP for inclusion as a baseline of Site conditions for comparison, and an excavation and offsite disposal alternative.

Selected Remedy

Record of Decision Dated June 24, 2002

The ROD was signed on June 24, 2002. The principal threat waste at the Site was to be addressed through the excavation and offsite disposal of contaminated soil and sediment, removal and offsite disposal of ACM and the UST, and the excavation, treatment, and offsite disposal of hazardous wastes.

The remedial action objectives (RAOs) for the Site included the following:

- RAO No. 1—Prevent direct human contact (trespassers, adult recreators, and child recreators) with surface soils and waste piles containing lead at concentrations that would result in a greater than 5 percent chance that a child's blood lead value would exceed 10 micrograms per deciliter (µg/dL).
- RAO No. 2—Prevent direct human contact (trespassers, adult recreators, and child recreators) with surface soils and waste piles containing antimony at concentrations which have a hazard index greater than 1.
- RAO No. 3—Prevent leaching and migration of lead from surface soils and waste piles into the ground water at concentrations exceeding 0.015 milligrams per liter.
- RAO No. 4—Prevent leaching and migration of antimony from surface soils and waste piles into the ground water at concentrations exceeding 0.006 milligrams per liter.
- RAO No. 5—Prevent direct human contact with asbestos containing material at concentrations greater than 1 percent by weight.
- RAO No. 6—Prevent direct contact with the underground storage tank, its contents, and surrounding contaminated soils.
- RAO No. 7—Prevent direct human contact (trespassers, adult recreators, and child recreators) with slag pile material with toxicity characteristic leaching procedure lead concentrations greater than 5 milligrams per liter and handle as hazardous waste in accordance with all applicable federal, state, and local regulations.
- RAO No. 8—Prevent migration of contaminants to deeper soils and ground water through the former onsite water supply well and from the existing buildings, slabs, sump, and trash.

Because there are no Federal or State cleanup standards for soil contamination, the EPA established the RAO cleanup levels (CLs) based on the baseline risk assessment to reduce the excess noncancer risk associated with exposure to contaminated wastes, the excess risk of exceeding 10 µg/dL blood lead level, and the potential for migration of contaminants into the ground water. The CL for antimony was established as 150 milligrams per kilogram (mg/kg), and the CL for lead was established as 500 mg/kg.

The major components of the original remedy were:

1. *Stabilization*—Approximately 1300 cubic yards (yd^3) of hazardous waste would be excavated and stabilized. The material would be stabilized until sampling verified that it no longer exceeded TCLP for lead. After verification, the waste would be disposed offsite at a Resource Conservation and Recovery Act (RCRA) regulated Subtitle D facility.
2. *ACM*—Materials would be consolidated onsite, contained, and transported offsite to a disposal facility licensed to accept ACM. Methods to control airborne dispersion of asbestos would be implemented during remediation. The estimated total volume of material was 22 yd^3.
3. *UST*—The UST, its contents, and the surrounding petroleum wastes would be characterized during the remedial design to determine whether the contents would be cleaned up under CERCLA or Oil Pollution Act authority. The surrounding polychlorinated biphenyl contaminated soils would be removed and disposed offsite in accordance with federal, state, and local regulations. The total volume of tank contents was estimated at 5,000 gallons. The volume of associated contaminated soil was included in the soil/sediment estimated volume of 15,000 yd^3.
4. *Building debris and water supply well*—The onsite well would be plugged and abandoned in accordance with federal, state, and local regulations. Portions of the Site would be cleared, where necessary, and the existing buildings and foundations would be demolished, removed and disposed offsite.
5. *Soil/sediment*—Approximately 15,000 yd^3 of lead and antimony contaminated soil and sediment would be excavated and disposed offsite in a RCRA Subtitle D facility.
6. *Air Monitoring*—During remedial action, efforts would be made to control dust and run-off to limit the amount of materials that may migrate to a potential receptor. Air monitoring would be conducted during times of remediation to ensure that control measures are working to regulate Site emissions.
7. *Short-term monitoring*—Monitoring of the surface water and ground water during remedial action may be necessary to ensure that run-off control measures are working.

Explanation of Significant Differences (ESD) Dated September 28, 2004

The EPA issued the ESD on September 28, 2004, to document post-ROD changes. Post-ROD negotiations between EPA and KCS indicated that the use of stabilization may not be the most efficient and cost effective method for addressing the slag waste. In addition, post-ROD discussions between the city and the community resulted in changing the proposed future Site reuse from recreational to industrial. Based on this information, EPA issued an ESD in September 2004 to document future Site use as industrial and to include a contingency remedy for the hazardous waste.

This new information significantly changed a component of the selected remedy and added a contingency remedy; however, it did not fundamentally alter the overall cleanup approach, which was stabilization and offsite disposal. The change in land use required revisions to the risk assessment, which in turn revised the soil/sediment CLs, the estimated waste volume to be addressed, and the estimated remedial costs. This change also required future operation and maintenance (O&M) activities, Five-year Reviews, and Institutional Controls (ICs).

The Revised RAOs for the Site included:

- RAO No. 1—Prevent direct human contact (pregnant adult woman worker) with surface soils and waste piles containing lead at concentrations that would result in a greater than 5 percent chance that a fetus's blood lead value would exceed 10 µg/dL.
- RAO No. 2—Prevent direct human contact (adult workers) with surface soils containing antimony at concentrations which have a hazard index greater than 1.
- RAO No. 3—Prevent direct human contact with asbestos containing material at concentrations greater than 1 percent by weight.
- RAO No. 4—Prevent direct contact with the underground storage tank, its contents, and surrounding contaminated soils.
- RAO No. 5—Prevent direct human contact (pregnant adult woman worker and adult workers) with slag pile material with toxicity characteristic leaching procedure lead concentrations

greater than 5 milligrams per liter and handle as hazardous waste in accordance with all applicable federal, state, and local regulations.

• RAO No. 6—Prevent migration of contaminants to deeper soils and ground water through the former onsite water supply well and from the existing buildings, slabs, sump, and trash.

The EPA established the RAO CLs based on the revised baseline human health risk assessment for an industrial reuse scenario to reduce the excess noncancer risk associated with exposure to contaminated wastes and the excess risk of exceeding 10 μg/dL blood lead level. The CL for antimony was established as 820 mg/kg, and the CL for lead was established as 1400 mg/kg. During this time, the LDEQ conducted a Site-specific evaluation of the leaching data and determined that soil data did not exceed the calculated Site-specific CL for protection of ground water. As a result, it was removed as a cleanup criteria for the Site.

The major components of the 2004 ESD were:

1. *Stabilization*—Approximately 1300 yd^3 of hazardous waste would be excavated and stabilized. The material would be stabilized until sampling verified that it no longer exceeded TCLP for lead. After verification, the waste would be disposed offsite at a RCRA regulated Subtitle D facility.

2. *ACM*—Materials would be consolidated onsite, contained, and transported offsite to a disposal facility licensed to accept ACM. Methods to control airborne dispersion of asbestos would be implemented during remediation. The estimated total volume of material was 22 $yd.^3$

3. *UST*—The UST, its contents, and the surrounding petroleum wastes would be characterized during the remedial design to determine whether the contents would be cleaned up under CERCLA or Oil Pollution Act authority. The surrounding polychlorinated biphenyl contaminated soils would be removed and disposed offsite in accordance with federal, state, and local regulations. The total volume of tank contents was estimated at 5,000 gallons.

4. *Building debris and water supply well*—The onsite well would be plugged and abandoned in accordance with federal, state, and local regulations. Portions of the Site would be cleared, where necessary, and the existing buildings and foundations would be demolished, removed and disposed offsite.

5. *Soil/sediment*—Approximately 1,766 yd^3 of lead and antimony contaminated soil and sediment would be excavated and disposed offsite in a RCRA Subtitle D facility.

6. *Air Monitoring*—During remedial action, efforts would be made to control dust and run-off to limit the amount of materials that may migrate to a potential receptor. Air monitoring would be conducted during times of remediation to ensure that control measures are working to regulate Site emissions.

7. *O&M and ICs*—The implementation of ICs and O&M would be necessary to restrict land use and ensure protectiveness.

8. *Five-Year Reviews*—Because hazardous substances would remain on the Site above levels that allow for unlimited use and unrestricted exposure, reviews of the remedy would be conducted no less than every five years to ensure that the remedy functions as designed, and remains protective of human health and the environment.

9. *Contingency Remedy*—Excavation and Offsite Disposal was added as a contingency for the hazardous waste. The implementation of this contingency was dependent on the completion of a treatability analysis of the stabilization process.

Explanation of Significant Differences Dated January 2, 2008

As part of the Consent Decree negotiations and remedial design activities, the PRP, through a treatability evaluation, researched and reviewed options related to stabilization of the slag waste. Information gathered during the treatability evaluation was submitted by KCS in a letter dated September 13, 2007. The evaluation supported the use of the contingency remedy documented in the 2004 ESD as being a more efficient and cost effective approach for remediation of the hazardous slag waste. Therefore, the 2008 ESD was issued to document the information that significantly changed a component of the selected remedy and to invoke the Contingency Remedy as outlined in the 2004 ESD. The contingency remedy, Excavation and Offsite Disposal, included the removal of the 1,300 yd^3 of hazardous slag waste from the Site with subsequent offsite disposal in a hazardous waste landfill. All other components of the remedy remain unchanged.

The major components of the 2008 ESD were:

1. *Hazardous Waste*—Approximately 1300 yd^3 of hazardous waste would be excavated and disposed offsite at a RCRA regulated Subtitle C facility.

2. *ACM*—Materials would be consolidated onsite, contained, and transported offsite to a disposal facility licensed to accept ACM. Methods to control airborne dispersion of asbestos would be implemented during remediation. The estimated total volume of material was 22 yd^3.

3. *UST*—The UST, its contents, and the surrounding petroleum wastes would be characterized during the remedial design to determine whether the contents would be cleaned up under CERCLA or Oil Pollution Act authority. The surrounding polychlorinated biphenyl contaminated soils would be removed and disposed offsite in accordance with federal, state, and local regulations. Total volume of tank contents was estimated at 5,000 gallons.

4. *Building debris and water supply well*—The onsite well would be plugged and abandoned in accordance with federal, state, and local regulations. Portions of the Site would be cleared, where necessary, and the existing buildings and foundations would be demolished, removed and disposed offsite.

5. *Soil/sediment*—Approximately 1,766 yd^3 of lead and antimony contaminated soil and sediment would be excavated and disposed offsite in a RCRA Subtitle D facility.

6. *Air Monitoring*—During remedial action, efforts would be made to control dust and run-off to limit the amount of materials that may migrate to a potential receptor. Air monitoring would be conducted during times of remediation to ensure that control measures are working to regulate Site emissions.

7. *O&M and ICs*—The implementation of ICs and O&M would be necessary to restrict land use and ensure protectiveness.

8. *Five-Year Reviews*—Because hazardous substances would remain on the Site above levels that allow for unlimited use and unrestricted exposure, reviews of the remedy would be conducted no less than every five years to ensure that the remedy is functioning as designed, and remains protective of human health and the environment.

Explanation of Significant Differences Dated November 9, 2009

This ESD documented the results from the remedial action activities for the Site that support the Site's unlimited use and unrestricted exposure scenario. Overall Site excavation and offsite disposal activities resulted in the removal of contaminated media to levels below the established CLs for the recreational/residential scenario. Because the Site meets unlimited use and unrestricted exposure, the ESD removed the ICs, O&M, and five-year reviews as components of the overall

Site remedy documented in the 2004 ESD and the 2008 Contingency ESD.

Response Actions

The Consent Decree between EPA and KCS was entered by the court on January 14, 2008. A notice to proceed was issued to the KCS on January 22, 2008. The Site RD/RA was completed as an EPA enforcement-lead project with LDEQ acting as the supporting agency, and KCS performing the work. The final Remedial Design and Implementation Work Plan was submitted by KCS on February 21, 2008, and was accepted by the Agencies as final on February 28, 2008.

Prior to implementing the response actions, a Louisiana-licensed asbestos abatement contractor completed a survey of and sampled potential ACM on January 28, 2008. Following receipt of the results of the asbestos sampling program, a second more local licensed contractor filed the required notification form on February 19, 2008, completed the abatement work on March 5, 2008, and disposed of 30 yd^3 on March 7, 2008.

The KCS construction contractor mobilized personnel, equipment and operations trailers to the Site on February 25, 2008. Between March 5 and 14, 2008, the areas of interest (AOIs) and slag piles were identified and marked. From March 14 through May 20, 2008, clearing and grubbing, soil excavation, slag removal, confirmation sampling, backfilling, and seeding activities were completed.

A preliminary project closeout meeting/Site walk was held on May 10, 2008, by EPA, LDEQ, and KCS. A punch list was created at that time. KCS completed hydroseeding, water system construction, and punch list items between May 11 and 20, 2008, along with a pre-final inspection with EPA and LDEQ on May 14, 2008. A formal Site closeout walk with the same parties was conducted on June 17, 2008. No additional punch list items were identified.

While performing Site remedial activities, KCS determined that minimal effort and cost would be required to address Site contamination to levels well below the CLs established for lead and antimony under an industrial scenario as described in the 2004 ESD. KCS was back at the Site on July 9, 2008, collecting soil samples from locations identified in the Remedial Investigation with lead concentrations between 500 mg/kg and 1400 mg/kg. In addition, KCS collected confirmation soil samples within AOIs that were excavated to native clay visually, to establish that lead concentrations were below 500 mg/kg. A single sample location south of the drainage ditch was above the unrestricted use standard of 500 mg/kg. KCS remobilized to the Site on August 18, 2008, to complete excavation of this area. Using visual removal as the criteria, contamination was excavated from approximately 0.9 acres followed by the collection of confirmation samples. The excavation area was backfilled and seeded. EPA and KCS conducted a final Site walk of the south supplemental excavation on August 22, 2008. This supplemental work was completed on August 24, 2008. The Preliminary Close Out Report was signed on September 3, 2008, documenting the completion of onsite construction.

Review of the draft remedial action report noted that an area along the southern boundary, just north of the canal may not have been fully addressed. On May 15, 2009, EPA and KCS performed a Site inspection to verify whether field activities were completed in this area. Visual inspection of the area confirmed that additional excavation would be required.

KCS mobilized to the Site during the week of May 25, 2009, and began clearing the canal bank. Excavation of contaminated soil and slag began during the week of June 1, 2009, and was completed on June 23, 2009. EPA and LDEQ were onsite June 23, 2009, to conduct a Site inspection with KCS. Seeding of the canal bank was completed on July 2, 2009, and later inspected jointly by LDEQ and KCS on July 22, 2009. During the inspection, it was noted that significant erosion had taken place due to heavy rains. These areas were repaired with riprap and inspected by KCS and LDEQ on August 25, 2009.

Details related to the remedial action are found in the final Ruston Foundry Superfund Site Remediation Report dated March 9, 2009, and the Ruston Foundry Superfund Site Remediation Report Addendum dated September 10, 2009.

After completion and acceptance of the final remedial action documents, the final Close Out Report for the was finalized on January 29, 2010, documenting completion of remedial action activities.

Cleanup Goals

The quality assurance/quality control (QA/QC) program for the Site was conducted in accordance with the work plan prepared to implement the remedial action construction activities. The EPA, in conjunction with LDEQ, conducted regular oversight throughout the implementation of the remedial action, reviewed and commented on all project plans for the Site, and participated in the Pre-final and Final Construction Inspections.

The quality assurance project plan incorporated EPA and State comments and requirements. The EPA and LDEQ reviewed the remedial action construction work for compliance with QA/QC protocols. Construction activities at the Site were determined to be consistent with the ROD, ESDs, and the Remedial Design and Implementation Work Plan and specifications. Deviations or non-adherence to QA/QC protocols or specifications were properly documented and resolved.

All monitoring equipment was calibrated and operated in accordance with the manufacturer's instructions and protocols established in the quality assurance project plan. During sampling, equipment was properly decontaminated prior to each use. The EPA analytical methods and contract laboratory program-like procedures and protocols were used for all confirmation and monitoring samples for soil and air analyses during the RA using a private laboratory contracted by the PRP. Air sample analyses followed EPA protocols in the *Compendium of Methods for the Determination of Toxic Compounds in Ambient Air.* The EPA and the State determined that analytical results were accurate to the degree needed to assure satisfactory execution of the RA.

Monitoring activities implemented during 2008 and 2009 remedial action are presented in the following paragraphs.

1. *ACM*—A Louisiana-licensed asbestos abatement contractor visually identified building debris that potentially contained asbestos. The contractor collected 6 samples of building debris material and mapped the area around the former foundry building where the debris was located. Asbestos was positively identified in three samples, two of cement board building debris and one of black flashing building debris. The ACM was localized about the former foundry building with no evidence of burial. Prior to excavation activities, the ACM debris was consolidated onsite, contained, and transported offsite to a disposal facility licensed to accept ACM. Methods to control airborne dispersion of asbestos were implemented during remediation. The final total volume of material disposed offsite was 30 yd^3. After removal of the ACM, the underlying soil within the ACM area was incorporated into the overall slag and soil excavation areas. At

a minimum, 6 inches of soil were removed during remediation, and the area was backfilled with clean fill upon completion.

2. *Slag*—Slag piles were visually identified, outlined and surveyed. Slag was either handpicked and moved with wheelbarrows or shoveled using heavy equipment. After removal of the slag, the underlying soil was incorporated into the overall soil excavation areas. At a minimum 6 inches of soil were removed during remediation, and the area was backfilled with clean fill upon completion. Approximately 745.94 tons of hazardous waste from the northern portion and 45 yd^3 of hazardous waste from the canal bank were excavated and shipped to a permitted RCRA hazardous waste landfill.

3. *UST*—The UST was found about 2 feet below ground level with an approximate 500-gallon capacity. The UST was filled with soil and a few gallons of rainwater. No staining was evident in the surrounding soil; however, the rainwater had a petroleum-like odor. Two soil samples were collected from the base of the excavation area and analyzed for total petroleum hydrocarbons by EPA Method 8015 diesel range organics and kerosene. Results were below LDEQ UST standards. The UST was decontaminated and disposed offsite. The surrounding soil was incorporated into the overall soil excavation areas.

4. *Water Supply Well*—All 5 onsite monitoring wells, designated MW–1 through MW–5, were closed by a licensed Louisiana contractor in accordance with LDEQ State requirements.

5. *Building Debris*—The concrete slabs were broken with jackhammers, stockpiled with the excavator, and pressure washed to remove loose soil. After decontamination, an estimated 550 yd^3 of concrete was transported offsite and donated to a local concrete recycler. All other domestic trash dumped on the property was removed and disposed offsite. Remnants of four remaining structures and a large amount of miscellaneous scrap metal were consolidated into piles, power washed, and loaded onto trailers. Approximately 43 tons of steel and other metal debris were recycled.

6. *Confirmation Samples*—Approximately 7,220 yd^3 [6,140 yd^3 from the northern portion, 1069.5 tons (713 yd^3) from the southern portion, and 550 tons (367 yd^3) from the canal bank] of lead and antimony contaminated soil and sediment were excavated and disposed offsite in a RCRA Subtitle D facility. Excavation progressed to the underlying native clay with depths ranging from 6 inches to 4 ft below original ground surface.

Five-point composites were collected from 25 by 25-foot grids used across the northern portion of the property. These grid locations were supplemented with six additional confirmation sample locations in areas where soil and slag locations overlapped. The southern portion of the property was sampled based on sample locations from the RI and the estimated location of the historic foundry building footprint. All confirmation sample results show levels of lead and antimony to be less than the CLs required for unlimited use and unrestricted exposure as determined by the Site-specific risk assessment. Lead concentrations are less than 500 mg/kg, with the highest concentration left onsite at 342 mg/kg, and antimony concentrations are less than 150 mg/kg, with the highest concentration left onsite at 18.9 mg/kg. The concentrations are consistent with accepted unlimited use and unrestricted exposure scenarios. In addition, identified ACM, hazardous waste (slag), and the UST were removed and disposed offsite.

7. *Backfill*—Six (6) composite samples were taken of the stockpiled native clay placed on the adjacent KCS property by the city of Alexandria during drainage ditch construction. Two (2) composite samples were collected from an offsite borrow source used for backfill during the 2008 and 2009 remedial activity. All samples were analyzed for RCRA metals. Results were consistent with background, and specifically met the CLs for lead and antimony. Approximately 9,185 yd^3 of backfill (7,800 yd^3 on the northern portion, 1,185 yd^3 on the southern portion, and 200 yd^3 on the canal bank) were used to fill excavation areas and grade the Site for proper drainage.

8. *Air*—During remedial action, efforts were made to control dust and run-off to limit the amount of materials that may migrate to a potential receptor. Work areas were continually wetted down to control potential dust emissions. Air monitoring was conducted during times of remediation upgradient, downgradient, and within the excavation areas as well as on personnel working within the exclusion zone. Air monitoring results did not exceed the Site-specific action levels for lead, antimony, or total suspended particulates.

Based on Site construction activity and subsequent confirmation sampling, all remedial action objectives have been met as well as the criteria for unlimited use and unrestricted exposure. The excavation areas were backfilled with suitable materials meeting Site-specific CLs, graded for proper drainage, and seeded.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Throughout the Site's history, the community has been interested and involved with Site activity. The EPA has kept the community and other interested parties updated on Site activities through informational meetings, fact sheets, and public meetings. The EPA worked closely with the local Lower Third Neighborhood Group. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

Determination That the Site Meets the Criteria for Deletion in the NCP

The NCP [40 CFR 300.425(e)] states that a site may be deleted from the NPL when no further response action is appropriate. EPA, in consultation with the State of Louisiana, has determined that all appropriate response action under CERCLA has been implemented, and no further response action by the PRP is appropriate.

V. Deletion Action

The EPA, with concurrence of the State of Louisiana, through the LDEQ, has determined that all appropriate response actions under CERCLA, have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *July 13, 2010* unless EPA receives adverse comments by *June 14, 2010.* If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 29, 2010.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

APPENDIX B—[AMENDED]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the entry "Ruston Foundry, Alexandria, LA."

[FR Doc. 2010–11306 Filed 5–13–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 10–49]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction and correcting amendments.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of May 16, 2008 (73 FR 28361), a Report and Order concerning steps the Commission took to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned business. This document corrects the Report and Order by substituting the word "ethnicity" for "gender" in explaining the requirements for broadcasters to certify that their advertising contracts do not discriminate on the basis of race or ethnicity and that such contracts contain nondiscrimination clauses. In this document, the FCC also corrects the rules in 47 CFR 73.3555 and 73.5008 published at 73 FR 28361, May 16, 2008, related to steps the Commission took to increase participation in the broadcasting industry by eligible entities, including minority- and women-owned businesses.

DATES: The amendments to 47 CFR 73.3555 and 73.5008 in this rule are effective May 14, 2010, and Form 303–S will become effective 30 days after the Commission publishes a document in the **Federal Register** announcing approval by the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Amy Brett, (202) 418–2703.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Erratum, FCC 10–49, adopted March 29, 2010 and released March 29, 2010. In FR Doc. E8–11039 the Federal Communications Commission published a Report and Order in the **Federal Register** of May 16, 2008 (73 FR 28361) in FCC 07–217.

On page 28364, in the first column, paragraph 11, the Commission inadvertently used the word "gender" instead of "ethnicity." This document corrects that error and revises the language to read as follows:

> The Commission finds that discriminatory practices have no place in broadcasting and concludes that it is appropriate for the Commission to require broadcasters renewing their licenses to certify that their advertising contracts do not discriminate on the basis of race or ethnicity and that such contracts contain nondiscrimination clauses.

Also, in this document the Commission amends Note 2(i) of 47 CFR 73.3555 and 47 CFR 73.5008(c), published at 73 FR 28361, May 16, 2008, so the rules accurately reflect the Commission's intent.

Need for Correction

As published, the final regulations contain inadvertent errors which need to be corrected.

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

Bulah Wheeler,

Acting Associate Secretary.

■ Accordingly, 47 CFR part 73 is corrected by making the following correcting amendments:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Revise paragraph i. of Note 2 to § 73.3555, to read as follows:

§ 73.3555 Multiple ownership.

* * * * *

i.1. Notwithstanding paragraphs e. and f. of this Note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules ("interest holder") shall have that interest attributed if:

A. The equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus all debt, of that media outlet; and

B.(i) The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this note other than this paragraph i.; or

(ii) The interest holder supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held. For purposes of applying this paragraph, the term, "market," will be defined as it is defined under the specific multiple ownership rule or cross-ownership rule that is being applied, except that for television stations, the term "market," will be defined by reference to the definition contained in the local television multiple ownership rule contained in paragraph (b) of this section.

2. Notwithstanding paragraph i.1. of this Note, the interest holder may exceed the 33 percent threshold therein without triggering attribution where holding such interest would enable an eligible entity to acquire a broadcast station, provided that:

i. The combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or

ii. The total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. For purposes of this paragraph i.2, an "eligible entity" shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121.201, at the time the transaction is approved by the FCC, and holds:

A. 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

B. 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

C. More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

* * * * *

■ 3. Section 73.5008 is amended by revising paragraph (c) to read as follows:

§ 73.5008 Definitions applicable for designated entity provisions.

* * * * *

(c)(1) An attributable interest in a winning bidder or in a medium of mass communications shall be determined in accordance with § 73.3555 and Note 2 to § 73.3555. In addition, any interest held by an individual or entity with an equity and/or debt interest(s) in a winning bidder shall be attributed to that winning bidder for purposes of determining its eligibility for the new entrant bidding credit, if the equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus all debt) of the winning bidder.

(2) Notwithstanding paragraph (c)(1) of this section, where the winning bidder is an eligible entity, the combined equity and debt of the interest holder in the winning bidder may exceed the 33 percent threshold therein without triggering attribution, provided that:

(i) The combined equity and debt of the interest holder in the winning bidder is less than 50 percent, or

(ii) The total debt of the interest holder in the winning bidder does not exceed 80 percent of the asset value of the winning bidder and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the winning bidder or any related entity. For purposes of paragraph (c)(2) of this section, an "eligible entity" shall include any entity that qualifies as a small business under the Small Business Administration's size standards for its industry grouping, as set forth in 13 CFR 121.201, at the time the transaction is approved by the FCC, and holds:

(A) 30 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet; or

(B) 15 percent or more of the stock or partnership interests and more than 50 percent of the voting power of the corporation or partnership that will own the media outlet, provided that no other person or entity owns or controls more than 25 percent of the outstanding stock or partnership interests; or

(C) More than 50 percent of the voting power of the corporation that will own the media outlet if such corporation is a publicly traded company.

[FR Doc. 2010–11161 Filed 5–13–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 10–62; FCC 10–38]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Amateur Radio Service rules to make certain non-substantive revisions to these rules. The rules are necessary to amend the amateur service rules or conform them to prior Commission decisions. The effect of this action is to enhance the usefulness of the amateur service rules by making them conform with other Commission rules, thereby eliminating licensee confusion when applying the rules to amateur service operations.

DATES: Effective July 13, 2010.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Mobility Division, Wireless Telecommunications Bureau, at (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order* (Order), adopted March 11, 2010, and released March 16, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, D.C. 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. By this action, we are amending the amateur service rules to revise 47 CFR 97.313(c) to limit Novice Class operators and Technician Plus Class operators to two hundred watts peak envelope power when these licensees are the control operator of a station transmitting in the segments of the 80, 40, 15, and 10 meter bands in which they may control an amateur station.

2. Also, by this action, we are also amending the amateur service rules to revise 47 CFR 97.301 and 97.303 related to the 40m, 60 m, 70 cm, and 9 cm bands to conform to the Table of Frequency Allocations in part 2 of our rules, and to references within the relevant sections of our rules. We also revise the frequency sharing requirements in 47 CFR 97.303 to limit the summary to those frequency bands that are allocated to the amateur service on a secondary basis, and to present the requirements more clearly.

3. In addition, we move transmitter power limit information that applies to stations transmitting a spread spectrum emission from 47 CFR 97.303(s) to 47 CFR 97.313, Transmitter power standards. Finally, we amend 47 CFR 97.103(c) to delete the cross-reference to 47 CFR 0.314(x), which was removed in 1999; and we remove the entry "1260–1270 MHz" from 47 CFR 97.207(c), which lists the frequency bands authorized to amateur space stations, because footnote 5.282 to the Table limits the use of that segment to earth station transmissions.

4. In the *Order,* we amend the amateur service rules to conform them to previous Commission decisions. The amended rules apply exclusively to individuals who are licensees in the Amateur Radio Service. Such amendments are in the public interest because they will clarify and conform the amateur service rules to other parts of the Commission's rules and previous decisions. The rule changes do not result in any mandatory change in manufactured amateur radio equipment or have any impact on business entities because such entities are not eligible for licensing in the amateur service. Therefore, we certify that the rules reflected in this *Order* will not have a significant economic impact on a substantial number of small entities.

5. The amended rules are set forth below, effective July 13, 2010.

6. This *Order* and the rule amendments are issued under the authority contained in 47 U.S.C. 154(i) and (j), 303(r) and 403.

7. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order,* including the Initial

and Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Radio.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 97 as follows:

PART 97—AMATEUR RADIO SERVICE

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

■ 2. Section 97.103 is amended by revising paragraph (c) to read as follows:

§ 97.103 Station licensee responsibilities.

* * * * *

(c) The station licensee must make the station and the station records available for inspection upon request by an FCC representative.

■ 3. Section 97.207 is amended by revising paragraph (c)(2) to read as follows:

§ 97.207 Space station.

* * * * *

(c) * * *

(2) The 7.0–7.1 MHz, 14.00–14.25 MHz, 144–146 MHz, 435–438 MHz, 2400–2450 MHz, 3.40–3.41 GHz, 5.83–5.85 GHz, 10.45–10.50 GHz, and 24.00–24.05 GHz segments.

* * * * *

■ 4. Section 97.301 is revised to read as follows:

§ 97.301 Authorized frequency bands.

The following transmitting frequency bands are available to an amateur station located within 50 km of the Earth's surface, within the specified ITU Region, and outside any area where the amateur service is regulated by any authority other than the FCC.

(a) For a station having a control operator who has been granted a Technician, Technician Plus, General, Advanced, or Amateur Extra Class operator license, who holds a CEPT radio amateur license, or who holds any class of IARP:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements *see* § 97.303 (paragraph)
VHF	MHz	MHz	MHz	
6 m		50–54	50–54	(a)
2 m	144–146.	144–148	144–148	(a), (k)
1.25 m		219–220		(l)
Do		222–225		(a)
UHF	MHz	MHz	MHz	
70 cm	430–440	420–450	430–440	(a), (b), (m)
33 cm		902–928		(a), (b), (e), (n)
23 cm	1240–1300	1240–1300	1240–1300	(b), (d), (o)
13 cm	2300–2310	2300–2310	2300–2310	(d), (p)
Do	2390–2450	2390–2450	2390–2450	(d), (e), (p)
SHF	GHz	GHz	GHz	
9 cm		3.3–3.5	3.3–3.5	(a), (b), (f), (q)
5 cm	5.650–5.850	5.650–5.925	5.650–5.850	(a), (b), (e), (r)
3 cm	10.0–10.5	10.0–10.5	10.0–10.5	(a), (b), (k)
1.2 cm	24.00–24.25	24.00–24.25	24.00–24.25	(b), (d), (e)
EHF	GHz	GHz	GHz	
6 mm	47.0–47.2	47.0–47.2	47.0–47.2	
4 mm	76–81	76–81	76–81	(c), (f), (s)
2.5 mm	122.25–123.00	122.25–123.00	122.25–123.00	(e), (t)
2 mm	134–141	134–141	134–141	(c), (f)
1 mm	241–250	241–250	241–250	(c), (e), (f)
	Above 275	Above 275	Above 275	(f)

(b) For a station having a control operator who has been granted an Amateur Extra Class operator license, who holds a CEPT radio amateur license, or who holds a Class 1 IARP license:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements *see* § 97.303 (paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (c), (g)
HF	MHz	MHz	MHz	
80 m	3.500–3.600	3.500–3.600	3.500–3.600	(a)
75 m	3.600–3.800	3.600–4.000	3.600–3.900	(a)

HF	MHz	MHz	MHz	
60 m		See § 97.303(h)		(h)
40 m	7.000–7.200	7.000–7.300	7.000–7.200	(i)
30 m	10.100–10.150	10.100–10.150	10.100–10.150	(j)
20 m	14.000–14.350	14.000–14.350	14.000–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.000–21.450	21.000–21.450	21.000–21.450	
12 m	24.890–24.990	24.890–24.990	24.890–24.990	
10 m	28.000–29.700	28.000–29.700	28.000–29.700	

(c) For a station having a control operator who has been granted an operator license of Advanced Class:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements *see* § 97.303 (Paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (c), (g)

HF	MHz	MHz	MHz	
80 m	3.525–3.600	3.525–3.600	3.525–3.600	(a)
75 m	3.700–3.800	3.700–4.000	3.700–3.900	(a)
60 m		See § 97.303(h)		(h)
40 m	7.025–7.200	7.025–7.300	7.025–7.200	(i)
30 m	10.100–10.150	10.100–10.150	10.100–10.150	(j)
20 m	14.025–14.150	14.025–14.150	14.025–14.150	
Do	14.175–14.350	14.175–14.350	14.175–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
Do	21.225–21.450	21.225–21.450	21.225–21.450	
12 m	24.890–24.990	24.890–24.990	24.890–24.990	
10 m	28.000–29.700	28.000–29.700	28.000–29.700	

(d) For a station having a control operator who has been granted an operator license of General Class:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements *see* § 97.303 (paragraph)
MF	kHz	kHz	kHz	
160 m	1810–1850	1800–2000	1800–2000	(a), (c), (g)

HF	MHz	MHz	MHz	
80 m	3.525–3.600	3.525–3.600	3.525–3.600	(a)
75 m		3.800–4.000	3.800–3.900	(a)
60 m		See § 97.303(h)		(h)
40 m	7.025–7.125	7.025–7.125	7.025–7.125	(i)
Do	7.175–7.200	7.175–7.300	7.175–7.200	(i)
30 m	10.100–10.150	10.100–10.150	10.100–10.150	(j)
20 m	14.025–14.150	14.025–14.150	14.025–14.150	
Do	14.225–14.350	14.225–14.350	14.225–14.350	
17 m	18.068–18.168	18.068–18.168	18.068–18.168	
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
Do	21.275–21.450	21.275–21.450	21.275–21.450	
12 m	24.890–24.990	24.890–24.990	24.890–24.990	
10 m	28.000–29.700	28.000–29.700	28.000–29.700	

(e) For a station having a control operator who has been granted an operator license of Novice Class, Technician Class, or Technician Plus Class:

Wavelength band	ITU region 1	ITU region 2	ITU region 3	Sharing requirements *see* § 97.303 (paragraph)
HF	MHz	MHz	MHz	
80 m	3.525–3.600	3.525–3.600	3.525–3.600	(a)
40 m	7.025–7.125	7.025–7.125	7.025–7.125	(i)
15 m	21.025–21.200	21.025–21.200	21.025–21.200	
10 m	28.0–28.5	28.0–28.5	28.0–28.5	
VHF	MHz	MHz	MHz	
1.25 m		222–225		(a)
UHF	MHz	MHz	MHz	
23 cm	1270–1295	1270–1295	1270–1295	(d), (o)

■ 5. Section 97.303 is revised to read as follows:

§ 97.303 Frequency sharing requirements.

The following paragraphs summarize the frequency sharing requirements that apply to amateur stations transmitting in the frequency bands specified in § 97.301 of this part. Each frequency band allocated to the amateur service is designated as either a secondary service or a primary service. A station in a secondary service must not cause harmful interference to, and must accept interference from, stations in a primary service.

(a) Where, in adjacent ITU Regions or sub-Regions, a band of frequencies is allocated to different services of the same category (*i.e.,* primary or secondary services), the basic principle is the equality of right to operate. Accordingly, stations of each service in one Region or sub-Region must operate so as not to cause harmful interference to any service of the same or higher category in the other Regions or sub-Regions.

(b) Amateur stations transmitting in the 70 cm band, the 33 cm band, the 23 cm band, the 9 cm band, the 5 cm band, the 3 cm band, or the 24.05–24.25 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government in the radiolocation service.

(c) Amateur stations transmitting in the 1900–2000 kHz segment, the 76–77.5 GHz segment, the 78–81 GHz segment, the 136–141 GHz segment, or the 241–248 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government, the FCC, or other nations in the radiolocation service.

(d) Amateur stations transmitting in the 430–450 MHz segment, the 23 cm band, the 3.3–3.4 GHz segment, the 5.65–5.85 GHz segment, the 13 cm band, or the 24.05–24.25 GHz segment, must not cause harmful interference to, and must accept interference from, stations authorized by other nations in the radiolocation service.

(e) Amateur stations receiving in the 33 cm band, the 2400–2450 MHz segment, the 5.725–5.875 GHz segment, the 1.2 cm band, the 2.5 mm band, or the 244–246 GHz segment must accept interference from industrial, scientific, and medical (ISM) equipment.

(f) Amateur stations transmitting in the following segments must not cause harmful interference to radio astronomy stations: 3.332–3.339 GHz, 3.3458–3.3525 GHz, 76–77.5 GHz, 78–81 GHz, 136–141 GHz, 241–248 GHz, 275–323 GHz, 327–371 GHz, 388–424 GHz, 426–442 GHz, 453–510 GHz, 623–711 GHz, 795–909 GHz, or 926–945 GHz. In addition, amateur stations transmitting in the following segments must not cause harmful interference to stations in the Earth exploration-satellite service (passive) or the space research service (passive): 275–277 GHz, 294–306 GHz, 316–334 GHz, 342–349 GHz, 363–365 GHz, 371–389 GHz, 416–434 GHz, 442–444 GHz, 496–506 GHz, 546–568 GHz, 624–629 GHz, 634–654 GHz, 659–661 GHz, 684–692 GHz, 730–732 GHz, 851–853 GHz, or 951–956 GHz.

(g) Amateur stations transmitting in the 1900–2000 kHz segment must not cause harmful interference to, and must accept interference from, stations authorized by other nations in the fixed, mobile except aeronautical mobile, and radionavigation services.

(h) Amateur stations may only transmit single sideband, suppressed carrier (emission type 2K80J3E), upper sideband on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5405 kHz. Amateur operators shall ensure that their station's transmission occupies only 2.8 kHz centered at each of these frequencies. Amateur stations must not cause harmful interference to, and must accept interference from, stations authorized by:

(1) The United States Government, the FCC, or other nations in the fixed service; and

(2) Other nations in the mobile except aeronautical mobile service.

(i) Amateur stations transmitting in the 7.2–7.3 MHz segment must not cause harmful interference to, and must accept interference from, international broadcast stations whose programming is intended for use within Region 1 or Region 3.

(j) Amateur stations transmitting in the 30 m band must not cause harmful interference to, and must accept interference from, stations by other nations in the fixed service. The licensee of the amateur station must make all necessary adjustments, including termination of transmissions, if harmful interference is caused.

(k) For amateur stations located in ITU Regions 1 and 3: Amateur stations transmitting in the 146–148 MHz segment or the 10.00–10.45 GHz segment must not cause harmful interference to, and must accept interference from, stations of other nations in the fixed and mobile services.

(l) *In the 219–220 MHz segment:*

(1) Use is restricted to amateur stations participating as forwarding stations in fixed point-to-point digital message forwarding systems, including intercity packet backbone networks. It is not available for other purposes.

(2) Amateur stations must not cause harmful interference to, and must accept interference from, stations authorized by:

(i) The FCC in the Automated Maritime Telecommunications System (AMTS), the 218–219 MHz Service, and the 220 MHz Service, and television stations broadcasting on channels 11 and 13; and

(ii) Other nations in the fixed and maritime mobile services.

(3) No amateur station may transmit unless the licensee has given written notification of the station's specific geographic location for such

transmissions in order to be incorporated into a database that has been made available to the public. The notification must be given at least 30 days prior to making such transmissions. The notification must be given to: The American Radio Relay League, Inc., 225 Main Street, Newington, CT 06111–1494.

(4) No amateur station may transmit from a location that is within 640 km of an AMTS coast station that operates in the 217–218 MHz and 219–220 MHz bands unless the amateur station licensee has given written notification of the station's specific geographic location for such transmissions to the AMTS licensee. The notification must be given at least 30 days prior to making such transmissions. The location of AMTS coast stations using the 217–218/219–220 MHz channels may be obtained as noted in paragraph (l)(3) of this section.

(5) No amateur station may transmit from a location that is within 80 km of an AMTS coast station that uses frequencies in the 217–218 MHz and 219–220 MHz bands unless that amateur station licensee holds written approval from that AMTS licensee. The location of AMTS coast stations using the 217–218/219–220 MHz channels may be obtained as noted in paragraph (l)(3) of this section.

(m) *In the 70 cm band:*

(1) No amateur station shall transmit from north of Line A in the 420–430 MHz segment. See § 97.3(a) for the definition of Line A.

(2) Amateur stations transmitting in the 420–430 MHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the FCC in the land mobile service within 80.5 km of Buffalo, Cleveland, and Detroit. See § 2.106, footnote US230 for specific frequencies and coordinates.

(3) Amateur stations transmitting in the 420–430 MHz segment or the 440–450 MHz segment must not cause harmful interference to, and must accept interference from, stations authorized by other nations in the fixed and mobile except aeronautical mobile services.

(n) *In the 33 cm band:*

(1) Amateur stations must not cause harmful interference to, and must accept interference from, stations authorized by:

(i) The United States Government;

(ii) The FCC in the Location and Monitoring Service; and

(iii) Other nations in the fixed service.

(2) No amateur station shall transmit from those portions of Texas and New Mexico that are bounded by latitudes 31°41′ and 34°30′ North and longitudes 104°11′ and 107°30′ West; or from outside of the United States and its Region 2 insular areas.

(3) No amateur station shall transmit from those portions of Colorado and Wyoming that are bounded by latitudes 39° and 42° North and longitudes 103° and 108° West in the following segments: 902.4–902.6 MHz, 904.3–904.7 MHz, 925.3–925.7 MHz, and 927.3–927.7 MHz.

(o) Amateur stations transmitting in the 23 cm band must not cause harmful interference to, and must accept interference from, stations authorized by:

(1) The United States Government in the aeronautical radionavigation, Earth exploration-satellite (active), or space research (active) services;

(2) The FCC in the aeronautical radionavigation service; and

(3) Other nations in the Earth exploration-satellite (active), radionavigation-satellite (space-to-Earth) (space-to-space), or space research (active) services.

(p) *In the 13 cm band:*

(1) Amateur stations must not cause harmful interference to, and must accept interference from, stations authorized by other nations in fixed and mobile services.

(2) Amateur stations transmitting in the 2305–2310 MHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the FCC in the fixed, mobile except aeronautical mobile, and radiolocation services.

(q) Amateur stations transmitting in the 3.4–3.5 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by other nations in the fixed and fixed-satellite (space-to-Earth) services.

(r) *In the 5 cm band:*

(1) Amateur stations transmitting in the 5.650–5.725 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by other nations in the mobile except aeronautical mobile service.

(2) Amateur stations transmitting in the 5.850–5.925 GHz segment must not cause harmful interference to, and must accept interference from, stations authorized by the FCC and other nations in the fixed-satellite (Earth-to-space) and mobile services and also stations authorized by other nations in the fixed service. In the United States, the use of mobile service is restricted to Dedicated Short Range Communications operating in the Intelligent Transportation System.

(s) Authorization of the 76–77 GHz segment for amateur station transmissions is suspended until such time that the Commission may determine that amateur station transmissions in this segment will not pose a safety threat to vehicle radar systems operating in this segment.

(t) Amateur stations transmitting in the 2.5 mm band must not cause harmful interference to, and must accept interference from, stations authorized by the United States Government, the FCC, or other nations in the fixed, inter-satellite, or mobile services.

Note to § 97.303: The Table of Frequency Allocations contains the complete, unabridged, and legally binding frequency sharing requirements that pertain to the Amateur Radio Service. *See* 47 CFR 2.104, 2.105, and 2.106. The United States, Puerto Rico, and the U.S. Virgin Islands are in Region 2 and other U.S. insular areas are in either Region 2 or 3; see Appendix 1 to part 97.

■ 6. Section 97.305 is amended by revising the last entry in the table following paragraph (c) to read as follows:

§ 97.305 Authorized emission types.

* * * * *

(c) * * *

Wavelength band	Frequencies	Emission types authorized	Standards *see* § 97.307(f), paragraph:
*	*	*	*
	Above 275 GHz	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12).

■ 7. Section 97.313 is amended by revising paragraphs (c) introductory text and (c)(2) and adding paragraph (i) to read as follows:

§ 97.313 Transmitter power standards.

* * * * *

(c) No station may transmit with a transmitter power output exceeding 200 W PEP:

* * * * *

(2) On the 3.525–3.60 MHz, 7.025–7.125 MHz, 21.025–21.20 MHz, and 28.0–28.5 MHz segment when the control operator is a Novice Class, Technician Class, or Technician Plus Class operator; or

* * * * *

(i) No station may transmit with an effective radiated power (ERP) exceeding 50 W PEP on the 60 m band. For the purpose of computing ERP, the transmitter PEP will be multiplied by the antenna gain relative to a dipole or the equivalent calculation in decibels. A half-wave dipole antenna will be presumed to have a gain of 1. Licensees using other antennas must maintain in their station records either the antenna manufacturer data on the antenna gain or calculations of the antenna gain.

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 107, 171, 173, 174, 176, 177, and 179

[Docket No. PHMSA–2009–0289 (HM–233A)]

RIN 2137–AE39

Hazardous Materials: Incorporation of Special Permits Into Regulations

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

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations so long as an equivalent level of safety is maintained. The revisions in this final rule are intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

DATES: *Effective Dates:* The effective date of these amendments is October 1, 2010.

Voluntary Compliance: Voluntary compliance with the provisions of this final rule is authorized June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Eileen Edmonson or Dirk Der Kinderen, Office of Hazardous Materials Standards, (202) 366–8553, or Diane LaValle, Office of Hazardous Materials Special Permits and Approvals, (202) 366–4535, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background
II. Overview of Amendments
III. Summary Review of Amendments
IV. Regulatory Analyses and Notices

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is amending the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) to incorporate certain requirements based on existing special permits (SPs) issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127). A special permit sets forth alternative requirements—or a variance—to the requirements in the HMR in a way that achieves a safety level at least equal to the safety level required under the regulations or that is consistent with the public interest. Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act of 1975.

The HMR generally are performance oriented regulations, which provide the regulated community with a certain amount of flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations. Innovation is a strength of our economy and the hazardous materials community is particularly strong at developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into production and the transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. Hazardous materials transported under the terms of a special permit must achieve a level of safety at least equal to the level of safety achieved when transported under the HMR. Implementation of new technologies and operational techniques enhances safety because the authorized operations or activities may achieve a greater level of safety than currently required under the regulations. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with an established safety record for conversion into regulations of broader applicability. Converting these special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether or not a specific special permit is a candidate for regulatory action include the safety record for hazardous materials transported or operations conducted under a special permit; potential broad application of a special permit; suitability of provisions in the special permit for incorporation into the HMR; rulemaking activity in related areas; and agency priorities.

Several of the special permits addressed in this final rule have hundreds of party status grantees. Party status is granted to a person who would like to offer for transport or transport a hazardous material, or perform an operation in association with a hazardous material in the same manner as the original applicant. Several special permits addressed in this final rule provide for the manufacture, marking, sale and use of certain packagings for transportation of hazardous materials. These manufacturing special permits are issued to the packaging manufacturer and provide for use of the packagings by hundreds and possibly thousands of distributors and users.

The amendments in this final rule will eliminate the need for approximately 510 current grantees to reapply for renewal of 44 special permits every four years and for PHMSA to process those renewal applications. These amendments also apply to any special permits this agency issues during the development of this final rule whose provisions are identical in every respect to those described in the rulemakings issued under this docket. To emphasize this, we preface the

description of the affected special permits with the wording "include" or "includes" to clarify that additional special permits other than those specifically listed in this final rule may be incorporated under these amendments.

Incorporation of the special permits into the HMR also eliminates a significant paperwork burden. As a condition of a special permit issued by PHMSA and depending on the provisions of the special permit, a copy of each special permit must be: (1) Maintained at each facility where an operation is conducted or a packaging is manufactured under a special permit; (2) maintained at each facility where a package is offered or re-offered for transportation under a special permit; and (3) in some cases, carried aboard each transport vehicle used to transport a hazardous material under a special permit.

II. Notice of Proposed Rulemaking

On December 22, 2009, PHMSA published a notice of proposed rulemaking (NPRM; 75 FR 68004) proposing to incorporate a number of special permits into the HMR. The proposed revisions included the following:

- Authorize cargo vessel transportation for salvage cylinders containing damaged or leaking packagings under § 173.3.
- Allow liquid contents in quantities greater than 10% of the capacity in a mechanical displacement meter prover to the extent that draining of the meter prover is impracticable under § 173.5a.
- Authorize the transport of waste Division 4.2, Packing Group (PG) I material and Division 5.2 (organic peroxide) material in lab packs under § 173.12.
- Allow the use of alternative outer packagings for waste lab packs and require use of UN standard steel or plastic drums (at the PG I performance level) as the outer packaging for waste Division 4.2, PG I material and as an overpack for Division 6.1, PG I, Hazard Zone A material under § 173.12.
- Except waste hazardous materials, packaged in lab packs and meeting additional conditions, and Division 6.1 PG I (Hazard Zone A) material packaged in accordance with § 173.226(c) from certain segregation and marking requirements under § 173.12.
- Allow variation in the packing method for packagings prepared in accordance with § 173.13.
- Authorize, for certain hazardous materials, external visual inspection of the rupture disc in a non-reclosing pressure relief device of a rail tank car without requiring removal of the rupture disc § 173.31.
- Authorize the transportation of certain specially designed radiation detectors containing a Division 2.2 (non-flammable gas) material under a new section § 173.310.
- Allow a greater gross weight limitation for packages used for the transport of aerosols for purposes of recycling or disposal under § 173.306.
- Allow rail tank cars to exceed the gross weight on rail limitations upon approval from the Federal Railroad Administration (FRA) under § 179.13.
- Eliminate several requirements for submitting duplicate copies of applications for special permit, party status, or renewal when the applications are submitted electronically.
- Require certification of understanding of a special permit for persons submitting an application for party status to a special permit.

The following companies and organizations submitted comments on the NPRM:

(1) Alcoa (Alcoa)
(2) All-Pak (All-Pak)
(3) Arkema, Inc. (Arkema)
(4) The Association of American Railroads (AAR)
(5) Baker Petrolite Corporation (BPC)
(6) The Chlorine Institute (CI)
(7) E.I. DuPont de Nemours and Company (Dupont)
(8) Fibre Box Association (FBA)
(9) National Association of Chemical Distributors (NACD)
(10) Utility Solid Waste Activities Group (USWG)
(11) Western Regional Group (WRG)

The commenters generally supported the proposals in the NPRM. Some commenters opposed the incorporation of certain special permits. A detailed discussion of the comments follows. (Note that comments beyond the scope of this rulemaking are not addressed in this final rule.)

III. Summary Review of Amendments

A. Salvage Cylinders

Damaged or leaking cylinders containing a Division 2.1, 2.2, 2.3, or 6.1, or Class 3 or 8 material may be overpacked in a salvage cylinder and transported by motor vehicle for repair or disposal (*see* § 173.3(d)). In the NPRM, PHMSA proposed to permit salvage cylinders to also be transported by cargo vessel for purposes of repair or disposal, consistent with the provisions of DOT–SP 14168. One commenter (CI) supported the proposal; no commenters opposed the proposal. We are adopting the amendment as proposed.

B. Meter Provers

A mechanical displacement meter prover (meter prover) is a mechanical device, permanently mounted on a truck or trailer, consisting of a piping system that is used to calibrate the accuracy and performance of meters that measure the quantity of product being pumped or transferred at facilities such as drilling locations, refineries, tank farms and loading racks. Section 173.5a(b) excepts meter provers from specification packaging requirements in Part 178 of the HMR provided the meter provers conform to certain conditions. In a final rule published January 24, 2005, under Docket No. RSPA–03–16370 (HM–233) (70 FR 3302), the Research and Special Programs Administration, the predecessor agency to PHMSA, incorporated several special permits concerning meter provers into § 173.5a. As provided by § 173.5a(b), a meter prover is excepted from the specification packaging requirements when, among other criteria, the liquid content of the meter prover does not exceed 10% of capacity (see § 173.5a(b)(2)(i)). PHMSA subsequently issued a special permit to allow transport of meter provers containing flammable liquids in quantities greater than 10% of capacity when conditions make draining of the liquid impracticable. This special permit was based on information that (1) facilities or equipment used to drain and reinject the meter provers may not be readily available while in the field; (2) alternatives such as using DOT specification cargo tanks as meter provers or accompanying a meter prover with DOT specification cargo tanks filled with liquids drained from the meter prover are cost prohibitive; and (3) there is a record of safe transportation of meter provers under provisions from special permits previously adopted into the HMR. In the NPRM, PHMSA proposed to allow meter provers to retain flammable liquid contents in quantities greater than 10% of capacity to the extent that draining the contents to 10% or less is impracticable. The affected special permits include DOT–SP 14405. No commenters addressed this proposal; therefore, in this final rule, PHMSA is adopting the provision as proposed.

Additionally, for consistency with use of the acronym "MAWP" (meaning maximum allowable working pressure) in other provisions of the HMR, in § 173.5a, paragraph (b)(2)(iv), in this final rule, PHMSA is revising the wording "maximum service pressure" to read "MAWP." Finally, for greater understanding and use of the provisions

of § 173.5a(b), we are adding a definition for "Mechanical displacement meter prover" in § 171.8. The definition reads: "Mechanical displacement meter prover means a mechanical device used in the oilfield service industry consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantities of a product being pumped or transferred at facilities such as drilling locations, refineries, tank farms, and loading racks."

C. Lab Packs

Certain waste materials are excepted from specification packaging requirements when transported in packagings ("lab packs") that conform to the requirements specified in paragraph (b) of § 173.12. Currently, the outer packaging of the lab packs must be a specification UN 1A2 or UN 1B2 metal drum, UN 1D plywood drum, UN 1G fiber drum, or UN 1H2 plastic drum tested to the PG III performance level. In the NPRM, PHMSA proposed to allow the use of a UN 4G fiberboard box made of at least 500 psig burst strength fiberboard that is tested and marked to at least the PG II performance level as an alternative outer packaging for a lab pack. The affected special permits include DOT–SP 10791, 12927, 13285, 13937, 14510, and 14817. PHMSA also proposed to allow the use of a UN 11G fiberboard intermediate bulk container (IBC) and a UN 11HH2 composite IBC (with a flexible plastic inner receptacle for solids loaded or discharged by gravity) as alternative outer packaging for a lab pack. The affected special permits include DOT–SP 12296, 12668, 12682, 12749, and 12826.

Certain hazardous materials packaged in lab packs conforming to § 173.12(b) are excepted from segregation requirements in Parts 174, 176, and 177 of the HMR provided the materials conform to the segregation requirements in § 173.12(e). In the NPRM, PHMSA proposed to except certain additional waste hazardous materials in lab packs and non-bulk packagings from segregation and overpack marking requirements consistent with the provisions of DOT–SP 13192. We first issued DOT–SP 13192 in 2001 to consolidate earlier special permits that allowed different combinations of incompatible materials, including waste materials, to be transported together on the same transport vehicle. The waste materials are subject to safety control measures designed to mitigate the risks presented by these materials, such as quantity limitations, additional packaging, and segregation requirements. Revised editions of DOT–SP 13192 have authorized the transport of additional hazardous materials not currently authorized for transport under § 173.12. These hazardous materials include Division 4.2 PG I material (subject to more stringent outer packaging requirements), Division 5.2 (organic peroxide) material, and Division 6.1 PG I (Hazard Zone A) material (for purposes of exception from segregation requirements only). Experience with DOT–SP 13192 suggests that when certain incompatible hazardous materials are properly packaged in lab packs and other authorized non-bulk packages, the possibility of these materials commingling in an incident is greatly reduced, if not eliminated, because of the integrity of the packagings and, for liquids, because of the requirement to include a sufficient amount of chemically compatible absorbent material to absorb the contents.

Two commenters (Dupont, NACD) supported adoption of these amendments. Thus, in this final rule, PHMSA is authorizing the transport of Division 4.2 PG I material and Division 5.2 (organic peroxide) material in lab packs, and the transport of waste Division 6.1 PG I (Hazard Zone A) material with other waste materials if packaged in accordance with § 173.226(c) of the HMR and further packaged in an overpack of a specification UN steel or plastic drum at the PG I performance level. In addition, for greater clarity, we are making several conforming amendments to the segregation requirements in Parts 174, 176, and 177 to specify that the requirements do not apply to Division 6.1 PG I (Hazard Zone A) material transported in conformance with § 173.12(e).

D. Excepted Packaging

Conditions for transport of hazardous materials in non-specification packaging are outlined in § 173.13. Currently, for packaging of liquids, the liquid must be placed in an inner packaging which is then placed in a hermetically sealed barrier bag that is wrapped in chemically compatible absorbent material and then placed in a metal can. PHMSA has issued a number of special permits that allow an alternative configuration in which the inner packaging for liquids is first wrapped in chemically compatible absorbent material and then placed in a hermetically sealed barrier bag which is then placed in a metal can. In the NPRM, PHMSA proposed to incorporate this alternative method of packing inner packagings for liquids into § 173.13. This proposal was drawn from the same provision in the following special permits: DOT–SP 7891, 8249, 9168, 10672, 10962, 10977, 11248, 12401, 13355.

One commenter (All-Pak) opposed adoption of this amendment. All-Pak's understanding from the preamble of the December 2009 NPRM is that a number of existing special permits would be cancelled through the adoption of this brief amendment into § 173.13. All-Pak does not support termination of the affected special permits and believes the special permits should remain in effect because they include additional provisions, such as stronger packaging requirements and authorization to transport additional materials.

All-Pak is correct that the provisions outlined in the listed special permits are broader in scope and more varied than the requirements of § 173.13. In this final rule, PHMSA is amending § 173.13 to allow the alternative packaging configuration in which the inner packaging for liquids may first be wrapped in absorbent material and then placed in a hermetically sealed barrier bag prior to placement in a metal can. Based on the comments presented and our review of this section, the affected special permits are not being incorporated in total under this final rule.

E. Visual Inspection of Rail Tank Cars

The HMR specify requirements for use of rail tank cars transporting hazardous materials in § 173.31. Paragraph (d) of this section requires an offeror to perform an external visual inspection of a rail tank car containing a hazardous material or a residue of a hazardous material prior to offering it for transportation. As part of the examination, paragraph (d)(1)(vi) requires a careful inspection of the rupture (frangible) disc in non-reclosing pressure relief devices for corrosion or damage that may alter the intended operation of the device. Under special permits DOT–SP 11761 and 11864, the rupture disc is not required to be removed prior to visual inspection if the tank car contains residue of a Class 8 (corrosive), PG II or III material with no subsidiary hazard (at no more than three percent of capacity of the tank car) or the residue of Class 9 molten sulfur. Based on the safety record of use of the special permits, in the December 2009 NPRM, we proposed to revise paragraph (d)(1)(vi) to exclude inspection of the underside of the rupture disc on rail tank cars containing residue of a Class 8 (corrosive), PG II or III material with no subsidiary hazard or containing the residue of a Class 9 elevated temperature material. For purposes of

the HMR, "residue" means the hazardous material remaining in a packaging after its contents have been unloaded to the maximum extent possible (*see* § 171.8). Additionally, PHMSA has interpreted "unloaded to the maximum extent possible" to mean that the hazardous material has ceased to flow out of the packaging's unloading device. Operations under these special permits have demonstrated these materials are present in the tank car in insufficient quantity and physical form to present a risk from a release of the material through a rail tank car pressure relief device due to the failure of a rupture disc during transportation.

Two commenters (CI, Dupont) supported the adoption of this proposal. One commenter (AAR) opposed the adoption of this provision on the basis that if the rupture disc is not removed, there is no way to tell whether: (1) A gasket is present; (2) the seats of the disc and the safety vent mounting flange are in proper condition; and (3) the fitting has the required surge protection. AAR provided a summary of data on non-accident releases involving rail tank cars with residue Class 8, PG II or III material (with no subsidiary hazard) and Class 9 material over a five-year period (January 2005 to January 2010). Analysis of the data indicates six non-accident releases in which the cause listed is the corrosion of the rupture disc. AAR noted these six non-accident releases could have been prevented had the rupture disc been inspected before the residue tank car was returned.

AAR added that:

> some discs have their ratings on their side and some have rating[s] around the outer top circumference, which * * * can be hidden by the retainer device. How does one insure the disc is rated properly? The current regulations require the shipper to ensure that all fittings are in proper condition for transportation and it is not clear how that is possible without an inspection of the rupture disc.

PHMSA appreciates AAR's concern regarding the risks of transporting these materials in rail cars with pressure relief devices that may have corroded components. However, there are other measures for identifying possible corrosion problems, including conducting a thorough inspection of the pressure relief device and rupture disc prior to loading of the rail tank car and implementing operating procedures for maintenance and inspection of the components. PHMSA's review of hazardous materials incident reports for the five-year period January 2005–January 2010 identified one report of an incident involving release of a hazardous material due to the corrosion of a rupture disc associated with the transport of a residue amount of corrosive material (hydrochloric acid solution). PHMSA and the Federal Railroad Administration (FRA) continue to believe that there is only a small possibility of release from a tank car transporting a residue amount of a Class 8, PG II or III or Class 9 elevated temperature material caused by corrosion of the rupture disc. Therefore, in this final rule, PHMSA is adopting the amendment as proposed.

F. Radiation Detectors

Radiation detectors are used for measuring the intensity of ionizing radiation. The devices typically contain a gas filled tube or ion chamber where radiation converts the gas into ions and the rate at which these ions are collected is measured as electric current. These radiation detectors are often used as integral parts of medical test equipment, such as a dose calibrator. The HMR require the pressurized gas contained in these devices to be transported in DOT specification cylinders or non-specification containers conforming to § 173.302 or § 173.306.

In the NPRM, PHMSA proposed to authorize in new § 173.310 the transportation of radiation detectors (also described as radiation sensors, electron tube devices, and ionization chambers) containing a gas, specifically, certain Division 2.2 (non-flammable) compressed gases contained in electron tubes that are non-DOT specification, metal, single trip, inside containers that may or may not be hermetically sealed or equipped with a pressure relief device, based on the use of several special permits. As proposed, the inside metal containers must be welded and designed to prevent fragmentation upon impact. The electron tubes may have up to a maximum design pressure of 4.83 MPa (700 psig) and up to a maximum water capacity of 355 fluid ounces (641 cubic inches); and must have a burst pressure of not less than three times the design pressure if equipped with a pressure relief device, and not less than four times the design pressure if not equipped with a pressure relief device. Each radiation detector must be placed in a strong outer packaging capable of withstanding a minimum drop test of 1.2 meters (4 feet) without breaking the device or rupturing the outer packaging, or if shipped as part of equipment, that the equipment provide equivalent protection. Also, each shipment of these devices must be accompanied by emergency response information that must identify those receptacles not fitted with a pressure relief device, and provide guidance on how to manage all the detectors if they are exposed to fire. When transported in conformance with these conditions, PHMSA proposed to except radiation detectors from the specification packaging requirements of the HMR and, except when transported by air, from labeling and placarding requirements of the HMR. The affected special permits include DOT–SP 9030, 9940, 10407, 12131, 12415, 13026, 13109 and 13244.

One commenter (USWAG) specified support for incorporation of DOT–SP 9940. PHMSA is adopting the amendment as proposed.

G. Aerosols for Recycling or Disposal

Exceptions from the requirements of the HMR to transport a material as a fully regulated compressed gas are specified for limited quantities of compressed gases (including in aerosol containers) in § 173.306. Conditions for exception include a 30 kg (66 pound) gross weight limitation for outer packagings. Under DOT–SP 12842, PHMSA authorized the transport of limited quantities of certain Division 2.1 (flammable) and Division 2.2 (non-flammable) gases in aerosol containers packaged in strong outer packagings with gross weights of up to 500 kg (1,100 pounds). PHMSA allowed the increase in gross weight for the purpose of packaging discarded empty, partially used, and full aerosol containers to be transported to a recycling or disposal facility. As part of the conditions for the special permit, each aerosol container must be fitted with a cap to protect the valve stem or the valve stem must be removed to prevent the accidental discharge of the contents. Based on the safe record of transportation of these aerosol containers under this special permit; and based on the condition that some limited quantity materials reclassed as ORM–D material, as authorized under § 173.306, are not subject to the 30 kg (66 pound) gross weight limitation when unitized in packages and offered for transportation in accordance with § 173.156 of the HMR, in the December 2009 NPRM, PHMSA proposed, in § 173.306(k), to authorize the highway transport of aerosol containers conforming to § 173.306 in strong outer packagings not to exceed 500 kg (1,100 pounds) when transported for the purpose of recycling or disposal. The affected special permits include DOT–SP 12842.

Two commenters (Alcoa, USWAG) supported this amendment. Additionally, Alcoa suggested revising paragraph (k)(2) relating to the requirement to protect against

accidental discharge to more closely align with DOT–SP 12842. Alcoa stated:

> we believe it preferable to take a more "performance based" approach to the provision requiring protection from accidental discharge in order to allow other equally effective means (as compared to only protective caps or removal of the valve stem) to be employed. In this regard, we suggest that the provision concerned should instead read: "Each aerosol container is protected against accidental discharge, such as by a protective cap over the valve stem, or, if without a protective cap, by removal of the valve stem, or any other measure that prevents accidental discharge."

Alcoa also suggested removing the limitation that motor vehicle transport must be by private or contract motor carrier or common carrier under exclusive use found in paragraph (k)(3) so there no longer is a need for DOT–SP 11396.

The proposed requirement to protect against accidental discharge is based on the specific conditions outlined in DOT–SP 12842, that each aerosol container must be shipped with a protective cap to protect the valve stem, or if no protective cap is available, the valve stem must be removed from the can. The safe history of use of the special permit is due in large part to the conditions of the special permit. Alcoa did not provide specific examples of alternative methods to protect against accidental discharge. Without evidence of other measures to prevent accidental discharge that provide an equivalent level of safety to protective caps or removal of the valve stem, PHMSA is reluctant to adopt a performance standard.

PHMSA also disagrees with the suggestion to remove the limitation for private or contract motor carrier or common carrier under exclusive use, thereby eliminating the need for DOT–SP 11396. The modal limitation provides a greater level of safety by requiring a greater level of control over shipments.

In this final rule, PHMSA is adopting the provision as proposed in the NPRM. Note that PHMSA is revising the language in § 173.306(k)(1) to clarify that the gross weight limitation of 500 kg (1,100 pounds) applies to the strong outer packaging and its contents, not just the strong outer packaging as written in the NPRM.

H. Rail Tank Car Gross Weight Limitation

The HMR include limitations on rail tank car capacity and gross weight in § 179.13. Currently, this section limits rail tank cars to a maximum capacity of 34,500 gallons (130,597 L) and a gross weight of 263,000 pounds (119,295 kg). PHMSA has granted several special permits to allow tank cars to transport up to 286,000 pounds (129,727 kg) gross weight on rail subject to certain conditions. In the NPRM, PHMSA proposed to revise this section to provide rail carriers with relief from the rail tank car gross weight limitation subject to review of an approval application submitted to the Associate Administrator for Safety, FRA. Providing for an approval process will expedite movement of rail tank cars by simplifying regulatory procedures and eliminating the time constraints associated with the mandatory comment period required for special permit applications. The affected special permits include DOT–SP 11241, 11654, 11803, 12423, 12561, 12613, 12768, 12858, 12903, 13856, 13936, 14004, 14038, 14442, 14505, 14520, 14570, and 14619.

Three commenters (AAR, CI, Dupont) supported adoption of this amendment. However, the commenters suggested that the final rule should include specific procedures for obtaining the specified approval.

We disagree. FRA has established guidelines for applications for authority to transport rail tank cars that are over specified gross weight limitations in a document entitled "Maximizing Safety and Weight." The document instructs applicants to consider safety-related items for both new construction and for existing equipment that include the following topics: (1) Puncture resistance; (2) controlling longitudinal loading; (3) structural-worthiness; (4) track-worthiness; (5) service equipment; (6) service reliability and maintenance management; and (7) maximizing safety and weight. This document may be reviewed at *http://www.fra.dot.gov/Pages/1800.shtml.* In addition, FRA plans to develop risk-based guidance for persons applying for an approval to authorize a gross weight greater than 263,000 pounds and up to 286,000 pounds.

Therefore, in this final rule, PHMSA is adopting the amendment as proposed.

I. Revisions to Procedures

Procedures for serving documents in PHMSA proceedings are established in 49 CFR Part 105. In accordance with these procedures, a non-resident of the United States must designate an agent and file the designation with PHMSA. In this final rule, the phrase "agent for service of process" is added as a synonym for the word "agent" in paragraph (b) of § 105.40(b) to clarify that this term includes an agent for service of process as this phrase is used elsewhere in PHMSA's procedural regulations in 49 CFR Parts 105, 106, and 107. In addition, in this final rule, we revise the definition for "Special Permit" in 49 CFR Part 107 to permit the Associate Administrator of Hazardous Materials Safety to delegate signature authority at the Office Director level. The same revision to the definition for "Special Permit" is made in § 171.8.

Currently, an application for a special permit must be submitted in duplicate no matter the method of submission, whether mail, fax, or e-mail (see § 107.105). In this final rule, PHMSA is revising § 107.105(a)(1) to clarify that a duplicate copy of the application for a special permit is not required when the application is submitted electronically by e-mail. PHMSA is also revising § 107.105(a)(2) to require an e-mail address if available and the DOT registration number, if applicable. Application procedures for party status to a special permit are set forth in § 107.107. In this final rule, PHMSA is revising § 107.107(b)(1) to clarify that a duplicate copy of the application for party status is not required when the application is submitted electronically by e-mail and is revising paragraph § 107.107(b)(3) to require an e-mail address if available and the DOT registration number, if applicable. In addition, PHMSA will require an applicant for party status to provide a justification of the need for party status to the special permit and to certify that the applicant has read and understands the provisions of the special permit for party status.

Application procedures for renewal of a special permit are set forth in § 107.109. In this final rule, PHMSA is revising § 107.109(a)(1) to state that a duplicate copy of an application to renew a special permit is not required when the application is submitted electronically by e-mail.

IV. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least

equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. The final rule amends the regulations by incorporating provisions from certain widely used and longstanding special permits that have established a history of safety and which may, therefore, be converted into the regulations for general use.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) and was not reviewed by the Office of Management and Budget (OMB). The final rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034].

In this final rule, PHMSA amends the HMR to incorporate alternatives this agency has permitted under widely used and longstanding special permits with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the final rule will reduce the paperwork burden on industry and this agency resulting from putting an end to the need for renewal applications for special permits. Taken together, the provisions of this final rule will promote the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

C. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule would preempt state, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(5) The designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (2), (3), and (5) and would preempt any State, local, or Indian tribe requirements not meeting the "substantively the same" standard. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption will be 90 days from publication of the final rule in this matter in the **Federal Register**.

D. Executive Order 13175

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

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule incorporates into the HMR certain widely used special permits. Incorporation of these special permits into regulations of general applicability will provide shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Therefore, PHMSA certifies this rule will not have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA has an approved information collection under OMB Control Number 2137–0051, "Rulemaking, Special Permits, and Preemption Requirements." This final rule may result in a decrease in the annual burden and costs under this information collection due to proposed changes to incorporate provisions contained in certain widely used or longstanding special permits that have an established safety record.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This final rule identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this final rule. PHMSA estimates that the information collection and recordkeeping burden of this final rule is as follows:

OMB Control No. 2137–0051:

Net Decrease in Annual Number of Respondents: 520.

Net Decrease in Annual Responses: 55.

Net Decrease in Annual Burden Hours: 560.

Net Decrease in Annual Burden Costs: $22,400.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials

Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major Federal actions and to prepare a detailed statement on actions that significantly affect the quality of the human environment.

The hazardous materials regulatory system is a risk management system that is prevention-oriented and focused on identifying a hazard and reducing the probability and quantity of a hazardous materials release. Hazardous materials are categorized by hazard analysis and experience into hazard classes and packing groups. The regulations require each shipper to class a material in accordance with these hazard classes and packing groups; the process of classifying a hazardous material is itself a form of hazard analysis. Further, the regulations require the shipper to communicate the material's hazards by identifying the hazard class, packing group, and proper shipping name on shipping papers and with labels on packages and placards on transport vehicles. Thus, the shipping paper, labels, and placards communicate the most significant findings of the shipper's hazard analysis. A hazardous material is assigned to one of three packing groups (PGs) based upon its degree of hazard, from a high hazard PG I material to a low hazard PG III material. The quality, damage resistance, and performance standards for the packagings authorized for the hazardous materials in each PG are appropriate for the hazards of the material transported.

Hazardous materials are transported by aircraft, vessel, rail, and highway. The potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation accidents. The need for hazardous materials to support essential services means transportation of highly hazardous materials is unavoidable. However, these shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. The ecosystems that could be affected by a hazardous materials release during transportation include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the accident scene.

There are no significant environmental impacts associated with the amendments in this final rule. We are making clarifications and changes to certain HMR requirements to include methods for packaging and transporting hazardous materials that are currently permitted under widely used special permits with established safety records for inclusion in the HMR. The process through which safety permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging proposed provides an equivalent level of safety as that provided in the HMR. Implicit in this process is that the special permit must provide an equivalent level of environmental protection as that provided in the HMR. Thus, incorporation of the special permits as regulations of general applicability maintains the existing environmental protections built into the HMR.

J. Privacy Act

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

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

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

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Rail carriers, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 179

Hazardous materials transportation, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

■ 1. The authority citation for part 105 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

§ 105.40 [Amended]

■ 2. In § 105.40, in the paragraph (b), introductory text, after the word "agent", add the words and punctuation ", also known as "agent for service of process"."

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

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

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

■ 4. In § 107.1, revise the definition of "Special permit" to read as follows:

§ 107.1 Definitions.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements). The terms "special permit" and "exemption" have the same meaning for purposes of subchapters A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5128.

* * * * *

■ 5. In § 107.105, revise paragraph (a) to read as follows:

§ 107.105 Application for special permit.

(a) *General.* Each application for a special permit or modification of a special permit must be written in English and submitted for timely consideration at least 120 days before the requested effective date and must—

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov.* Electronic submissions need not be submitted in duplicate;

(2) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application;

(3) Include a designation of agent of service for process in accordance with § 105.40 of this part if the applicant is not a resident of the United States; and

(4) For a manufacturing special permit, include a statement of the name and street address of each facility when manufacturing under the special permit will occur.

* * * * *

■ 6. In § 107.107, revise paragraphs (b)(1), (b)(3), (b)(4), and (b)(5) to read as follows:

§ 107.107 Application for party status.

* * * * *

(b) * * *

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov.* Electronic submissions need not be submitted in duplicate;

* * * * *

(3) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application. In addition, each applicant must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested;

(4) Include a designation of agent of service for process in accordance with § 105.40 of this part if the applicant is not a resident of the United States; and

(5) For a Class 1 material that is forbidden for transportation by aircraft except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), include a certification by the applicant for party status to a special permit to transport such Class 1 material, on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds, that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

* * * * *

■ 7. Revise § 107.109 to read as follows:

§ 107.109 Application for renewal.

(a) Each application for renewal of a special permit or renewal of party status to a special permit must—

(1)(i) Be submitted in duplicate to: Associate Administrator for Hazardous Materials Safety (Attention: Special Permits, PHH–31), Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001;

(ii) Be submitted in duplicate with any attached supporting documentation by facsimile (fax) to: (202) 366–3753 or (202) 366–3308; or

(iii) Be submitted by electronic mail (e-mail) to: *Specialpermits@dot.gov.* Electronic submissions need not be submitted in duplicate;

(2) Identify by number the special permit for which renewal is requested;

(3) State the name, street and mailing addresses, e-mail address (if available), US DOT Registration number (if applicable), and telephone number of the applicant. If the applicant is not an individual, also state the name, street and mailing addresses, e-mail address (if available), and telephone number of an individual designated as an agent of the applicant for all purposes related to the application. In addition, each applicant for renewal of party status must state why party status to the special permit is needed and must submit a certification of understanding of the provisions of the special permit to which party status is being requested;

(4) Include either a certification by the applicant that the original application, as it may have been updated by any application for renewal, remains accurate and complete; or include an amendment to the previously submitted application as is necessary to update and assure the accuracy and completeness of the application, with certification by the applicant that the application as amended is accurate and complete; and

(5) Include a statement describing all relevant shipping and incident experience of which the applicant is aware in connection with the special permit since its issuance or most recent renewal. If the applicant is aware of no incidents, the applicant must so certify. When known to the applicant, the statement should indicate the approximate number of shipments made

or packages shipped, as the case may be, and number of shipments or packages involved in any loss of contents, including loss by venting other than as authorized in subchapter C; and

(6) When a Class 1 material is forbidden for transportation by aircraft, except under a special permit (see Columns 9A and 9B in the table in 49 CFR 172.101), include a certification by the applicant for renewal of party status to a special permit to transport such Class 1 material, on passenger-carrying or cargo-only aircraft with a maximum certificated takeoff weight of less than 12,500 pounds, that no person within the categories listed in 18 U.S.C. 842(i) will participate in the transportation of the Class 1 material.

(b) If at least 60 days before an existing special permit expires the grantee files an application for renewal that is complete and conforms to the requirements of this section, the special permit will not expire until final administrative action on the application for renewal has been taken.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 8. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410, section 4 (28 U.S.C. 2461 Note); Pub. L. 104–134 section 31001.

■ 9. In § 171.8, add a new definition for "Mechanical displacement meter prover" and revise the definition for "Special permit" to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Mechanical displacement meter prover means a mechanical device used in the oilfield service industry consisting of a pipe assembly that is used to calibrate the accuracy and performance of meters that measure the quantities of a product being pumped or transferred at facilities such as drilling locations, refineries, tank farms, and loading racks.

* * * * *

Special permit means a document issued by the Associate Administrator, or other designated Department official, under the authority of 49 U.S.C. 5117 permitting a person to perform a function that is not otherwise permitted under subchapters A or C of this chapter, or other regulations issued under 49 U.S.C. 5101 *et seq.* (e.g., Federal Motor Carrier Safety routing requirements). The terms "special permit" and "exemption" have the same meaning for purposes of subchapters A or C of this chapter or other regulations issued under 49 U.S.C. 5101 through 5128.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 10. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 11. In § 173.3, revise paragraph (d)(6) to read as follows:

§ 173.3 Packaging and exceptions.

* * * * *

(d) * * *

(6) Transportation is authorized by motor vehicle and cargo vessel only.

* * * * *

■ 12. In § 173.5a, revise paragraph (b) to read as follows:

§ 173.5a Oilfield service vehicles and mechanical displacement meter provers.

* * * * *

(b) *Mechanical displacement meter provers.* (1) A mechanical displacement meter prover, as defined in § 171.8 of this subchapter, permanently mounted on a truck chassis or trailer and transported by motor vehicle is excepted from the specification packaging requirements in part 178 of this subchapter provided it—

(i) Contains only the residue of a Division 2.1 (flammable gas) or Class 3 (flammable liquid) material. For liquids, the meter prover must be drained to not exceed 10% of its capacity or, to the extent that draining of the meter prover is impracticable, to the maximum extent practicable. For gases, the meter prover must not exceed 25% of the marked pressure rating;

(ii) Has a water capacity of 3,785 L (1,000 gallons) or less;

(iii) Is designed and constructed in accordance with chapters II, III, IV, V and VI of ASME Standard B31.4 (IBR, see § 171.7 of this subchapter);

(iv) Is marked with the MAWP determined from the pipe component with the lowest pressure rating; and

(v) Is equipped with rear-end protection as prescribed in § 178.337–10(c) of this subchapter and 49 CFR 393.86 of the Federal Motor Carrier Safety Regulations.

(2) The description on the shipping paper for a meter prover containing the residue of a hazardous material must include the phrase "RESIDUE: LAST CONTAINED * * * " before the basic description.

(3) *Periodic test and inspection.* (i) Each meter prover must be externally visually inspected once a year. The external visual inspection must include at a minimum: checking for leakage, defective fittings and welds, defective closures, significant dents and other defects or abnormalities which indicate a potential or actual weakness that could render the meter prover unsafe for transportation; and

(ii) Each meter prover must be pressure tested once every 5 years at not less than 75% of design pressure. The pressure must be held for a period of time sufficiently long to assure detection of leaks, but in no case less than 5 minutes.

(4) In addition to the training requirements in subpart H, the person who performs the visual inspection or pressure test and/or signs the inspection report must have the knowledge and ability to perform them as required by this section.

(5) A meter prover that fails the periodic test and inspection must be rejected and removed from hazardous materials service unless the meter prover is adequately repaired, and thereafter, a successful test is conducted in accordance with the requirements of this section.

(6) Prior to any repair work, the meter prover must be emptied of any hazardous material. A meter prover containing flammable lading must be purged.

(7) Each meter prover successfully completing the external visual inspection and the pressure test must be marked with the test date (month/year), and the type of test or inspection as follows:

(i) V for external visual inspection; and

(ii) P for pressure test.

The marking must be on the side of a tank or the largest piping component in letters 32 mm (1.25 inches) high on a contrasting background.

(8) The owner must retain a record of the most recent external visual inspection and pressure test until the next test or inspection of the same type is successfully completed. The test or inspection report must include the following:

(i) Serial number or other meter prover identifier;

(ii) Type of test or inspection performed;

(iii) Test date (month/year);

(iv) Location of defects found, if any, and method used to repair each defect;

(v) Name and address of person performing the test or inspection;

(vi) Disposition statement, such as "Meter Prover returned to service" or "Meter Prover removed from service".

■ 13. In § 173.12, revise paragraphs (b) and (e), redesignate paragraph (f) as new paragraph (g), and add new paragraph (f) to read as follows:

§ 173.12 Exceptions for shipment of waste materials.

* * * * *

(b) *Lab packs.* (1) Waste materials prohibited by paragraph (b)(3) of this section are not authorized for transport in packages authorized by this paragraph (b). Waste materials classed as Class or Division 3, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1, 8, or 9 are excepted from the specification packaging requirements of this subchapter for combination packagings if packaged in accordance with this paragraph (b) and transported for disposal or recovery by highway, rail or cargo vessel. In addition, a generic description from the § 172.101 Hazardous Materials Table may be used in place of specific chemical names, when two or more chemically compatible waste materials in the same hazard class are packaged in the same outside packaging.

(2) Combination packaging requirements:

(i) *Inner packagings.* The inner packagings must be either glass, not exceeding 4 L (1 gallon) rated capacity, or metal or plastic, not exceeding 20 L (5.3 gallons) rated capacity. Inner packagings containing liquid must be surrounded by a chemically compatible absorbent material in sufficient quantity to absorb the total liquid contents.

(ii) *Outer packaging.* Each outer packaging may contain only one class of waste material. The following outer packagings are authorized except that Division 4.2 Packing Group I materials must be packaged using UN standard steel or plastic drums tested and marked to the Packing Group I performance level for liquids or solids; and bromine pentafluoride and bromine trifluoride may not be packaged using UN 4G fiberboard boxes:

(A) A UN 1A2 or UN 1B2 metal drum, a UN 1D plywood drum, a UN 1G fiber drum, or a UN 1H2 plastic drum, tested and marked to at least the Packing Group III performance level for liquids or solids;

(B) At a minimum, a double-walled UN 4G fiberboard box made out of 500 pound burst-strength fiberboard fitted with a polyethylene liner at least 3 mils (0.12 inches) thick and when filled during testing to 95 percent capacity with a solid material, successfully passes the tests prescribed in §§ 178.603 (drop) and 178.606 (stacking), and is capable of passing the tests prescribed in § 178.608 (vibration) to at least the Packing Group II performance level for liquids or solids; or

(C) A UN 11G fiberboard intermediate bulk container (IBC) or a UN 11HH2 composite IBC, fitted with a polyethylene liner at least 6 mils (0.24 inches) thick, that successfully passes the tests prescribed in Subpart O of Part 178 and § 178.603 to at least the Packing Group II performance level for liquids or solids; a UN 11HH2 is composed of multiple layers of encapsulated corrugated fiberboard between inner and outer layers of woven coated polypropylene.

(iii) The gross weight of each completed combination package may not exceed 205 kg (452 lbs).

(3) *Prohibited materials.* The following waste materials may not be packaged or described under the provisions of this paragraph (b): a material poisonous-by-inhalation, a Division 6.1 Packing Group I material, chloric acid, and oleum (fuming sulfuric acid).

* * * * *

(e) *Segregation requirements.* Waste materials packaged according to paragraph (b) of this section and transported in conformance with this paragraph (e) are not subject to the segregation requirements in §§ 174.81(d), 176.83(b), and 177.848(d) if blocked and braced in such a manner that they are separated from incompatible materials by a minimum horizontal distance of 1.2 m (4 feet) and the packages are loaded at least 100 mm (4 inches) off the floor of the freight container, unit load device, transport vehicle, or rail car. The following conditions specific to incompatible materials also apply:

(1) *General restrictions.* The freight container, unit load device, transport vehicle, or rail car may not contain any Class 1 explosives, Class 7 radioactive material, or uncontainerized hazardous materials;

(2) *Waste cyanides and waste acids.* For waste cyanides stored, loaded, and transported with waste acids:

(i) The cyanide or a cyanide mixture may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging; a cyanide solution may not exceed 2 L (0.6 gallon) per inner packaging and may not exceed 10 L (3.0 gallons) per outer packaging; and

(ii) The acids must be packaged in lab packs in accordance paragraph (b) of this section or in single packagings authorized for the acid in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(3) *Waste Division 4.2 materials and waste Class 8 liquids.* For waste Division 4.2 materials stored, loaded, and transported with waste Class 8 liquids:

(i) The Division 4.2 material may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging; and

(ii) The Class 8 liquid must be packaged in lab packs in accordance with paragraph (b) of this section or in single packagings authorized for the material in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(4) *Waste Division 6.1 Packing Group I, Hazard Zone A material and waste Class 3, Class 8 liquids, or Division 4.1, 4.2, 4.3, 5.1 and 5.2 materials.* For waste Division 6.1 Packing Group I, Hazard Zone A material stored, loaded, and transported with waste Class 8 liquids, or Division 4.2, 4.3, 5.1 and 5.2 materials:

(i) The Division 6.1 Packing Group I, Hazard Zone A material must be packaged in accordance with § 173.226(c) of this subchapter and overpacked in a UN standard steel or plastic drum meeting the Packing Group I performance level;

(ii) The Class 8 liquid must be packaged in lab packs in accordance with paragraph (b) of this section or in single packagings authorized for the material in Column (8B) of the § 172.101 Hazardous Materials Table of this subchapter not to exceed 208 L (55 gallons) capacity.

(iii) The Division 4.2 material may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging;

(iv) The Division 5.1 materials may not exceed 2 kg (4.4 pounds) net weight per inner packaging and may not exceed 10 kg (22 pounds) net weight per outer packaging. The aggregate net weight per freight container, unit load device, transport vehicle, or rail car may not exceed 100 kg (220 pounds);

(v) The Division 5.2 material may not exceed 1 kg (2.2 pounds) net weight per inner packaging and may not exceed 5 kg (11 pounds) net weight per outer packaging. Organic Peroxide, Type B material may not exceed 0.5 kg (1.1 pounds) net weight per inner packaging and may not exceed 2.5 kg (5.5 pounds) net weight per outer packaging. The aggregate net weight per freight container, unit load device, transport vehicle, or rail car may not exceed 50 kg (110 pounds).

(f) *Additional exceptions.* Lab packs conforming to the requirements of this section are not subject to the following:

(1) The overpack marking and labeling requirements in § 173.25(a)(2) of this subchapter when secured to a pallet with shrink-wrap or stretch-wrap except that labels representative of each Hazard Class or Division in the overpack must be visibly displayed on two opposing sides.

(2) The restrictions for overpacks containing Class 8, Packing Group I material and Division 5.1, Packing Group I material in § 173.25(a)(5) of this subchapter. These waste materials may be overpacked with other materials.

(g) *Household waste.* Household waste, as defined in § 171.8 of this subchapter, is not subject to the requirements of this subchapter when transported in accordance with applicable state, local, or tribal requirements.

■ 14. In § 173.13, revise paragraph (c)(1)(ii) to read as follows:

§ 173.13 Exceptions for Class 3, Division 4.1, 4.2, 4.3, 5.1, 6.1, and Classes 8 and 9 materials.

* * * * *

(c) * * *

(1) * * *

(ii) The inner packaging must be placed in a hermetically sealed barrier bag which is impervious to the lading, and then wrapped in a non-reactive absorbent material in sufficient quantity to completely absorb the contents of the inner packaging. Alternatively, the inner packaging may first be wrapped in a non-reactive absorbent material and then placed in the hermetically sealed barrier bag. The combination of inner packaging, absorbent material, and bag must be placed in a snugly fitting metal can.

* * * * *

■ 15. In § 173.31, revise paragraph (d)(1)(vi) to read as follows:

§ 173.31 Use of tank cars.

* * * * *

(d) * * *

(1) * * *

(vi) The pressure relief device, including a careful inspection of the rupture disc in non-reclosing pressure relief devices, for corrosion or damage that may alter the intended operation of the device. The rupture disc is not required to be removed prior to visual inspection if the tank car contains the residue, as defined in § 171.8 of this subchapter, of a Class 8, PG II or PG III material with no subsidiary hazard or the residue of a Class 9 elevated temperature material;

* * * * *

■ 16. In § 173.306, redesignate paragraph (k) as paragraph (l) and add new paragraph (k) to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(k) *Aerosols for recycling or disposal.* Aerosols, as defined in § 171.8 of this subchapter, containing a limited quantity which conforms to the provisions of paragraph (a)(3), (a)(5), (b)(1), (b)(2), or (b)(3) of this section are not subject to the 30 kg (66 pounds) gross weight limitation when transported by motor vehicle for purposes of recycling or disposal under the following conditions:

(1) The strong outer packaging and its contents must not exceed a gross weight of 500 kg (1,100 pounds);

(2) Each aerosol container must be secured with a cap to protect the valve stem or the valve stem must be removed; and

(3) The packaging must be offered for transportation or transported by—

(i) Private or contract motor carrier; or

(ii) Common carrier in a motor vehicle under exclusive use for such service.

(l) For additional exceptions, also see § 173.307.

■ 17. Add new § 173.310 to read as follows:

§ 173.310 Exceptions for radiation detectors.

Radiation detectors, radiation sensors, electron tube devices, or ionization chambers, herein referred to as "radiation detectors," that contain only Division 2.2 gases, are excepted from the specification packaging in this subchapter and, except when transported by air, from labeling and placarding requirements of this subchapter when designed, packaged, and transported as follows:

(a) Radiation detectors must be single-trip, hermetically sealed, welded metal inside containers that will not fragment upon impact.

(b) Radiation detectors must not have a design pressure exceeding 4.83 MPa (700 psig) and a capacity exceeding 355 fluid ounces (641 cubic inches). They must be designed and fabricated with a burst pressure of not less than three times the design pressure if the radiation detector is equipped with a pressure relief device, and not less than four times the design pressure if the detector is not equipped with a pressure relief device.

(c) Radiation detectors must be shipped in a strong outer packaging capable of withstanding a drop test of at least 1.2 meters (4 feet) without breakage of the radiation detector or rupture of the outer packaging. If the radiation detector is shipped as part of other equipment, the equipment must be packaged in strong outer packaging or the equipment itself must provide an equivalent level of protection.

(d) Emergency response information accompanying each shipment and available from each emergency response telephone number for radiation detectors must identify those receptacles that are not fitted with a pressure relief device and provide appropriate guidance for exposure to fire.

PART 174—CARRIAGE BY RAIL

■ 18. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 19. In § 174.81, revise paragraph (c) to read as follows:

§ 174.81 Segregation of hazardous materials.

* * * * *

(c) Except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 20. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 21. In § 176.83, revise paragraph (a)(11) to read as follows:

§ 176.83 Segregation.

(a) * * *

(11) Certain exceptions from segregation for waste cyanides or waste cyanide mixtures or solutions transported with acids; waste Division 4.2 materials transported with Class 8 liquids; and waste Division 6.1 Packing Group I, Hazard Zone A material transported with waste Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material are set forth in § 173.12(e) of this subchapter.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 22. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 23. In § 177.848, revise paragraph (c) to read as follows:

§ 177.848 Segregation of hazardous materials.

* * * * *

(c) In addition to the provisions of paragraph (d) of this section and except as provided in § 173.12(e) of this subchapter, cyanides, cyanide mixtures or solutions may not be stored, loaded and transported with acids; Division 4.2 materials may not be stored, loaded and transported with Class 8 liquids; and Division 6.1 Packing Group I, Hazard Zone A material may not be stored, loaded and transported with Class 3 material, Class 8 liquids, and Division 4.1, 4.2, 4.3, 5.1 or 5.2 material.

* * * * *

PART 179—SPECIFICATIONS FOR TANK CARS

■ 24. The authority citation for part 179 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 25. Revise § 179.13 to read as follows:

§ 179.13 Tank car capacity and gross weight limitation.

Except as provided in this section, tank cars, built after November 30, 1970, or any existing tank cars that are converted, may not exceed 34,500 gallons (130,597 L) capacity or 263,000 pounds (119,295 kg) gross weight on rail.

(a) For other than tank cars containing poisonous-by-inhalation material, a tank car may be loaded to a gross weight on rail of up to 286,000 pounds (129,727 kg) upon approval by the Associate Administrator for Safety, Federal Railroad Administration (FRA). Tank cars must conform to the conditions of the approval and must be operated only under controlled interchange conditions agreed to by participating railroads.

(b) Tank cars containing poisonous-by-inhalation material meeting the applicable authorized tank car specifications listed in § 173.244(a)(2) or (3), or § 173.314(c) or (d) may have a gross weight on rail of up to 286,000 pounds (129,727 kg). Tank cars exceeding 263,000 pounds and up to 286,000 pounds gross weight on rail must meet the requirements of AAR Standard S–286, Free/Unrestricted Interchange for 286,000 lb Gross Rail Load Cars (IBR; see § 171.7 of this subchapter). Any increase in weight above 263,000 pounds may not be used to increase the quantity of the contents of the tank car.

Issued in Washington, DC on May 7, 2010, under authority delegated in 49 CFR part 1.

Cynthia L. Quarterman,

Administrator.

[FR Doc. 2010–11570 Filed 5–13–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 090130104–91027–02]

RIN 0648–XW12

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions and Observer Requirements in Purse Seine Fisheries for 2009–2011

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

ACTION: Rule; announcement of date of applicability.

SUMMARY: NMFS announces that the catch retention requirements for U.S. purse seine fishing vessels operating in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area) will be applicable from 00:00 on June 14, 2010, Universal Coordinated Time (UTC). In accordance with regulations, the requirements will be applicable until 24:00 on December 31, 2011, UTC, or until nullified by a notification in the **Federal Register.** This action is being taken to implement, for U.S. fishing vessels, the catch retention measures adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) at its regular annual session in December 2008. The action will have the effect of requiring that U.S. purse seine vessels do not discard any bigeye tuna, yellowfin tuna, or skipjack tuna at sea within the Convention Area, except in certain specified circumstances.

DATES: The date of applicability of 50 CFR 300.223(d) is 00:00 on June 14, 2010, UTC, and the requirements of that paragraph will be applicable until 24:00 on December 31, 2011, UTC, or until nullified by a notification in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS Pacific Islands Regional Office, 808–944–2219.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR 300.223(d)(1) provide for NMFS to publish a notification in the **Federal Register** announcing the "effective date" of the catch retention requirements set forth at 50 CFR 300.223(d)(3), which apply to U.S. fishing vessels equipped with purse seine gear operating in the Convention Area. The phrase "effective date" as used in 50 CFR 300.223(d) is synonymous with the "date of applicability" in this notice of the catch retention requirements. The term "date of applicability" is used here to clarify that the regulation, including 50 CFR 300.223(d)(1), became effective (but not yet applicable) on August 3, 2009. The regulations at 50 CFR 300.223(d) establish the catch retention requirements adopted by the WCPFC. The notification by NMFS is to be based on NMFS' determination as to whether an adequate number of WCPFC observers is available for the purse seine vessels of all members of the WCPFC as necessary to ensure compliance by such vessels with the catch retention requirements established by the WCPFC. Based upon information provided by the WCPFC Secretariat, NMFS has determined that an adequate number of WCPFC observers is currently available for placement aboard purse seine vessels of all WCPFC members. Accordingly, NMFS announces through this document that the date of applicability of the catch retention requirements is 00:00 on June 14, 2010, UTC. In accordance with 50 CFR 300.223(d)(3), the requirements will be applicable until 24:00 on December 31, 2011, UTC, or until they are nullified by a notification in the **Federal Register** pursuant to 50 CFR 300.223(d)(2).

Further information about the Convention, the catch retention requirements established by the WCPFC, and the basis for the catch retention requirements for U.S. fishing vessels set forth at 50 CFR 300.223(d) can be found in the proposed and final rules to establish the requirements for U.S. fishing vessels (74 FR 26160, June 1, 2009; and 74 FR 38544, August 4, 2009; respectively).

Classification

This action is required by 50 CFR 300.223(d) and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the NMFS Assistant Administrator for Fisheries finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on this action, as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary as NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria for implementing the catch retention requirement (proposed rule published at 74 FR 26160, June 1, 2009, and final rule published at 74 FR 38544, August 4, 2009), and all that remains is to notify the public of the date of applicability of the requirement. In addition, prior notice and comment would be contrary to the public interest because it would unnecessarily delay implementation of the catch retention requirement, an international obligation of the United States under the Convention, after a determination that there is a sufficient number of observers for placement aboard purse seine vessels of WCPFC members.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: May 7, 2010.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2010–11348 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622, 635, 640, and 654

[Docket No. 100510220–0221–01]

RIN 0648–AY90

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Emergency Fisheries Closures in the Southeast Region Due to the Deepwater Horizon Oil Spill; Amendment 2

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

ACTION: Emergency rule; amendment; request for comments.

SUMMARY: NMFS issues this emergency rule to close portions of the Gulf of Mexico (Gulf), South Atlantic, and Caribbean exclusive economic zones (Southeast EEZ) to all fishing as necessary when new information becomes available, to respond to the evolving nature of the Deepwater Horizon oil spill. The closed portions of the Southeast EEZ will be updated on a regular basis and announced to the public via NOAA Weather Radio, fishery bulletin, and NOAA Web site updates. The updated closed area may also be obtained by calling the NMFS Southeast Regional Office, Sustainable Fisheries Division at 727–824–5305. This rule replaces the existing closure rule, which became effective May 7, 2010, and will remain in effect until terminated by subsequent rulemaking, which will occur once the existing emergency conditions from the oil spill no longer exist. Fish and shellfish in oil affected waters may be contaminated with levels of hydrocarbons above baseline levels. The U.S. Food and Drug Administration (FDA) considers such seafood to be adulterated. The intent of this emergency rule is to prohibit the harvest of adulterated seafood and for public safety.

DATES: This rule is effective May 11, 2010. Comments may be submitted through June 10, 2010.

ADDRESSES: You may submit comments on this rule, identified by "0648–AY90" by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.*
- *Fax:* 727–824–5308; Attention: Anik Clemens.
- *Mail:* Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: No comments will be posted for public viewing until after the comment period. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* enter "NOAA–NMFS–2010–0103" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the environmental assessment, which includes a finding of no significant impact, may be obtained from Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701–5505; telephone: 727–824–5305; e-mail: *cynthia.meyer@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Anik Clemens, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *anik.clemens@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides the legal authority for the promulgation of emergency regulations under section 305(c).

Background

NMFS responded to the April 20, 2010 Deepwater Horizon oil spill by closing a portion of the Gulf EEZ to all fishing through an emergency rule effective May 2, 2010 (75 FR 24822, May 6, 2010). The closure covered an area of the Gulf approximately 6,817 square miles (17,655 square km), or 3 percent of the total area of the Gulf EEZ. Oil continued to leak from the Deepwater Horizon incident at a rate of approximately 5,000 barrels (210,000 gallons, or 794,936.5 liters) per day. Due to the evolving nature of the oil spill, NMFS revised the closed area in a second emergency rule that became effective May 7, 2010 and will publish May 12, 2010. This second emergency rule closed an area of the Gulf approximately 10,807 square miles (27,989 square km), or 4.5 percent of the total area of the Gulf EEZ, therefore, 95.5 percent of the Gulf remains open.

Need for This Emergency Rule

The oil spill continues to shift locations in the Gulf of Mexico and could reach South Atlantic and/or Caribbean Federal waters. Wind speed and direction, currents, waves, and other weather patterns lead to changes in oil location. As the weather conditions controlling the movement of the oil change, the oil could move in directions not initially predicted. This emergency rule allows NMFS to make more timely revisions to the area closed to all fishing. This will become necessary as new information on the location of the Deepwater Horizon oil spill becomes available. Continuing to follow the process of revising the closed area through publication of successive emergency rules does not allow for timely modification of the closure and

could lead to possible harvest of adulterated seafood products from an area where oil is actually present. Sale of adulterated seafood is not in the public interest. This rule will remain in effect until terminated by subsequent rulemaking, which will occur once the existing emergency conditions from the oil spill no longer exist.

Revising the Closed Area

NMFS will revise the closed area to all fishing in the Southeast EEZ based on the current location of the oil spill. Wind speed and direction, currents, waves, and other weather patterns lead to changes in oil location. Closed areas may be reopened if NMFS has determined that oil has never been in that area. Closed areas may also be reopened if NMFS has determined that fish and other marine species located in that area have returned to their baseline levels of hydrocarbons. NMFS will announce the revised closed area via NOAA Weather Radio, fishery bulletin, and NOAA Web site updates. The updated closed area may also be obtained by calling the NMFS Southeast Regional Office, Sustainable Fisheries Division at 727–824–5305. In order to give fishermen enough time to come into compliance with the revised closed area, NMFS will announce the revised closed area daily at 12 noon, eastern time (11 a.m. central time). The revised closed area will become effective at 6 p.m. eastern time (5 p.m. central time). If no changes are made to the closed area on a given day, that will be announced as well. To obtain the coordinates of the revised closed area, go to the following Web site: *http://sero.nmfs.noaa.gov,* or call the NMFS Southeast Regional Office, Sustainable Fisheries Division at 727–824–5305. The Sustainable Fisheries Division After-Hours message includes the updated coordinates of the closure.

NMFS continues to assess the impacts this oil spill is having on the fishing industry, as well as on the fish and other marine species that inhabit these waters. Fish and shellfish in oil affected waters may be contaminated with levels of hydrocarbons above baseline levels. The FDA considers such seafood to be adulterated, as defined under § 402(a) of the Food, Drug, and Cosmetic Act of 1938. The intent of this emergency rule is to prohibit the harvest of adulterated seafood.

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c).

This rulemaking is a "significant regulatory action" under section 3(f) of Executive Order 12866. The Department of Commerce has notified the Office of Management and Budget Office of Information and Regulatory Affairs (OMB/OIRA) under section 6(a)(3)(D) of the Executive Order, and OMB/OIRA agrees, that NOAA is promulgating this action in an emergency situation and that normal Executive Order review is not practicable at this time. For this reason, OMB/OIRA has not reviewed this notice under EO 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and opportunity for public comment would be impracticable and contrary to the public interest, as delaying action constitutes a public safety concern. NMFS is implementing this closure in response to the oil spill to help prevent any potential injuries to fishermen in the area. Any delay of implementation of this fisheries closure could constitute unsafe fishing conditions for the fishing industry. In addition, any delay would pose a clear risk of the lawful harvest of adulterated product, which is not in the public interest. Thus, the AA finds good cause to waive prior notice and the opportunity for public comment.

For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this rule under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subjects

50 CFR Part 622

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

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Imports, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

50 CFR Part 654

Fisheries, Fishing.

Dated: May 11, 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 622, 635, 640, and 654 are amended as follows:

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

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

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

■ 2. In § 622.7, paragraph (jj) is added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(jj) Harvest a Caribbean spiny lobster, effective May 11, 2010, in the portion of the Caribbean EEZ designated in § 622.33(c), due to the Deepwater Horizon oil spill.

■ 3. In § 622.33, paragraph (c) is added to read as follows:

§ 622.33 Caribbean EEZ seasonal and/or area closures.

* * * * *

(c) *Caribbean EEZ area closure related to Deepwater Horizon oil spill.* Effective [May 11, 2010, all fishing is prohibited in the portion of the Caribbean EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.*

■ 4. In § 622.34, paragraph (o) is removed and reserved and paragraph (n) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(n) *Gulf EEZ area closure related to Deepwater Horizon oil spill.* Effective [May 11, 2010, all fishing is prohibited in the portion of the Gulf EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.*

* * * * *

■ 5. In § 622.35, paragraph (m) is added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(m) *Atlantic EEZ area closure related to Deepwater Horizon oil spill.* Effective May 11, 2010, all fishing is prohibited in the portion of the South Atlantic EEZ identified in the map shown on the NMFS Web site: *http://sero.nmfs.noaa.gov/deepwater_horizon_oil_spill.htm.*

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 6. The authority citation for part 635 continues to read as follows:

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

■ 7. In § 635.21, paragraph (a)(4)(vi) is removed and reserved and paragraph (a)(4)(vii) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *

(4) * * *

(vii) *Caribbean, Gulf, and South Atlantic EEZ area closures related to Deepwater Horizon oil spill.* Effective May 11, 2010, no vessel issued, or required to be issued, a permit under this part, may fish or deploy any type of fishing gear in the areas designated at §§ 622.33(c), 622.34(n), or 622.35(m) of this chapter.

* * * * *

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

■ 8. The authority citation for part 640 continues to read as follows:

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

■ 9. In § 640.7, paragraph (x) is added to read as follows:

§ 640.7 Prohibitions.

* * * * *

(x) Harvest a spiny lobster, effective May 11, 2010, in the portion of the Gulf or South Atlantic EEZ designated in § 622.34(n) or § 622.35(m) of this chapter, respectively, due to the Deepwater Horizon oil spill.

PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

■ 10. The authority citation for part 654 continues to read as follows:

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

■ 11. In § 654.7, paragraph (r) is removed and reserved and paragraph(s) is added to read as follows:

§ 654.7 Prohibitions.

* * * * *

(s) Pull or tend a stone crab trap, effective May 11, 2010, in the portion of the Gulf EEZ designated in § 622.34(n) of this chapter, due to the Deepwater Horizon oil spill.

[FR Doc. 2010–11601 Filed 5–11–10; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100105009–0167–02]

RIN 0648–AY51

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fisheries; 2010 Atlantic Deep-Sea Red Crab Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2010 Atlantic deep-sea red crab fishery, including a target total allowable catch (TAC) and a fleet-wide days-at-sea (DAS) allocation. The intent of this rulemaking is to specify the target TAC and other management measures in order to manage the red crab resource for fishing year (FY) 2010.

DATES: This rule is effective on June 14, 2010.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Paul Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The specifications document is also accessible via the Internet at *http://www.nefmc.org*. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298, and on the Northeast Regional Office's website at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

SUPPLEMENTARY INFORMATION:

Background

The Red Crab FMP includes a specification process that requires the New England Fishery Management Council (Council) to recommend, on a triennial basis, a target TAC and a fleet DAS allocation that is consistent with that target TAC. In FY 2009, NMFS published a temporary emergency rule to modify the 2009 target TAC and fleet DAS to be consistent with the recommendations of the Data Poor Stocks Working Group and Review Panel (Working Group). The Working Group recommended a reduction in the maximum sustainable yield (MSY) to 3.75–4.19 million lb (1,700–1,900 mt). In keeping with the FMP in setting the target TAC at 95 percent of MSY, NMFS implemented a target TAC of 3.56 million lb (1,615 mt), and reduced the fleet DAS allocation from 780 DAS to 582 DAS. The fleet DAS allocation is divided equally among the vessels active in the fishery, which can vary from year to year. For FY 2009, the allocation was initially divided among four vessels; however, NMFS allowed one of the four vessels to opt out of the fishery for the FY and reallocated the fleet DAS to the remaining three vessels. It is expected that four vessels will be active in the red crab fishery in FY 2010. The Council has requested waiving the 6–month notification requirement for opting out of the red crab fishery for FY 2010.

In September 2009, the Council's Scientific and Statistical Committee (SSC) accepted the Working Group's recommendation that MSY for red crab should be set within the range 3.75–4.19 million lb (1,700–1,900 mt), and recommended that the interim acceptable biological catch (ABC) be set commensurate with recent catch. The SSC determined recent catch to be the amount of red crab landed in FY 2007, which was 2.83 million lb (1,284 mt). The landings in FY 2007 were the lowest since the implementation of the FMP in 2002. Despite the recommendation from the SSC that the target TAC not exceed an ABC of 2.83 million lb (1,284 mt), the Council recommended a target TAC and fleet DAS allocation equal to the 2009 emergency rule, 3.56 million lb (1,615 mt) and 582 DAS, respectively. The Council based its target TAC on the MSY advice from the Working Group, rather than that recommended by the SSC, because the Council considered the advice of the Working Group to provide an acceptably low risk of avoiding overfishing. The Council further requested the SSC to reconsider its recommendation for red crab.

In response to this request from the Council to reconsider its recommendation, the SSC met on March 16–17, 2010, and determined that the interim ABC for red crab should be revised. The SSC has determined that

the model results from the Working Group are an underestimate of MSY, but could not determine by how much. The SSC now recommends that the ABC for red crab be set equal to long-term average landings (3.91 million lb; 1,775 mt). The SSC considers this level of landings to be sustainable and comfortably below the actual MSY level.

Final Specifications

In the proposed rule, NMFS proposed setting the target TAC equal to the original SSC recommendation because this level would be consistent with the best available science, but noted that if the SSC revised its ABC recommendation prior to the publication of the final specifications for FY 2010, NMFS would consider revising the specifications to the levels recommended by the Council. However, the red crab regulations at § 648.260 provided no explicit authority for NMFS to have proposed specifications that differed from the Council's recommendation. Accordingly, based on this regulatory constraint, because the specifications recommended by the Council exceeded the ABC recommended by the Council's SSC, had the ABC recommendation of the SSC not changed, NMFS would have had no alternative but to disapprove the Council's proposed specifications in the final rule. But, based on the new ABC recommendation by the Council's SSC, NMFS is able to approve the FY 2010 specifications, which are now consistent with the best scientific information available, at the level recommended by the Council.

Therefore, this final rule adopts the Council's recommended target TAC of 3.56 million lb (1,615 mt) and DAS allocation of 582 DAS, instead of the proposed target TAC of 2.83 million lb (1,284 mt) and 464 fleet DAS allocation. Although this is consistent with the Council's recommendation, it remains less than the most recent ABC recommendation by the SSC because, as explained above, the red crab specification regulations do not grant NMFS the authority to implement a target TAC different than that recommended by the Council. As an alternative, the red crab regulations at § 648.260(a)(3) authorize NMFS to make an in-season adjustment of the specifications, after consultation with the Council and an opportunity for additional public comment.

Other Measures

NMFS is also adopting the Council's request to waive the 6–month notification requirement for vessels to opt out of the red crab fishery for FY 2010. Currently, vessel owners must inform NMFS of their intention to opt out of the fishery 6 months prior to the start of the next fishing; i.e., by September 1. NMFS is adopting the Council's request because the specification decisions were not made until after September.

As described in the FMP, and specified at § 648.260(b)(2), if the effective date of a final rule falls after the start of the FY on March 1, fishing may continue under the specifications for the previous year. Because the specifications that were put in place under the emergency action expired on February 28, 2010, the target TAC and DAS allocation reverted to those previously specified in the regulations (5.928 million lb (2,688 mt) and 780 DAS, respectively). However, any DAS used by a vessel on or after March 1 will be counted against the DAS allocation the vessel receives for FY 2010.

Comment and Response

One comment was received from the Atlantic Red Crab Company, requesting NMFS to adopt the SSC's revised ABC recommendation of 3.91 million lb (1,775 mt) as the target TAC, which would have a positive economic impact on the red crab industry. As stated above, NMFS does not have the regulatory authority to implement a target TAC that is greater than the Council's recommended level; however, the regulations do provide for an in-season adjustment of the specifications, after consultation with the Council. Therefore, at this time, NMFS is implementing the specifications recommended by the Council. Following an opportunity to consult with the Council, NMFS may consider a mid-year adjustment to the specifications.

One comment was also received from the Council requesting NMFS to adopt its recommended specifications of 3.56 million lb (1,615 mt) based on the SSC's revised recommendation for ABC, and noting that the Council intends to consider recommending that the target TAC be adjusted according to the procedures laid out in the FMP at its earliest opportunity. This final rule adopts the Council's recommended target TAC of 3.56 million lb. As stated above, NMFS may consider a mid-year adjustment to the specifications.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Atlantic Deep-Sea Red Crab FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/Regulatory Impact Review/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for these specifications are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Two comments were submitted on the proposed rule; while they were not specific to the IRFA, one did comment on the economic effects of the rule. NMFS has responded to the comments in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

Description and Estimated of Number of Small Entities to Which the Rule will Apply

There are no large entities that participate in this fishery, as defined in section 601 of the RFA; therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available, and individual vessel profitability cannot be determined directly; therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector are the owners of vessels issued limited access red crab vessel permits. There are five limited access red crab vessel permits, although only three vessels participated in the fishery in FY 2009.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of the target TAC and corresponding fleet DAS allocation is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The target TAC contained in this final rule is equal to the FY 2009 target TAC, and roughly 20 percent higher than actual FY 2009 commercial red crab landings. Whereas a limited market has been responsible for the shortfall in landings compared to the target TAC, red crab vessel owners have invested heavily in a new processing plant in New Bedford, MA, and have developed new marketing outlets with hopes to increase demand for their product. Further, the Council considered three alternatives, and this rule implements the alternative that has the highest target TAC and DAS allocation that is consistent with both the FMP and the best available science.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the Atlantic red crab fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see ADDRESSES) and at the following website: *http://www.nero.noaa.gov*.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: May 10, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.4, paragraph (a)(13)(i)(B)(*2*)(*ii*) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(13) * * *

(i) * * *

(B) * * *

(*2*) * * *

(*ii*) A limited-access permit holder may choose to declare out of the red crab fishery for the next fishing year by submitting a binding declaration on a form supplied by the Regional Administrator, which must be received by NMFS at least 180 days before the last day of the current fishing year. NMFS will presume that a vessel intends to fish during the next fishing year unless such binding declaration is received at least 180 days before the last day of the current fishing year. Any limited-access permit holder who has submitted a binding declaration must submit either a new binding declaration or a renewal application for the year after which they were declared out of the fishery. For the 2010 fishing year only, the 6–month notification requirement is waived, and a vessel may be declared out of the fishery at any time prior to fishing under a limited access red crab DAS during the 2010 fishing year.

* * * * *

■ 3. In § 648.260, paragraph (a)(1) is revised to read as follows:

§ 648.260 Specifications.

(a) * * *

(1) Target total allowable catch. The target TAC for each fishing year will be 3.56 million lb (1,615 mt), unless modified pursuant to this paragraph.

* * * * *

■ 4. In § 648.262, paragraph (b)(2) is revised to read as follows:

§ 648.262 Effort-control program for red crab limited access vessels.

* * * * *

(b) * * *

(2) For fishing years 2010 and thereafter. Each limited access permit holder shall be allocated 116 DAS unless one or more vessels declares out of the fishery consistent with § 648.4(a)(13)(i)(B)(*2*)(*ii*) or the TAC is adjusted consistent with § 648.260.

* * * * *

[FR Doc. 2010–11613 Filed 5–13–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100204079–0199–02]

RIN 0648–XQ49

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2010 Atlantic Bluefish Specifications

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

ACTION: Final rule; final specifications for the 2010 Atlantic bluefish fishery.

SUMMARY: NMFS issues final specifications for the 2010 Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the U.S. The intent of these specifications is to establish the allowable 2010 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP).

DATES: Effective June 14, 2010, through December 31, 2010.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment (EA) and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov*. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. The FRFA consists of the IRFA, public comments and responses contained in this final rule, and a summary of impacts and alternatives contained in this final rule. The small entity compliance guide is available from Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298, and on the Northeast Regional Office's website at *http://www.nero.noaa.gov*.

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

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the FMP is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160.

The FMP requires the Council to recommend, on an annual basis, a total allowable catch (TAC) and total allowable landings (TAL) that will control fishing mortality. Estimates of stock size, coupled with the target F, allow for a calculation of the TAC. Projected bluefish discards are subtracted from the TAC to calculate the TAL that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota (allocated to the states from Maine to Florida in specified shares) and a coastwide recreational harvest limit (RHL). The Council may also specify a research set-aside (RSA) quota, which is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the Northeast Regional Administrator (RA). Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

In July 2009, the Monitoring Committee and the SSC met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2010. Based on the updated 2008 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: B_{2008} = 360.957 million lb (163,727 mt) is greater than the minimum biomass threshold, ½ B_{MSY} = 162 million lb (73,526 mt), and is actually above the long-term biomass target (B_{MSY}). Biomass has been above the target since 2007, and the stock was declared rebuilt in 2009, satisfying the rebuilding program requirement to achieve rebuilding by 2010 that was established in Amendment 1 to the FMP. Estimates of F have declined from 0.41 in 1991 to 0.12 in 2008. The updated model results also conclude that the Atlantic bluefish stock is not experiencing overfishing; i.e., the most recent F (F_{2008} = 0.12) is less than the maximum F overfishing threshold specified by the 41st Stock Assessment Review Committee (F_{MSY} = 0.19). Detailed background information regarding the stock assessment process for bluefish and the development of the 2010 specifications for this fishery was provided in the proposed specifications (75 FR 10450, March 8, 2010), and will not be repeated here.

Final Specifications

2010 TAL

During the rebuilding period, the Council was required to set a TAC consistent with the prescribed F for a given phase in the rebuilding period, or the status quo F, whichever was less. According to Amendment 1, once the stock is recovered, the TAC could be set to achieve an F_{target} defined as 90 percent of F_{MSY} (0.19). At its July 2009 meeting, the SSC noted that sparse age composition data, the lack of sampling by fishery independent trawl and seine surveys, and the uncertainty behind recreational catch estimates were sources of scientific uncertainty associated with the bluefish stock assessment. Therefore, the Monitoring Committee and the SSC recommended a TAC for 2010 at a level consistent with the maximum allowable rebuilding F (0.15), rather than increasing F_{target} to the FMP-prescribed level for a recovered stock (F = 0.17). The Council subsequently approved the Monitoring Committee and SSC's recommendations at its August 2009 meeting. Therefore, the Council recommended a coastwide TAC of 34.376 million lb (15,593 mt) to achieve the target F (0.15) in 2010 and to ensure that the bluefish stock continues to remain above B_{MSY}).

The TAL for 2010 is derived by subtracting an estimate of discards of 5.112 million lb (2,319 mt), the average discard level from 2006–2008, from the TAC. After subtracting estimated discards, the 2010 TAL would be 29.264 million lb (13,274 mt), which is slightly less than the 2009 TAL of 29.356 million lb (13,316 mt) due to an increase in discard estimates in recent years. Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2010 would be 4.975 million lb (2,257 mt), and the RHL would be 24.289 million lb (11,017 mt) in 2010. In addition, up to 3 percent of the TAL may be allocated as an RSA quota. The discussion below describes the recommended allocation of TAL between the commercial and recreational sectors, and the proportional adjustments to account for the recommended bluefish RSA quota.

Final Commercial Quota, RHL, and RSA Quota

The FMP stipulates that in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt) the commercial quota may be increased up to 10.500 million lb (4,763 mt) as long as the recreational fishery is not projected to land more than 83 percent of the TAL in the upcoming fishing year, and the combined projected recreational landings and commercial quota would not exceed the TAL. At the Monitoring Committee meeting in July 2009, Council staff attempted to estimate projected recreational landings for the 2010 fishing year by using a simple linear regression of the recent (2002–2008) temporal trends in recreational landings. However, at that time, only 2009 Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 2 were available for 2009, and a reliable estimate of 2009 recreational catch could not be generated. Therefore, the Council postponed this type of projection until more landings data for the 2009 fishing year became available. Recreational landings for 2008 (18.9 million lb, 8,573 mt) were applied to 2010 for an initial calculation of the RHL. As such, it was expected that a transfer of up to 5.387 million lb (2,444 mt) to the commercial sector could be approved. This represents the preferred alternative recommended by the Council in its specifications document.

Northeast Regional Office (NERO) staff recently updated the recreational harvest projection using 2009 MRFSS data from Waves 1 through 4 and 6.

Wave 5 estimates for 2009 are not available at this time. Using the best available data, the 2009 recreational harvest was estimated to be 15.391 million lb (6,981 mt), or 53 percent of the TAL. Consistent with the Council's recommendation, this would allow for a transfer of 5.387 million lb (2,444 mt) from the recreational sector to the commercial fishery, increasing the commercial quota from 4.975 million lb (2,257 mt) to 10.362 million lb (4,700 mt). This commercial quota is 5 percent greater than the 2009 commercial quota and 71 percent greater than actual 2009 commercial landings.

A request for research proposals for the 2010 Mid-Atlantic RSA Program was published on January 2, 2009 (74 FR 72). Two research projects that would utilize bluefish RSA quota have been approved and forwarded to NOAA's Grants Management Division. A 419,750–lb (190,395–kg) RSA quota is approved for use by these projects during 2010. This final rule does not represent NOAA's approval of any RSA quota-related grant award, which will be included in a separate action. Consistent with the allocation of the bluefish RSA quota, the final commercial quota for 2010 is 10,213,222 lb (4,633 mt), the final RHL is 18,630,842 lb (8,451 mt), and the RSA quota is 419,750 lb (190,395 kg).

Recreational Possession Limit

NMFS has approved the Council's recommendation to maintain the current recreational possession limit of 15 fish per person to achieve the RHL.

Final State Commercial Allocations

The final state commercial allocations for the 2010 commercial quota are shown in Table 1, based on the percentages specified in the FMP. In accordance with the regulations at ' 648.160(e)(2), NMFS shall deduct any overages of the commercial quota landed in any state from that state's annual quota for the following year. Updated landings information for fishing year 2009, through December 31, 2009, indicate no commercial bluefish quota overages.

TABLE 1. FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2010 (INCLUDING RSA DEDUCTIONS).

State	Percent Share	Final State Quotas (lb)(including RSA deductions)	Final State Quotas (kg)(including RSA deductions)
ME	0.6685	68,275	30,969
NH	0.4145	42,334	19,202
MA	6.7167	685,991	311,161
RI	6.8081	695,326	315,395
CT	1.2663	129,330	58,663
NY	10.3851	1,060,653	481,104
NJ	14.8162	1,513,211	686,381
DE	1.8782	191,825	87,010
MD	3.0018	306,580	139,063
VA	11.8795	1,213,280	550,334
NC	32.0608	3,274,441	1,485,261
SC	0.0352	3,595	1,631
GA	0.0095	970	440
FL	10.0597	1,027,419	466,030
Total	100.0001	10,213,222	4,632,644

Comments and Responses

The public comment period for the proposed rule ended on March 23, 2010. One comment was received from a private citizen. A summary and response to the concerns raised by the commenter are included below.

Comment 1: The commenter suggested that quotas should be cut, based on the notion that commercial fisheries are causing bluefish, and other species, to become extinct.

Response: The commenter provided no scientific basis for the suggestion that bluefish are at risk of extinction. The reasons presented by the Council and NMFS for recommending the final 2010 bluefish specifications are based on the best scientific information available, and are discussed in the preambles to both the proposed and final rule. Bluefish are not considered overfished or subject to overfishing, and biomass appears to be at its highest level in 20 years. Sufficient analysis and scientific justification for NMFS's action in this final rule are contained within the supporting documents.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Assistant Administrator for Fisheries, NOAA, has determined that this rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

The FRFA included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA and a summary of the analyses completed to support the action. No significant issues were raised by the public comment in response to the IRFA. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are contained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

One comment was submitted on the proposed rule but did not raise specific issues regarding the economic analyses summarized in the IRFA or the economic impacts of the rule more generally. No changes were made to the final rule as a result of the comment received. For a summary of the comment received, and the response to that comment, refer to the "Comments and Responses" section of this preamble.

Description and Estimate of Number of Small Entities to Which the Rule will Apply

The Small Business Administration (SBA) defines small businesses in the commercial fishing and recreational fishing sectors as firms with receipts (gross revenues) of up to $4.0 million and $6.5 million, respectively. No large entities participate in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate effects on small versus large entities. The categories of small entities likely to be affected by this action include commercial and party/charter vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters.

The Council estimates that the proposed 2010 specifications could affect those vessels that were actively involved (landed more than 1 lb (0.45 kg) of bluefish) in the bluefish fishery in 2008. Northeast dealer reports identified 624 vessels that landed bluefish in states from Maine to North Carolina. South Atlantic Trip Ticket reports identified 908 vessels that landed bluefish in North Carolina and 685 vessels that landed bluefish on Floridas east coast (double counting is possible because some of these vessels were also identified in the Northeast dealer data). Bluefish landings in South Carolina and Georgia were near zero in 2008, representing a negligible proportion of the total bluefish landings along the Atlantic Coast in 2008. The Council also estimates that approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish in recent years.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The commercial quota contained in this final rule is 5 percent higher than the 2009 commercial quota, and 71 percent higher than actual 2009 commercial bluefish landings. All affected states will receive increases in their individual commercial quota allocations in comparison to their respective 2009 individual state allocations, which is expected to result in positive economic impacts for commercial bluefish fishery participants.

The RHL contained in this final rule is approximately 5 percent lower than the RHL in 2009. The small reduction in RHL is a reflection of a declining trend in recreational bluefish harvest in recent years. Since the 2010 RHL is greater than the total projected recreational bluefish harvest for 2009, it does not constrain recreational bluefish harvest below a level that the fishery is anticipated to achieve. The possession limit for bluefish will remain at 15 fish per person, so there should be no impact on demand for party/charter vessel fishing and, therefore, no impact on revenues earned by party/charter vessels. No negative economic impacts on the recreational fishery are anticipated.

The impacts on revenues associated with the proposed RSA quota were analyzed and are expected to be minimal. Assuming that the full RSA quota of 419,750 lb (190,395 kg) is landed and sold to support the proposed research projects (a supplemental finfish survey in the Mid-Atlantic region and a study to reduce butterfish bycatch in the offshore Loligo squid fishery), then all of the participants in the fishery would benefit from the improved fisheries data yielded from each project.

Because the 2010 commercial quota being implemented in this final rule is greater than the 2009 commercial quota, the 2010 RHL is greater than the projected 2009 recreational bluefish harvest and consistent with recent trends in recreational landings, and the impacts of the RSA quota will be minimal, no negative economic impacts are expected as a result of this final rule.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the Atlantic bluefish fishery.

In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.nero.noaa.gov*.

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

Dated: May 10, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–11611 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 93
Friday, May 14, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2008-0060]

RIN 0579-AD13

Hass Avocados from Mexico; Importation into the Commonwealth of Puerto Rico and Other Changes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our fruits and vegetables regulations to provide for the importation of Hass avocados from Mexico into Puerto Rico under the same systems approach currently required for the importation of Hass avocados into all States of the United States from Michoacán, Mexico. The systems approach requirements include trapping, orchard certification, limited production area, trace back labeling, pre-harvest orchard surveys for all pests, orchard sanitation, post-harvest safeguards, fruit cutting and inspection at the packinghouse, port-of-arrival inspection, and clearance activities. This action would allow for the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico while continuing to provide protection against the introduction of quarantine pests. In addition, we are proposing to amend the regulations to provide for the Mexican national plant protection organization to use an approved designee to inspect avocados for export and to suspend importation of avocados into the United States from Michoacán, Mexico, only from specific orchards or packinghouses when quarantine pests are detected, rather than suspending imports from the entire municipality where the affected orchards or packinghouses are located. These changes would provide additional flexibility in operating the export program while continuing to provide protection against the introduction of quarantine pests.

DATES: We will consider all comments that we receive on or before July 13, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0060*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send one copy of your comment to Docket No. APHIS-2008-0060, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0060.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56 through 319.56–50), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States. The requirements for importing Hass avocados into the United States from Michoacán, Mexico, are described in § 319.56-30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection, and shipping procedures.

In this document, we are proposing to:

- Allow the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico, under the same conditions required for importation into the 50 States;
- Provide for the Mexican national plant protection organization (NPPO) to use an approved designee to inspect avocados for export; and
- Limit the scope of suspension of export certification to the orchard or packinghouse in which pests are found, rather than the municipality in which the orchard or packinghouse is located.

These changes are discussed directly below.

Importation of Hass Avocados from Michoacán, Mexico, into Puerto Rico

In a final rule published on November 30, 2004 in the **Federal Register** (69 FR 69749-69722, Docket No. 03-022-5) and effective on January 31, 2005, we amended the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacán, Mexico, may be distributed. Currently, Hass avocados from Michoacán, Mexico, are permitted entry into the 50 States if they are produced in accordance with the requirements of a systems approach as provided in § 319.56-30. This action was based on a pest risk assessment (PRA), "Importation of Avocado Fruit (*Persea americana* Mill. var. 'Hass'), from Mexico, A Risk Assessment" (November 2004), which evaluated the risk of permitting the importation of Mexican Hass avocados only into the 50 States.

At the request of the Government of Mexico, we prepared a commodity import evaluation document (CIED) to determine what phytosanitary measures should be applied to mitigate the pest risk associated with the importation of Hass avocados from Michoacán, Mexico, into the Commonwealth of Puerto Rico. Copies of the CIED may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

In the CIED, titled "Importation of Hass Avocado fruit from Michoacán,

Mexico into Puerto Rico" (September 2009), we determined that because the systems approach currently in place is successful in mitigating the risks of introducing quarantine pests associated with the importation of Hass avocado from Mexico into the 50 U.S. States, and because avocados entering the United States from other approved exporting countries may also move to Puerto Rico without additional requirements, the current systems approach will also adequately mitigate the risks of introducing quarantine pests directly into Puerto Rico as well. We concluded the phytosanitary risks for insect pests associated with the importation of Hass avocados from Michoacán, Mexico, into the Commonwealth of Puerto Rico would be effectively mitigated using the same systems approach as is currently used for the importation of Hass avocados from Michoacán, Mexico, into the 50 States, as set fourth in § 319.56-30. These import requirements include trapping, orchard certification, limited production area, trace back labeling, pre-harvest orchard surveys for all pests, orchard sanitation, post-harvest safeguards, fruit cutting and inspection at the packinghouse, port-of-arrival inspection, and clearance activities.

Based on the findings of the CIED and the November 2004 PRA, we are proposing to amend § 319.56-30 to allow commercial shipments of Hass avocados from Michoacán, Mexico, to be imported into Puerto Rico. Specifically, we are proposing to amend § 319.56-30(a)(2), which currently prohibits Hass avocados from Mexico from being imported into or distributed in Puerto Rico and U.S. territories, to allow their importation into Puerto Rico. Because Mexico's request was specific to Puerto Rico, the CIED did not consider U.S. territories, so that prohibition would remain.

In addition, we are proposing to amend § 319.56-30(c)(3)(vii) to remove the requirement that boxes of avocados be marked to indicate that their distribution in Puerto Rico or U.S. territories is prohibited. The prohibition on distribution in U.S. territories would continue to be enforced through the APHIS permitting process. Specifically, we would implement this distribution limitation by denying permit applications for consignments of the avocados to destinations outside the 50 States and Puerto Rico and, for consignments imported into the 50 States and Puerto Rico, by including as a condition of the permit a prohibition on moving the avocados to any U.S. territory. This same paragraph also contains a requirement for box marking that applied from January 31, 2005, through January 31, 2007; as this requirement is outdated, we would remove it.

Use of an Approved Designee to Inspect Avocados for Export

Currently, our regulations in § 319.56-30(c)(3)(iv) require samples of Hass avocados produced in Michoacán, Mexico, to be selected, cut, and inspected by the Mexican NPPO and found free from pests. The Mexican NPPO has requested that we amend the regulations to provide for the use of an approved designee to perform these functions. The use of approved designees in situations such as this is consistent with the International Plant Protection Convention's International Standard for Phytosanitary Measures (ISPM) No. 20,[1] which describes a system that NPPOs may use to authorize other government services, non-governmental organizations, agencies, or persons to act on their behalf for certain defined functions. This system includes the development of procedures to determine the competency of designees, to perform system audits and review, to implement corrective actions, and to withdraw authorization. We have determined that an approved designee could perform NPPO functions when a system meeting the criteria of ISPM 20 is used. Accordingly, we are proposing to amend the regulations to provide for the Mexican NPPO to use an approved designee to perform these functions. Specifically, we are proposing to amend § 319.56-30(c)(3)(iv) to provide for avocados to be selected, cut, and inspected by either the Mexican NPPO or its approved designee.

Limiting the Scope of Suspension of Export Certification

Paragraph (e) of § 319.56-30 sets out the procedures that are followed when a pest is detected in the required inspections. Currently, under paragraph (e)(1), when avocado seed pests are detected during semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activities, the entire municipality in which the pests are discovered loses its pest-free certification and avocado exports from that municipality are suspended. However, our regulations in paragraphs (e)(2) and (e)(3) call for the suspension of the export certification of individual orchards and packinghouses where the stem weevil *Copturus aguacatae* is detected, rather than for the suspension of the export certification of the entire municipality. This difference in the scope of suspension was originally created because we had limited specific information on the mobility of avocado seed pests within approved municipalities in Mexico, so we took a more cautious approach by providing for the suspension of the entire municipality in which a seed pest was detected.

Now that we have had years to evaluate the effectiveness of the systems approach used to mitigate pests in approved municipalities, APHIS has concluded that the mobility of avocado seed pests creates no greater risk of their avoiding detection than the mobility of the avocado stem weevil, and that the same scope of export suspension should apply to avocado seed pests and the stem weevil. In addition, if avocado seed pests are present in places of production close to a place of production in which an avocado seed pest is found, the required surveys would find it in those nearby places of production, and we would suspend those places of production as well. Of course, the entire municipality would be suspended if the pests were detected in all places of production within that municipality. Given this information, APHIS has concluded that suspension of shipments from an affected orchard or packinghouse, rather than from an entire municipality, would provide sufficient safeguards against pest introduction while minimizing trade disruptions. Therefore, we are proposing to apply suspensions only to an affected orchard or packinghouse, rather than to an entire municipality, when seed pests are detected. Specifically, we are proposing to replace paragraphs (e)(1) through (e)(3) of § 319.56-30 with a new paragraph (e) that would state that suspension of avocado shipments applies to orchards or packinghouses within a municipality when the pests *Heilipus lauri*, *Conotrachelus aguacatae*, *C. perseae*, *Copturus aguacatae*, or *Stenoma catenifer* are detected.

Protocols for reinstatement from suspension of export of Hass avocados would continue to be included in the operational work plan between Mexico and the United States required under § 319.56-30(c).

Executive Order 12866 and Regulatory Flexibility Act

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

[1] To view this and other ISPMs on the Internet, go to (*http://www.ippc.int/*) and click on the "Adopted Standards" link under the "Core activities" heading.

We have prepared an initial regulatory flexibility analysis for this proposed rule. The analysis examines the potential economic effects of this action on small entities, as required by the Regulatory Flexibility Act. The analysis identifies avocado producers, importers, and wholesalers in Puerto Rico as the small entities most likely to be affected by this action and considers the effects of increased imports of avocados. Puerto Rico is a large net importer of avocados. Imports for 2007 totaled around 3,700 short tons while exports totaled only 8 short tons, as preliminarily reported by the Puerto Rican Department of Agriculture's Office of Agricultural Statistics.[2] In other words, three-fifths of Puerto Rico's avocado supply is imported. In addition, there may well be movement of avocado from the mainland United States to Puerto Rico, which would not be reported as imports. Based on the information presented in the analysis, we expect affected entities would experience minimal economic effects as a result of additional imports arriving in Puerto Rico from Mexico. We invite comment on the analysis, which is posted with this proposed rule on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12988

This proposed rule would allow Hass avocados to be imported into Puerto Rico from Michoacán, Mexico. If this proposed rule is adopted, State and local laws and regulations regarding Hass avocados imported under this rule would be preempted while the fruit is in foreign commerce. Fresh Hass avocados are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If the proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging the rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56-30 is amended as follows:

■ a. By revising paragraph (a)(2) to read as set forth below.

■ b. In paragraph (c)(3)(iv), by adding the words "or its approved designee" after the word "NPPO".

■ c. In paragraph (c)(3)(vii), by removing the last two sentences.

■ d. By revising paragraph (e) to read as set forth below.

§ 319.56-30 Hass avocados from Michoacán, Mexico.

(a) * * *

(2) *Shipping restrictions.* The avocados may be imported into and distributed in all States and in Puerto Rico, but not in any U.S. Territory.

* * * * *

(e) *Pest detection.* If any of the avocado pests *Heilipus lauri*, *Conotrachelus aguacatae*, *C. perseae*, *Copturus aguacatae*, or *Stenoma catenifer* are detected during the semiannual pest surveys in a packinghouse, certified orchard or areas outside of certified orchards, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. Orchards affected by the pest detection will lose their export certification immediately, and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective.

* * * * *

Done in Washington, DC, this 10th day of May 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–11598 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–34–S

[2] Puerto Rico Dept. of Agriculture, Office of Agricultural Statistics. "18.58F23 Fresh Fruits." November 13, 2007. p. 23.

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket Number: EE–2008–BT–STD–0006]

RIN 1904–AB47

Energy Conservation Program: Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: On March 25, 2010, the U.S. Department of Energy (DOE) announced that it would hold a public meeting to discuss and receive comments on the product classes that DOE plans to analyze for purposes of establishing energy conservation standards for residential central air conditioners and heat pumps; the analytical framework, models, and tools that DOE is using to evaluate amended standards for these products; the results of preliminary analyses performed by DOE for these products; and potential energy conservation standard levels derived from these analyses that DOE could consider for these products. DOE also encouraged written comments on these subjects. This document announces an extension of the time period for submitting comments on the energy conservation standards notice of public meeting (NOPM) and availability of the preliminary technical support document for central air conditioners and heat pumps. The comment period is extended to May 17, 2010.

DATES: DOE will accept comments, data, and information regarding the energy conservation standards NOPM for residential central air conditioners and heat pumps received no later than May 17, 2010.

ADDRESSES: Any comments submitted must identify the "NOPM for Energy Conservation Standards for Residential Central Air Conditioners and Heat Pumps" and provide the appropriate docket number EE–2008–BT–STD–0006 and/or RIN number 1904–AB47. Comments may be submitted using any of the following methods:

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

• *E-mail: Res_Central_AC_HP@ee.doe.gov* (NOPM). Include docket number EE–2008–BT–STD–0006 and/or RIN 1904–AB47, as appropriate, in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.

• *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.

• *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Anderson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7335. E-mail: *Wes.Anderson@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. Telephone: (202) 586–7796. E-mail: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On March 25, 2010, DOE published a **Federal Register** notice announcing the availability of its preliminary technical support document for energy conservation standards for residential central air conditioners and heat pumps, as well as a public meeting to discuss and receive comment on the preliminary analysis. 75 FR 14368. The NOPM provides for the submission of comments by May 10, 2010. The public meeting to discuss the preliminary analysis was held on for May 5, 2010. A number of commenters stated at the public meeting that the time between the public meeting on May 5, 2010 and the end of the comment period on May 10, 2010 was not sufficient to address any issues that arose during the public meeting. DOE has determined that an extension of the public comment period is appropriate and is hereby extending the comment period. DOE will consider any comments received by May 17, 2010, and deems any comments received between publication of the NOPM and May 17, 2010 to be timely submitted.

Further Information on Submitting Comments

Under 10 CFR part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on May 7, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–11571 Filed 5–13–10; 8:45 am]

BILLING CODE 6450–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

Proposed FOIA Fee Schedule Update

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Defense Nuclear Facilities Safety Board is publishing its proposed Freedom of Information Act (FOIA) Fee Schedule Update and solicits comments from interested organizations and individual members of the public.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5 p.m. on or before June 14, 2010.

ADDRESSES: Comments on the proposed fee schedule should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004. All comments will be placed in the Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Monday through Friday (except on federal holidays), in the Board's Public Reading Room at the same address.

FOR FURTHER INFORMATION CONTACT: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule Updates were published in the **Federal Register** and went into effect, most recently, on May 6, 2009, 74 FR 20934. The Board's proposed fee schedule is consistent with the guidance. The components of the proposed fees (hourly charges for search and review and charges for copies of requested documents) are based upon the Board's specific cost.

Board Action

Accordingly, the Board proposes to establish the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge	$77.00 per hour.
Copy Charge (paper)	$.12 per page, if done in-house, or generally available commercial rate (approximately $.10 per page).
Electronic Media	$5.00.
Copy Charge (audio cassette)	$3.00 per cassette.
Duplication of DVD	$25.00 for each individual DVD; $16.50 for each additional individual DVD.
Copy Charge for large documents (*e.g.,* maps, diagrams)	Actual commercial rates.

Dated: May 7, 2010.

Brian Grosner,

General Manager.

[FR Doc. 2010–11375 Filed 5–13–10; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0347; Airspace Docket No. 07–AWA–2 RIN 2120–AA66]

Proposed Modification of Class B Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Chicago, IL, Class B airspace area by expanding the existing airspace to ensure containment of Instrument Flight Rules (IFR) aircraft conducting instrument approach procedures within Class B airspace, and segregating IFR aircraft at Chicago O'Hare International Airport (ORD) and Visual Flight Rules (VFR) aircraft operating in the vicinity of Chicago Class B airspace. Additional Class B airspace would support operations to ORD's triple parallel runways and three additional parallel runways planned for the near future. This action would enhance safety, improve the flow of air traffic, and reduce the potential for midair collision in the Chicago terminal area, further supporting the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: Comments must be received on or before July 13, 2010.

ADDRESSES: Send comments on this proposal to the United States (U.S.) Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2010–0347 and Airspace Docket No. 07–AWA–2 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2010–0347 and Airspace Docket No. 07–AWA–2) and be submitted in triplicate to the Docket Management Facility (*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 Docket Nos. FAA–2010–0347 and Airspace Docket No. 07–AWA–2." 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/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* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

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

Background

In 1970, the FAA issued a final rule (35 FR 8880) which established the Chicago, Ill., Terminal Control Area to replace the Chicago, Ill., control zone. As a result of the Airspace Reclassification final rule (56 FR 65638), which became effective in 1993, the terms "terminal control area" and "airport radar service area" were replaced by "Class B airspace area," and "Class C airspace area," respectively. The primary purpose of a Class B airspace area is to reduce the potential for midair collisions in the airspace surrounding airports with high density air traffic operations by providing an

area in which all aircraft are subject to certain operating rules and equipment requirements.

The present day Chicago Class B airspace has remained unchanged since being established in 1993 by the Airspace Reclassification final rule noted above. During that period, ORD has experienced increased traffic levels, a considerably different fleet mix, and airport infrastructure improvements enabling simultaneous instrument approach procedures to three parallel runways. For calendar year 2008, ORD was ranked number 2 in the list of the "50 Busiest FAA Airport Traffic Control Towers," with 882,807 aircraft operations, and number 6 in the list of the "50 Busiest Radar Approach Control Facilities," with 1,270,825 instrument operations. Additionally, the calendar year 2008 passenger enplanement data ranked ORD as number 2 among Commercial Service Airports with 33,683,991 passenger enplanements.

In recent years, the City of Chicago has undertaken construction projects to convert ORD to a primarily east/west operating airport. Ongoing construction projects include three additional parallel runways planned to supplement the existing three parallel Runways 9L/27R, 9R/27L, and 10/28. The FAA has determined that it is not possible to modify existing procedures to contain arrival aircraft conducting simultaneous instrument approaches to the existing parallel runways within the Chicago Class B airspace area. As the planned runways become operational and capacity increases, the number of aircraft exiting the Class B airspace will also increase.

With the current Class B airspace configuration, arriving aircraft routinely enter, exit, and then reenter Class B airspace while flying published instrument approach procedures, contrary to FAA directives. The procedural requirements for establishing aircraft on final to conduct simultaneous approaches to the three existing parallel runways has resulted in aircraft exceeding the lateral boundaries of the current Class B airspace by up to 5 to 10 miles during moderate levels of air traffic. Modeling of existing traffic flows has shown that the proposed expanded Class B airspace would enhance safety by containing all instrument approach procedures and associated traffic patterns within the confines of Class B airspace, support increased operations and capacity to the current and planned parallel runways, and better segregate the IFR aircraft arriving/departing ORD and VFR aircraft operating in the vicinity of the Chicago Class B airspace. The proposed Class B airspace modifications described in this NPRM are intended to address these issues.

Pre-NPRM Public Input

In 2007, the FAA initiated action to form an ad hoc committee to develop recommendations for the FAA to consider in designing a proposed modification of the Chicago Class B airspace area. Participants in the committee included representatives from the Illinois Department of Transportation, the City of Chicago, the Chicago Area Business Aviation Association, the Aircraft Owners and Pilots Association (AOPA), the National Business Aviation Association, Inc. (NBAA), the Cargo Airline Association (CAA), the Helicopter Association International (HAI), the United States Parachute Association (USPA), airline pilot groups, airlines, soaring clubs, and local area airports, pilots, and fixed base operators. Three ad-hoc committee meetings were held on December 18, 2007; January 31, 2008; and April 9, 2008.

As announced in the **Federal Register** (73 FR 44311 and 73 FR 51605), three informal airspace meetings were held; one each on September 23 and 25, 2008, at the Chicago Executive Airport, Wheeling, IL, and one on September 24, 2008, at the Chicago DuPage Airport, West Chicago, IL. Two additional informal airspace meetings were held, as announced in the **Federal Register** (73 FR 77867); one on February 23, 2009, at Lewis University, Romeoville, IL; and one on February 26, 2009, at Chicago DuPage Airport, West Chicago, IL, to ensure all interested airspace users were provided with an opportunity to present their views and offer suggestions regarding the planned modification of the Chicago Class B airspace area.

All substantive airspace recommendations made by the ad hoc committee and public comments received as a result of the informal airspace meetings were considered in developing this proposal.

Discussion of Recommendations and Comments

Ad hoc Committee Recommendations

The ad hoc committee recommended the FAA reduce the size of the original proposed Area E in order to provide general aviation and glider communities with additional airspace to operate within. (The original proposed Area E incorporated the airspace around the existing Class B airspace area out to 30 nautical miles of the Chicago O'Hare VHF omnidirectional range(VOR)/Distance Measuring Equipment (DME) antenna, extending upward from 4,000 feet mean sea level (MSL) to and including 10,000 feet MSL, excluding Areas A, B, C, and D.) Specifically, the committee recommended the airspace extension to the west be limited and designed to retain the existing Area F, extending upward from 4,000 feet MSL to 10,000 feet MSL, with the western boundary extended to a uniform 25 nautical mile arc of the Chicago O'Hare VOR/DME antenna. Additionally, the ad hoc committee recommended a new area be established to supplement Area F, extending upward from 5,000 feet MSL to 10,000 feet MSL, bordered on the east and west by the 25 nautical mile and 30 nautical mile arcs of the Chicago O'Hare VOR/DME antenna, respectively, and by a set of railroad tracks and the Aurora Airport Class D airspace on the north and south, respectively. The FAA partially adopted this recommendation. In lieu of modifying one area of the Chicago Class B airspace and establishing a second area, with a different altitude floor, to support the Class B airspace extension required to the west, the FAA designed one area by expanding the existing Area F and retaining the 4,000 feet MSL floor for the whole area. The expansion of Area F will be limited to (1) extending the western boundary of the current Area F to a uniform 25 nautical mile arc of the Chicago O'Hare VOR/DME antenna and (2) further extending the western boundary to include the airspace between the 25 nautical mile and 30 nautical mile arcs of the Chicago O'Hare VOR/DME antenna between a border defined from the intersection of Interstate 90 and the 25 nautical mile arc of the Chicago O'Hare VOR/DME antenna, then due west to lat. 42°07′21″ N., long. 88°33′05″ W., on the 30 nautical mile arc of the Chicago O'Hare VOR/DME antenna, to the north, and Illinois State Route 10, to the south. The FAA has determined that the need to descend aircraft low enough for an approach to all of the present and future runways, while maintaining 1,000 feet vertical separation between simultaneous arrivals and departures, requires that the lowest of the final approach courses be at 4,000 feet MSL between the 15 and 30 nautical mile arcs of the Chicago O'Hare VOR/DME antenna.

The ad hoc committee similarly recommended the FAA reduce the size of the original proposed Area E East of ORD and design the airspace extension as an area, extending upward from 5,000 feet MSL to 10,000 feet MSL, bordered by the 25 nautical mile and 30 nautical

mile arcs of the Chicago O'Hare VOR/DME antenna between the 070° and 110° degree radials of the Chicago O'Hare VOR/DME antenna. The FAA partially adopted this recommendation. The proposed Class B airspace extension to the east (new Area E) is designed to include the airspace, extending upward from 4,000 feet MSL to 10,000 feet MSL, from the 25 nautical mile arc to the 30 nautical mile arc of the Chicago O'Hare VOR/DME antenna between latitude/longitude points that lay along Federal airways V–100/V–526, to the north, and latitude/longitude points that lay along Federal airways V–6/V–10, to the south. Again, the FAA determined that the need to descend aircraft low enough for an approach to all of the present and future runways, while maintaining 1,000 feet vertical separation between simultaneous arrivals and departures, requires that the lowest of the final approach courses be at 4,000 feet MSL between the 15 and 30 nautical mile arcs of the Chicago O'Hare VOR/DME antenna.

The ad hoc committee also recommended the FAA modify the existing Area G to accommodate aircraft flying the instrument landing system approach to Runway 16 and circling to Runway 34 at Chicago Executive Airport without having to enter the Chicago Class B airspace. Specifically, the committee recommended expanding Area G by moving the southern boundary from the 6 nautical mile arc of the Chicago O'Hare VOR/DME antenna to the 5 nautical mile arc, with the airspace segment extending upward from 2,500 feet MSL to 10,000 feet MSL. The FAA adopted this recommendation. The proposed modifications to Area A and Area G reflect this lateral boundary movement and the associated vertical airspace floor change from the existing surface to the recommended 2,500 feet MSL. These modifications will accommodate the traffic pattern and circling approach to Runway 34 at Chicago Executive Airport.

Finally, the ad hoc committee recommended the FAA not incorporate the airspace originally established to protect the, now-closed, Glenview Naval Air Station (currently Area E of the ORD Class B airspace area) into Area B of the original proposed Class B airspace modification. Inclusion of this airspace into Area B as originally proposed would lower the Class B airspace floor in that area from 2,500 feet MSL to 1,900 feet MSL. The FAA adopted this recommendation. The proposed Area H, described in the Proposal section, contains the airspace area boundary and altitude descriptions recommended by the ad hoc committee; thus, retaining the availability of the airspace below Area H from the surface to 2,500 feet MSL for VFR aircraft flying outside the ORD Class B airspace area.

The ad hoc committee included two additional recommendations in their report, one addressing discreet transponder codes for glider operations and a second addressing a future ad hoc committee being established when east-west runway construction projects are completed. These recommendations fall outside the scope of this airspace rulemaking action and accordingly, are not addressed in this rulemaking action.

Informal Airspace Meeting Comments

As a result of the informal airspace meetings, the FAA received written comments from 89 commenters. Three commenters concurred with the Chicago Class B airspace proposal as it was briefed at the informal airspace meetings. Four commenters shared that the proposed Class B airspace, in general, was too large and unnecessary. However, the majority of commenters focused their attention on the proposed Area F; although one commenter was in favor of the proposed Area F design.

Sixty-seven comments were received objecting to the amount of airspace to the west (Area F) that is included within the new Class B airspace proposal. Twenty-one commenters requested that the airspace to the west be reduced in size laterally and/or vertically. They specifically requested that Area F, proposed with a base altitude of 4,000 feet MSL, be raised to either 5,000 feet MSL or 6,000 feet MSL. The FAA has determined that this is not achievable. Aircraft conducting simultaneous parallel approaches may not be assigned the same altitude during turn-on to the final approach course. Air Traffic Control needs to turn aircraft on to instrument approaches at 6,000, 7,000, and 8,000 feet. It is not possible to turn aircraft on to approaches at 5,000 feet MSL because of satellite airport air traffic to the other 52 airports within the Chicago Terminal Radar Approach Control Facility (TRACON) airspace.

Twenty-three commenters expressed safety concerns due to traffic compression between gliders, as well as between gliders and general aviation aircraft. To remain clear of the Chicago Class B airspace VFR aircraft and gliders would have to fly at lower altitudes or fly further east or west of ORD. The FAA partially agrees. For general aviation and glider aircraft to remain clear of the Chicago Class B airspace areas, they would have to fly either below or above the Class B airspace extensions, or circumnavigate five to ten nautical miles further east or west of ORD. However, these areas are necessary to (1) retain IFR aircraft on instrument approaches and departures within the Chicago Class B airspace area; and (2) ensure general aviation and glider aircraft and the large turbine-powered aircraft conducting instrument approaches to Chicago O'Hare are segregated. Additionally, aircraft conducting simultaneous, triple parallel instrument and visual approaches to ORD may not be assigned the same altitude during turn-on to the final approach course, resulting in aircraft being assigned altitudes that will differ by a minimum of 1,000 feet. In order to contain these aircraft flying simultaneous instrument approaches within Class B airspace, and ensure segregation from general aviation traffic, the Chicago Class B airspace area must be modified to establish the additional extensions as proposed.

Three commenters contended that the amount of airspace proposed to be included in the Class B airspace to the west could be reduced through changes in procedures and airspace delegation between the Chicago TRACON and Chicago Air Route Traffic Control Center (ARTCC). They suggested that the Chicago ARTCC MALTS sector boundary be moved to the north; that the Rockford Federal airway V–100 traffic be moved to the north; and that the Plano arrivals be forced down to 10,000 feet MSL or lower when in an east flow. The FAA does not agree and has determined that changing procedures and/or airspace delegation would not solve the problem at hand. Implementation of these suggestions would not enable Chicago TRACON to contain aircraft within the boundaries of the present day Class B airspace, nor ensure segregation of IFR arrival aircraft with the VFR aircraft and gliders operating in the vicinity of the Chicago Class B airspace.

Fifty-nine commenters raised concerns for adverse impacts to glider operations, echoing similar issues to those mentioned above, as a result of the proposed Class B airspace modifications of Area F. The FAA partially agrees. The airspace where Area F is proposed to be established currently lies outside the existing boundary of the Chicago Class B airspace and it is understandable that users of that airspace view the necessary establishment of Class B airspace as an encroachment. However, in the interest of safety for all, the FAA has determined that the Class B airspace extension to the west of ORD is the only way to ensure IFR aircraft arriving and departing ORD are contained within Class B airspace and IFR aircraft are segregated from VFR aircraft and

gliders, that may not be visible to or communicating with Air Traffic Control, that already are operating in that area. The proposed Area F Class B airspace extension has been limited in design to include only the volume of airspace necessary to contain IFR arrivals/departures at ORD, segregate IFR and VFR aircraft operations, and minimize impacts to general aviation and glider VFR operators. Additionally, the proposed Area F was designed to ensure it does not encompass or overlay the airfields where the Sky Soaring Glider Club (Hampshire, IL) and Windy City Soaring Association (Hinckley, IL) operations are located. The Chicago Glider Club (Minooka, IL) lies well south of any of the proposed Chicago Class B airspace.

Four commenters suggested that the western portion of the Class B airspace be delegated to gliders through Letter of Agreement/Letter of Authorization/Notice to Airmen when Air Traffic Control did not require it for their use. The FAA finds these suggestions untenable due to the regulatory nature of Class B airspace and the requirement for Air Traffic Control to provide positive separation within it. Class B airspace is established via rulemaking and when it is established, the airspace and regulatory requirements associated with accessing and operating within it are specific and in effect at all times. Class B airspace cannot be modified or delegated to the user community on an ad hoc basis. Additionally, the regulatory requirements for aircraft to enter and operate within Class B airspace may not be waived, modified, or exempted by Letter of Agreement.

Three commenters thought that the northern border of Area F should be moved south to the railroad tracks in the Hampshire, IL, area to establish a better visual reference of the Class B airspace for VFR aircraft. Another commenter thought that the northern border of the Area F extension should be moved to Illinois State Route 72 for a visual reference. The FAA finds both of these suggestions impractical. The resultant size of the Area F extension would be insufficient to safely ensure separation between aircraft flying in the runways 9L, 9R, and 10 traffic patterns and final approach course. Additionally, issues associated with an insufficient amount of airspace would only be compounded when the three additional planned parallel runways become operational.

One commenter cited noise and safety concerns for residents located below the proposed Area F to the west of ORD. The FAA does not agree. The proposed modifications to the Chicago Class B airspace will not change the location of existing flight tracks, use of altitudes, or the number of aircraft being vectored for approaches to ORD within the proposed Area F airspace today. Moreover, the FAA views the proposed Area F as critical to overcoming the safety ramifications associated with large turbojet aircraft exiting the Class B airspace, and consequently, intermingling with general aviation and glider aircraft not in contact with the Chicago TRACON.

Three commenters expressed support for establishing Global Positioning Satellite (GPS) guidance or VOR DME waypoints for VFR flyways underneath the Chicago Class B airspace. Specifically, one commenter requested that there be three north-south VFR routes west of ORD, a VFR route along the shoreline, east-west transitions both north and south of ORD, a VFR route around Chicago Executive Airport, and a route around Chicago Midway Airport. A second commenter expressed a need for a VFR flyway from Chicago Executive Airport/Lakeshore to south side airports in both directions. In response, the FAA offers that VFR flyways under and around the Class B airspace similar to the those addressed by the commenters already exist. The VFR flyways are published on the Chicago Charted VFR Flyway Planning Chart on the reverse side of the Chicago VFR Terminal Area Chart. The FAA does note, however, that the existing VFR flyways depicted on the Chicago Charted VFR Flyway Planning Chart will require minor adjustments in recommended altitudes to accommodate the proposed Class B airspace modifications.

One commenter recommended that a VFR flyway directly over the top of ORD running north/south at 8,000, 9,000, or 10,000 feet MSL using GPS or VOR/DME waypoints should be established. The FAA does not agree. On a daily basis, roughly 10 aircraft an hour for 13 to 15 hours a day (130 to 150 flights per day on average) are routed over the top of ORD at altitudes between 8,000 feet MSL and 11,000 feet MSL in order to utilize a preferred runway. The use of a preferred runway is normally based on the need for a longer runway, but can also be required for runway balancing. Additionally, departures at Chicago Midway International Airport (MDW) that are northbound transition over the top of ORD between 6,000 feet MSL and 11,000 feet MSL, climbing to 13,000 feet MSL, and departures at Aurora (ARR) and DuPage (DPA) Airports heading east and then northbound also transition through this same airspace. Aircraft at MDW, ARR, and DPA are typically corporate business jets and, depending on runway configuration(s) and destinations, account for an additional estimated 40 to 50 aircraft per day.

A number of comments were received regarding the proposed modification to the Class B airspace (Area E) to the east of ORD. Ten commenters felt the size of the proposed area to the east was excessive, not needed by the Chicago TRACON, and objected to this aspect of the proposal. Five other commenters specifically questioned the need for the additional airspace supporting Runway 22 operations; requesting the size of the area be reduced. The FAA agrees with these commenters. The original proposal for Area E incorporated the airspace east of ORD from the 25 nautical mile arc to the 30 nautical mile arc of the Chicago O'Hare VOR/DME antenna, extending upward from 4,000 feet MSL to and including 10,000 feet MSL, from the shoreline north of ORD to the shoreline southeast of ORD. The FAA has determined the size of Area E could be reduced to the dimensions listed in the Proposal section below.

Two commenters further stated that traffic landing on Runway 28 could be vectored on to the localizer at 4,000 feet MSL inside the 25 nautical mile arc of the Chicago O'Hare VOR/DME antenna, which would allow the floor of Area F to be raised between the 25 nautical mile and 30 nautical mile arcs. The FAA does not agree. There are simply too many aircraft to contain them all within the 25 nautical mile arc of the Chicago O'Hare VOR/DME antenna. Simply put, ORD and its associated operations has outgrown the present day Class B airspace established in 1993.

The FAA also received some general comments regarding the Chicago Class B airspace. Two commenters suggested lowering the ceiling of the Class B airspace, citing other Class B airspace areas in the country with lower ceilings. The FAA does not agree. Class B airspace designs are specific to locations based on varying local area operational requirements and aviation needs. To advocate one standard Class B airspace design for all major airports with high density air traffic operations does not recognize those differences in the local area operational requirements or aviation needs and could result in airspace being incorporated unnecessarily at some locations (impacting free navigable airspace) or not enough airspace being incorporated at other locations (causing unacceptable aviation safety risks). This suggestion also would not be suitable in Chicago's case as the higher altitudes of the Chicago Class B airspace are currently used to accommodate the large volume

of aircraft arriving and departing the area.

Four commenters expressed concern that the proposal would increase the risk of Class B airspace violations. The FAA does not agree. The legal description of the proposed Class B airspace includes prominent visual references, latitude/longitude coordinates, and arcs of the Chicago O'Hare VOR/DME antenna. The FAA believes that this mix of descriptors effectively assists pilots in identifying the lateral boundaries of the Class B airspace.

Two commenters stated that the proposal would have an economic impact on general aviation traffic due to increased fuel burn. The FAA partially agrees with this comment. Although some aircraft would need to fly added distances or different altitudes to remain clear of the Class B airspace, the FAA believes any increase in fuel burn would be nominal.

Finally, two commenters thought that inadequate information was given to the ad hoc committee in order for them to accurately evaluate the proposal and recommended that the entire Class B process begin over again. They also requested that after all runway construction projects are completed at ORD, the ad hoc committee be reestablished. The FAA does not agree. Three ad hoc committee meetings were held to identify, discuss, and develop recommendations for the FAA to consider with respect to modifying the Chicago Class B airspace. The ad hoc committee provided the FAA a memorandum that addressed four specific recommendations for consideration in the development of the Chicago Class B airspace modification proposal, which are incorporated into the proposal. Additionally, five informal airspace meetings were held to inform interested aviation users of the proposed airspace changes and to gather facts and information relevant to the proposed action. Furthermore, this NPRM provides users with a 60-day comment period to submit comments or recommendations on the proposal. All comments received as a result of this NPRM will be fully considered, and may result in changes to the proposed action, before the FAA makes a final determination. The FAA believes that re-initiating the Class B process, after it has been in progress since December of 2008, would be to ignore the safety ramifications associated with the inability to contain large turbojet aircraft operations within the existing Chicago Class B airspace, and consequently, their intermingling with VFR aircraft that are not in contact with the Chicago TRACON.

The Proposal

The FAA is proposing an amendment to Title 14 of the Code of Federal Regulations (14 CFR) part 71 to modify the Chicago Class B airspace area. This action (depicted on the attached chart) is proposed to make minor modifications to the existing Chicago Class B airspace and to establish two new airspace extensions (the first, a new Area E, to the east and the second, expanding existing Area F, to the west) to the current Chicago Class B airspace area in order to provide airspace needed to contain aircraft conducting instrument and visual approach operations within the confines of Class B airspace. Additionally, the proposed modifications would better segregate the IFR aircraft arriving/departing ORD and the VFR aircraft operating in the vicinity of the Chicago Class B airspace. The current Chicago Class B airspace area consists of seven subareas (A through G) while the proposed configuration would consist of eight subareas (A through H). The proposed revisions to the Chicago Class B airspace area are discussed below.

Area A. The FAA proposes to modify the northern boundary of Area A by incorporating the airspace east of U.S. Highway 12 between the 6 nautical mile and 5 nautical mile arcs of the Chicago O'Hare VOR/DME antenna, from 2,500 feet MSL to and including 10,000 feet MSL, as part of Area G. The airspace east of U.S. Highway 12 between the 6 nautical mile and 5 nautical mile arcs of the Chicago O'Hare VOR/DME antenna, below 2,500 feet MSL, would be returned to the NAS. This modification of Area A, as described, would raise the floor of the Class B airspace in the affected segment from the surface to 2,500 feet MSL. This proposed modification, as recommended by the ad hoc committee and adopted by the FAA, would provide additional airspace to accommodate aircraft on the downwind traffic pattern and circling approaches to Runway 34 at Chicago Executive Airport, without entering Chicago Class B airspace.

Area B. The FAA proposes to modify Area B by defining its northeast boundary using the railroad tracks that run from U.S. Highway 294 to Willow Road (slightly east of the existing Area B, Area C, and current Area E shared boundary) and expanding Area B to incorporate a portion of existing Class B airspace that is contained in the current Area E. Specifically, the modification would expand Area B to incorporate the airspace contained east of the railroad tracks and south of Willow Road within the current Area E, and lower the floor of that affected airspace from the current 2,500 feet MSL to 1,900 feet MSL. This modification of Area B, as described, would raise the floor of the Class B airspace west of the railroad tracks to the existing shared boundary noted above to 3,000 feet MSL, but lower the floor of the Class B airspace in the affected segment of the current Area E by 600 feet to 1,900 feet MSL. This proposed modification of Area B would incorporate only that airspace deemed necessary from the current Area E to ensure IFR arrival aircraft flying instrument approaches to ORD Runway 22R are contained within the confines of Class B airspace throughout the approach, and ensure segregation of IFR arrival aircraft from VFR aircraft flying near the boundary of Class B airspace. Additionally, this proposed modification would better define the northeast boundary of Area B using visual references for pilots flying in the vicinity of Chicago Class B airspace.

Area C. Area C would expand into existing Class B airspace, incorporating portions of Area B and Area H commensurately. As proposed in Areas B and H, the new shared boundary would follow the railroad tracks that run northeast from U.S. Highway 294 to the 10 nautical mile arc of the Chicago O'Hare VOR/DME antenna. Other than re-defining the shared boundary of Areas B, C, and H using visual references for pilots flying in the vicinity of the Chicago Class B airspace, there is no effect to IFR or VFR aircraft operations from this resultant modification of existing Class B airspace.

Area D. The FAA is not proposing to modify Area D.

Area E. The FAA proposes to establish a new Area E to the east of ORD. This modification would extend Class B airspace from the existing Area D boundary defined by the 25 nautical mile arc of the Chicago O'Hare VOR/DME antenna to the 30 nautical arc of the Chicago O'Hare VOR/DME antenna. The northern boundary would be defined by latitude/longitude points that lay along Federal airways V–100/V–526, and the southern boundary would be defined by latitude/longitude points that lay along Federal airways V–6/V–10. This new area would extend upward from 4,000 feet MSL to and including a ceiling of 10,000 feet MSL, overlying Lake Michigan. The FAA has determined that the need to descend aircraft low enough for an approach to all present and future runways, while maintaining 1,000 feet vertical separation between simultaneous

arrivals and departures, requires that the lowest of the final approach courses be at 4,000 feet MSL between the 15 and 30 nautical mile arcs of the Chicago O'Hare VOR/DME antennas. This new area would ensure IFR arrival aircraft flying simultaneous visual and instrument approaches to the existing runways 27R, 27L, and 28, as well as three additional parallel runways planned for the future, are contained within the confines of Class B airspace throughout the approach. This proposed new area would also ensure segregation of IFR aircraft arriving ORD and VFR aircraft operating in the vicinity of the Chicago Class B airspace, yet provide navigable airspace below and above Class B airspace for VFR aircraft.

Area F. The FAA proposes to expand Area F to the west of ORD. This proposed modification would (1) extend the western boundary of the current Area F to a uniform 25 nautical mile arc of the Chicago O'Hare VOR/DME antenna and (2) further extend the western boundary to include the airspace between the 25 nautical mile and 30 nautical mile arcs of the Chicago O'Hare VOR/DME antenna between a border defined from the intersection of Interstate 90 and the 25 nautical mile arc of the Chicago O'Hare VOR/DME antenna, then due west to lat. 42°07′21″N., long. 88°33′05″W., on the 30 nautical mile arc of the Chicago O'Hare VOR/DME antenna, to the north, and Illinois State Route 10, to the south. This new Area F would be established with the floor extending upward from 4,000 feet MSL to and including 10,000 feet MSL. The FAA has determined that the need to descend aircraft low enough for an approach to all of the present and future runways, while maintaining 1,000 feet vertical separation between simultaneous arrivals and departures, requires that the lowest of the final approach courses be at 4,000 feet MSL between the 15 and 30 nautical mile arcs of the Chicago O'Hare VOR/DME antenna. This new area would ensure IFR arrival aircraft flying simultaneous visual and instrument approaches to the existing Runways 9L, 9R, and 10, as well as three additional parallel runways planned for the future, are contained within the confines of Class B airspace throughout the approach. This proposed new area would also ensure segregation of IFR aircraft arriving ORD and VFR aircraft and gliders operating in the vicinity of the Chicago Class B airspace, yet provide navigable airspace below and above Class B airspace for VFR aircraft operations.

Area G. The FAA proposes to modify the southern boundary of Area G by incorporating the airspace contained in Area A that lies east of U.S. Highway 12 between the 6 nautical mile and 5 nautical mile arcs of the Chicago O'Hare VOR/DME antenna, extending upward from 2,500 feet MSL to and including 10,000 feet MSL. The modification of Area G, as described, would raise the floor of Class B airspace in the affected segment from the surface to 2,500 feet MSL. This proposed modification, as recommended by the ad hoc committee and adopted by the FAA, would provide additional airspace to accommodate aircraft on the downwind traffic pattern and circling approaches to Runway 34 at Chicago Executive Airport, without entering the Chicago Class B airspace.

Area H. The FAA proposes to establish Area H from the existing northern portion of the current Area E. The proposed Area H would be bordered by the 10 nautical mile arc of the Chicago O'Hare VOR/DME antenna on the east, Willow Road on the south, and the railroad tracks (located slightly east of the existing Area B, Area C, and Area E shared boundary) that run from U.S. Highway 294 to the 10 nautical mile arc of the Chicago O'Hare VOR/DME antenna on the west. This new area would be established with the floor extending upward from 2,500 feet MSL to and including 10,000 feet MSL.

These modifications to the Chicago Class B airspace are being proposed to ensure the containment of IFR aircraft operations within Class B airspace as required by FAA directives, the segregation of IFR aircraft arriving/departing ORD and VFR aircraft operating in the vicinity of the Chicago Class B airspace, and support the aircraft arrival/departure operations of three parallel runways, planned to be expanded to six parallel runways, performing simultaneous visual and instrument approaches.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9T, Airspace Designations and Reporting Points, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall 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, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of United States 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 the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

This proposed rule would enhance safety by containing all instrument approach procedures and associated traffic patters within the confines of Class B airspace. The requirements would support increased operations and capacity to the current and planned parallel runways while better segregating IRF aircraft that would be operating in the affected airspace.

After consultation with a diverse cross-section of stakeholders that participated in the ad hoc committee to develop the recommendations contained in this proposal, and a review of the recommendations and comments, the FAA expects that this proposed rule would result in minimal cost. We are aware that the proposal might require small adjustments to existing VFR flyway planning charts, but the additional cost would be minimal. Also, the proposed rule could also have an affect on general aviation due to increased fuel consumption from flying different distances or altitudes to remain safely outside of Class B airspace. Although we expect operators might consume more fuel on some flights, we

estimate the additional fuel cost would be minimal.

Initial 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 FAA believes the proposal would not have a significant economic impact on a substantial number of small entities as the economic impact is expected to be minimal. We request comments from the potentially affected small businesses.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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 the 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 United States standards. The FAA has assessed the potential effect of this proposed rule and determined that it would enhance safety and is not considered an unnecessary obstacle to trade.

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 $143.1 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.

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 that there is no new information collection requirement associated with this proposed rule.

Conclusion

This NPRM would enhance safety, reduce the potential for a midair collision in the Chicago terminal area, and would improve the flow of air traffic. As such, we estimate a minimal impact with substantial positive net benefits. The FAA requests comments with supporting justification about the FAA determination of minimal impact. 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

Paragraph 3000 Subpart B–Class B Airspace

* * * * *

AGL IL B Chicago, IL [Modified]

Chicago O'Hare International Airport (Primary Airport)
(Lat. 41°58′46″ N., long. 87°54′16″ W.)
Chicago Midway Airport
(Lat. 41°47′10″ N., long. 87°45′08″ W.)
Chicago O'Hare VOR/DME
(Lat. 41°59′16″ N., long. 87°54′17″ W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°04′10″ N., long. 87°55′31″ W.; thence clockwise along the 5 nautical mile arc of the Chicago O'Hare VOR/DME to lat. 41°59′15″ N., long. 87°47′35″ W.; thence east to lat. 41°59′15″ N., long. 87°46′15″ W.; thence clockwise along the 6 nautical mile arc of the Chicago O'Hare VOR/DME to Interstate Highway 290 (lat. 41°57′12″ N., long. 88°01′ 56″ W.); thence north along Interstate Highway 290 to the 6 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°01′20″ N., long. 88°01′51″ W.); thence clockwise along the 6 nautical mile arc of the Chicago O'Hare VOR/DME to U.S. Highway 12 (lat. 42°05′03″ N., long. 87°56′26″ W.); thence southeast along U.S. Highway 12 to the point of beginning.

Area B. That airspace extending upward from 1,900 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the intersection of U.S. Highway 294 and railroad tracks at lat. 42°03′48″ N., long. 87°52′03″ W.; thence northeast along the railroad tracks to Willow Road (lat. 42°06′20″ N., long. 87°49′38″ W.); thence east along Willow Road to the 10 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°06′04″ N., long. 87°44′28″ W.); thence clockwise along the 10 nautical mile arc of the Chicago O'Hare VOR/DME to the 5 nautical mile radius of Chicago Midway Airport (lat. 41°49′34″ N., long. 87°51′00″ W.); thence counterclockwise along the 5 nautical mile radius of the Chicago Midway Airport to the 10.5 nautical mile arc of the

Chicago O'Hare VOR/DME (lat. 41°48′59″ N., long. 87°51′22″ W.); thence clockwise along the 10.5 nautical mile arc of the Chicago O'Hare VOR/DME to the 10 nautical mile radius of the Chicago Midway Airport (lat. 41°49′11″ N., long. 87°58′14″ W.); thence clockwise along the 10 nautical mile radius of Chicago Midway Airport to the 10 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 41°49′40″ N., long. 87°58′05″ W.); thence clockwise along the 10 nautical mile arc of the Chicago O'Hare VOR/DME to U.S. Highway 12 (lat. 42°08′02″ N., long. 88°00′44″ W.); thence southeast along U.S. Highway 12 to the 5 mile arc of the Chicago O'Hare VOR/DME (lat. 42°04′10″ N., long. 87°55′31″ W.); thence clockwise along the 5 nautical mile arc of the Chicago O'Hare VOR/DME to the point of beginning, excluding that airspace designated as Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded by the 15 nautical mile arc of the Chicago O'Hare VOR/DME, excluding that airspace designated as Area A, Area B, Area G, and Area H.

Area D. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°07′52″ N., long. 88°10′47″ W.; thence northwest to the 25 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°15′40″ N., long. 88°19′39″ W.); thence clockwise along the 25 nautical mile arc of the Chicago O'Hare VOR/DME to lat. 41°42′03″ N., long. 88°18′34″ W.; thence northeast to the 15 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 41°49′53″ N., long. 88°09′59″ W.); thence clockwise along the 15 nautical mile arc of the Chicago O'Hare VOR/DME to the point of beginning, excluding that airspace designated as Area A, Area B, Area C, Area G, and Area H.

Area E. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°11′11″ N., long. 87°24′46″ W.; thence east to the 30 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°10′39″ N., long. 87°17′01″ W.); thence clockwise along the 30 nautical mile arc of the Chicago O'Hare VOR/DME to lat. 41°46′38″ N., long. 87°17′51″ W.; thence west to the 25 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 41°46′40″ N., long. 87°25′22″ W.); thence counterclockwise along the 25 nautical mile arc of the Chicago O'Hare VOR/DME to the point of beginning.

Area F. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°07′52″ N., long. 88°10′47″ W.; thence northwest to the 25 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°15′40″ N., long. 88°19′39″ W.); thence counterclockwise along the 25 nautical mile arc of the Chicago O'Hare VOR/DME to Interstate 90 (lat. 42°07′22″ N., long. 88°26′01″ W.); thence west to the 30 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°07′21″ N., long. 88°33′05″ W.); thence counterclockwise along the 30 nautical mile arc of the Chicago O'Hare VOR/DME to Illinois State Route 10 (lat. 41°49′49″ N., long. 88°32′27″ W.); thence east along Illinois State Route 10 to the 25 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 41°50′40″ N., long. 88°25′44″ W.); thence counterclockwise along the 25 nautical mile arc of the Chicago O'Hare VOR/DME to lat. 41°42′03″ N., long. 88°18′34″ W.; thence northeast to the 15 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 41°49′53″ N., long. 88°09′59″ W.); thence clockwise along the 15 nautical mile arc of the Chicago O'Hare VOR/DME to the point of beginning.

Area G. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°04′14″ N., long. 87°54′56″ W.; thence northwest to the 10 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°09′00″ N., long. 87°57′22″ W.); thence counterclockwise along the 10 nautical mile arc of the Chicago O'Hare VOR/DME to U.S. Highway 12 (lat. 42°08′02″ N., long. 88°00′44″ W.); thence southeast along U.S. Highway 12 to the 5 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°04′10″ N., long. 87°55′31″ W.); thence clockwise along the 5 nautical mile arc of the Chicago O'Hare VOR/DME to the point of beginning.

Area H. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL within an area bounded by a line beginning at the intersection of Willow Road and railroad tracks at lat. 42°06′20″ N., long. 87°49′38″ W.; thence northeast along the railroad tracks to the 10 nautical mile arc of the Chicago O'Hare VOR/DME (lat. 42°08′06″ N., long. 87°48′02″ W.); thence clockwise along the 10 nautical mile arc of the Chicago O'Hare VOR/DME to Willow Road (lat. 42°06′04″ N., long. 87°44′28″ W.); thence west along Willow Road to the point of beginning.

Issued in Washington, DC, on May 6, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

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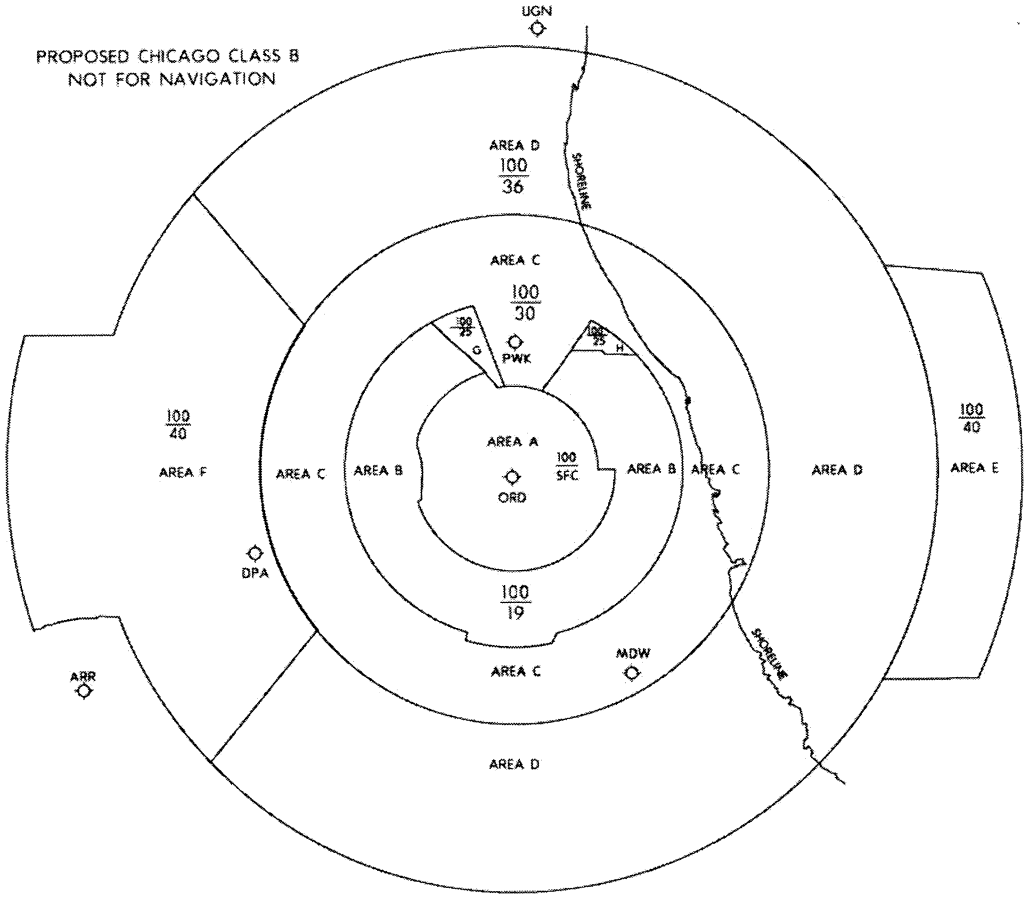

[FR Doc. 2010–11499 Filed 5–13–10; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0080]

RIN: 1218–AC34

Regulatory Flexibility Act Review of the Bloodborne Pathogens Standard

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting a review of its Bloodborne Pathogens Standard (29 CFR 1910.1030) under Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866 on Regulatory Planning and Review. OSHA conducts its review pursuant to Section 610 of the Regulatory Flexibility Act, 5 U.S.C. 610, and Section 5 of Executive Order (EO) 12866. Section 610 directs agencies to review impacts of regulations on small businesses by examining: the continued need for the rule; the nature of complaints or comments received concerning the rule from the public; the complexity of the rule; 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 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. The EO requires agencies to determine whether their regulations "should be modified or eliminated so as to make the Agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and principles set forth in th[e] Executive Order." Written comments on these and other relevant issues are welcome.

DATES: Written comments to OSHA must be sent or postmarked by August 12, 2010.

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

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions;

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648; or

Mail, hand delivery, express mail, messenger and courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0080, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for this rulemaking (OSHA–2007–0080). Submissions are placed in the public docket without change and may be available online *http://www.regulations.gov.* OSHA cautions you about submitting personal information such as social security numbers and birth dates.

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.

FOR FURTHER INFORMATION CONTACT:

Joanna Dizikes Friedrich, Directorate of Evaluation and Analysis, Occupational Safety and Health Administration, Room N–3641, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–1939, Fax (202) 693–1641.

SUPPLEMENTARY INFORMATION:

Background

OSHA issued the final Bloodborne Pathogens Standard (29 CFR 1910.1030) on December 6, 1991 (56 FR 64004). It was promulgated to protect health care workers from exposure to pathogens in blood and other potentially infectious materials, particularly the Hepatitis B virus (HBV) and the Human Immunodeficiency Virus (HIV). Workers who may have occupational exposure to bloodborne pathogens include, but are not limited to, physicians, nurses, nursing home workers, dental workers, funeral home workers, law enforcement, emergency, fire, and rescue workers. The Standard was upheld in *American Dental Assoc.* v. *Martin,* 984 F. 2d 823 (7th Cir. 1993), *cert. denied,* 510 U.S. 859 (1993). The court concluded that OSHA had shown that occupational exposure to bloodborne pathogens constituted a significant risk and that the compliance measures required by the standard were feasible.

In 2001, in response to the Needlestick Safety and Prevention Act (Pub. L. 106–430, 114 Stat. 1901), OSHA revised the Bloodborne Pathogens Standard (66 FR 5318, 1/18/01) to include the use of safer needle devices and to involve employees in identifying and choosing these devices. Also, the updated Standard requires employers to maintain a log of injuries from contaminated sharps.[1] (A sharp is any object that can penetrate the skin including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental wires.) Significant requirements of the 1991 Standard are as follows:[2]

- A written exposure plan intended to minimize or eliminate workers' exposures to bloodborne pathogens;
- Use of Universal Precautions (*i.e.,* an infection control approach in which all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, and other bloodborne pathogens);
- Engineering controls to minimize or eliminate worker exposure;
- Work practices to minimize or eliminate worker exposure;
- Personal protective equipment if worker exposure is not eliminated by engineering controls or work practices;
- Unless required by a specific medical or dental procedure or there is no feasible alternative, bending, recapping, or removing contaminated needles and other sharps is prohibited;
- Shearing or breaking contaminated needles (*i.e.,* needles reasonably expected to have blood or other potentially infectious substances on them) is prohibited;
- Employers must make HBV vaccinations available to employees occupationally exposed to bloodborne pathogens and at no cost to the employees;
- Employee training;
- Post-exposure evaluation and follow-up;
- If appropriate, post-exposure prophylaxis.

The revised 2001 Standard clarifies the need for employers to:[3]

- Select safer needle devices;
- Involve employees in identifying and choosing safer needle devices;
- Maintain a log of injuries from contaminated sharps.

In conducting this lookback review, OSHA intends to investigate possible sources of occupational data on HIV, HBV, and needlestick injuries that may be applied to analyzing the impact of the Standard. Medical developments and treatment protocols may also be reviewed. Since the Standard affects small businesses across a range of sectors, the lookback review might identify opportunities for reducing the burden on small entities while maintaining or improving worker protection, particularly outside the healthcare sectors.

Regulatory Review

OSHA is reviewing the Bloodborne Pathogens Standard (29 CFR 1910.1030) under Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Section 5 of Executive Order 12866 (58 FR 51735, Oct 4, 1993).

The purpose of a review under Section 610 of the Regulatory Flexibility Act:

"[S]hall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant impact of the rules upon a substantial number of such small entities."

In reviewing rules under this Section, "the agency shall consider the following factors:

(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."

The review requirements of Section 5 of Executive Order 12866 require agencies:

"* * * to reduce the regulatory burden on the American people, their families, their communities, their State, local, and Tribal governments, and their industries; to determine whether regulations promulgated by the * * * [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations * * *."

Request for Comments

An important step in the review process involves gathering and analyzing information from affected persons about their experience complying with the rule and any material changes in circumstances since the rule was issued. This notice requests written comments on the continuing

[1] *http://www.osha.gov/SLTC/bloodbornepathogens/index.html.*

[2] United States Department of Health and Human Services; Centers for Disease Control and Prevention (CDC); National Institute for Occupational Safety and Health (NIOSH); "NIOSH Alert: Preventing Needlestick Injuries in Health Care Settings;" *NIOSH Publication No. 2000–108;* November 1999.

[3] United States Department of Labor, Occupational Safety and Health Administration (OSHA); Safety and Health Topics, Bloodborne Pathogens and Needlestick Prevention; *http://www.osha.gov/SLTC/bloodbornepathogens/index.html.*

need for the Bloodborne Pathogens Standard (29 CFR 1910.1030), its impact on small businesses, its effectiveness in protecting workers, and all other issues raised by Section 610 of the Regulatory Flexibility Act and Section 5 of Executive Order 12866. It would be particularly helpful for commenters to suggest how the Standard could be modified to reduce the burden on employers while maintaining or improving employee protection. Furthermore, comments would be appreciated on the following topics:

- Exposures in non-hospital settings;
- Recent technological advances in needlestick prevention;
- Effectiveness of needlestick prevention programs;
- New, emerging health risks from bloodborne pathogens; and
- Any other experiences related to compliance with the standard.

Public comments will assist the Agency in determining whether to retain the Standard unchanged, to initiate rulemaking to revise or rescind it, or to develop improved compliance assistance.

Comments must be submitted by August 12, 2010. Comments should be submitted to the addresses and in the manner specified at the beginning of the notice.

Authority: This document was prepared under the direction of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under Section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) and Section 5 of Executive Order 12866 (58 FR 51735, October 4, 1993).

Signed at Washington, DC on May 11, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–11579 Filed 5–13–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA–H054a-2006–0064]

RIN 1218–AC43

Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards

AGENCY: Occupational Safety and Health Administration (OSHA): Department of Labor.

ACTION: Proposed rule; withdrawal.

SUMMARY: With this notice, OSHA is withdrawing the proposed rule that accompanied its direct final rule (DFR) amending the employee notification requirements in the exposure determination provisions of the Hexavalent Chromium (Cr(VI)) standards.

DATES: Effective May 14, 2010, the proposed rule published March 16, 2010 (75 FR 12485), is withdrawn.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries contact Ms. Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1999. For technical inquiries, contact Maureen Ruskin, Office of Chemical Hazards—Metals, Directorate of Standards and Guidance, Room N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; *telephone:* (202) 693–1950; *fax:* (202) 693–1678.

Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1888. Electronic copies of this **Federal Register** notice and other relevant documents are available at OSHA's Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: On March 17, 2010, OSHA published a DFR amending the employee notification requirements in the exposure determination provisions of the Cr(VI) standards at 29 CFR 1910.1026, 29 CFR 1915.1026, and 29 CFR 1926.1126 (75 FR 12681). OSHA also published a companion proposed rule proposing the same changes to the Cr(VI) standards. (75 FR 12485, March 16, 2010). In the DFR, OSHA stated that it would withdraw the companion proposed rule and confirm the effective date of the DFR if no significant adverse comments were submitted on the DFR by April 16, 2010.

OSHA received eight comments on the DFR, which the Agency has determined were not significant adverse comments. OSHA is publishing a notice announcing and explaining this determination and confirming the effective date of the DFR as June 15, 2010. Accordingly, OSHA is not proceeding with the proposed rule and is withdrawing it from the rulemaking process.

List of Subjects

29 CFR Part 1910

Exposure determination, General industry employment, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

29 CFR Part 1915

Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health, Shipyard employment.

29 CFR Part 1926

Construction employment, Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice under the following authorities: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1911.

Signed at Washington, DC, on May 11, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–11583 Filed 5–13–10; 8:45 am]

BILLING CODE 4510–9–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AB24

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Department of the Treasury, Financial Management Service (Service) is proposing to amend our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. Our regulation adopts, with some exceptions, the ACH Rules developed by NACHA—The Electronic Payments

Association (NACHA) as the rules governing the use of the ACH Network by Federal agencies. We are issuing this proposed rule to address changes that NACHA has made to the ACH Rules since the publication of NACHA's 2007 ACH Rules book. These changes include new requirements to identify all international payment transactions using a new Standard Entry Class Code and to include certain information in the ACH record sufficient to allow the receiving financial institution to identify the parties to the transaction and to allow Office of Foreign Assets Control (OFAC) screening.

In addition, we are proposing to streamline the process for reclaiming post-death benefit payments from financial institutions; to require financial institutions to provide limited account-related customer information related to the reclamation of post-death benefit payments as permitted under the Payment Transactions Integrity Act of 2008; to allow Federal payments to be delivered to pooled or master accounts established by nursing facilities for residents or held by religious orders whose members have taken vows of poverty; and to allow Federal payments to be delivered to stored value card, prepaid card or similar card accounts meeting certain consumer protection requirements.

DATES: Comments on the proposed rule must be received by July 13, 2010.

ADDRESSES: You can download this proposed rule at the following Web site: *http://www.fms.treas.gov/ach.* You may also inspect and copy this proposed rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

In accordance with the U.S. government's eRulemaking Initiative, the Service publishes rulemaking information on *http://www.regulations.gov.* Regulations.gov offers the public the ability to comment on, search, and view publicly available rulemaking materials, including comments received on rules.

Comments on this rule, identified by docket FISCAL–FMS–2009–0001, should only be submitted using the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Mail:* Bill Brushwood, Financial Management Service, 401 14th Street, SW., Room 400A, Washington, DC 20227.

The fax and e-mail methods of submitting comments on rules to the Service have been decommissioned.

Instructions: All submissions received must include the agency name ("Financial Management Service") and docket number FISCAL–FMS–2009–0001 for this rulemaking. In general, comments received will be published on Regulations.gov without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Bill Brushwood, Director of the Settlement Services Division, at (202) 874–1251 or *bill.brushwood@fms.treas.gov;* or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title 31 CFR part 210 (Part 210) governs the use of the ACH Network by Federal agencies. The ACH Network is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions. From time to time we amend Part 210 in order to address changes that NACHA periodically makes to the ACH Rules or to revise the regulation as otherwise appropriate.

NACHA has adopted a number of changes to the ACH Rules since the publication of the 2007 ACH Rules book. We are proposing to incorporate in Part 210 some, but not all, of the changes to the ACH Rules. The changes to the ACH Rules include new requirements to identify all international payment transactions using a new Standard Entry Class Code and to include in the ACH record certain information sufficient to allow the receiving financial institution to identify the parties to the transaction and the path of the transaction. In addition, NACHA amended the ACH Rules to allow NACHA to request data from Originating Depository Financial Institutions (ODFIs) for an Originator or Third-Party Sender that exceeds a rate of 1 percent for debit entries returned as unauthorized.

In addition to addressing NACHA Rule changes, we are proposing to amend Part 210, effective January 1, 2012, to streamline the reclamation process for post-death benefit payments. Currently, the reclamation process is a manual, paper-based process in which Treasury sends out a Notice of Reclamation (FMS Form 133) that the financial institution must complete, certify and return. Under Part 210, a financial institution generally is liable for the total amount of payments sent within 45 days of the recipient's death even if the financial institution was not aware of the death. In light of the fact that the great majority of reclamations are limited to just this "45-day Amount," consisting of one or two post-death payments for which the financial institution will ultimately be liable, we are requesting comment on an approach in which Treasury would proceed with an automatic debit to the financial institution's reserve account, following advance notice to the financial institution of the debit with a right to challenge. This process would apply only to situations in which a notice of reclamation is limited to payments received within 45 days after the recipient's death. As discussed in Section II below, we believe this change would result in operational efficiencies for both Treasury and financial institutions.

For reclamations limited to the 45-day Amount, financial institutions would no longer be required to provide customer account-related information related to the disposition of the post-death payments. For reclamations of payments received more than 45 days after the recipient's death, we are proposing to require financial institutions to provide the last-known telephone number of account holders and withdrawers, in addition to name and address. Also, as now permitted pursuant to the Payment Transactions Integrity Act of 2008, financial institutions would be required to provide withdrawer information for all types of benefit payments being reclaimed. Prior to the enactment of the Payment Transactions Integrity Act, account-related information could be shared only for certain types of benefit payments.

Finally, we are proposing to amend our long-standing requirement in Part 210 that non-vendor payments be delivered to a deposit account at a financial institution in the name of the recipient. The proposed amendment would allow the delivery of Federal payments to resident trust or patient fund accounts held by nursing homes,

to accounts held by religious orders for members who have taken a vow of poverty, and to prepaid and stored value card accounts provided that the cardholder's balance is FDIC insured and covered by the consumer protections of the Federal Reserve's Regulation E.

We are requesting public comment on all the foregoing proposed amendments to Part 210.

II. Summary of Rule Changes

International ACH Transactions

Effective September 18, 2009, the NACHA Rules require ODFIs and Gateway Operators to identify all international payment transactions transmitted via the ACH Network for any portion of the money trail as International ACH Transactions using a new Standard Entry Class Code (IAT). IAT transactions must include the specific data elements defined within the Bank Secrecy Act's (BSA) "Travel Rule" so that all parties to the transaction have the information necessary to comply with U.S. law, including the laws administered by OFAC.

OFAC has stated that financial institutions need to safeguard the U.S. financial system from terrorist and other sanctions abuses involving international ACH payments processed through the domestic U.S. ACH Network. In the domestic payment environment, ODFIs and Receiving Depository Financial Institutions (RDFIs) can rely on each other to ensure compliance with OFAC obligations with regard to their own customers. For international payments, however, Depository Financial Institutions (DFIs) cannot rely on international counterparts for compliance with U.S. law.

Previously, many payments that are international in nature were being introduced as domestic transactions into the U.S. ACH Network through correspondent banking relationships, making it difficult for processing DFIs to identify them for purposes of complying with U.S. law. NACHA's new IAT Standard Entry Class Code classifies international payments based on the geographical location of the financial institutions or money transmitting businesses involved in the transaction, instead of the location of the originator or receiver. Each IAT entry is accompanied by mandatory Addenda Records conveying the following information:

- Name and physical address of the Originator.
- Name and physical address of the Receiver.
- Account number of the Receiver.
- Identity of the Receiver's bank.
- Foreign Correspondent Bank name, Foreign Correspondent Bank ID number, and Foreign Correspondent Bank Branch Country Code.

As defined in the 2009 ACH Rules, an International ACH Transaction (IAT) entry is:

> A debit or credit Entry that is part of a payment transaction involving a financial agency's office that is not located in the territorial jurisdiction of the United States. For purposes of this definition, a financial agency means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds. An office of a financial agency is involved in the payment transaction if it (1) holds an account that is credited or debited as part of the payment transaction; (2) receives payment directly from a Person or makes payment directly to a Person as part of the payment transaction; or (3) serves as an intermediary in the settlement of any part of the payment transaction.

See 2009 ACH Rules, Subsection 14.1.36. The term "Person" means a natural person or an organization. 2009 ACH Rules, Subsection 14.1.52. The term "payment transaction" is not defined within the ACH Rules, but the 2009 Operating Guidelines state that within the IAT definition, payment transaction refers to: "An instruction of a sender to a bank to pay, or to obtain payment of, or to cause another bank to pay or obtain payment of, a fixed or determinate amount of money that is to be paid to, or obtained from, a receiver, and any and all settlements, accounting entries, or disbursements that are necessary or appropriate to carry out the instruction." 2009 Operating Guidelines, Section IV, Chapter XI, p. 202.

The 2009 Operating Guidelines provide various examples of transactions that would be classified as IAT entries. One example deals with pension or Social Security benefit payments delivered to the U.S. bank accounts of retirees residing offshore. If the U.S. bank to which such a payment is delivered further credits the payment to an offshore bank with which it has a correspondent relationship, the entry is to be classified by the ODFI as IAT. In other words, despite being destined to U.S. bank accounts, the transactions would be IATs because the ultimate destinations of the payments are accounts held with offshore banks or financial agencies. The 2009 Operating Guidelines indicate that it is the Originator's obligation to understand the legal domicile of its retirees and inquire whether they hold accounts in U.S. banks or with offshore financial institutions. *See* 2009 Operating Guidelines, Section IV, Chapter XI, Scenario F, p. 209. As applied to Federal payments, this would mean that an agency certifying a payment to a recipient residing overseas must inquire whether the payment, although directed to a domestic bank, will be further credited to a foreign correspondent bank. If so, the agency must classify the payment as IAT.

We are proposing to accept the IAT rule for Federal payments. For Federal benefit payments delivered to overseas recipients in Mexico, Canada and Panama through the FedGlobal℠ ACH Payment Services, we do not foresee any difficulty in implementing the IAT rule. For other payments, however, we anticipate that it may take until January 1, 2012 to make the system and operational changes necessary to implement the IAT, due in part to the dedication of operational resources to the delivery of Economic Recovery Act payments in 2009. We plan to phase in IAT requirements in stages, based on the type of payment and the agency issuing the payment, as expediently as operationally possible, and we have already ceased originating Consumer Cross Border (PBR) and Corporate Cross Border (CBR) entries. Accordingly, we are proposing to adopt the IAT rule for Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal℠ ACH Payment Service. For all other Federal payments, we are proposing an effective date of January 1, 2012.

The proposed January 1, 2012 effective date does not affect agencies' existing and ongoing obligation to perform OFAC screening of all payments that they certify to Treasury for disbursement, and in fact presupposes that agencies are screening all payments prior to certification. As set forth in the Treasury Financial Manual, agencies must not make or certify payments, or draw checks or warrants, payable to an individual or organization listed on the Specially Designated National and Blocked Person list, and agencies must consult the list before making payments. *See* Treasury Financial Manual, Vol. I, Part 4, Chapter 1000, sec. 1020.

Lastly, in implementing the IAT requirements, we anticipate that some agencies will format as an IAT transaction any payment to an individual or entity with an address outside the territorial jurisdiction of the U.S. This may result in the identification of some transactions as IAT even though funds do not ultimately leave the United States. However, taking an "over-inclusive"

approach to implementing IAT greatly eases the administrative burden that Federal agencies would otherwise be faced with. We do not believe this over-inclusive approach would create any compliance issues, but we request comment from agencies and financial institutions on this approach.

B. NACHA Rules Enforcement

Effective December 21, 2007, NACHA modified its rules to broaden the scope of Appendix Eleven (The National System of Fines). The Appendix was revised to (1) allow NACHA to request data from ODFIs for an Originator or Third-Party Sender that appears to exceed a rate of one percent for debit entries returned as unauthorized; and (2) define the circumstances under which NACHA may submit violations related to the ODFI reporting requirement to the National System of Fines. Several other provisions of the National System of Fines were also modified.

Part 210 does not incorporate Appendix 11 of the NACHA Rules. *See* 31 CFR 210.2(d)(3). The Federal government is constrained from entering into arrangements that may result in unfunded liabilities. Moreover, we do not believe that subjecting Federal agencies to the System of Fines is necessary or appropriate in light of its underlying purpose. Accordingly, we are proposing not to adopt the modifications to Appendix 11. In the event that a Federal agency were to experience a high rate of debit entries returned as unauthorized, we would work with the agency and coordinate with NACHA to address the situation.

C. ODFI Reporting Requirements

Effective March 20, 2009, NACHA amended its rules to incorporate new reporting requirements for ODFIs within Article Two (Origination of Entries). These reporting requirements require ODFIs to provide, when requested by NACHA, certain information about specific Originators or Third-Party Senders believed to have a return rate for unauthorized debit entries in excess of 1 percent. The rule also requires ODFIs to reduce the return rate for any such Originator or Third-Party Sender to a rate below 1 percent within 60 days. The amendment replaced a reporting requirement for Telephone-Initiated (TEL) entries that was previously in the ACH Rules.

We are proposing not to adopt the new reporting requirements. When NACHA adopted the TEL reporting requirement in 2003, we did not adopt it, in part because we did not believe that agencies were likely to experience excessive rates of returned entries, which has proved to be true. Similarly, we do not believe that it is necessary or appropriate to subject Federal agencies to a formal reporting process for unauthorized entries. However, in the event that NACHA were to bring to our attention an excessive return rate at any agency, we would work with the agency and coordinate with NACHA to address the situation.

D. Reclamations

Currently, based on instructions from the Social Security Administration (SSA) and other Federal agencies that pay recurring benefit payments, Treasury sends paper Notices of Reclamation to RDFIs in order to reclaim post-death benefit payments. RDFIs must respond to these notices by providing information on the notices and returning them to Treasury within a specific time frame. Depending on the circumstances of a reclamation, the RDFI would be liable for either the full amount or a partial amount of the post-death payments that were issued. In general, an RDFI is liable to Treasury for the total amount of all benefit payments received after the death or legal incapacity of a recipient or death of a beneficiary unless the RDFI can limit its liability. An RDFI can limit its liability to the total amount of payments sent within 45 days after the recipient's death if it: (1) Certifies that it did not have actual or constructive knowledge of the recipient's death or incapacity at the time the RDFI received one or more benefit payments; (2) returns all post-death benefit payments it receives after it learns of the death; and (3) responds to the FMS–133, Notice of Reclamation, within 60 days from the date of the Notice. Since most benefit payments are issued on a monthly basis, the "45-day Amount" consists of either one or two payments.

Currently, after receiving the completed Notice of Reclamation from the RDFI, Treasury debits the RDFI for the 45-day Amount less any amount the RDFI has returned with the completed Notice of Reclamation. In some cases, the Federal agency that issued the payment(s) (*e.g.,* SSA) may be able to collect an amount from whoever withdrew the funds after they were deposited, thereby reducing the 45-day Amount. In such cases, the amount of the reclamation debit against the RDFI's reserve account is sometimes less than the 45-day Amount.

Approximately 85 percent of all reclamation notices sent to RDFIs are for payments disbursed within 45 days after death or legal incapacity of the recipient. Of this 85 percent figure, RDFIs return the full 45-day Amount approximately 89 percent of the time. For the other 11 percent of reclamation notices, in many cases the RDFIs eventually remit any remaining portion of the 45-day Amount.

Example: To illustrate, assume that for a given month the Service sends 100 reclamation notices to RDFIs. Of those 100 notices, approximately 85 notices will request reclamation of only payments disbursed within 45 days after death or legal incapacity. Of those 85 notices, RDFIs will return the 45-day Amount in response to 76 notices. The RDFIs will eventually return the 45-day Amount for most of the other 9 notices.

As the example illustrates, in the vast majority of cases, the amount of the reclamation is the 45-day Amount, which represents one or two post-death payments, and the vast majority of RDFIs return that amount with their response to the Notice of Reclamation.

To achieve cost savings and efficiencies for both the Federal government and RDFIs, we are proposing to automatically debit RDFIs for the 45-day Amount, following a 30-day advance notice of the debit. RDFIs could choose to return the 45-day Amount after receiving the notice, or could elect to let the debit proceed. By automatically originating a debit for the 45-day Amount (less any amount collected by the paying agency), rather than issuing forms that must be manually processed, the Service would create a more streamlined process with reduced processing, paperwork, and postage. The Service would not need to expend resources manually processing reclamation notices and RDFIs would not be required to expend resources processing notices and returning funds to Treasury. The proposed change, which would take effect on January 1, 2012, would affect only the procedure used to process a reclamation, and not the amount of an RDFI's liability. In order to provide RDFIs with a process for challenging any debit for a 45-day Amount, we are proposing to adopt a formal procedure for protesting such debits. An RDFI that believes that a debit was or would be improper, either entirely or in part, would be able to submit a notice that it is disputing the reclamation either before the debit is carried out or within 90 days after the debit to its reserve account. The Service would be required to make a determination within 60 days of receipt of the dispute notice, subject to a 60-day extension if necessary. If the RDFI files a dispute notice before the debit is carried out, the Service would not proceed with the debit until a final

determination is made that the debit is proper.

Only reclamations limited to the 45-day Amount would be subject to this process. As discussed above, 15 percent of all reclamation actions are for an amount that exceeds the 45-day Amount. For these reclamations, the current paper-based manual process would be continued, meaning that RDFIs would receive and need to respond to a Notice of Reclamation as they currently do.

E. Payment Transactions Integrity Act of 2008 Changes

Last year Congress enacted the Payment Transactions Integrity Act of 2008. The Payment Transactions Integrity Act amended the Right to Financial Privacy Act of 1978, which had prohibited Treasury and other Federal agencies from obtaining from banks information contained within the financial records of any customer, with limited exceptions. Under the Payment Transactions Integrity Act, Treasury and other agencies are now permitted to obtain customer information in connection with the investigation or recovery of an improper Federal payment. We are proposing to amend § 210.11(b)(3)(i) in order to require RDFIs to provide the name and last-known address and phone number for account owners and others who have withdrawn, or were authorized to withdraw, funds subject to a reclamation. Currently, Part 210 requires banks to provide only the name and address (not the phone number) of account owners and withdrawers, and only in connection with the reclamation of Social Security Federal Old-Age, survivors, and Disability Insurance benefit payments or benefit payments certified by the Railroad Retirement Board or the Department of Veterans' Affairs. The proposed change would require financial institutions to provide information for other types of benefit payments, such as Civil Service benefit payments and Supplemental Security Income payments, as now permitted under the Payment Transactions Integrity Act. As discussed above, the Service is proposing to discontinue the collection of such information for all reclamations that do not exceed the 45-day Amount. Accordingly, information would be collected in connection with reclamations only for the approximately 15 percent of total reclamations involving more than the 45-day Amount.

F. "In The Name Of The Recipient" Requirements

Title 31 CFR § 210.5(a) provides that, notwithstanding ACH rules 2.1.2, 4.1.3, and Appendix Two, section 2.2 (listing general ledger and loan accounts as permissible transaction codes), an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account at a financial institution. For all payments other than vendor payments, the account at the financial institution must be in the name of the recipient, subject to certain exceptions.[1] As we indicated in the preamble of the **Federal Register** notice promulgating § 210.5, our long-standing interpretation of the words "in the name of the recipient," has been that the payment recipient's name must appear in the account title. *See, e.g.,* 64 FR 17480, referring to discussion at 63 FR 51490, 51499. From time to time financial institutions and other payment service providers have urged Treasury to opine that the "in the name of the recipient" requirement is met if the recipient has an ownership interest in a pooled account and that individual's interest is reflected in a subacccount record, even if the recipient's name is not included in the title of the account. To date we have declined to adopt this interpretation.

The "in the name of the recipient" requirement is, in essence, a consumer protection policy. The requirement that an account be in the name of the recipient is designed to ensure that a payment reaches the intended recipient. *See* discussion at 63 FR 51490, 51499. We have had concerns in the past that Federal benefit payment recipients could enter into master/sub account relationships in which they have little control over the account to which their benefit payments are directed.

The Service's "in the name of the recipient" requirement was last opened for public comment in the late 1990's during the rulemaking process for 31 CFR part 208. It was at this time that Treasury reaffirmed that the policy applies not only to benefit payments, but also to wage, salary and retirement payments, and that the account must be at a financial institution, with specific exceptions provided for authorized payment agents and investment accounts. The exclusion of vendor payments was a result of the comments received during the comment period and accepted in the final rule.

[1] Identical requirements appear in 31 CFR 208.6. In the event that we finalize the proposed amendment to § 210.5, we will amend 31 CFR 208.6 to create an identical exception.

Currently, there are four exceptions to the "in the name of the recipient" requirement of § 210.5(a), which are set forth in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4). Paragraph 210.5(b)(1) allows deposits into an account held by an "authorized payment agent" and titled in accordance with the regulations governing the authorized payment agent. An authorized payment agent is defined as a representative payee or fiduciary appointed to act on behalf of an individual under agency regulations. 31 CFR 210.2(e). Section 210.5(b)(2) allows deposits into investment accounts established through a registered securities broker or dealer. Section 210.5(b)(3) allows Federal agency employee travel reimbursement payments to be credited to the account of the travel card issuing bank for credit to the employee's travel card account. Section 210.5(b)(4) allows deposits to an account held by a fiscal or financial agent designated by the Service for card programs established by the Service and provides that the account title, access terms and other account provisions may be specified by the Service. We are proposing to add three additional exceptions to the "in the name of the recipient" requirements: (1) An exception for payments to individuals residing in nursing facilities; (2) an exception for payments to members of religious orders who have taken a vow of poverty; and (3) an exception for payments to prepaid debit and stored value card accounts meeting certain consumer protection requirements.

1. Accounts Held by Nursing Facilities

On April 21, 2008, SSA published a **Federal Register** notice requesting comments on arrangements in which Social Security benefit payments are deposited into a third-party's "master" account when the third party maintains separate "sub" accounts for individual beneficiaries. 73 FR 21403. The issue of master/sub accounts had come to SSA's attention in the context of concerns regarding the use of master/sub accounts by "payday lenders" who solicit Social Security beneficiaries to take out high-interest loans. SSA requested comments on the use of master/sub accounts not only by beneficiaries, lenders, advocates, and other members of the public, but also specifically asked if nursing homes would be able to receive and manage benefits for their residents without the use of master/sub accounts. The comments received by SSA indicated that the use of master/sub account arrangements by residents of nursing facilities is widespread, and that these arrangements are beneficial for residents

(particularly for the elderly population needing assistance with banking or for whom it can be difficult to make trips to the bank). None of the commenters noted any abuses associated with these arrangements. Based on the comments received, SSA's view is that master/sub accounts held by nursing facilities serve useful purposes and do not present the concerns raised by payday lender account arrangements.

Nursing facilities are highly regulated entities, and resident trust or patient fund accounts held by nursing facilities are fiduciary accounts subject to specific requirements and protections under Federal statute and regulation. The Federal Nursing Home Reform Act, which was part of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), revised Federal standards for nursing home care established in the 1965 creation of both Medicare and Medicaid. 42 U.S.C. 1395i–3, 42 U.S.C. 1396r. OBRA '87 created a set of national minimum standards of care and rights for people living in nursing facilities. Detailed regulations at 42 CFR part 483 implement the statute. The Centers for Medicare and Medicaid Services (CMS) provides additional detailed guidance as part of its oversight and compliance enforcement. *See http://www.cms.hhs.gov/GuidanceforLawsandRegulations/12_NHs.asp.*

One element of the revised standards was to mandate that nursing facilities manage and account for the personal funds residents often deposit with the facility. Residents have the right to manage their financial affairs, and nursing facilities are prohibited from requiring residents to deposit their personal funds with the facility. 42 U.S.C. 1396r(c)(6); 42 CFR 483.10(c)(1). At the same time, upon written authorization of a resident, facilities must "hold, safeguard, manage and account for" the personal funds of the resident deposited with the facility. 42 U.S.C. 1396r(c)(1)(B); 42 CFR 483.10(c)(2). The statute requires that residents be provided a written description of their legal rights that includes a description of the protection of personal funds and a statement that a resident may file a complaint with a state survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility. 42 U.S.C. 1396r(c)(1)(B); 42 CFR 483.10(b)(7)(i). Other statutory provisions address the management of personal funds, as follows:

- The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account that is separate from any of the facility's operating accounts and all interest earned on that separate account must be credited to resident's account balance. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund. 42 U.S.C. 1396r(c)(6)(B)(i).
- The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record. 42 U.S.C. 1396r(c)(6)(B)(ii).
- The facility must notify each resident receiving medical assistance under the state plan when the amount in the resident's account reaches $200 less than the dollar amount determined under 42 U.S.C. 1382(a)(3)(B) and of the fact that, if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section, the resident may lose eligibility for such medical assistance or for certain other benefits. 42 U.S.C. 1396r(c)(6)(B)(iii).

To protect personal funds of residents deposited with a nursing facility, the nursing facility must purchase a security bond to assure the security of all personal funds. 42 U.S.C. 1396r(c)(6)(C). Lastly, nursing facilities cannot charge anything for these services. A facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicare or Medicaid. 42 U.S.C. 1396r(c)(6)(D). It can only offset the bank service fee on the patient fund account against the interest earned.

In light of the extensive protections provided to residents of nursing facilities whose funds are maintained in resident trust or patient fund accounts, we believe it is appropriate to permit the delivery of Federal benefit payments to these accounts, which are typically master/sub accounts. We are therefore requesting comment on a proposed amendment to the existing "in the name of the recipient" requirement in order to permit payments to be deposited into resident trust or patient fund accounts established by nursing facilities.

2. Accounts for Members of Religious Orders Who Have Taken Vows of Poverty

SSA's **Federal Register** notice regarding master/sub accounts specifically requested comment on accounts established by religious orders for members of such orders who have taken vows of poverty. The comments received did not indicate that there are any problems associated with these accounts, and commenters recommended that they be permitted. Accordingly, we are proposing to allow payments disbursed to a member of a religious order who has taken a vow of poverty to be deposited to an account established by the religious order.

For purposes of defining who is a "member of a religious order who has taken a vow of poverty," we are proposing to utilize existing guidance issued by the Internal Revenue Service (IRS). The treatment for Federal tax purposes of services performed by a member of a religious order who has taken a vow of poverty is addressed in IRS Publication 517 (2008). For example, IRS Publication 517 states that a member of a religious order who has taken a vow of poverty is exempt from Self-Employment (SE) tax on earnings for services performed for the member's church or its agencies. For purposes of Federal income tax withholding and employment tax (FICA), a member of a religious order who has taken a vow of poverty may be entitled to receive Social Security benefits if the order (or an autonomous subdivision of the order) has elected coverage for its current and future vow-of-poverty members. In that case, the religious order pays all FICA taxes, including the employee's share. *See* IRS Publication 517 (2008). Organizations and individuals may request rulings from IRS on whether they are religious orders, or members of a religious order, respectively, for FICA, SE tax and Federal income tax withholding purposes. We request comment on whether it is appropriate to define the phrase "member of a religious order who has taken a vow of poverty" in the same way that the phrase would be defined by IRS for Federal tax purposes.

3. Prepaid Debit and Stored Value Card Accounts

The utilization of prepaid debit cards and stored value cards has expanded substantially over the last decade, and cards have become a vital payment delivery mechanism for the under-banked. Typically, prepaid card programs are set up so that cardholders' funds are pooled in a master account with each individual cardholder having a subaccount established in the underlying records maintained by the financial institution. Thus, in most cases the individual cardholder's name is not on the title of the deposit account in which the funds are held, even though the cardholder's name may be

embossed on the card itself. We believe that the "in the name of the recipient" requirement may be impeding the use of prepaid card programs that may be beneficial to the unbanked and underbanked populations. In view of developments in the prepaid and stored value card industry during the past ten years, we are proposing to add an exception to the "in the name of the recipient" requirement of § 210.5 to adjust to the changing payment environment and the financial products that support the private sector. As part of this proposal, we are seeking comment on whether the "in the name of the recipient" requirement unduly hampers account options for Federal payment recipients. We request comment from consumers and consumer groups, industry associations, Federal agencies, financial institutions and payment services providers on this issue.

The "in the name of the recipient" requirement was put in place to ensure that the payment reaches the intended recipient through a deposit account, and that the recipient has the usual consumer control and protections associated with a deposit account. We believe that account structures underlying prepaid and stored value cards can be set up to ensure that the recipient receives and has control of payments, even if the cardholder's name is not on the account title in which the funds are held. In this regard, we have taken into consideration the Federal Deposit Insurance Corporation's (FDIC) issuance in 2008 of New General Counsel's Opinion No. 8 (GC8). *See* 73 FR 67155. The FDIC's Legal Division, noting that stored value cards now commonly serve as the delivery mechanism for vital funds such as employee payroll and government payments such as benefits and tax refunds, clarified that deposit insurance coverage would be provided to the holders of prepaid and stored value cards. The FDIC's Legal Division concluded that funds underlying prepaid and stored value cards that are held for cardholders' benefit at insured depository institutions should always be treated as deposits, without regard to whether the funds are accessed by a plastic card or a paper check. Under GC8, all funds underlying stored value cards and other nontraditional access mechanisms will be treated as "deposits" to the extent that the funds have been placed at an insured depository institution. If cardholders' funds are commingled in a pooled account, each cardholder will be treated as the insured owner of the funds held on his or her behalf in the pooled account, provided that the three requirements for pass-through insurance are met. Those requirements are:

(1) The account records of the insured depository institution must disclose the existence of the agency or custodial relationship. This requirement can be met by opening the account under a title such as: "ABC Company as Custodian for Cardholders;"

(2) The records of the insured depositor institution or records maintained by the custodian or other party must disclose the identities of the actual owners and the amount owned by each such owner; and

(3) The funds in the account actually must be owned (under the agreements among the parties or applicable law) by the purported owners and not by the custodian or other party. *See* GC8, 73 FR67157. *See* 73 FR 67155, 67157.

We are proposing to allow the delivery of Federal payments to prepaid and stored value card accounts, provided that the card bears the cardholder's name and meets the following requirements:

- The account accessed by the card is held at an insured depository institution and meets the requirements for pass-through insurance under 12 CFR part 330 such that the cardholder's balance is FDIC insured to the extent permitted by law; and
- The card account constitutes an "account" as defined in 12 CFR 205.2(b) such that the consumer protections of Regulation E apply to the cardholder.

Stored value or prepaid cards that do not meet the foregoing requirements would not fall under the proposed exception. For example, some merchants, such as book stores and coffee shops, offer prepaid cards that function in the same manner as gift certificates. These cards do not typically bear the cardholder's name, do not provide access to money at a depository institution and do not meet the FDIC's requirements for pass-through insurance. *See* 73 FR 67156. These types of cards also are not covered by the Federal Reserve's Regulation E. Therefore, they could not be used to deliver certain Federal payments, such as Federal benefit payments.

We request comment on the implications of allowing delivery of Federal benefit payments to accounts that meet the requirements listed above. We are mindful of concerns that account arrangements may be structured to facilitate payday lending and similar arrangements that are inappropriate for Federal benefit recipients, and we are particularly interested in comment on whether the consumer protections required in the proposed exceptions are adequate to prevent potential abuses. In addition, we request comment on whether to revise the wording in 31 CFR 210.5(a) which provides that "an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account at a financial institution." We are considering revising that sentence to read "an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account held by a financial institution and directly *accessible by the recipient*." The purpose of the revision would be to make it clear that accounts established by payday lenders or other third parties under terms that prevent the recipient from being able to freely withdraw or access funds in the account do not satisfy the requirements of 31 CFR 210.5.

III. Section-by-Section Analysis

In order to incorporate in Part 210 the ACH rule changes that we are accepting, we are replacing references to the 2007 ACH Rules book with references to the 2009 ACH Rules book. No change to Part 210 is necessary in order to exclude the amendments to the rules enforcement provisions, since Part 210 already provides that the rules enforcement provisions of Appendix 11 of the ACH Rules do not apply to Federal agency ACH transactions. *See* § 210.2(d).

§ 210.2(d)

We are proposing to amend the definition of applicable ACH Rules at § 210.2(d) to reference the rules published in NACHA's 2009 Rules book rather than the rules published in NACHA's 2007 Rules book. Proposed § 210.2(d)(6) is revised to reflect a numbering change to the ACH Rules pursuant to which former ACH Rule 2.11.2.3 is now ACH Rule 2.12.2.3. In addition, we are proposing to revise 210.2(d)(7) to remove a reference to former ACH Rule 2.13.3, which required reporting regarding unauthorized Telephone-Initiated entries. NACHA has replaced that reporting requirement with a broader reporting requirement which we are proposing not to adopt. Proposed § 210.2(d)(7) sets forth ACH Rule 2.18, which contains those broader reporting requirements and which we are proposing not to adopt.

Proposed § 210.2(d)(8) has been added in order to exclude entries other than Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal℠ ACH Payment Service

from ACH Rule 2.11 (International ACH Transactions) until January 1, 2012.

§ 210.3(b)

We are proposing to amend § 210.3(b) by replacing the references to the ACH Rules as published in the 2007 Rules book with references to the ACH Rules as published in the 2009 Rules book.

§ 210.5(b)

We are proposing to redesignate paragraph (b)(5) as paragraph (b)(8) and to add new paragraphs (b)(5), (b)(6) and (b)(7), which create additional exceptions to the requirement in paragraph (a) that all payments other than vendor payments be delivered to an account in the name of the recipient. Proposed paragraph (b)(5) would allow payments disbursed to a resident of a nursing facility, as defined in 42 U.S.C. 1396r, to be deposited into a resident trust or patient fund account established by the nursing facility. Proposed paragraph (b)(6) would allow payments disbursed to a member of a religious order who has taken a vow of poverty to be deposited to an account established by the religious order. Proposed paragraph (b)(7) would allow payments to be deposited to an account accessed through a stored value card, prepaid card or similar card that bears the cardholder's name and meets certain requirements. The requirements include that the account meets the FDIC's pass-through insurance requirements so that cardholder's balance is FDIC insured to the cardholder, and that the card constitutes an "account" for purposes of requiring compliance with the Federal Reserve's Regulation E.

§ 210.10

Proposed § 210.10(a) retains certain provisions not affected by the proposed changes to the reclamation process. RDFIs must return all payments after becoming aware of the death or incapacity of a recipient. Also, an RDFI must notify an agency issuing payments if it learns of the death or legal incapacity of a recipient or beneficiary from a source other than the agency.

Proposed § 210.10(b) sets forth the automated reclamation process for payments not exceeding the 45-day Amount. Proposed § 210.10(c) sets forth the process for payments exceeding the 45-day Amount, which is unchanged from the current process.

Proposed §§ 210.10(d), 210.10(e) and 210.10(f) contain the language currently located in current §§ 210.10(c), 210.10(d) and 210.10(e), without any changes. Proposed § 210.10(f) sets forth the procedure by which financial institutions can protest a debit carried out under proposed § 210.10(b).

Proposed §§ 210.10(b) and (f) would not become effective until January 1, 2012.

§ 210.11

We are proposing to amend § 210.11(b)(3)(i) in order to require RDFIs to provide the name and last-known address and phone number for account owners and others who have withdrawn, or were authorized to withdraw, funds from the account, as permitted by the Payment Transactions Integrity Act of 2008. This requirement applies only to reclamations for an amount exceeding the 45-day Amount.

IV. Procedural Analysis

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make these rule easier to understand.

Regulatory Planning and Review

The proposed rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed changes to the regulation related to automating reclamations may nominally reduce costs for financial institutions, including financial institutions that are small entities, because the costs of completing reclamation forms and mailing them back to Treasury would be eliminated. However, the economic impact of this cost reduction would be minimal. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

For the reasons set out in the preamble, we propose to amend 31 CFR part 210 as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

2. Revise § 210.2, paragraph (d), to read as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before September 18, 2009, as published in Parts IV, V and VII of the "2009 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network" except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rules 1.2.4 and 2.2.1.12; Appendix Eight; and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.10; 2.6; and 4.8 (governing the reclamation of benefit payments);

(5) ACH Rule 9.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of "Effective Entry Date" in Appendix Two);

(6) ACH Rule 2.12.2.3 (requiring that originating depository financial

institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries);

(7) ACH Rule 2.18 (requiring reporting and reduction of high rates of entries returned as unauthorized); and

(8) ACH Rule 2.11 (International ACH Transactions), which shall not apply until January 1, 2012 to entries other than Federal benefit payments delivered to Mexico, Canada and Panama through the FedGlobal℠ ACH Payment Service.

* * * * *

3. Revise § 210.3, paragraph (b), to read as follows:

* * * * *

(b) *Incorporation by reference—applicable ACH Rules.*

(1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 18, 2009, as published in Parts IV, V, and VII of the "2009 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network." The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the "2009 ACH Rules" are available from NACHA—The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC 20002; and the Financial Management Service, 401 14th Street, SW., Room 400A, Washington, DC 20227.

(2) Any amendment to the applicable ACH Rules that is approved by NACHA—The Electronic Payments Association after January 1, 2009, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register.** An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** notice expressly accepting such amendment.

* * * * *

4. In § 210.5, redesignate paragraph (b)(5) as (b)(8) and add new paragraphs (b)(5), (b)(6) and (b)(7), to read as follows:

§ 210.5 Account requirements for Federal payments.

* * * * *

(b) * * *

(5) Where a Federal payment is disbursed to a resident of a nursing facility as defined in 42 U.S.C. 1396r, the payment may be deposited into a resident trust or patient fund account established by the nursing facility.

(6) Where a Federal payment is disbursed to a member of a religious order who has taken a vow of poverty, the payment may be deposited to an account established by the religious order. As used in this paragraph, the phrase "member of a religious order who has taken a vow of poverty" is defined as it would be by the Internal Revenue Service for Federal tax purposes.

(7) Where a Federal payment is to be deposited to an account accessed through a stored value card, prepaid card or similar card that bears the cardholder's name and meets the following requirements:

(i) The account accessed by the card is held at an insured depository institution and meets the requirements for pass through insurance under 12 CFR part 330 such that the cardholder's balance is FDIC insured to the extent permitted by law; and

(ii) The card account constitutes an "account" as defined in 12 CFR 205.2(b) such that the consumer protections of Regulation E apply to the cardholder.

* * * * *

5. Revise § 210.10 to read as follows:

§ 210.10 RDFI liability.

(a) *RDFI obligations.* An RDFI must return any benefit payments received after RDFI becomes aware of the death or legal incapacity of a recipient or the death of a beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency issuing payments to the recipient, the RDFI must immediately notify the agency of the death or incapacity. The proper use of the R15 or R14 return reason code shall be deemed to constitute such notice.

(b) *Liability for 45-day Amount.* An RDFI is liable to the Federal Government for the full amount of all benefit payments received by the RDFI from an agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary (45-day Amount). When an agency notifies the Service that benefit payments in an amount not exceeding the 45-day Amount were originated to a deceased or incapacitated recipient, the Service will instruct the appropriate Federal Reserve Bank to debit the RDFI's reserve account for the 45-day Amount. The Service will notify the RDFI at least 30 days prior to the debit. If the RDFI returns the amount specified in the notice during the 30-day period, the Service will not proceed with the debit. If the RDFI files a reclamation dispute notice during the 30-day period before the debit is carried out, the Service will not proceed with the debit until a final decision has been reached, in accordance with paragraph (g), that the debit is proper.

(c) *Liability for amounts exceeding 45-day Amount.* An RDFI is liable to the Federal Government for the full amount of all benefit payments received by the RDFI after 45 days following the death or legal incapacity of the recipient or death of the beneficiary unless the RDFI has the right to limit its liability under 210.11 of this part. When an agency notifies the Service that benefit payments in an amount exceeding the 45-day Amount were originated to a deceased or incapacitated recipient, the Service will send a notice of reclamation to the RDFI. Upon receipt of the notice of reclamation, the RDFI must provide the information required by the notice of reclamation and return the amount specified in the notice of reclamation in a timely manner.

(d) *Exception to liability rule.* An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(e) *Time limits.* An agency that initiates a request for a reclamation must do so within 120 calendar days after the date that the agency first has actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary. An agency may not reclaim any post-death or post-incapacity payment made more than six years prior to the date of the notice of reclamation; provided, however, that if the account balance at the time the RDFI receives the notice of reclamation exceeds the total amount of post-death or post-incapacity payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all post-death or post-incapacity payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity to act on the notice (not to exceed one business day).

(f) *Debit of RDFI's account.* If an RDFI does not return the full amount of the outstanding total or any other amount for which the RDFI is liable under this subpart in a timely manner, the Federal Government will collect the amount outstanding by instructing the

appropriate Federal Reserve Bank to debit the account utilized by the RDFI. The Federal Reserve Bank will provide advice of the debit to the RDFI.

(g) *Reclamation disputes.* Where the Service, in accordance with paragraph (b) of this section, has instructed a Federal Reserve Bank to debit the account of a financial institution for the 45-day Amount, the financial institution may file a dispute notice challenging the reclamation. A dispute notice filed under this paragraph must be in writing, and must be sent to the Claims Manager, Department of the Treasury, Financial Management Service, at the address listed on the notice of the debit, or to such other address as the Service may publish in the Green Book. The reclamation dispute notice must include supporting documentation. The Service will not consider reclamation dispute notices received more than 90 days after the date on which the financial institution's reserve account was debited. The Claims Manager, or an authorized designee, will make every effort to decide any dispute notice submitted under this section within 60 days. If it is not possible to render a decision within 60 days, the Claims Manager or an authorized designee will notify the financial institution of the delay and may take up to an additional 60 days to render a decision. If, based on the evidence provided, the Claims Manager, or an authorized designee, finds that the financial institution has proved, by a preponderance of the evidence, that debit was improper or excessive, the Service will notify the financial institution in writing and, within ten days of the decision, recredit the financial institution's reserve account for the amount improperly debited. Such notice shall serve as the final agency determination under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*). No civil suit may be filed until the financial institution has filed a dispute notice under this section, and the Service has provided notice of its final determination.

6. Revise § 210.11, paragraph (b)(3)(i) to read as follows:

§ 210.11 Limited liability.

* * * * *

(b) * * *

(3)(i) Provide the name and last known address and phone number of the following person(s):

(A) The recipient and any co-owner(s) of the recipient's account;

(B) All other person(s) authorized to withdraw funds from the recipient's account; and

(C) All person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

* * * * *

Dated: May 10, 2010.

Richard L. Gregg,

Acting Fiscal Assistant Secretary.

[FR Doc. 2010–11492 Filed 5–13–10; 8:45 am]

BILLING CODE 4810–35–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

Gap in Termination Provisions; Inquiry

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public inquiry; request for comments; extension of comment period.

SUMMARY: The Copyright Office is extending the time in which reply comments may be filed on the topic of the application of Title 17 to the termination of certain grants of transfers or licenses of copyright, specifically those for which execution of the grant occurred prior to January 1, 1978 and creation of the work occurred on or after January 1, 1978.

DATES: The comment period for initial comments on the Notice of Inquiry and Requests for Comments published on March 29, 2010 (75 FR 15390) closed on April 30, 2010. Reply comments are due on or before May 21, 2010.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/termination.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–1027 for special instructions.

FOR FURTHER INFORMATION CONTACT: Maria Pallante, Associate Register, Policy and International Affairs, by telephone at 202–707–1027 or by electronic mail at *mpall@loc.gov.*

SUPPLEMENTARY INFORMATION: The United States Copyright Office is extending the reply comment period for commenting on the topic of the application of Title 17 to the termination of certain grants of transfers or licenses of copyright, specifically those for which execution of the grant occurred prior to January 1, 1978 and creation of the work occurred on or after January 1, 1978. This action is being taken in order to allow interested parties adequate time to give input on this important issue. Reply comments are due by 5 p.m. on May 21, 2010.

Subject of Inquiry

The Copyright Office seeks comment on the question of whether and how Title 17 provides a termination right to authors (and other persons specified by statute) when the grant was made prior to 1978 and the work was created on or after January 1, 1978. For purposes of illustration, please note the following examples:

Example 1: A composer signed an agreement with a music publisher in 1977 transferring the copyrights to future musical compositions pursuant to a negotiated fee schedule. She created numerous compositions under the agreement between 1978 and 1983, some of which were subsequently published by the publisher-transferee. Several of these achieved immediate popular success and have been economically viable ever since. The original contract has not been amended or superseded.

Example 2: A writer signed an agreement with a book publisher in 1977 to deliver a work of nonfiction. The work was completed and delivered on time in 1979 and was published in 1980. The book's initial print run sold out slowly, but because the author's subsequent works were critically acclaimed, it was released with an updated cover last year and is now a best seller. The rights remained with the publisher all along and the original royalty structure continues to apply.

Questions

In order to better understand the application of sections 304(c), 304(d) and 203 to the grants of transfers and licenses discussed above, the Copyright Office seeks comments as follows:

A. *Experience.* Please describe any experience you have in exercising or negotiating termination rights for pre-1978 grants of transfers or licenses for

works that were created on or after January 1, 1978.

B. *Interpretation.* Are the grants of transfers or licenses discussed above terminable under Title 17 as currently codified? If so, under which provision? What is the basis for your determination? Are there state or federal laws other than copyright that are relevant? Is delivery of the work by the grantor to the grantee relevant to the question of termination? Is publication relevant?

C. *Recommendations.* Do you have any recommendations with respect to the grants of transfers or licenses illustrated above?

D. *Other Issues.* Are there other issues with respect to the application or exercise of termination provisions that you would like to bring to our attention for future consideration?

Dated: May 11, 2010.

Maria Pallante,

Associate Register for Policy & International Affairs, U.S. Copyright Office.

[FR Doc. 2010–11619 Filed 5–13–10; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2006–0534; FRL–9151–4]

RIN 2060–AQ24

Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On October 6, 2009, EPA promulgated its response to the remand of the new source performance standards and emissions guidelines for hospital/medical/infectious waste incinerators by the U.S. Court of Appeals for the District of Columbia Circuit and satisfied the Clean Air Act Section 129(a)(5) requirement to conduct a review of the standards every five years. This action proposes to amend the new source performance standards in order to correct inadvertent drafting errors in the emissions limits for nitrogen oxides and sulfur dioxide promulgated for large hospital/medical/infectious waste incinerators, which did not correspond to our description of our standard-setting process. This action will also correct erroneous cross-references in the reporting and recordkeeping requirements.

DATES: *Comments.* Comments must be received on or before June 28, 2010. Because of the need to revise the new source performance standards (NSPS) emissions limits and reporting and recordkeeping requirements in a timely manner, EPA will not grant requests for extensions beyond this date.

Public Hearing. If anyone contacts EPA by May 24, 2010 requesting to speak at a public hearing, EPA will hold a public hearing on June 1, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0534, by one of the following methods:

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

E-mail: Send your comments via electronic mail to *a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2006–0534.

Facsimile: Fax your comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2006–0534.

Mail: Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0534. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (*see* **FOR FURTHER INFORMATION CONTACT**).

Hand Delivery: Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0534. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0534. The EPA's policy is that all comments received will be included in the public docket and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Public Hearing: If a public hearing is held, it will be held at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. Contact Ms. Joan Rogers at (919) 541–4487 to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held, or to determine the hearing location. If no one contacts EPA requesting to speak at a public hearing concerning this proposed rule by May 24, 2010, the hearing will be cancelled without further notice.

Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0534 and Legacy Docket ID No. A–91–61. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Ketan D. Patel, Natural Resources and Commerce Group, Sector Policies and Programs Division (E143–03),

Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–9736; fax number: (919) 541–3470; e-mail address: *patel.ketan@epa.gov.*

SUPPLEMENTARY INFORMATION:

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information
A. Does the proposed action apply to me?
B. What should I consider as I prepare my comments?
II. Background
III. Summary of Proposed Amendments
A. Nitrogen Oxides Emissions Limit
B. Sulfur Dioxide Emissions Limit
C. Reporting and Recordkeeping Requirements
IV. Impacts of the Proposed Action
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

A redline version of the regulatory language that incorporates the changes in this action is available in the docket.

I. General Information

A. Does the proposed action apply to me?

Regulated Entities. Categories and entities potentially affected by the proposed action are those which operate hospital/medical/infectious waste incinerators (HMIWI). The NSPS and emissions guidelines (EG) for HMIWI affect the following categories of sources:

Category	NAICS code	Examples of potentially regulated entities
Industry	622110 622310 325411 325412 562213 611310	Private hospitals, other health care facilities, commercial research laboratories, commercial waste disposal companies, private universities.
Federal Government	622110 541710 928110	Federal hospitals, other health care facilities, public health service, armed services.
State/local/tribal Government	622110 562213 611310	State/local hospitals, other health care facilities, State/local waste disposal services, State universities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action. To determine whether your facility would be affected by the proposed action, you should examine the applicability criteria in 40 CFR 60.50c of subpart Ec. If you have any questions regarding the applicability of the proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments?

1. Submitting CBI

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the following address: Mr. Ketan D. Patel, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2006–0534. Clearly mark the part or all of the information that you claim to be CBI. For CBI on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified in the preceding section titled **DATES**.

3. Docket

The docket number for the proposed action regarding the HMIWI NSPS (40 CFR part 60, subpart Ec) is Docket ID No. EPA–HQ–OAR–2006–0534.

4. Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of the proposed action is available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA posted a copy of the proposed action on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology

exchange in various areas of air pollution control.

II. Background

On September 15, 1997, EPA adopted NSPS (40 CFR part 60, subpart Ec) and EG (40 CFR part 60, subpart Ce) for HMIWI under the authority of Sections 111 and 129 of the Clean Air Act (CAA). Emissions standards were adopted for the nine pollutants required to be regulated under CAA Section 129—particulate matter, lead, cadmium, mercury, chlorinated dibenzo-p-dioxins/dibenzofurans, carbon monoxide, nitrogen oxides, hydrogen chloride and sulfur dioxide. The EPA developed emissions limits for all nine pollutants for three HMIWI size subcategories (large, medium and small) for the NSPS and four HMIWI size subcategories (large, medium, small and small rural) for the EG.

On November 14, 1997, the Sierra Club and the Natural Resources Defense Council (Sierra Club) filed suit in the U.S. Court of Appeals for the District of Columbia Circuit (the Court). The Sierra Club claimed that EPA violated CAA Section 129 by setting emissions standards for HMIWI that are less stringent than required by Section 129(a)(2); that EPA violated Section 129 by not including pollution prevention or waste minimization requirements; and that EPA had not adequately considered the non-air quality health and environmental impacts of the standards.

On March 2, 1999, the Court issued its opinion in *Sierra Club* v. *EPA,* 167 F.3d 658 (D.C. Cir. 1999). While the Court rejected the Sierra Club's statutory arguments under CAA Section 129, the Court remanded the rule to EPA for further explanation regarding how EPA derived the maximum achievable control technology (MACT) floors for new and existing HMIWI. The Court did not vacate the regulations, and the regulations remained in effect during the remand.

On October 6, 2009, EPA promulgated its response to the Court's remand of the HMIWI regulations and also satisfied its requirement under CAA Section 129(a)(5) to conduct a five-year review of the HMIWI standards. The promulgated rule revised the NSPS and EG emissions limits for all nine of the CAA Section 129 pollutants.

Following promulgation of the revised emissions limits, an industry representative informed EPA of an error in the published NSPS emissions limit for nitrogen oxides (NO_X) for large HMIWI, which did not appear to reflect EPA's described analytical process for adopting the revised standards. On review, EPA staff determined that the published revised NO_X NSPS for large HMIWI indeed did not reflect EPA's intent in the final rule. EPA also reviewed the other published NSPS and EG emissions limits for similar errors, and determined that the published revised sulfur dioxide (SO_2) NSPS for large HMIWI also did not reflect EPA's intent in the final rule. To correct these errors, this action issues proposed amendments to the NSPS emissions limits for NO_X and SO_2 for large HMIWI.

Also after promulgation, a State agency representative informed EPA of an error in the published NSPS reporting and recordkeeping requirements, which incorrectly referred to § 60.56, instead of § 60.56c, in three separate paragraphs. To correct this error, this action issues proposed amendments to the NSPS reporting and recordkeeping provisions that have this incorrect cross-reference.

III. Summary of Proposed Amendments

The NSPS emissions limits for new and reconstructed HMIWI were developed in accordance with the criteria specified in CAA Section 129(a)(2), which provides that the "degree of reduction in emissions that is deemed achievable [* * *] shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator."

In order to properly account for variability in the data, we calculated upper limits associated with the data for the best controlled similar unit (best performer), prior to setting the emissions limits. We would typically take into account the distribution of the emissions data (*i.e.,* determine whether the data are distributed normally or lognormally) prior to calculating the upper limit value. Where there were a sufficient number of datapoints for the best performer, we used the skewness of the data to determine the distribution. Because normal distributions typically have a skewness of zero, we concluded that those datasets with a skewness less than 0.5 were normally distributed, while those with a skewness of 0.5 or greater were lognormally distributed. Where there were only a few datapoints for the best performer, we decided to assume a normal distribution in calculating the upper limit value, which provides a more stringent limit, rather than a lognormal distribution. (*See* 2009 memorandum entitled "Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI," which is included in the docket.) (A lognormal distribution would tend to provide less stringent emissions limits than a normal distribution.)

We used the 99th percentile to calculate the upper limits, because we found it provided a more reasonable compensation for variability than the other percentiles we considered (*i.e.,* 90, 95 and 99.9 percent). We determined the emissions limits by rounding up the upper limit values to two significant figures, in accordance with standard engineering practices.

Note: In the preamble to the October 6, 2009, final rule, we erroneously referred to these calculated values as "upper confidence limits" or "UCLs." In today's notice, we are using the more accurate term "upper limits."

The following two sections discuss the proposed amendments to the NO_X and SO_2 NSPS emissions limits for new large HMIWI, which have been revised to correspond to the aforementioned standard-setting process. The third section discusses the proposed amendments to the reporting and recordkeeping requirements for new HMIWI, which have been revised to correct the cross-reference to § 60.56c.

A. Nitrogen Oxides Emissions Limit

For the large HMIWI size subcategory, the NO_X emissions estimate associated with the best controlled similar unit is 66.9 parts per million by volume (ppmv). (*See* 2009 memorandum entitled "Revised MACT Floors, Data Variability Analysis and Emission Limits for Existing and New HMIWI," which is included in the docket.) Because there were only a few datapoints for NO_X for the best performer, we assumed a normal distribution in calculating the NO_X upper limit value. The 99 percent upper limit for NO_X for new large HMIWI (assuming a normal distribution) is 144 ppmv. (*See* 2009 memorandum entitled "Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI," which is included in the docket.) Rounding up to two significant figures, we estimated the NO_X emissions limit for new large HMIWI would be 150 ppmv, which would be less stringent than the corresponding NO_X EG limit for existing HMIWI (140 ppmv).

This unusual situation occurred due to a difference in the size of the datasets used to determine the NO_X upper limit values for existing and new HMIWI. The NO_X dataset for the best performer (used to determine the MACT floor for NO_X for new sources) was smaller than the NO_X dataset for the best-performing 12 percent of sources (used to determine the MACT floor for existing sources) and had a higher standard deviation.

Since the upper limit calculation depends on both the average and standard deviation, the higher standard deviation resulted in the NO_X upper limit value for the best performer being less stringent. (*See* 2009 memorandum entitled "Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI," which is included in the docket.)

In this and other similar cases, we decided to use existing source limits for new sources where they are more stringent than new source limits, in order to prevent a situation where a new source would have a less stringent emissions limit than an existing source. We estimated the NO_X EG limit for existing large HMIWI to be 140 ppmv. (*See* 2009 memorandum entitled "Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI," which is included in the docket.) Therefore, the NSPS NO_X emissions limit for new large HMIWI should have also been 140 ppmv. However, a NO_X NSPS limit of 130 ppmv was erroneously published, which does not correspond to our analytical process.

The source of this error lies in the previous draft of the NO_X EG limit for existing large HMIWI (130 ppmv), which was incorrectly determined assuming a normal distribution of the NO_X emissions dataset for the best-performing 12 percent of the large HMIWI size subcategory. The distribution of the NO_X emissions dataset for the best-performing 12 percent of large HMIWI was actually lognormal (based on a skewness of 1.44). Assuming a normal distribution would result in a NO_X upper limit value of 121 ppmv, which would be rounded up to 130 ppmv to establish the NO_X EG limit. Assuming a lognormal distribution, the NO_X upper limit would actually be 131 ppmv, which would be rounded up to 140 ppmv to establish the NO_X EG limit. The correct NO_X EG limit (140 ppmv) was included in the final rule for existing large HMIWI, but the incorrect, previous draft of the NO_X NSPS limit (130 ppmv) was erroneously included in the final rule for new large HMIWI. Today's action proposes to correct this error and amend the HMIWI NSPS to include the correct NO_X NSPS limit of 140 ppmv for new large HMIWI, which matches the final NO_X EG limit and reflects EPA's intent in the October 6, 2009 final rule.

B. Sulfur Dioxide Emissions Limit

For the large HMIWI size subcategory, the SO_2 emissions estimate associated with the best controlled similar unit is 0.462 ppmv. (*See* 2009 memorandum entitled "Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI," which is included in the docket.) In our analysis for the October 6, 2009, final rule, we indicated that the SO_2 data for the best performer were normally distributed, but a closer examination of the skewness of the data (0.54) indicates that the SO_2 data are actually lognormally distributed. For the October 6, 2009, final rule, we erroneously estimated a 99 percent upper limit of 1.59 ppmv and an emissions limit of 1.6 ppmv for new large HMIWI, based on our incorrect estimation that the SO_2 data were normally distributed. (*See* 2009 memorandum entitled "Revised MACT Floors, Data Variability Analysis, and Emission Limits for Existing and New HMIWI," which is included in the docket.) The 99 percent upper limit for SO_2 for new large HMIWI based on a lognormal distribution is 8.04 ppmv. Rounding up to two significant figures, the SO_2 NSPS emissions limit should be 8.1 ppmv, if our standard-setting process is to be correctly followed. (*See* 2009 memorandum entitled "Revised Sulfur Dioxide MACT Floor, Data Variability Analysis, and Emission Limit for New Large HMIWI," which is included in the docket.) This action proposes to amend the HMIWI NSPS to include the correct SO_2 limit of 8.1 ppmv for new large HMIWI, which reflects EPA's intent in the October 6, 2009, final rule.

C. Reporting and Recordkeeping Requirements

The NSPS reporting and recordkeeping requirements of the October 6, 2009, final rule include three separate cross-references to "§ 60.56(d), (h), or (j)." The correct cross-reference in each case should have been "§ 60.56c(d), (h), or (j)," consistent with the section numbering format for NSPS subpart Ec. This action proposes to amend the HMIWI NSPS to correct this error.

IV. Impacts of the Proposed Action

Based on the stringency of the HMIWI standards promulgated on October 6, 2009, sources would likely respond to the HMIWI rule by choosing not to construct new HMIWI and would use alternative waste disposal options rather than incur the costs of compliance. Considering this information, we do not anticipate any new HMIWI, and, therefore, no costs or impacts are associated with the proposed NSPS amendments for NO_X and SO_2 for new large units.

However, in the unlikely event that a new unit is constructed, we estimated costs and impacts expected for each of three HMIWI model plants (large, medium and small), which we entered into the docket for the October 6, 2009, promulgation. (*See* 2009 memoranda entitled "Revised Compliance Costs and Economic Inputs for New HMIWI" and "Revised Baseline Emissions and Emissions Reductions for Existing and New HMIWI," which are included in the docket.) We estimated baseline NO_X emissions of 80 ppmv and baseline SO_2 emissions of 0.84 ppmv for the large HMIWI model plant, based on the average NO_X and SO_2 emissions measured at the latest large HMIWI to be installed since the 1997 rule. Consequently, the NO_X and SO_2 emissions associated with the large HMIWI model plant are already below both the incorrect NO_X and SO_2 emissions limits of 130 ppmv and 1.6 ppmv, respectively, promulgated in the October 6, 2009, **Federal Register** notice and the correct NO_X and SO_2 emissions limits of 140 ppmv and 8.1 ppmv, respectively, being proposed in today's action. Therefore, even if a new large unit were constructed, we would estimate no cost savings or negative impacts associated with today's proposed amendments to the NO_X and SO_2 emissions limits for new large HMIWI.

V. Statutory and Executive Order Reviews

A. Executive Order (EO) 12866: Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under the terms of EO 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under the EO.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). Today's proposed rule only includes revised NO_X and SO_2 emissions limits for new large HMIWI, and, as noted previously, no new HMIWI are anticipated. Consequently, today's proposed action will not impose any additional information collection burden for new sources.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant

economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed action on small entities, small entity is defined as follows: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Today's proposed action only includes revised NO_X and SO_2 emissions limits for new large HMIWI, and no new HMIWI are anticipated.

D. Unfunded Mandates Reform Act

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

This proposed action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

EO 13132 (64 FR 43255; August 10, 1999) requires EPA 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 EO 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."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This proposed action will not impose substantial direct compliance costs on State or local governments, and will not preempt State law. Thus, EO 13132 does not apply to this rule.

In the spirit of EO 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249; November 9, 2000). EPA is not aware of any HMIWI owned or operated by Indian tribal governments. Thus, EO 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets EO 13045 (62 FR 19885; April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is based solely on technology performance.

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

This action is not a "significant energy action" as defined in EO 13211 (66 FR 28355; May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

EO 12898 (59 FR 7629)(February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it affects only new large units and no new units are anticipated to be constructed.

List of Subjects in 40 CFR Part 60

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

Dated: May 10, 2010.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart Ec—[Amended]

2. Section 60.58c is amended by revising paragraphs (d)(1) through (3) to read as follows:

§ 60.58c Reporting and recordkeeping requirements.

* * * * *

(d) * * *

(1) The values for the site-specific operating parameters established pursuant to § 60.56c(d), (h), or (j), as applicable.

(2) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded for the calendar year being reported, pursuant to § 60.56c(d), (h), or (j), as applicable.

(3) The highest maximum operating parameter and the lowest minimum operating parameter, as applicable, for each operating parameter recorded pursuant to § 60.56c(d), (h), or (j) for the calendar year preceding the year being reported, in order to provide the Administrator with a summary of the performance of the affected facility over a 2-year period.

* * * * *

3. Table 1B to Subpart Ec is revised to read as follows:

TABLE 1B TO SUBPART EC OF PART 60—EMISSIONS LIMITS FOR SMALL, MEDIUM, AND LARGE HMIWI AT AFFECTED FACILITIES AS DEFINED IN § 60.50C(A)(3) AND (4)

Pollutant	Units (7 percent oxygen, dry basis)	Emissions limits			Averaging time [1]	Method for demonstrating compliance [2]
		HMIWI size				
		Small	Medium	Large		
Particulate matter.	Milligrams per dry standard cubic meter (grains per dry standard cubic foot).	66 (0.029)	22 (0.0095)	18 (0.0080)	3-run average (1-hour minimum sample time per run).	EPA Reference Method 5 of appendix A–3 of part 60, or EPA Reference Method M 26A or 29 of appendix A–8 of part 60.
Carbon monoxide.	Parts per million by volume	20	1.8	11	3-run average (1-hour minimum sample time per run).	EPA Reference Method 10 or 10B of appendix A–4 of part 60.
Dioxins/furans	Nanograms per dry standard cubic meter total dioxins/furans (grains per billion dry standard cubic feet) or nanograms per dry standard cubic meter TEQ (grains per billion dry standard cubic feet).	16 (7.0) or 0.013 (0.0057).	0.47 (0.21) or 0.014 (0.0061).	9.3 (4.1) or 0.035 (0.015).	3-run average (4-hour minimum sample time per run).	EPA Reference Method 23 of appendix A–7 of part 60.
Hydrogen chloride.	Parts per million by volume	15	7.7	5.1	3-run average (1-hour minimum sample time per run).	EPA Reference Method 26 or 26A of appendix A–8 of part 60.
Sulfur dioxide	Parts per million by volume	1.4	1.4	8.1	3-run average (1-hour minimum sample time per run).	EPA Reference Method 6 or 6C of appendix A–4 of part 60.
Nitrogen oxides	Parts per million by volume	67	67	140	3-run average (1-hour minimum sample time per run).	EPA Reference Method 7 or 7E of appendix A–4 of part 60.
Lead	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet.	0.31 (0.14)	0.018 (0.0079)	0.00069 (0.00030).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Cadmium	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction.	0.017 (0.0074)	0.0098 (0.0043)	0.00013 (0.000057).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.
Mercury	Milligrams per dry standard cubic meter (grains per thousand dry standard cubic feet) or percent reduction.	0.014 (0.0061)	0.0035 (0.0015)	0.0013 (0.00057).	3-run average (1-hour minimum sample time per run).	EPA Reference Method 29 of appendix A–8 of part 60.

[1] Except as allowed under § 60.56c(c) for HMIWI equipped with CEMS.

[2] Does not include CEMS and approved alternative non-EPA test methods allowed under § 60.56c(b).

[FR Doc. 2010–11585 Filed 5–13–10; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1999–0006; FRL–9150–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Intent to Delete the Ruston Foundry Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a Notice of Intent to Delete the Ruston Foundry Superfund Site (Site), located in Alexandria, Rapides Parish, Louisiana, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by June 14, 2010.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1999–0006, by one of the following methods:

- *http://www.regulations.gov*. Follow online instructions for submitting comments.
- *E-mail:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 *coltrain.katrina@epa.gov.*
- *Fax:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 (6SF–RL) 214–665–6660.
- *Mail:* Katrina Higgins-Coltrain, Remedial Project Manager, U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733.
- *Hand delivery:* U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1999–0006. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket

All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. EPA Region 6 Library, 7th Floor Reception area by Appointment, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424; Rapides Parish Public Library, 411 Washington Street, Alexandria, Louisiana 71301, (318) 442–1840; Louisiana Department of Environmental Quality Public Records Center, Galvez Building Room 127, 602 N. Fifth Street, Baton Rouge, Louisiana 70802, (225) 219–3168, e-mail: *publicrecords@la.gov,* Web page: *http://www.deq.louisiana.gov/pubrecords.*

FOR FURTHER INFORMATION CONTACT: Katrina Higgins-Coltrain, Remedial Project Manager (RPM), U.S. EPA Region 6 (6SF–RL), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–8143 or 1–800–533–3508 (*coltrain.katrina@epa.gov*).

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" Section of today's **Federal Register,** we are publishing a direct final Notice of Deletion of the Ruston Foundry Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent Final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the *Rules* section of this **Federal Register.**

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: April 29, 2010.

Lawrence E. Starfield,

Deputy Regional Administrator, Region 6.

[FR Doc. 2010–11305 Filed 5–13–10; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 76

[CS Docket No. 97–80; PP Docket No. 00–67; FCC 10–61]

Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: In this document, we propose new rules designed to improve the operation of the CableCARD regime in the interim until the successor solution becomes effective. As discussed in a companion *Notice of Inquiry,* the Commission has not been fully successful in implementing the command of Section 629 of the Communications Act to ensure the commercial availability of navigation devices used by consumers to access the services of multichannel video programming distributors ("MVPDs"). The *Notice of Inquiry* begins the process of instituting a successor to the CableCARD regime that has been the centerpiece of the Commission's efforts to implement Section 629 to date.

DATES: Comments for this proceeding are due on or before June 14, 2010; reply comments are due on or before June 28, 2010. Written PRA comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before July 13, 2010.

ADDRESSES: You may submit comments, identified by CS Docket No. 97–80; and PP Docket No. 00–67, 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.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to filing comments with the Secretary, a copy of any PRA comments on the proposed collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to *nfraser@omb.eop.gov* or via fax at 202–395–5167.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120 or Alison Neplokh, *Alison.Neplokh@fcc.gov,* of the Media Bureau, Engineering Division, (202) 418–1083.

For additional information concerning the information collection requirements contained in this document, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams on (202) 418–2918.

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the **SUPPLEMENTARY INFORMATION** section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Further Notice of Proposed Rulemaking (FNPRM),* FCC 10–61, adopted and released on April 21, 2010. The full text of this document is available for public inspection and copying 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 via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document 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 contains proposed revised information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Public and agency comments are due July 13, 2010.

Comments should address: (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–0849.

Title: Commercial Availability of Navigation Devices.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 958 respondents; 511,729,510 responses.

Estimated Time per Response: 0.000278—40 hours.

Frequency of Response: On occasion, quarterly, monthly and semi-annual reporting requirements; Recordkeeping and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 4(i), 303(r), and 629 of the

Communications Act of 1934, as amended.

Total Annual Burden: 186,287 hours.

Total Annual Cost: $137,550.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On April 21, 2010, the FCC released a *Fourth Further Notice of Proposed Rulemaking,* FCC 10–61, which proposes new rules to improve the CableCARD regime. One proposed rule would require cable operators to bill their subscribers separately for CableCARDs. This proposed rule is intended to ensure that consumers are charged equal and transparent prices for CableCARDs, in furtherance of Section 629 of the Communications Act.

Summary of the Notice of Inquiry

I. Introduction

1. As discussed in the companion *Notice of Inquiry,* FCC 10–61, the Commission has not been fully successful in implementing the command of Section 629 of the Communications Act to ensure the commercial availability of navigation devices used by consumers to access the services of multichannel video programming distributors ("MVPDs"). The *Notice of Inquiry* begins the process of instituting a successor to the CableCARD regime that has been the centerpiece of the Commission's efforts to implement Section 629 to date. In this *Fourth Further Notice of Proposed Rulemaking,* we propose new rules designed to improve the operation of the CableCARD regime in the interim until the successor solution becomes effective.

2. To implement the mandate of Section 629, the FCC adopted rules in its *First Report and Order,* 63 FR 38089, that required MVPDs to make available a conditional access element separate from the basic navigation or "host" device, to enable unaffiliated entities to manufacture and market host devices while allowing MVPDs to protect their networks from harm or theft of service. The Commission later adopted standards in its *Second Report and Order,* 68 FR 66728, that largely reflected the terms of a Memorandum of Understanding between cable operators and the consumer electronics industry to establish the technical details of the conditional access element, resulting in the creation of the CableCARD. The CableCARD is a security device provided by the cable provider and inserted into a retail navigation device (including digital cable ready televisions) bought by a consumer in the retail market or a set-top box leased from the cable provider.

3. Unfortunately, in practice, cable customers who purchase retail navigation devices and connect these devices to their cable service using CableCARDs for conditional access typically experience additional installation and support costs and pay higher prices than those who lease set-top boxes from their cable company. Accordingly, in this Fourth Further Notice of Proposed Rulemaking, we seek comment on proposed rules designed to remove this disparity in the subscriber experience for those customers who choose to utilize a navigation device purchased at retail as opposed to leasing the cable providers' set-top box.

4. Additionally, the *Second Report and Order* included rules requiring a specific interface on leased set-top boxes to allow recording on digital recording devices. Multiple parties have raised concerns about whether the rule is specific enough to be effective and whether other interfaces could equally achieve this purpose. Therefore, we seek comment on proposed rules to more fully specify the functionality of this interface and to enable other interfaces as well.

5. Finally, we seek comment on proposed changes to our rules that are intended to encourage cable operators to use their capacity more efficiently by transitioning the systems to all-digital. All of these proposed rules are intended to further the goals of Section 629.

II. Background

6. In the Telecommunications Act of 1996, Congress added Section 629 to the Communications Act. That section directs the Commission to adopt regulations to ensure the commercial availability of navigation devices used by consumers to access services from MVPDs. Section 629 covers "equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems." Congress, in enacting the section, pointed to the vigorous retail market for customer premises equipment ("CPE") used with the telephone network and sought to create a similarly vigorous market for devices used with MVPD services.

7. In 1998, the Commission adopted the First Report and Order to implement Section 629. The order required MVPDs to make available a conditional access element separate from the basic navigation or host device, in order to permit unaffiliated manufacturers and retailers to manufacture and market host devices while allowing MVPDs to retain control over their system security. The technical details of this conditional access element were to be worked out in industry negotiations. In 2003, the Commission adopted, with certain modifications, standards on which the National Cable and Telecommunications Association and the Consumer Electronics Association had agreed in a Memorandum of Understanding ("MOU"). The MOU prescribed the technical standards for one-way (from cable system to customer device) CableCARD compatibility. The CableCARD is a security device provided by an MVPD, which can be inserted into a retail navigation device bought by a consumer in the retail market to allow the consumer's television to display MVPD-encrypted video programming. To ensure adequate support by MVPDs for CableCARDs, the Commission prohibited MVPDs from integrating the security function into set-top boxes they lease to consumers, thus forcing MVPDs to rely on CableCARDs as well. This "integration ban" was initially set to go into effect on January 1, 2005, but that date was later extended to July 1, 2007.

8. Unfortunately, the Commission's efforts to date have not developed a competitive retail market for retail navigation devices that connect to subscription video services. Most cable subscribers continue to use the traditional set-top boxes leased from their cable operator. Although following adoption of the CableCARD rules some television manufacturers sold unidirectional digital cable-ready products ("UDPCs"), most manufacturers have abandoned the technology. Indeed, since July 1, 2007, cable operators have deployed more than 18.5 million leased devices pre-equipped with CableCARDs, compared to only 489,000 CableCARDs installed in retail devices connected to their networks. Furthermore, while 605 UDCP models have been certified or verified for use with CableCARDs, only 37 of those certifications have occurred since the integration ban took effect in July 2007. This indicates that many retail device manufacturers abandoned CableCARD as a solution to develop a retail market before any substantial benefits of the integration ban could be realized.

9. Not only were there very few retail devices manufactured and subsequently purchased in the retail market, but there was an additional complication with the installation process that depressed the retail market. The cable-operator-leased devices come pre-equipped with a CableCARD, so that no subscriber

premises installation of the card is required. But this is not the case with devices purchased at retail. CableCARDs must be professionally installed in those devices by the cable operator. Unfortunately, the record reflects poor performance with regard to subscriber premise installations of CableCARDs in retail devices. This could be a consequence of the fact that only 1% of the total navigation devices deployed are purchased at retail and require an actual CableCARD installation, which may have made it difficult to properly train the cable installers. It could also reflect either an indifference or a reluctance by cable operators to support navigation devices purchased at retail in competition with their own set-top boxes. Regardless of the cause, these serious installation problems further undermined the development of a retail market.

10. The Commission anticipated that the parties to the one-way MOU would negotiate a further MOU to achieve bidirectional compatibility, using either a software-based or hardware-based solution. When the Commission realized in June 2007 that negotiations were not leading to an agreement for bidirectional compatibility between consumer electronics devices and cable systems, it released a Third Further Notice of Proposed Rulemaking, seeking comment on competing proposals for bidirectional compatibility and other related issues. In the wake of the Two-way FNPRM, the six largest cable operators and numerous consumer electronics manufacturers negotiated an agreement for bidirectional compatibility that continues to rely and builds on CableCARDs by using a middleware-based solution called "tru2way."

III. Discussion

11. In this Fourth FNPRM, we seek comment on proposed rules designed to improve the CableCARD regime during the time in which it will remain in effect. Specifically, we seek comment on whether market-based solutions serve consumers adequately with respect to switched-digital video and we propose rules that would (i) require that equivalent prices be charged for CableCARDs for use in cable-operator-provided set-top boxes and in retail devices, and require billing of the CableCARD to be more transparent; (ii) simplify the CableCARD installation process; (iii) require cable operators to offer their subscribers CableCARDs that can tune multiple streams; and (iv) streamline the CableCARD device certification process. As noted, we also propose a change to our existing output requirement rules to ensure set-top box compatibility with retail consumer devices, and we propose changes to our rules that are intended to encourage cable operators to use their capacity more efficiently by transitioning the systems to all-digital.

12. *Reforming the CableCARD System.* NCTA suggests that the Commission seek comment on whether the CableCARD has become outdated. NCTA explains that physical dimensions and components of the CableCARD are based on a standard that is more than a decade old and that new technologies, such as IPTV, are moving away from the CableCARD's traditional hardware-based security model. Accordingly, we seek comment on whether technical developments over the last decade have overtaken the CableCARD model. While we recognize that CableCARD is an aging technology with certain limitations, we also understand that the cable and consumer electronics industries have invested heavily in the technology as both an unidirectional and bidirectional solution, and we do not believe that it needs to be abandoned in the near-term. To the contrary, we hope to build on this technology with relatively minor adjustments to our existing CableCARD rules to extend the viability of the CableCARD while the Commission works to establish a successor solution for retail navigation device compatibility with MVPD services. We seek comment on the Commission's tentative conclusion that CableCARD is not a viable long-term solution for the current lack of compatibility between MVPD services and retail navigation devices, and on the Commission's proposal to reform the CableCARD system as an interim solution as we work toward a new model that will provide for that compatibility. Given the Commission's predictive judgment regarding the CableCARD regime, we also seek comment on a reporting requirement that we imposed in 2005, directing NCTA and the Consumer Electronics Association to file quarterly status reports on the status of their two-way negotiations. Should we continue that requirement? If so, should we make any changes to it? In a similar vein, we encourage commenters to update the record on petitions seeking reconsideration of the Commission's Second Report and Order in this proceeding. Have there been technological or marketplace developments since 2004 that the Commission should consider or developments that render any of the issues in those petitions for reconsideration moot?

13. The Commission's National Broadband Plan made certain recommendations designed to provide benefits to consumers who use retail CableCARD devices without imposing unfair regulatory burdens on the cable industry. The plan suggested that these changes could serve as an interim solution that will benefit consumers while the Commission considers broader changes to develop a retail market for navigation devices. We view these interim steps as an important bridge to the implementation of a successor technology, and we believe that these reforms will address problems immediately with relatively little cost. Specifically, the Plan recommended that the Commission take five steps to solve problems associated with the Commission's current CableCARD rules: (i) Ensure equal access to linear channels for retail and operator-leased CableCARD devices; (ii) mandate equivalent and transparent prices for CableCARDs; (iii) ensure that CableCARD installations provide a substantially similar consumer experience to operator-leased set-top box installations; (iv) require operators to offer multi-stream CableCARDs to their subscribers; and (v) streamline and accelerate the certification process for retail CableCARD devices. We seek comment on proposed rules to implement these recommendations as discussed below.

14. *Switched Digital Video.* UDCPs with a CableCARD today cannot access linear channels delivered by cable operators using switched-digital technology. Private industry negotiations have led to a market-based solution to allow certain types of UDCPs to access switched-digital programming through operator-provided tuning adapters. We seek comment on whether this market-based solution is working and whether UDCP manufacturers and cable operators are meeting their obligations under that agreement. We seek comment on the cost of the tuning adapters to consumers and cable operators, and any provisioning challenges with the tuning adapters. We also seek comment on whether any Commission action is necessary to ensure consumers with UDCPs have access to linear channels delivered through switched-digital technology. TiVo has suggested that an alternative solution would be to require cable operators to allow retail CableCARD devices to receive out-of-band communications from the cable head-end and transmit out-of-band communications to the headend over IP.

TiVo states that this would allow subscribers with compatible UDCPs to access all linear content without the need for any equipment beyond a CableCARD. We seek comment on this alternative proposal, including the cost and feasibility of this solution for cable operators, and whether such a network solution would discourage investment by cable operators in switched digital technology.

15. *CableCARD Pricing and Billing.* We propose rules requiring cable operators to charge equivalent and transparent prices for CableCARDs both for customers who purchase a navigation device at retail and those who lease a set-top box from their cable operator. This proposal is intended to ensure that subscribers are aware of the retail options that are available and associated costs, and to ensure that cable operators are allocating equipment costs fairly. We seek comment on how cable operators should determine charges for a CableCARD. Regardless of the method cable operators use to determine the lease fee, under our proposed rule, cable operators would be required to list the fee for their CableCARDs as a line item on subscribers' bills separate from their host devices. We believe that this would better inform customers about their options and enable them to compare retail options to leasing a set-top box from their cable operator. This proposed rule also will ensure that subscribers who choose to use CableCARDs in retail devices will be leasing their CableCARDs at a rate equivalent to those who use CableCARDs in leased devices. We seek comment on this proposal. We also seek comment on the Commission's legal authority to impose such a requirement.

16. *CableCARD Installations.* In a similar vein, we are concerned that CableCARD installation costs for retail devices and installation costs for leased boxes may be disparate. To address this situation, we propose requiring cable operators to allow subscribers to install CableCARDs in retail devices if the cable operator allows its subscribers to self-install leased set-top boxes. CableCARD installation fees are significant, and we seek specific comment on why many operators require professional CableCARD installation. Furthermore, for professional installations, our proposed rule would require that technicians arrive with at least the number of CableCARDs requested by the customer. We seek comment on whether and how the Commission could enforce this rule. We believe that these simple rule changes will bolster CableCARD support significantly and remove obstacles that discourage customers from purchasing navigation devices at retail.

17. *Multi-stream CableCARDs.* According to the National Cable and Telecommunications Association ("NCTA"), major cable operators have offered multi-stream CableCARDs since 2007, and at least one UDCP manufacturer offers devices that are compatible only with multi-stream CableCARDs. Multi-stream CableCARDs benefit consumers because they allow devices to tune multiple channels, thereby allowing consumers to record one channel while watching another, with a single card. With the monthly lease rate for a CableCARD exceeding $2.00 per CableCARD in some instances, multi-stream CableCARDs can reduce the equipment fees paid by subscribers by enabling them to use only one CableCARD per device rather than two or more. Accordingly, our proposed rule would require operators to offer multi-stream CableCARDs to their subscribers. Multi-stream CableCARDs are readily available, and we tentatively conclude that providing cable subscribers with the option to use them will save those subscribers lease fees and serve the public interest. We seek comment on this tentative conclusion.

18. *CableCARD Device Certification.* Our final proposed rule with respect to CableCARD is intended to streamline the process of CableCARD device certification. Commenters have criticized the cost and complexity of the CableCARD certification process. In reply comments filed in response to NBP PN #27, SageTV described the CableCARD certification process as having limited the capabilities of the SiliconDust HDHomeRun CableCARD tuner, a device that can send cable content throughout the home using Ethernet:

19. The major issue with this device is its requirement of CableLabs certification for anything it communicates with; which limits it exclusively to Microsoft's Windows Media Center PC software use. Removal of the CableLabs certification for allowing communication with this device is another short-term solution which the Commission could adopt in order to immediately begin to open up the market for retail navigation devices.

20. We intend to clarify that CableLabs or other qualified testing facilities may refuse to certify digital cable ready products only based on a failure to comply with the procedures we adopted for unidirectional digital cable products. Accordingly, we propose to modify our rules to clarify that the certification process may require only such testing; conformance tests outside of our adopted procedures would be at the UDCP manufacturer's discretion. We believe that adoption of this rule will streamline the device certification process while allowing the cable industry to continue to control its system security and prevent theft of service. We seek comment on this proposed rule and will consider any other proposed solution to streamline the CableCARD certification process to facilitate the introduction of retail navigation devices.

21. *Interface Requirements.* In recent months, the Commission has received three requests for waiver of the requirement that cable operators include IEEE 1394 interfaces on all high-definition set-top boxes that they deploy. Comments we received in response to those requests made compelling cases that IP connectivity will provide consumers with the functionality that the IEEE 1394 interface requirement was intended to provide, such as home networking. We also received comments that suggested that the Commission should require cable operators to activate the bi-directional capabilities of these interfaces to allow devices equipped with these interfaces to send basic command functions to the leased set-top box.

22. We tentatively conclude that allowing manufacturers greater choice in the specific interface they include in their set-top boxes will serve the public interest by enabling connectivity with the multitude of IP devices in consumers' homes. Accordingly, we propose to modify our interface requirement to require cable operators to include any of (i) an IEEE 1394 interface, (ii) an Ethernet interface, (iii) Wi-Fi connectivity, or (iv) USB 3.0 on all high-definition set-top boxes acquired for distribution to customers. We seek comment on this proposal and encourage commenters to propose other interfaces that could further home networking goals.

23. We also tentatively conclude that we should require cable operators to enable bi-directional communication over these interfaces. We propose that, at a minimum, these interfaces should be able to receive remote-control commands from a connected device. We also propose to require that these outputs deliver video in any industry standard format to ensure that video made available over these interfaces can be received and displayed by devices manufactured by unaffiliated manufacturers. We believe that these proposals will improve the functionality of retail consumer electronics devices

significantly. We seek comment on this proposed rule and tentative conclusions. We also seek specific comment on whether cable operators could implement these changes inexpensively with firmware upgrades, and if so, whether January 1, 2011 would be a reasonable effective date for such a rule change. If not, we encourage commenters to propose an effective date for this proposed rule change based on how complex it would be to execute.

24. *Promote Cable Digital Transition.* The integration ban went into effect on July 1, 2007, and since that time the Commission's Media Bureau has acted on hundreds of requests for waiver of the integration ban rule. The Media Bureau's basis for many of those waivers was to provide cable operators with economic incentives to transition their systems to all-digital, which is a more effective use of system capacity. We propose to further encourage digital transitions, which will make it easier for operators to increase broadband speeds and introduce other new services. Specifically, we propose that operators be allowed to place into service new, one-way navigation devices (including devices capable of processing a high-definition signal) that perform both conditional access and other functions in a single integrated device but do not perform recording functions. Operators would still be required to offer CableCARDs to any subscribers that request them and to commonly rely on CableCARDs in any digital video recorder and bidirectional devices that they offer for lease or sale. This limited modification to our rules will allow operators to offer increased broadband speeds and more high definition programming without substantially affecting the retail market for CableCARD devices. We seek comment on this proposed rule, including whether this limited modification would affect the retail market for retail CableCARD devices substantially, and whether the potential effect on the retail market supports limiting any relief to smaller cable systems with activated capacity of 552 MHz or less.

IV. Conclusion

25. The rules we propose are designed to build on and bolster the existing CableCARD regime to remove the disparity in the customer experience for those customers who choose to utilize a navigation device purchased at retail as opposed to leasing the cable providers' set-top box. We believe that these new rules will improve the CableCARD regime and will further the goals of Section 629 by providing potential consumers of retail cable navigation devices with more information about those options and eliminating barriers that companies face in developing such devices while the Commission takes action to establish a new solution to ensure the commercial availability of video navigation devices as proposed in the accompanying Notice of Inquiry.

V. Procedural Matters

26. *Initial Regulatory Flexibility Analysis.* With respect to the Fourth Further Notice of Proposed Rulemaking, an Initial Regulatory Flexibility Analysis ("IRFA"), *see* generally 5 U.S.C. 603, is contained in Appendix A. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Fourth Further Notice of Proposed Rulemaking specified infra. The Commission will send a copy of the Fourth Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

27. *Initial Paperwork Reduction Act of 1995 Analysis.* This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

28. *Ex Parte Rules. Permit-But-Disclose.* This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under section 1.1206(b) of the Commission's rules. 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. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

29. *Filing Requirements.* 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).

30. *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.*

31. *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.

32. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

33. 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. The filing hours are 8 a.m. to 7 p.m.

34. 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.

35. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

36. 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 via ECFS. Documents will be available electronically in ASCII, Microsoft 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 FCC'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.*

39. *Additional Information.* For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov,* or Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120, or Alison Neplokh, *Alison.Neplokh@fcc.gov,* of the Engineering Division, (202) 418–1083.

Initial Regulatory Flexibility Analysis

40. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA") the Commission has prepared this Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this Fourth Further Notice of Proposed Rulemaking and Order on Review ("Further Notice"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Further Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

41. *Need for, and Objectives of the Proposed Rules.* The need for FCC regulation in this area derives from deficiencies in our rules that prevent consumer electronics manufacturers from developing video navigation devices (such as televisions and set-top boxes) that can be connected directly to cable systems and access cable services without the need for a cable-operator provided navigation device. The objectives of the rules we propose to adopt are to support a competitive market for navigation devices by increasing customer service and by improving audio-visual output functionality on cable operator leased devices.

42. Specifically, we propose rules that would (i) require that equivalent prices be charged for CableCARDs for use in cable-operator-provided set-top boxes and in retail devices, and require billing of the CableCARD to be more transparent; (ii) simplify the CableCARD installation process; (iii) require cable operators to offer their subscribers CableCARDs that can tune multiple streams; and (iv) streamline the CableCARD device certification process. The proposed billing rule would increase customer service by ensuring that cable subscribers are billed fairly for the equipment that they lease, regardless of whether it is a CableCARD for use in a retail device or for use in a device leased from the cable operator. The proposed installation rule would require cable technicians to arrive with the number of CableCARDs that a consumer requests, and allow for self-installation of CableCARDs if the operator allows for self-installation of leased set-top boxes. This is intended to reduce the difficulties that consumers face when having CableCARDs installed in retail devices and to reduce the number of service calls that cable operators and subscribers need to schedule. The proposed rule regarding multistream CableCARDs would require cable operators to offer subscribers multi-stream CableCARDs; this rule is intended to reduce the cost consumers face to use the picture-in-picture and "watch one, record one" functions of their video navigation devices. Finally, the proposed rule that would streamline the CableCARD device certification process is intended to reduce the cost of the certification process and limit the influence that testing facilities have in the development of consumer electronics equipment.

43. We also seek comment on whether market-based solutions serve consumers adequately with respect to switched-digital video. Private industry negotiations have led to a market-based solution to allow certain types of unidirectional digital cable products ("UDCPs") to access switched-digital programming through operator-provided tuning adapters. We seek comment on whether this market-based solution is sufficient, and seek comment on whether the Commission should consider a proposal filed by TiVo that would require cable operators to use broadband signaling for upstream communication to ensure that certain UDCPs can access switched digital cable channels.

44. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 303, 403, 601, 624A, and 629 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 303, 403, 521, 544a, and 549.

45. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental entity" under Section 3 of the Small Business Act. In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 Small Business Administration ("SBA").

46. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System ("NAICS") defines "Wired Telecommunications Carriers" 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. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry." The SBA has developed a small business size standard for wireline firms within the broad economic census category, "Wired Telecommunications Carriers." Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year. Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

47. *Wired Telecommunications Carriers—Cable and Other Program Distribution.* This category includes, among others, cable operators, direct broadcast satellite ("DBS") services, home satellite dish ("HSD") services, satellite master antenna television ("SMATV") systems, and open video systems ("OVS"). The data we have available as a basis for estimating the number of such entities were gathered under a superseded SBA small business size standard formerly titled Cable and Other Program Distribution. The former Cable and Other Program Distribution category is now included in the category of Wired Telecommunications Carriers, the majority of which, as discussed above, can be considered small. 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. 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. Thus, we believe that a substantial number of entities included in the former Cable and Other Program Distribution category may have been categorized as small entities under the now superseded SBA small business size standard for Cable and Other Program Distribution. With respect to OVS, the Commission has approved approximately 120 OVS certifications with some OVS operators now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises, even though OVS is one of four statutorily-recognized options for local exchange carriers (LECs) to offer video programming services. As of June 2006, BSPs served approximately 1.4 million subscribers, representing 1.46 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

48. *Cable System Operators (Rate Regulation Standard).* 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. As of 2006, 7,916 cable operators qualify as small cable companies under this standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

49. *Cable System Operators (Telecom Act Standard).* 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." There are approximately 65.3 million cable subscribers in the United States today. Accordingly, an operator serving fewer than 654,000 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. Based on available data, we find that the number of cable operators serving 654,000 subscribers or less totals approximately 7,916. 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. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

50. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis * * *. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers." The SBA has developed a small business size standard for firms within this category, which is all firms with $15 million or less in annual receipts. According to Census Bureau data for 2002, there were 270 firms in this category that operated for the entire year. Of this total, 217 firms had annual receipts of under $10 million and 13 firms had annual receipts of $10 million to $24,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

51. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. 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." 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. We have therefore included small incumbent local exchange carriers in this RFA, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

52. *Incumbent Local Exchange Carriers ("LECs").* 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. According to Commission data, 1,307 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses.

53. *Computer Terminal Manufacturing.* "Computer terminals are input/output devices that connect with a central computer for processing." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 71 establishments in this category that operated with payroll during 2002, and all of the establishments had employment of under 1,000. Consequently, we estimate that all of these establishments are small entities.

54. *Other Computer Peripheral Equipment Manufacturing.* Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. The SBA has developed a small business size

standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data, there were 860 establishments in this category that operated with payroll during 2002. Of these, 851 had employment of under 1,000, and an additional five establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities.

55. *Audio and Video Equipment Manufacturing.* These establishments manufacture "electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications." The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data, there were 571 establishments in this category that operated with payroll during 2002. Of these, 560 had employment of under 500, and ten establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities.

56. *Description of Reporting, Recordkeeping and Other Compliance Requirements.* The rules proposed in the Further Notice of Proposed Rulemaking will impose additional reporting, recordkeeping, and compliance requirements on cable operators. The Further Notice of Proposed Rulemaking proposes a rule that would require cable operators to charge equivalent and transparent prices for CableCARDs. This rule change may require certain cable operators to change their billing practices.

57. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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.

58. As indicated above, the Further Notice of Proposed Rulemaking seeks comment on whether the Commission should adopt or revise rules relating to compatibility between digital cable television systems and consumer electronics equipment. The proposed billing rule and the proposed multistream CableCARD requirement will present a burden on small entities. The countervailing public interest benefits will outweigh those burdens, however, as subscribers to small cable systems will see reduced costs and have a better understanding of the specific equipment for which their cable operators are charging them. We do not expect that the proposed rule regarding CableCARD device certification or CableCARD installation will have anything beyond a *de minimis* effect on small entities.

59. Due to the overwhelming consumer benefits that will derive from the proposed modifications to the Commission's rules, the Commission did not consider alternatives to those proposed rules. As described above, the proposed rule changes should reduce the number of service calls that consumers will need to schedule, reduce the costs associated with using a video navigation device purchased at retail, and encourage more competition in the retail video navigation device market.

60. With respect to the questions regarding whether marketplace solutions are providing adequate access to channels that are offered over switched-digital video, the Commission chose to seek comment on a proposal by TiVo, rather than proposing adoption of that proposal as recommended by the National Broadband Plan. Our decision to allow such comment will allow the Commission to consider the effect the proposal could have on small entities.

61. We welcome comments that suggest modifications of any proposal if based on evidence of potential differential impact on smaller entities. In addition, the Regulatory Flexibility Act requires agencies to seek comment on possible small entity-related alternatives, as noted above. We therefore seek comment on alternatives to the proposed rules that would assist small entities while ensuring improved customer support by cable operators for digital cable products purchased at retail.

62. *Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals.* None.

List of Subjects

47 CFR Part 15

Communications equipment, Computer technology, Labeling, Radio, Reporting and recordkeeping requirements, Security measures, Telephone, Wiretapping and electronic surveillance.

47 CFR Part 76

Administrative practice and procedure, Cable television, Equal employment opportunity, Political candidates, Reporting and recordkeeping requirements.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Parts 15 and 76 as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, and 544a.

2. Amend § 15.123 by revising paragraph (c)(1) to read as follows:

§ 15.123 Labeling of digital cable ready products.

* * * * *

(c) * * *

(1) The manufacturer or importer shall have a sample of its first model of a unidirectional digital cable product tested to show compliance with the procedures set forth in Uni-Dir-PICS–I01–030903: Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma (incorporated by reference, *see* 15.38) at a qualified test facility. The manufacturer or importer shall have any modifications to the product to correct failures of the procedures in Uni-Dir-PICS–I01–030903: Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma (incorporated by reference, *see* 15.38) retested at a qualified test facility. A qualified test facility may only require compliance with the procedures set forth in Uni-Dir-PICS–I01–030903: Uni-Directional Receiving Device: Conformance Checklist: PICS Proforma (incorporated by reference, *see* 15.38). Compliance testing beyond those procedures shall be at the discretion of the manufacturer or importer.

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522,

531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

4. Amend § 76.640 by revising paragraph (b)(4)(ii) to read as follows:

§ 76.640 Support for unidirectional digital cable products on digital cable systems.

* * * * *

(b) * * *

(4) * * *

(ii) Include both:

(A) A DVI or HDMI interface and

(B) An IEEE 1394, Ethernet, or USB 3.0 interface, or WiFi connectivity on all high definition set-top boxes acquired by a cable operator for distribution to customers. Effective [Date to be determined in the final rule], this interface must, at a minimum:

(*1*) Allow another device to transmit remote control commands via the same interface and

(*2*) Deliver video in an industry standard format.

* * * * *

5. Amend § 76.1204 by revising paragraph (a)(2) to read as follows:

§ 76.1204 Availability of equipment performing conditional access or security functions.

(a) * * *

(2) The foregoing requirement shall not apply

(i) With respect to unidirectional set-top boxes without recording functionality; or

(ii) To a multichannel video programming distributor that supports the active use by subscribers of navigation devices that:

(A) Operate throughout the continental United States, and

(B) Are available from retail outlets and other vendors throughout the United States that are not affiliated with the owner or operator of the multichannel video programming system.

* * * * *

6. Revise § 76.1205 to read as follows:

§ 76.1205 CableCARD support.

(a) Technical information concerning interface parameters that are needed to permit navigation devices to operate with multichannel video programming systems shall be provided by the system operator upon request in a timely manner.

(b) A multichannel video programming provider that is subject to the requirements of § 76.1204(a)(1) must:

(1) Include the charge for the CableCARD as a separate line item in the subscriber's bill;

(2) Provide the means to allow subscribers to self-install the CableCARD if the MVPD allows its subscribers to self-install operator-leased set-top boxes;

(3) Provide a multi-stream CableCARD to any subscriber who requests one; and

(4) With respect to professional installations, ensure that the technician arrives with no fewer than the number of CableCARDS requested by the customer.

[FR Doc. 2010–11387 Filed 5–13–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 10–91; CS Docket No. 97–80; PP Docket No. 00–67; FCC 10–60]

Video Device Competition; Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: In this document, the Commission seeks comment on ways to unleash competition in the retail market for smart set-top video devices that are compatible with all multichannel video programming distributor ("MVPD") services. The goal of this proceeding is to better accomplish the intent of Congress as set forth in section 629 of the Communications Act of 1934, as amended. In particular, we wish to explore the potential for allowing any electronics manufacturer to offer smart video devices at retail that can be used with the services of any MVPD and without the need to coordinate or negotiate with MVPDs. We believe that this could foster a competitive retail market in smart video devices to spur investment and innovation, increase consumer choice, allow unfettered innovation in MVPD delivery platforms, and encourage wider broadband use and adoption.

DATES: Comments for this proceeding are due on or before July 13, 2010; reply comments are due on or before August 12, 2010.

ADDRESSES: You may submit comments, identified by MB Docket No. 10–91; CS Docket No. 97–80; and PP Docket No. 00–67, 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.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120 or Alison Neplokh, *Alison.Neplokh@fcc.gov*, of the Media Bureau, Engineering Division, (202) 418–1083.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry (NOI),* FCC 10–60, adopted and released on April 21, 2010. The full text of this document is available for public inspection and copying 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 via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document 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).

Summary of the Notice of Inquiry

I. Introduction

1. In this *Notice of Inquiry,* the Commission seeks comment on specific steps we can take to unleash competition in the retail market for smart, set-top video devices ("smart video devices") that are compatible with all multichannel video programming distributor ("MVPD") services. Our goal in this proceeding is to better effectuate the intent of Congress as set forth in section 629 of the Communications Act of 1934, as amended. In particular, we wish to explore the potential for

allowing any electronics manufacturer to offer smart video devices at retail that can be used with the services of any MVPD and without the need to coordinate or negotiate with MVPDs. We believe that this could foster a competitive retail market in smart video devices to spur investment and innovation, increase consumer choice, allow unfettered innovation in MVPD delivery platforms, and encourage wider broadband use and adoption.

2. More specifically, we introduce the concept of an adapter that could act either as a small "set-back" device for connection to a single smart video device or as a gateway allowing all consumer electronics devices in the home to access multichannel video programming services. Unlike the existing cable-centric CableCARD technology, this adapter could make possible the development and marketing of smart video devices that attach to any MVPD service anywhere in the United States, which could greatly enhance the incentives for manufacturers to enter the retail market. As conceived, the adapter would communicate with the MVPD service, performing the tuning and security decryption functions that may be specific to a particular MVPD; the smart video device would perform navigation functions, including presentation of programming guides and search functionality. The Commission seeks comment on this concept. We also invite any alternative proposals that would achieve the same objective of eliminating barriers to entry in the retail market for smart video devices that are compatible with all MVPD services.

3. The Commission envisions that the proposal adopted in this proceeding would be a successor technology to CableCARD. We predict that smart video devices built to new standards that would be adopted through this proceeding would eventually replace CableCARD devices on retail shelves. Accordingly, in this *Notice of Inquiry* the Commission also seeks comment on the future of the CableCARD regime. We are separately releasing a *Notice of Proposed Rulemaking* to address a number of CableCARD implementation issues pending the completion of a successor regime.

II. Background

4. In the Telecommunications Act of 1996, Congress added section 629 to the Communications Act. Section 629 directed the Commission to adopt regulations to ensure the commercial availability of navigation devices used by consumers to access services from MVPDs. Section 629 covers "equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems." In enacting the section, Congress pointed to the vigorous retail market for customer premises equipment ("CPE") used with the telephone network and sought to create a similarly vigorous market for devices used with MVPD services.

5. Congress was prescient in enacting section 629 in 1996. In analog cable systems, which were common throughout the 1990s, most consumers could connect their "cable ready" video cassette recorders and television sets directly to a cable operator's system without the need for any other equipment. During that time, many people became accustomed to and appreciated the convenience of the "plug and play" aspect of connecting a coaxial cable from the wall directly into a television set to receive their video programming service. But this analog "plug and play" technology was unable to support advancements in video delivery technology such as digital cable, bidirectional video services such as pay-per-view, and the emergence of competitive services from Direct Broadcast Satellite ("DBS") providers, which were widely available by 2000. These new developments required the use of more advanced encryption and encoding techniques and bidirectional communication, among other functions, and the MVPDs built this capability into proprietary set-top boxes.

6. The Commission has adopted regulations in response to the statutory mandate in section 629 to ensure retail competition in the "navigation device" market. Those regulations have enabled competitors such as TiVo and Moxi to enter the market. However, the Commission's rules as they currently exist have yet to realize Congress' charge to develop a fully competitive retail market.

7. The Commission adopted its first *Report and Order,* 63 FR 38089, to implement section 629 in 1998. The *Report and Order* required MVPDs to make available a conditional access element separate from the basic navigation device, in order to permit unaffiliated manufacturers and retailers to manufacture and market navigation devices while allowing MVPDs to retain control over their system security. The technical details of this conditional access element were to be worked out in industry negotiations. In 2003, the Commission adopted standards on which the National Cable and Telecommunications Association and the Consumer Electronics Association had agreed in a Memorandum of Understanding ("MOU"), with certain modifications. The MOU prescribed the technical standards for "CableCARD" compatibility. The CableCARD is a security device provided by an MVPD, which can be inserted into a set-top box or television set bought by a consumer in the retail market and enable the consumer's television to display MVPD encrypted video programming. To ensure adequate support by MVPDs for CableCARDs, the Commission prohibited MVPDs from integrating the security function into set-top boxes they lease to consumers, thus forcing MVPDs to rely on CableCARDs as well. This "integration ban" was initially set to go into effect on January 1, 2005, but that date was later extended to July 1, 2007.

8. The Commission's rules require cable operators to support only one-way plug-and-play capability for retail CableCARD devices. This largely reflects the absence of a proven market for two-way services when negotiations began, and a desire within the industry to achieve consensus on how to assure access to the most basic services first and not await the conclusion of negotiations regarding access to new services that might be introduced later. Accordingly, the Commission's rules do not require cable operators to provide access for retail devices to two-way services such as interactive program guides, pay-per-view, or video-on-demand services, which were nascent services in 2003 and would have required complex and lengthy technical consideration. For that reason among others, retail CableCARD devices have not been able to offer all of the cable services available to subscribers who lease their set-top boxes from the cable operator. This is partially responsible for the failure of the CableCARD solution to create a strong retail market for navigation devices.

9. Furthermore, although the CableCARD rules nominally apply to all MVPDs, the Commission exempted MVPDs that operate throughout the United States and offer devices for retail sale through unaffiliated vendors. In practice, this means that DBS operators are not subject to these rules. More recent entrant AT&T does not provide CableCARD devices, and Verizon supports CableCARDs to a limited extent, but not for its advanced IP services. The Commission also has given numerous integration ban waivers to cable operators who have demonstrated good cause for waiver, such as cable operators in financial distress and cable operators who have upgraded their systems to all-digital. While numerous, these integration ban waivers involve a de minimis number of

cable subscribers nationwide. The Commission also started granting waivers for low-cost, limited capability set-top boxes and, although these waivers will result in more than a de minimis number of subscribers receiving these boxes, these boxes are able to access only one-way services and provide a substantial public interest benefit by significantly reducing costs to consumers for these low-end services.

10. Unfortunately, the Commission's efforts to date have not led to a robustly competitive retail market for navigation devices that connect to subscription video services. Most cable subscribers continue to use the traditional set-top boxes leased from their cable operator. Although following adoption of the CableCARD rules some television manufacturers sold unidirectional digital cable-ready products ("UDCPs"), most manufactures have abandoned the technology. Indeed, since July 1, 2007, cable operators have deployed only 456,000 CableCARDs for installation in retail devices, compared with their deployment of more than 17.7 million leased devices pre-equipped with CableCARDs since the integration ban went into effect. Furthermore, while 605 UDCP models have been certified or verified for use with CableCARDs, only 37 of those certifications have occurred since the integration ban took effect in July 2007. This indicates that, with the exceptions of TiVo, Moxi, and CableCARD-equipped home theater computers, retail device manufacturers have abandoned CableCARD technology before any substantial benefits of the integration ban could be realized.

11. The Commission anticipated that the parties to the MOU would negotiate a further agreement to achieve two-way compatibility, using either a software-based or hardware-based solution. When the Commission realized in June 2007 that negotiations were not leading to an agreement for two-way compatibility between consumer electronics devices and cable systems, it released a *Third Further Notice of Proposed Rulemaking,* 72 FR 40818, seeking comment on competing proposals for two-way compatibility and other related issues. In the wake of this *Third Further Notice of Proposed Rulemaking,* the six largest cable operators and a number of consumer electronics manufacturers negotiated an agreement for bidirectional compatibility that continues to rely and build on CableCARDs by using a middleware-based solution called "tru2way."

12. We are not convinced that the tru2way solution will assure the development of a commercial retail market as directed by Congress. As an alternative, we seek to explore the potential for fulfilling this statutory directive by providing consumer electronics manufacturers with the ability to build smart video navigation devices that can access MVPD content regardless of the delivery technology the provider employs and to ensure that necessary licensing agreements do not contain contractual terms that limit the functionality of the devices. Although tru2way is designed to be a two-way solution for traditional cable operators, it requires manufacturers to sign a license agreement that contains limitations that may hinder innovation. For example, the agreement limits a device's ability to integrate video from multiple sources into a consistent viewing experience by limiting the presentation and content of a tru2way device's graphical user interface. This could prevent a tru2way device from searching a consumer's computer, DVR, Netflix account, and cable-operator-provided video on demand offerings for a particular film or for films that include the consumer's favorite actor. Furthermore, tru2way is an unworkable solution for DBS and other non-cable providers. Even service from a cable provider like Verizon, which provides most of its video using the same QAM delivery technology as traditional cable operators, but uses Internet Protocol ("IP") for interactive functions such as video-on-demand, currently is not compatible with tru2way. Finally, the fact that the DBS providers are the second and third largest MVPDs, continue to gain market share, and yet are not subject to the integration ban also may be impeding the development of a vibrant retail market by artificially limiting the market for competitive retail devices. Despite the importance of being able to expand the retail market to reach the DBS providers' networks, most consumer electronics manufacturers acknowledge that an attempt to establish standards for navigation devices that would work with each of the different delivery technologies without some intermediation would be impractical and prohibitively expensive.

13. The approaches considered to date have a number of inherent limitations. Both the one-way CableCARD and tru2way approaches focus on television sets and digital video recorders ("DVRs") as the initial consumer device, with that device housing security (through the CableCARD), tuning, and navigation functions. Yet delivery platforms continue to evolve at a rapid pace. As these delivery platforms evolve, consumers may need to upgrade or replace their devices to maintain compatibility with those delivery platforms, even if the device is still physically sound. It is impractical to expect consumers to spend hundreds of dollars to replace their television sets or set-top boxes to accommodate each delivery innovation. A subscriber can avoid that risk by renting an HD set-top box from a cable operator for an average cost of $8.22 per month. This disparity can be expected to perpetuate reliance on cable operators' set-top leasing model and undermine development of a vigorous retail market in navigation devices even if tru2way is successfully deployed.

14. On December 3, 2009, the Commission's Omnibus Broadband Initiative ("OBI") released a Public Notice ("NBP PN #27") seeking comment on four issues related to the ability of manufacturers to compete and innovate in the video device market. Specifically, the Public Notice sought comment on (i) the technological and market-based limitations that prevent retail devices from accessing all types of content; (ii) whether a retail market for network-agnostic video devices could spur broadband use and adoption and achieve the goals of section 629; (iii) whether the home broadband service model could be adapted to provide for audio-visual device connectivity; and (iv) what obstacles may hinder convergence of internet and MVPD-provided video. Commenters generally agreed that the technological limitations that prevent devices from accessing all types of content can be traced to the different conditional access schemes, delivery technologies, and platforms that MVPDs use. Commenters expressed some disagreement about whether network-agnostic video devices would spur broadband use and adoption, but generally agreed that true network agnosticism is a laudable goal for navigation devices. Commenters also generally agreed that the home broadband service model could be adapted to provide for audio-visual device connectivity, but some disagreed about the specific methods that should be used for such connectivity. Finally, commenters generally agreed that the obstacles that hinder convergence of Internet and MVPD-provided video are divergent delivery technologies and content protection methods. Certain commenters also cited business practices that deter entry into the market. NCTA recently filed a letter expressing its members' commitment to a set of principles largely supportive of

our objectives in launching this proceeding.

III. Discussion

15. In this *Notice of Inquiry,* we seek comment on ways to achieve the objective that Congress established nearly fifteen years ago. While MVPD services have become far more robust in the intervening years, for the most part the consumer experience with respect to the equipment that is required to access those services has not. Consumers have shown limited interest in purchasing retail devices that can access MVPD services under our existing rules, and we believe that two fundamental defects in the current regime account for this reluctance. First, with few exceptions retail navigation devices are unable to provide functionality beyond that available in devices that subscribers can lease from their providers and often are unable to access many of the MVPD services that leased set-top devices are able to access. Second, as a general matter a retail navigation device purchased for use with one MVPD's services cannot be used with the services of a competing MVPD. We seek comment on these premises, and we invite commenters to offer other explanations for the failure of a retail market for navigation devices to emerge.

16. Assuming that these premises are in the main correct, we propose a solution that could address these two fundamental problems and seek comment on them. We believe that the concept discussed below could give device manufacturers the ability to develop "smart" products that can access any service that an MVPD provides without the need to enter into restrictive license agreements with MVPDs. The concept also could give device manufacturers the ability to develop smart video devices that can access MVPD programming regardless of the delivery technology that the MVPD uses. Accordingly, we introduce and seek comment on a model that would require MVPDs to provide a small, low-cost adapter that would connect to proprietary MVPD networks and would provide a common interface for connection to televisions, DVRs, and other smart video devices, as described below. This adapter, a further development of the concept of the "gateway device" recommended in Chapter 4 of the National Broadband Plan, would perform the conditional access functions as well as tuning, reception, and upstream communication as directed by the smart video device. The adapter and the smart video device would communicate with each other using a standard interface, but each adapter would be system-specific to a particular MVPD in order to communicate with its network. Innovations in a MVPDs' delivery technology might require substitution of a new adapter but would not require the consumer to replace her smart video device or other in-home equipment. While the Commission seeks comment on this concept, we also encourage commenters to present other proposals that would remove barriers to the establishment of a retail market for smart video devices compatible with all MVPD services. If commenters disagree that the root problems involve limits on device functionality and portability across MVPDs, we invite them to identify what they believe are the obstacles to a competitive retail market in navigation devices and to propose solutions.

17. *The AllVid Concept.* Ideally, the Commission's all video ("AllVid") solution would work for all MVPDs and lead to a nationwide interoperability standard, much as Ethernet and the IEEE 802.11 standards have led to nationwide interoperability for customer data networks while allowing broadband service providers to deploy differing proprietary network technologies. The AllVid solution would be designed to accommodate any delivery technology that an MVPD chooses to use and allow MVPDs to continue unfettered innovation in video delivery, because the MVPD-provided AllVid adapter, rather than the consumer-owned smart video device, would be responsible for all communication with the MVPD. At the same time, it would allow consumer electronics manufacturers to design to a stable interface and to integrate multiple functions within a retail device. This approach would provide the necessary flexibility for consumer electronics manufacturers to develop new technologies, including combining MVPD content with over-the-top video services (such as videos offered from, for example, Amazon, Hulu, iTunes, or NetFlix), manipulating the channel guide, providing more advanced parental controls, providing new user interfaces, and integrating with mobile devices.

18. Two previous standardization approaches help to illustrate how this solution could unleash competition and innovation in equipment used with MVPD services, while allowing unfettered innovation in the services themselves: (i) The Carterfone and Computer Inquiry decisions required that the telephone network be terminated in a standardized RJ–11 interface; and (ii) broadband services developed using divergent and rapidly developing network technologies terminated in an adapter that presents a standardized Ethernet interface.

19. The RJ–11 interface requirement allowed the development of a vibrant retail market for answering machines, cordless phones, fax machines, modems, and other customer-premises equipment used with the telephone network. The requirement that the network terminate in a standardized interface with no carrier-supplied terminating device was implemented in the context of a single telephone network that used a single, stable delivery technology. It was a workable and successful solution in that context because our telephone network was based on a nationwide standard.

20. Broadband services differ from telephone service in two key respects that have led to a significantly different approach. Multiple broadband operators provide services using divergent network technologies; and those technologies are not static but are rapidly developing. Numerous broadband delivery technologies exist—among them cable, digital subscriber line ("DSL"), satellite, wireless broadband, and optical fiber to the home. In each system, the operator provides a customer with an interface device such as a cable modem that performs all of the network-specific functions and connects via an Ethernet port to a multitude of competitively provided customer-premises devices including computers, printers, game consoles, digital media devices, wireless routers, and network storage devices. This approach has promoted an innovative and highly competitive retail market for devices used with broadband services. At the same time, because each operator terminates its service in an interface device that it can swap out as needed to accommodate innovations in delivery technologies, this approach has freed service providers to innovate in their networks without changing the Ethernet connection to which customers attach their devices. For example, a DSL provider can introduce a new, faster technology in its network and, if necessary, swap in a new DSL modem that incorporates the new technology, without changing the customer interface or requiring customers to replace devices they use with the service. This allows consumers to benefit from new and improved services without incurring the cost of replacing devices they have purchased at retail—replacing a single modem is more cost-effective than replacing each device that accesses broadband services.

21. One possible reason for the lack of success in the implementation of Section 629 to date is that it was modeled on the earlier telephone service approach, rather than the second, broadband approach. As NCTA has pointed out, the interface requirement as it applies to telephone service is not completely analogous. We agree, and we believe that the approach to assuring device compatibility with broadband services may provide a better model for MVPD device compatibility. MVPDs, like broadband providers, use divergent and rapidly developing delivery technologies, and our experience with the CableCARD regime indicates that a static implementation of section 629 that incorporates network-specific interface functions into the navigation devices that consumers purchase in the retail market is unlikely to succeed. A more innovative, pragmatic, and long-term approach may be to separate those network interface functions from the consumer devices through the use of an adapter, as is the case with broadband services.

22. The AllVid concept would follow the broadband approach. It would place the network-specific functions such as conditional access, provisioning, reception, and decoding of the signal in one small, inexpensive operator-provided adapter, which could be either (i) a set-back device—which today could be as small as deck of cards—that attaches to the back of a consumer's television set or set-top box, or (ii) a home gateway device that routes MVPD content throughout a subscriber's home network. The adapter would act as a conduit to connect proprietary MVPD networks with navigation devices, TV sets, and a broad range of other equipment in the home. The AllVid adapter would communicate over open standards widely used in home communications protocols, as outlined below, enabling consumers to select and access content through navigation devices of their choosing purchased in a competitive retail market. MVPDs would, of course, be free to participate in the retail market by offering navigation devices for sale or lease to consumers, but those devices would be separate from the adapter and marketed separately.

23. We believe that this model could unleash an expanding retail market for innovative and portable smart video devices and could also maintain MVPDs' freedom to innovate in and protect their networks. As we envision the AllVid concept, it could lead to "[c]ompetition in the manufacturing and distribution of consumer devices" as Congress envisioned, which "has always led to innovation, lower prices and higher quality," because retail devices would be able to access the full array of services offered by all MVPDs and to integrate those services with other video sources—something that today's plug-and-play devices and tru2way devices cannot do. More specifically, we believe that this new AllVid model could: (i) Spur the development of a competitive retail market in navigation devices, thus providing subscribers with viable alternatives to leasing or buying a set-top box from their MVPD, (ii) drive down retail prices for devices used to access MVPD services without increasing the prices of those services, (iii) encourage MVPDs to develop and introduce innovative services without being inhibited by the need to consult with navigation device manufacturers, and (iv) encourage device manufacturers to develop and introduce innovative smart video devices without being deterred by the need to consult with MVPDs. In the following section, we seek comment on a framework designed to achieve those goals; we also encourage commenters to propose alternative plans that could achieve the same goals.

24. *AllVid Standards.* The AllVid adapter would perform only the functions necessary to support devices connected to the home network, and should connect to home network devices using a nationally supported standard interface that is common across MVPDs. We expect that an AllVid adapter could be inexpensive and physically small but, as set forth below, seek comment on those assumptions. We also envision that MVPDs would provide subscribers with the AllVid adapters (included in the price of service, or for a nominal lease fee, or with the option to purchase), and that AllVid adapters would likely not be portable across carriers. We seek comment on these expectations, as well as on the specific elements we believe would be necessary to bring the concept to fruition. For example, in a petition for rulemaking filed in the wake of NBP PN #27, Public Knowledge suggests that an AllVid-type device would require "standards for (1) a physical connection, (2) a communication protocol, (3) authentication, (4) service discovery, and (5) content encoding." We seek comment on Public Knowledge's proposal, as well as the list of functions discussed in detail below that we believe would be necessary to implement the AllVid concept. We seek comment on any other functions for which standards would be necessary to develop an AllVid adapter. In this Section, we also seek comment on standards for the adapters, with the understanding that these standards may not encompass the entire universe necessary to develop and deploy AllVid adapters.

25. *AllVid Equipment.* The AllVid equipment would be designed to operate specifically with one MVPD and offered through the MVPD's preferred mechanism, whether leased or sold at retail, manufactured by one company or competitively. We foresee two possible physical configurations for the AllVid equipment. In the first configuration, the AllVid equipment would be a small "set-back" device, capable of communicating with one navigation device or TV set and providing at least two simultaneous video streams to allow for picture-in-picture and to allow subscribers to watch a program on one channel while recording a program on another channel. In the second configuration, the AllVid equipment would act as a whole-home gateway, capable of simultaneously communicating with multiple navigation devices within the home, and providing at least six simultaneous video streams within the home (which would allow picture-in-picture in three different rooms), possibly through a modular system that could accommodate more streams as necessary. We seek input on each of these configurations and whether one of these configurations is more appropriate than the other, or if there are other superior configurations that should be considered.

26. *Physical connection.* The 100–BASE–TX Ethernet could act as the physical layer technology used to connect the AllVid adapters with navigation devices. 100–BASE–TX Ethernet operates at speeds adequate to allow transfer of multiple high definition MPEG–2 signals (nominally 15 Mbps each), and it has developed as a de facto connection for data transmission. Current and next-generation audio-visual equipment has and will continue to include Ethernet ports for connectivity for the foreseeable future. Therefore, adoption of Ethernet as the physical connection for AllVid adapters and navigation devices could enable compatibility with existing devices. In addition, the ubiquity of Ethernet could allow the AllVid adapter and navigation device manufacturers to defray costs to a large extent. We seek comment on these predictions. We seek comment on whether using Ethernet for the physical connection would be limiting if Internet video were not passed through the AllVid adapter. We also seek comment on any other

physical connectors (for example, Multimedia over Coaxial Cable ("MoCA")) that could serve as the bridge between AllVid adapters and retail navigation devices, or whether the Commission would need to mandate a physical layer technology at all.

27. *Communication Protocol.* Internet Protocol ("IP") could act as the communication protocol between the AllVid adapter and navigation devices. Like Ethernet, IP is the de facto standard protocol for data transmission, and current and next-generation audio-visual equipment is capable of handling IP communication. As a widely adopted protocol, IP is familiar to hardware and software developers, which would allow the retail market to flourish for smart video devices. We seek comment on whether IP would be the best choice for an AllVid communication protocol. We also seek comment on any other communication protocols that could serve as a standardized communication protocol between AllVid adapters and retail navigation devices.

28. *Encryption and Authentication.* Both the MPAA and CableLabs have approved digital transmission content protection over Internet protocol ("DTCP–IP") technology as an acceptable method of content encryption to prevent content theft, and it is the content protection scheme used in the Digital Living Network Alliance ("DLNA") standard. For these reasons, we believe that the DTCP–IP standard would be a logical choice for content encryption and device authentication, and we seek comment on that assessment. We also seek comment on whether it would be practical to give each navigation device its own specific key. We believe that this could prevent a situation in which entire model classes of navigation devices would need to be deauthorized in the event that a key were compromised. Should the Commission select a party to administer the public key database in the same manner that the Commission handled the white spaces database, or would the relevant industry parties be able to agree on a third party to handle maintenance of a public key database? In the event that commenters are in favor of a third party maintaining the public key database, we seek proposals regarding parties that can handle that task. We seek comment on the ideas presented here with respect to encryption and authentication. We seek comment also on any other proposals that could serve the encryption and authentication functions in an AllVid-connected home network.

29. *Content Ordering and Billing.* At least one party has indicated that MVPDs need the ability to verify that their subscribers have actually ordered pay-per-view and subscription content. What specific methods could the AllVid and navigation device use to facilitate ordering of pay-per-view and subscription content? We envision that the AllVid adapter would perform video rendering for the purpose of verifying a subscriber's purchase of MVPD content such as Video on Demand ("VOD") or a subscription service. We seek comment on these issues, including any other proposals that would allow MVPDs to verify that a subscriber wishes to purchase a specific MVPD service.

30. *Service Discovery.* TiVo suggests that Universal Plug and Play ("uPnP") protocols would be "an obvious technology choice for service discovery." TiVo explains that the only protocols that the Commission would need to adopt for service discovery are "gateway advertisement, which allows a gateway to announce its presence to consumer devices on the home network, and service browsing, in which a consumer device can browse and access the available services on the gateway." We seek comment on TiVo's proposal and invite commenters to propose any other protocols that would allow a navigation device to discover MVPD content on a home network with an AllVid adapter. For example, to achieve the efficiencies that come with switched-digital video, devices attached to a cable network need to inform the cable headend when a subscriber stops watching a program. What protocols would be necessary for the AllVid adapter to query whether the navigation device still requires access to the program stream?

31. *Content Encoding.* A recent controversy over audio-visual codec support has led to heightened awareness about the issue of content encoding. Ideally, navigation devices should be designed to decode content that has been encoded in a number of specified formats and the AllVid adapter should be designed to transfer content in at least one of those formats. This would allow MVPDs to encode their content as they wish without the need for the AllVid adapter to transcode the content, which could make the AllVid adapter more expensive and less energy efficient. We seek comment on whether the Commission would need to specify the formats, and, if so, on the audio-visual codecs that the Commission should require navigation devices to handle.

32. *Intellectual Property.* The Commission seeks comment on intellectual property issues related to proposed standards for the AllVid adapter. How long would it take for the necessary standards to be developed, and what costs would be involved? Would a requirement that all rights holders license their relevant intellectual property on reasonable and nondiscriminatory terms allow the market to flourish and provide adequate incentives for innovation? Does the Commission have the legal authority to mandate such terms? We seek comment on whether patent pools exist for any technologies that might be adopted. We seek comment on the licensing fees charged by patent holders for these technologies, and which parties hold those rights. We also seek comment on any other intellectual property issues relevant to the AllVid concept.

33. *Other Issues.* The Commission also seeks comment on any additional standardization work that would be necessary to implement the AllVid regime. For example, we seek comment on how the AllVid adapter should resolve resource conflicts. If a subscriber's home is equipped to handle six separate video streams and seven people in the home want to watch programming on seven different devices, which devices take precedence? Should the most recent device to make a request have the ability to override the conflict and choose which device to exclude? We seek comment on innovative ways to resolve device conflicts.

34. Several commenters have highlighted issues regarding how a home network would handle emergency alert system ("EAS") messages, closed captioning data, and MVPD parental controls. We note that there are existing standards to transmit closed captioning data and parental control data for broadcast television and unencrypted cable television. We seek comment on whether these standards can be adapted readily to perform these functions in the AllVid regime or whether new standards development is necessary. We note that development of a next generation EAS system is underway and seek comment on how EAS messages formatted in the Common Alerting Protocol could be carried in the AllVid system and received by devices. CEA and the Society of Cable Telecommunications Engineers (SCTE) have both adopted standards for the carrying of EAS within the home network. We seek comment on what additional standards work is necessary to assure that retail devices receive and display EAS messages.

35. We seek comment also on whether navigation devices in the AllVid system should include over-the-air ATSC tuners. The Commission's rules require

unidirectional digital cable devices to include an ATSC tuner. In the *Second Report and Order,* the Commission concluded that "the public has come to understand that television receivers labeled or marketed as 'cable ready' universally include the capability of receiving over-the-air broadcast service." Would consumers similarly expect this equipment to receive over-the-air broadcast service? Does the Commission have the authority under the All-Channel Receiver Act to impose such a requirement?

36. We seek comment also on differences in delivery technology that might require specific MVPD providers to include functionality beyond what is necessary for conditional access, provisioning, reception, and decoding of the signal. For example, given the DBS industry's inherently one-way distribution model, DISH Network and DIRECTV have indicated that home gateway devices for DBS would need to include hard drives for video caching to allow their subscribers to view VOD programming instantly and might need to include additional "intelligence." We seek proposals on any network-specific functions that may need to be included in particular operators' AllVid adapters. We also seek comment on how we could enable evolution of the AllVid system, with respect to both the components of the device and the output standards, in order to accommodate technological innovation over time. Finally, we seek comment on any other issues regarding the AllVid regime and specific proposals that would allow the Commission to resolve those issues.

37. *AllVid Support Requirements.* The National Broadband Plan calls for Commission action to require MVPDs who offer digital navigation devices for lease to be prepared to offer AllVid equipment to their subscribers by December 31, 2012. We seek comment on that deadline, including measures that would be effective in enforcing it. To encourage MVPDs to adhere to this deadline, should the Commission take supplemental measures that would apply to MVPDs that are unable to deploy AllVid equipment to all new subscribers and to any subscribers who request AllVid equipment after this deadline (such as denying extensions of certain CableCARD waivers), or do the Commission's existing enforcement mechanisms, which allow the imposition of forfeitures, provide sufficient incentives for MVPDs to meet such a deadline? How can the Commission prevent an overabundance of waiver requests similar to the ones filed in response to the integration ban, which some have argued have brought about policymaking by waiver?

38. In concept, the AllVid approach would provide a successor technology to CableCARD. While the Commission is separately proposing steps to ameliorate shortcomings in the retail market for CableCARD devices in the interim, we anticipate that AllVid devices could over time replace CableCARD devices on retail shelves. Accordingly, we seek comment on whether the Commission should consider eliminating its CableCARD rules, and if so, the appropriate date for such a change. We seek comment on consumer expectations regarding the lifespan of their devices, and whether the AllVid approach or any other approach could be implemented in a way that limits the number of CableCARD devices that become obsolete.

39. *Navigation Device Economics.* Certain parties suggest that a retail market for navigation devices may be destined to fail because consumers are not interested in owning navigation devices. We seek comment on this assessment, including whether consumers prefer to lease at government-regulated "cost-plus" rates, whether consumers wish to avoid the risk of obsolescence of navigation devices, and whether consumers' inability to "port" a retail navigation device when he or she changes MVPDs limits the attractiveness of the retail option. The cable industry has adopted the leasing model, charging customers a monthly fee that allows consumers to avoid a larger upfront cost entailed by a retail purchase. To evaluate the leasing versus retail equipment models, we seek data on consumer behavior when faced with a lease versus purchase decision, concerning navigation devices and analogous consumer electronic devices. We expect that MVPDs will want to continue to offer devices for lease or sale that provide greater functionality than an AllVid adapter. Should we require those devices to attach to the AllVid network, through an adapter? How would our decision on whether operator-provided navigation devices must commonly rely on the AllVid network affect the economics of the retail and leasing markets?

40. What are consumer expectations with respect to "navigation devices?" Traditionally, the Commission and interested parties have considered the term navigation devices to include televisions, set-top boxes (including DVRs), and home theater computers. Do these devices comprise the universe of navigation devices, and if not, what other devices could perform navigation device functions? Are there specific minimum functions that a navigation device needs to perform? Should there be different classifications of navigation devices, and if so, should the Commission dictate the minimum functionality requirements of specific classes? What steps can the Commission take to increase economic and energy efficiencies that will allow consumers to connect fewer devices to their television display by consolidating functionality into one device?

41. Would MVPDs be at an advantage in providing set-top boxes because they could provide home installation whereas consumers typically would have to install devices purchased in the retail market themselves? Do MVPDs earn a profit on home installations or, if not, would self-installations of retail devices by MVPD customers save MVPDs money? We seek comment also on the assertion that the cost of bringing navigation device functionality into television sets exceeds what consumers are willing to pay at retail. We seek data on consumer purchasing behavior regarding home entertainment equipment. To what extent are consumers willing to pay for additional functionalities in the equipment they purchase? Would the AllVid concept change the economics of consumer preferences? How much would an AllVid adapter cost? How much would it cost to add AllVid compatibility to a navigation device? Should the cost of an AllVid adapter and charges for installation by the MVPD be calculated according to the Commission's rate regulation rules under section 76.923 in rate-regulated communities? Finally, we seek comment on whether economic or technological factors dictate that AllVid adapters would have to be provided by the MVPD, or whether AllVid adapters could be sold at retail, as NCTA has suggested in the past.

42. *Alternative Proposals.* In response to NBP PN #27, several MVPDs expressed reservations about a "home gateway" technology mandate. These commenters suggest that the Commission should encourage market-driven negotiations and standards development to achieve the goals of section 629. In this vein, we seek alternative proposals to the AllVid concept that could lead to the implementation of a competitive market solution for smart video devices by December 31, 2012. We also seek input on whether the movement of functions away from navigation devices and into the cloud or network might represent a viable alternative. How would the AllVid proposal affect the development of downloadable security? Are there specific incentives that the Commission

could create that would expedite market negotiations and address the shortcomings of the current CableCARD regime discussed above?

43. *Other Issues. Content Presentation.* Much of the innovation in television reception devices is related to easy-to-use graphical user interfaces; device manufacturers distinguish their products from one another by providing better user experiences. MVPDs argue, however, that a graphical user interface that is standard across its footprint makes consumer education and support easier; they also state that marketing agreements often require the MVPD to provide certain content within the electronic program guide. Providers also argue that multiple graphical user interfaces would create customer confusion with regard to whom subscribers should call with questions about problems associated with the user interface, service, and hardware compatibility. What steps should be taken to minimize any potential for confusion with regard to the appropriate provider of customer service for retail device product performance, warranty, and service-related issues? Given the inherent conflict between innovation and standardization, we seek comment on whether the Commission should adopt rules governing the way in which MVPD content is presented. What steps should be taken to protect agreements between MVPDs and content providers? Is there a way to balance MVPDs' interests in improved customer service and adherence to their marketing contracts against the consumer benefits that result from electronics manufacturers differentiating their products from competitors'? We seek comment on the best way to resolve this issue.

44. We also seek comment on intellectual property issues associated with electronic programming guides. The Consumer Electronics Association asserts that consumers already pay for programming guide data as part of their subscription fees, that the data is not subject to intellectual property protection, and that therefore MVPDs should provide programming guide data in a form that would allow competitive devices to display the data as they wish. MVPDs disagree, arguing that the intellectual property issues related to electronic programming guide presentation and data are more complex than the Consumer Electronics Association suggests. In addition to seeking comment on the intellectual property issues, we seek specific proposals for solutions or reasonable compromises that could address those issues and achieve the objectives of this proceeding. For example, would it be reasonable for MVPDs to charge separately for guide data, thereby saving subscribers who use third-party data from having to pay for the same data twice?

45. *Authority.* The DC Circuit has found that section 629 gives the Commission broad discretion to adopt regulations to assure a competitive market for navigation devices. Throughout this proceeding, certain parties have argued that the Commission lacks the authority to require MVPDs to disaggregate their programming guides and allow retail devices to "repackage" their content. Section 629 directs the Commission to adopt regulations to assure the retail commercial availability of navigation devices, and the DC Circuit's review has been "particularly deferential" in cases where the "FCC must make judgments about future market behavior with respect to a brand-new technology." We seek further comment on our authority under section 629 of the Act.

IV. Procedural Matters

46. *Ex Parte Rules.* This is an exempt proceeding in which ex parte presentations are permitted (except during the Sunshine Agenda period) and need not be disclosed.

47. *Filing Requirements.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 13, 2010; reply comments are due on or before August 12, 2010. 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).

48. 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.*

49. 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.

50. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

51. 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. The filing hours are 8 a.m. to 7 p.m.

52. 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.

53. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

54. *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).

55. *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 via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

56. *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 FCC'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.*

57. *Additional Information.* For additional information on this proceeding, contact Steven Broeckaert, *Steven.Broeckaert@fcc.gov,* Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120, or Alison Neplokh, *Alison.Neplokh@fcc.gov,* of the Media Bureau, Engineering Division, (202) 418–1083.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2010–11388 Filed 5–13–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[WT Docket No. 10–62; FCC 10–38]

Amateur Service Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the amateur radio service rules to facilitate the use of spread spectrum communications technologies. The effect of this action is to enhance the usefulness of the amateur service rules by making them conform with other Commission rules, thereby eliminating licensee confusion when applying the rules to amateur service operations.

DATES: Submit comments on or before June 14, 2010 and reply comments are due June 28, 2010.

ADDRESSES: You may submit comments, identified by WT Docket No. 10–62; FCC 10–38, 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.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William T. Cross, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Notice of Proposed Rulemaking and Order* (NPRM), WT Docket No. 10–62, FCC 10–38, adopted March 11, 2010, and released March 16, 2010. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The Commission initiated this proceeding to amend the part 97 Amateur Radio Service rules to facilitate the use of spread spectrum (SS) communications technologies. The Commission found that one of the purposes of the amateur service is to contribute to the advancement of the radio art and that the use of amateur service spectrum to experiment with SS communication systems is consistent with the basis and purpose of the amateur service. Specifically, the Commission proposed in this *NPRM* to amend the amateur service's SS rules to (1) eliminate the automatic power control requirement applicable to stations that transmit SS emissions and (2) reduce the maximum transmitter power output amateur stations may use when transmitting SS communications from one hundred watts to ten watts peak envelope power.

I. Procedural Matters

A. Ex Parte Rules—Permit-but-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

B. Comment Dates

3. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before June 14, 2010, and reply comments are due June 28, 2010.

4. *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*.

5. *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.

6. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- 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. The filing hours are 8 a.m. to 7 p.m. 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.

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).

C. Paperwork Reduction Act

7. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed 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).

II. Initial Regulatory Flexibility Analysis

8. The Regulatory Flexibility Act requires an initial regulatory flexibility analysis to be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 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 Small Business Administration (SBA).

9. In the *NPRM,* we propose to amend the amateur service rules to eliminate the requirement that an amateur station transmitting a SS emission must automatically use APC to reduce the transmitter power when the station transmits with a power greater than one watt and to reduce from one hundred watts to a peak of ten watts the transmitter power output that an amateur station may transmit when the station is transmitting a SS emission.[1] Because "small entities," as defined in the RFA, are not persons eligible for licensing in the amateur service, this proposed rule does not apply to "small entities." Rather, it applies exclusively to individuals who are the control operators of amateur radio stations. Therefore, we certify that the proposals in this *NPRM,* if adopted, will not have a significant economic impact on a substantial number of small entities.

III. Ordering Clauses

10. 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 Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Radio.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 97 as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

§ 97.313 [Amended]

2. Section 97.311 is amended by removing paragraph (d).

3. Section 97.313 is amended by adding paragraph (j) to read as follows:

§ 97.313 Transmitter power standards.

* * * * *

(j) No station may transmit with a transmitter output exceeding 10 W PEP when the station is transmitting a SS emission type.

[1] *See* 47 CFR 97.311(d).

[FR Doc. 2010–11386 Filed 5–13–10; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 173

[Docket No. PHMSA–07–29364 (HM–231A)]

RIN 2137–AE32

Hazardous Materials; Packages Intended for Transport by Aircraft

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes to amend requirements in the Hazardous Materials Regulations to enhance the integrity of inner packagings or receptacles of combination packagings containing liquid hazardous material by ensuring they remain intact when subjected to the reduced pressure and other forces encountered in air transportation. In order to substantially decrease the likelihood of a hazardous materials release, the proposed amendments: prescribe specific test protocols and standards for determining whether an inner packaging or receptacle is capable of meeting the pressure differential requirements specified in the regulations and, consistent with the 2011–2012 edition of the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Aircraft (ICAO Technical Instructions), require the closures on all inner packagings containing liquids within a combination packaging to be secured by a secondary means or, under certain circumstances, permit the use of a liner.

DATES: Comments must be received by July 13, 2010.

ADDRESSES: You may submit comments identified by the docket number PHMSA–07–29364 (HM–231A) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (*see* **ADDRESSES**).

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

FOR FURTHER INFORMATION CONTACT: Michael G. Stevens, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, telephone (202) 366–8553, or Janet McLaughlin, Office of Security and Hazardous Materials, Federal Aviation Administration, U.S. Department of Transportation, 490 L'Enfant Plaza, SW., Room 2200, Washington, DC 20024, telephone (202) 385–4897.

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I. Background

The Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) authorize a variety of packaging types for the transportation of hazardous materials in commerce. Combination packagings are the most common type of packaging used for the transportation of both liquid and solid hazardous materials by aircraft. A combination packaging consists of one or more inner packagings or one or more articles secured in a non-bulk outer packaging.[1]

Requirements for combination packagings used to transport hazardous materials are set forth in parts 173 and 178 of the HMR. Certain classes and quantities of hazardous materials may be transported in "non-UN standard" combination packagings, which are subject only to the general requirements in subpart B of part 173, including the following:

—The packaging must be designed, constructed, filled, and closed so that it will not release its contents under conditions normally incident to transportation. § 173.24(b)(1).

—The effectiveness of the package must be maintained to withstand minimum and maximum temperatures, changes in humidity and pressure, and shocks, loadings and vibrations normally encountered during transportation. § 173.24(b)(2).

— Each non-bulk packaging must be capable of withstanding, without rupture or leakage, the vibration test procedure specified in § 178.608 of this subchapter, which sets forth a specific test method to measure the vibration capability of a non-bulk packaging. § 173.24a(a)(5).

A packaging authorized for transportation by aircraft must also be designed and constructed to prevent leakage that may be caused by changes in altitude and temperature. § 173.27(c)(1). Inner packagings of combination packagings for which retention of liquid is a basic function must be capable of withstanding the greater of: (1) An internal pressure that produces a gauge pressure of not less than 75 kPa for liquids in Packing Group III of Class 3 or Division 6.1 and 95 kPa for other liquids; *or* (2) a pressure related to the vapor pressure of the liquid to be transported as determined by specified formulae. § 173.27(c). A number of voluntary industry consensus standards have been developed, some of which include test methods intended to evaluate the effects of pressure differential on packagings at the various altitudes experienced in the air transport environment. These standards-setting organizations have also conducted measurement studies and testing to identify the transportation forces a package encounters and developed integrity standards and industry best-practices to ensure the pressure differential capability standard is met. This process assists all parties to design and manufacture packaging with quality standards that could be used to verify conformance with capability requirements. However, these voluntary industry standards are not included or referenced in the HMR, and the HMR do not provide specific guidance to shippers or packaging manufacturers as to how to comply with the pressure differential standards.

Subparts L and M of part 178 contain UN performance standards for non-bulk packagings adopted in PHMSA's "HM–181" final rules in 1990 and 1991. 55 FR 52401 (December 21, 1990); 56 FR 66124 (December 20, 1991). These performance standards criteria replaced the former detailed construction specifications and provide packaging design flexibility that is not possible with detailed design specifications. The performance criteria require design qualification testing and periodic retesting to verify whether a design type meets the performance standards. For combination packagings, drop and stacking testing are required, and the packaging must be "capable" of passing a vibration test. §§ 178.603, 178.606, 178.608. The packaging (including the inner packagings) must be closed for testing, and tests must be carried out on the completed package that is prepared for testing, in the same manner as if prepared for transportation. § 178.602.

In the HM–181 advance notice of proposed rulemaking (47 FR 16268 (April 15, 1982)) and the notice of proposed rulemaking (52 FR 16482 (May 5, 1987)), we proposed to require the hydrostatic pressure test in § 178.605 to be performed on all inner packagings of UN standard combination packaging designs intended for transportation by aircraft. The pressure test would have addressed pressure differentials encountered during air transportation. This amendment was not adopted in the final rule. 55 FR 52402 (December 21, 1990). Instead, consistent with the ICAO Technical Instructions and the HMR in effect at the time, we elected to continue the requirement for all packagings containing liquids offered or intended for transportation aboard aircraft to be capable of withstanding without leakage a specified pressure differential. § 173.27(c).

Since that time, ICAO has added a note to Part 4; 1.1.6 of the Technical Instructions stating that the capability of a packaging to meet the pressure differential performance standard should be determined by testing, with the appropriate test method selected based on packaging type. However, ICAO has not adopted specific test methods in the Technical Instructions.

Because the HMR do not specify test methods for verifying that a packaging meets the pressure differential requirement, some shippers and packaging manufacturers have used historical data (*i.e.,* lack of incidents) and other methods (*e.g.* computer modeling, analogies, or engineering studies) to demonstrate that their packagings satisfy the pressure differential capability requirement. Shippers and packaging manufacturers have differing views on how the requirements are to be verified, and use various test methods to demonstrate compliance. This leads to a non-uniform approach, and it is difficult for PHMSA and FAA to verify whether a package meets the pressure differential requirement because no test report, documentation, or other proof of compliance is required by the HMR. Additionally, it does not provide an effective method of oversight to determine whether regulatory requirements are meeting actual forces encountered in transportation. If there is no control, the evaluation of quality and failure analysis is not possible. Even the most conscientious and safety-focused shippers have difficulty understanding how to comply with the requirements in § 173.27. Other shippers and packaging manufacturers may be taking advantage of the absence of specific requirements for verifying compliance.

The absence of specific test methods in the HMR leads to inconsistencies in package integrity and results in varying levels of compliance among shippers. References to the pressure differential requirements in § 173.27(c) are found throughout the regulations for packagings and packages offered for air transportation and transported by

[1] As a receptacle for a liquid or solid, a non-bulk outer packaging is one that has a maximum capacity of 450 liters (119 gallons) and, for solid contents, a maximum net mass of 400 kg (882 pounds). § 171.8.

aircraft without methods specified to verify compliance with this critical safety requirement. This results in wide disparities in packaging quality and the potential for sub-standard packages to be introduced into the air transport environment, increasing the probability of releases of hazardous materials aboard aircraft. In addition, some shippers or manufacturers may not realize that inner packagings of non-UN standard combination packagings are required to meet the pressure differential capability requirements of the HMR and the ICAO Technical Instructions. This includes packagings authorized under the limited quantity, consumer commodity, and Category B Biological Substance exceptions. A significant percentage of aircraft incidents involving liquid hazardous materials appear to result from failures of these packagings. We strongly believe the introduction of specific test methods and amendments that clarify the requirements for packagings offered for transportation by aircraft will enhance safety by reducing risk and level the playing field for shippers, manufacturers and air carriers alike.

II. Problem

When a package reaches high altitudes during transport, it experiences low pressure on its exterior. This results in a pressure differential between the interior and exterior of the package since the pressure inside remains at the higher ground-level pressure. Higher altitudes create lower external pressures and, therefore, larger pressure differentials. This condition is especially problematic for combination packagings containing liquids. When an inner packaging, such as a glass bottle or plastic receptacle, is initially filled and sealed, the cap must be tightened to a certain torque to obtain sealing forces sufficient to contain the liquids in the packaging. This will require certain forces to be placed upon the bottle and cap threads as well as the sealing surface of the cap or cap liner to ensure the packaging remains sealed. Once at altitude, due to the internal pressure of the liquid acting upon the closure combined with the reduced external air pressure, the forces acting on the threads and the forces acting on the sealing surfaces will not be the same as when the packaging was initially closed. Under normal conditions encountered in air transport (26 kPa reduction in pressure at 8000 ft), the pressure differentials are not overly severe. However, if the compartment is depressurized at altitude or if the compartment is not pressurized at all, such as on certain "feeder" aircraft, the pressure differential may be severe enough to cause package failure and release of the hazardous materials in the aircraft. High-altitude stresses are encountered when cargo and feeder aircraft transport packages in non-pressurized or partially-pressurized cargo holds.

A seemingly "minor" incident can quickly escalate and result in irreversible, possibly catastrophic, consequences. For example, a closure failure of an inner container could cause an outer package to fail, resulting in fumes, smoke or flammable liquid acting as a catalyst to a more serious incident. The interaction of events occurring on aircraft, such as electrical fires, static electricity or other materials interacting with the leaking material, could result in a catastrophic event. The successful testing of inner packaging designs may lower the likelihood of such an event. Taking a systems-safety approach that includes multiple safety processes and redundancies can prevent a minor incident from becoming potentially much worse.

PHMSA, FAA and, more recently, several international competent authorities all agree that the testing of design samples or prototypes of inner packagings or receptacles for pressure differential capability is key to preventing package failure in air transport. Testing also forms the basis of current performance standards in both the HMR and international regulations. Additionally, incident data and compliance verification testing of combination packagings intended for air transport and readily available in the marketplace indicate that an unacceptable number of packagings are not able to withstand pressure differential conditions normally incident to air transportation. Again, the packagings of particular concern are packagings that must be "capable" of meeting pressure differential requirements, but are not required to be certified as meeting a specific performance test method to verify compliance with pressure differential performance standards. Incident data continue to show that packagings are leaking aboard aircraft; this likely is in part attributable to the fact that the HMR do not specifically provide test methods for determining that packagings meet the minimum pressure differential performance necessary to withstand conditions of air transport. It cannot be overemphasized that any incident, such as a package failure, involving hazardous materials in air transportation is unacceptable.

Four recent studies simulated the impact of high-altitude on package integrity. These conditions result in extreme changes in pressure when compared to packages being transported at or close to sea level. These four studies were discussed in detail in the ANPRM published under this docket [73 FR 38361; July 7, 2008] and are available for review at *http://www.regulations.gov.*

In the first study, FAA analyzed incident data from the DOT Hazardous Materials Information System (HMIS) for the years 1998 and 1999 and focused on properly declared hazardous material shipments. The study concluded that of 1,583 air incidents reported to PHMSA, a failure of inner packagings in combination packaging designs contributed to 333 spills or leaks. In the second study, United Parcel Service (UPS) presented its findings to the American Society of Testing and Materials (ASTM) outlining the conditions that packages experience in the air transport environment. In 2002, the FAA initiated a study with Michigan State University (MSU) to replicate actual air and pre- and post-truck transportation conditions to determine which conditions contribute to package failures. In this third study on conditions experienced in air transportation, FAA examined the effects of vibration alone, altitude alone, and a combination of vibration and altitude on the performance of UN standard hazardous material combination packages containing liquids. In 2003, PHMSA also initiated a study with MSU to compare the HMR requirements and the testing used in the FAA/MSU study to provide for a more thorough evaluation of the performance of liquid hazardous materials in combination packagings when subjected to the conditions of air transport. This fourth round of testing was conducted on a smaller number of packaging designs; however, a much greater number of packagings of each design were tested in the study.

During the first half of 2007, PHMSA conducted a comprehensive assessment of hazardous materials transportation incidents occurring in air transportation from 1997 through 2006. This study and its corresponding data may be accessed in the public docket for this rulemaking. The study concluded that there has been no appreciable reduction in package failures over the past 10 years. It is estimated that 191,429 tons of liquid hazardous materials contained in approximately 16.9 million combination packages are transported by aircraft annually. Of that total, the analysis concluded that approximately 483 combination packagings containing liquids fail in air transportation each

year with an average of two incidents reported as "serious."[2] However, any incident, such as a package failure, involving hazardous materials in air transportation is unacceptable.

The 2007 study concluded that of the approximately 483 air incidents reported each year, at least 44 percent involved the failure of inner packaging closures within a combination outer packaging as the primary cause. Such failures could have been the result of pressure differential (packages closed at sea level subjected to lower pressure on planes), stress relaxation of the closure (closures that appear tight but loosen during transportation), improper closures, vibration, or some other cause. The analysis also suggested that most incidents involved combination packagings containing flammable liquids (*e.g.,* paint and paint related material) of varying degrees of hazard. Some additional statistical data from the 2007 incident review include:

- Over 40% of failures of combination packages containing liquids in air transportation involve closures and/or inner receptacles.
- Flammable liquids are the most common liquid hazardous materials released from failed packages in air transportation. If such materials found an ignition source, it could result in a fire or explosion.
- In incident years 2005–2006, 18 of 953 incidents involving combination packagings containing liquids, or 2%, occurred on passenger-carrying aircraft. Although low when compared to incidents occurring on cargo-carrying aircraft, this percentage of package failures continues to be a troubling statistic.
- Combination packages containing liquids that fail in air transportation release an average 2 liters (0.5 gallons) of liquid hazardous materials.

III. ANPRM

On July 7, 2008, PHMSA published an advance notice of rulemaking (ANPRM; 73 FR 38361) seeking to identify cost-effective solutions to reduce incident rates and the potential severity of incident consequences without placing unnecessary burdens on the regulated community. We solicited comments on how to accomplish these goals, including measures to: (1) Enhance the effectiveness of performance testing for packagings used to transport hazardous materials on aircraft; (2) more clearly indicate the responsibilities of shippers that offer packages for air transport in the HMR; and (3) authorize alternatives for enhancing package integrity. We asked a series of questions related to the packaging of liquid hazardous materials in combination packagings that are offered for transportation and transported by aircraft. A total of 13 persons submitted comments in response to the ANPRM; the list of commenters includes:

AHS Association of Hazmat Shippers, Inc.
Ecolab Ecolab, Inc.
ALPA Air Line Pilots Association, International
COSTHA The Council on Safe Transportation of Hazardous Articles, Inc.
IOPP Institute of Packaging Professionals
CPC Chemical Packaging Committee
FedEx Federal Express
ISTA International Safe Transit Association
ASTM ASTM International
ICC ICC The Compliance Center, Inc.
MSU Michigan State University School of Packaging
Viking Viking Packing Specialist
DGAC Dangerous Goods Advisory Council

Commenters generally agree that regulatory changes are necessary to address safety issues related to the transportation of hazardous materials in non-UN standard packagings on board aircraft. However, commenters had varying views on the scope of the safety problem or specific regulatory amendments necessary to eliminate or reduce problems should they exist. Some commenters also questioned the validity of studies conducted and analysis of the underlying data used that motivated PHMSA to initiate rulemaking action. These comments are summarized below.

A. Studies and Data

As indicated previously, recent studies have simulated the impact of high altitudes on packaging integrity. These studies suggest that the current testing requirements (or lack thereof) under the HMR may not adequately address the conditions encountered during air transportation. Moreover, a review of incident data conducted by FAA and PHMSA supports the conclusion that some combination packaging designs used to transport hazardous materials by aircraft may not meet the capability standards mandated under the HMR. Indeed, the testing conducted suggests that the capability standards themselves may not be sufficiently rigorous to ensure that packagings maintain their integrity under conditions normally incident to air transportation. Study data, incidents, and several years of feedback from industry indicate that, without specific standards and protocols, a consistent approach to compliance cannot be achieved. This can lead to a potentially unsafe condition.

Some commenters cited concerns over how two of the studies were conducted or suggested that the problems discussed in the ANPRM may not be as serious as presented. For example, Ecolab identifies what it contends are at least three discrepancies in the two air packaging integrity studies conducted by MSU in 2002 and 2003 on behalf of PHMSA and FAA. Ecolab contends that these discrepancies, identified by CPC and published in a 2006 *Hazmat Packager and Shipper* article, occurred because some of the tests utilized for the studies were not conducted in accordance with the HMR or corresponding international standards. One study allegedly used an improper closure design that differed from the originally tested design. CPC asserted that the improper closure design used in the study raised the number of packaging failures from 14 to 42, an increase of 75%. In its comments, Ecolab contends that a successfully tested package will not leak when closed properly and subjected to normal conditions of air transport. As a result of conclusions drawn from these initial studies and to address challenges made to the assumptions used in their methodology, further studies were budgeted and carried out. PHMSA and FAA acknowledge that some of the studies utilized packagings that did not conform in all respects with HMR requirements. The characteristics of the packagings tested were fully disclosed in the study reports. We do not agree that the minor differences in the closures used affects the conclusions of the studies. We note that the studies were not used to determine compliance with HMR requirements, but rather to measure the capability of commercially available packaging designs to withstand the unique conditions encountered in air transportation.

Although most commenters support the actual testing of inner packaging designs for pressure differential capabilities, several commenters doubt that incidents are occurring in air transport as a result of the lack of actual testing. AHS notes that incident reports submitted to PHMSA in accordance with reporting requirements in § 171.16 of the HMR do not indicate whether an inner packaging failed because it had

[2] The HMR define a "serious incident" as one that involves one or more of the following: (1) A fatality or major injury caused by the release of a hazardous material; (2) the evacuation of 25 or more persons as a result of release of a hazardous material or exposure to fire; (3) a release or exposure to fire which results in the closure of a major transportation artery; (4) the alteration of an aircraft flight plan or operation; (5) the release of radioactive materials from Type B packaging; (6) the release of over 45 liters (11.9 gallons) or 40 kilograms (88.2 pounds) of a severe marine pollutant; or (7) the release of a bulk quantity (over 450 liters (119 gallons) or 400 kilograms (882 pounds)) of a hazardous material. § 171.15.

not been tested or because it was not capable of withstanding forces encountered in transportation. We note that it is highly unlikely that a carrier or other entity without intimate knowledge of a packaging's design or overall integrity would be able to report, as a root cause, that an incident that occurred in air transportation resulted from a lack of actual testing or the packaging's inability to withstand the forces inherent to transportation by aircraft. However, by carefully analyzing available incident data and conducting controlled laboratory studies of commercially available packaging designs, we can conclude that the actual testing for pressure differential capability was either conducted incorrectly or not conducted at all.

COSTHA contends that PHMSA should not be alarmed if leakage from an inner packaging is contained within its outer packaging and suggests that seepage from a closure over time should be evaluated differently than a complete failure where the entire contents of an inner packaging are released within an outer packaging. We disagree. A successfully tested and properly filled and closed inner packaging design should not leak under normal conditions encountered in air transportation. Additionally, an inferior inner packaging design or component would be identified through the pass/fail criteria when originally tested. Because the primary receptacle within a combination packaging system is the most important component of that system in air transport, it should not fail except under extreme or highly abnormal conditions.

Regarding the distribution hazards experienced in today's air transport environment, Ecolab asserts that shipments have always been subjected to multiple flight segments and any consequences resulting from that environment. Ecolab is correct; however, although shipments have routinely utilized multiple flight segments in the past, the proliferation of sort systems and feeder aircraft systems has changed the environment shipments normally encountered during transit. Today, air carriers use multiple mechanical handling systems to sort packages, and the number of distribution points has grown with the natural expansion of commerce.

In its comments, Ecolab states that better enforcement of existing regulations related to packaging integrity is key to reducing the number of incidents in air transportation. We agree. Once verifiable and repeatable testing standards are adopted in the HMR, shippers, packaging test labs, and government regulators can all measure packaging integrity using the same process, procedures, and protocols. Consistency is the most efficient and effective way to measure success or failure. Ecolab also notes that, according to PHMSA's HMIS incident database, human error is cited as an accident cause six times more frequently than packaging failure. An example of human error could be the deliberate or inadvertent consequences resulting from failure to follow a packaging manufacturer's customer notification or closure instructions. An example of packaging failure would be differences in manufacturing tolerances that result in leakage (failure) from an otherwise properly closed inner packaging design. Again, this supports the multi-layered safety system concept.

B. Pressure Differential Testing

In the ANPRM, we noted that because specific test methods are not included in the HMR or the ICAO Technical Instructions, there are inconsistencies in package integrity and varying levels of compliance among shippers. For example, because the pressure differential and vibration capability standards for combination packagings are not required to be verified by test protocols, some shippers (self-certifiers) or manufacturers have used historical shipping data, computer modeling, analogies to tested packagings, engineering studies, or similar methods to determine that their packagings meet pressure differential and vibration capability standards.

Shippers, carriers, packaging manufacturers, and testing facilities generally agree that the current capability requirements for air packagings are difficult to comply with and suggest that specific test methods designed to demonstrate that packagings will withstand conditions encountered during air transportation should be specified in the HMR. Ecolab states that the current regulatory language in the HMR regarding the pressure differential capability of inner packagings should be replaced with recognized industry standards for testing and no additional testing should be proposed. ALPA recommends that the HMR incorporate the language contained in the ICAO Technical Instructions clarifying test methods and responsible parties. For example, the ICAO Technical Instructions suggest test methods appropriate for certain types of inner packagings and liquid hazardous materials in order to promote compliance with the prescribed performance standard. ALPA contends the lack of standardized, easily understandable testing protocol contributes to incidents in air transportation. Ecolab and Viking both agree that, to properly determine the capability of a packaging design, it must first be tested. ISTA asserts that the simultaneous combination of low pressure and vibration exerted on a package is the only way to accurately replicate conditions encountered by a package in air transportation.

The HMR and ICAO Technical Instructions both require that a shipper consider the pressure differential capability for an inner packaging intended to contain a mixture or solution based on its vapor pressure. Many commenters agree that determining the vapor pressure of a mixture or solution is problematic, costly, and does not materially contribute to reducing the likelihood of packaging failure. Ecolab believes that a 95 kPa differential capability is a realistic and attainable indication of inner packaging integrity and that the 75 kPa capability for some hazard classes and packing groups should be eliminated for clarity and increased safety. In addition, Ecolab states that PHMSA should codify any testing protocol adopted in Subpart M of Part 178. Because the proposed amendments in this notice apply to non-UN standard packagings as well as UN standard packagings, and the Part 178 requirements apply to UN standard packagings only, it is appropriate that the amendments proposed in this notice be codified in § 173.27. We appreciate and understand commenter frustration with regard to calculating the vapor pressure of a mixture or solution to determine the appropriate packaging capable of withstanding the prescribed pressure differential. In this NPRM, we are proposing an alternative method that can be used to calculate the appropriate packaging required for a mixture or solution without testing to determine vapor pressure.

C. Alternatives to Testing

The HMR and ICAO Technical Instructions both allow a liquid hazardous material to be contained in an inner packaging that does not itself meet the pressure differential performance standard, provided that the inner packaging is packed within a supplementary packaging that does meet the pressure requirements. In their comments, AHS and ICC ask PHMSA to retain in the HMR the option for a shipper to use supplementary packaging that meets the pressure differential requirements. PHMSA agrees with commenters on this issue and is not

proposing to amend the HMR to do otherwise.

The HMR currently permit the use of variations in inner packagings of a tested combination package, without further testing of the package, provided an equivalent level of performance is maintained under conditions prescribed in § 178.601. ICC states that a packaging designed to successfully withstand the § 178.601(g)(2) Variation 2 test protocols should not be required to contain inner packagings capable of meeting the pressure differential and vibration capabilities of the HMR. We disagree. A primary inner packaging or receptacle of known or questionable inferiority is unacceptable in air transportation regardless of whether the outer packaging is of a higher integrity. No other commenters opposed actual testing of inner packagings of combination packagings intended to contain liquids for transportation by aircraft.

ICAO recently adopted revised packaging instructions for incorporation in the ICAO Technical Instructions that will become effective January 1, 2011. The new packing instructions require a secondary means of closure for all liquids in combination packagings. This requirement may be satisfied by using a liner or other form of containment when the secondary means of closure cannot be applied. Inner packagings containing liquids of Packing Group I must be placed in rigid leakproof receptacles with absorbent material before placing them in outer packagings of a combination package. None of the comments submitted to the ANPRM oppose this requirement; those who did comment on this requirement support its adoption in the HMR.

D. Packaging Components

Many commenters state that pressure differential and vibration capability standards should apply to both specification and non-specification packaging designs. Ecolab asserts that a properly tested and closed inner packaging design offers no risk in air transport. In evaluating the inherent risks assumed in air transportation and the potential for high consequence events should an incident occur, ALPA supports multiple layers of redundancy to include actual testing of inner packaging designs and the use of liners, absorbent material, and secondary means of closure. Commenters agree that the interaction between an inner packaging containing a liquid and its closure are critical in air transport. COSTHA believes that if any component of a tested design is changed, and it is not an exact replacement, quality review and testing is required. Viking believes that a successfully tested inner packaging is only one (albeit a major one) part of a closure system that also uses a protective liner and is properly oriented when stored or transported. PHMSA and FAA both agree that the verification of packaging integrity through testing and the additional redundant amendments proposed in this notice will ensure consistency in the quality of packagings used for the air transport of liquid hazardous materials and mitigate or eliminate the consequences of an incident or accident should one occur.

IV. Summary of Proposals in This NPRM

Because aircraft accidents caused by leaking or breached hazardous materials packages can have significant or catastrophic consequences, the air transportation of hazardous materials requires clear standards, exceptional diligence, and attention to detail. To address the regulatory deficiencies previously described in detail, we are proposing amendments to the HMR to strengthen the integrity of packages intended for transport by aircraft.

Most commenters support adoption of the ICAO Technical Instructions requirement for a secondary means of closure and utilization of a liner if such secondary means of closure is infeasible or impracticable. Further, most commenters agree that the most effective means to ensure that combination packagings are capable of meeting specified performance standards is actual testing. We agree. Therefore, in this NPRM we are proposing to adopt the new ICAO Technical Instructions requirements for combination packagings and test protocols that may be used to demonstrate that such packagings conform to applicable performance standards. If adopted, these amendments will add clarity to the processes required in determining whether a packaging design is capable of meeting the forces encountered in air transportation. We are confident that these enhancements to current regulatory requirements will result in a higher level of safety in air transportation by reducing the likelihood of combination package failures in air transportation.

The following is a summary of the proposals in this NPRM.

A. Incorporation of Revised ICAO Technical Instructions Packaging Provisions

Currently under the HMR, stoppers, corks, or other such friction-type closures must be held securely, tightly, and effectively in place by positive means. See § 173.27(d). However, a screw-type closure on any packaging must only be secured to prevent the closure from loosening due to "vibration or substantial change in temperature." We have stated in letters of clarification that a secured closure should incorporate a secondary means of maintaining a seal, such as a shrink-wrap band or heat sealed liner. (We have included three of those letters (02–0302 dtd. January 23, 2003; 04–0011 dtd. May 12, 2004; 07–0174 dtd. March 17, 2008) in the docket for information and guidance.) Additionally, laboratory studies conducted on behalf of PHMSA and FAA concluded that a simple application of tape on a screw-type closure prevented "back-off" under even extreme conditions. We also note for the purposes of this notice that:

- Liners typically must be manually inserted into a packaging before filling. Because most packaging systems can be automated or are already automated with some form of secondary closure being applied, costs and regulatory burden to shippers should be minimal.
- Most Packing Group I liquids already require a leakproof liner in the HMR and ICAO Technical Instructions.
- A liner or secondary means of positive closure should not affect an existing UN standard packaging design as in most cases it will not be considered a new design.
- Requiring a secondary positive means of closure combined with required verification of pressure differential capability adds a layered systems-approach to air transportation safety.

Packaging failures in air transportation often are the result of closures that have loosened in transportation. Such leaks are potentially dangerous in all modes of transportation, but have the potential for catastrophic results in air transportation. Therefore, we are proposing to revise § 173.27(d) to clearly state that all friction and screw type closures must be secured by a secondary means of positive closure. We believe that adoption of this requirement provides a necessary added level of protection to prevent packages from leaking in air transportation. For liquids assigned to Packing Groups II or III, a leakproof liner may be used to satisfy the secondary closure requirement where it cannot be applied or it is impracticable to apply. For liquids of Packing Group I, we are proposing to revise § 173.27(e) to require secondary means of closure, absorbent material, and a rigid, leakproof liner or

intermediate packaging. Also, for clarity we are proposing to remove the reference to Division 5.2 materials from the § 173.27(e) introductory text.

B. Enhanced Pressure Differential Capability Standard

Currently, the HMR require all packagings containing liquid hazardous materials intended for transportation by aircraft to be capable of withstanding, without leakage, an internal gauge pressure of at least 75 kPa for liquids in Packing Group III of Class 3 or Division 6.1 or 95 kPa for all other liquids, or a pressure related to the vapor pressure of the liquid to be conveyed, whichever is greater. See § 173.27(c). This requirement also applies to liquids excepted from specification packaging, such as limited quantities and consumer commodities. Liquids contained in inner receptacles that do not meet the minimum pressure requirements in § 173.27(c) may be placed into receptacles that do meet the pressure requirements to ensure that the completed packaging—inner receptacles plus outer packaging—will withstand pressures typically encountered in air transportation. Single and composite packagings, or any packaging subject to hydrostatic pressure testing under § 178.605, must have a marked test pressure of not less than 250 kPa for liquids in Packing Group I, 80 kPa for liquids in Packing Group III of Class 3 or Division 6.1, and 100 kPa for other liquids.

As discussed in detail earlier in this preamble and in the ANPRM, testing conducted on behalf of FAA and PHMSA indicates that many combination packagings fail when subjected to conditions intended to simulate the pressures encountered in the air transportation environment. One possible conclusion is that these packagings might not be capable of meeting the pressure differential capability standards. Without testing there is no assurance that these packagings are capable of meeting the prescribed standards. For air transportation, such deficiencies in packaging integrity are unacceptable.

In this notice, we are proposing that conformance with the pressure differential requirements for rigid packagings may be demonstrated by testing performed in accordance with ASTM D6653, "*Standard Test Methods for Determining the Effects of High Altitude on Packaging Systems by Vacuum Method*" or ASTM D4991, "*Standard Test Method for Leakage Testing of Empty Rigid Containers by Vacuum*".

For flexible packaging, we are proposing that conformance with the pressure requirements may be demonstrated by pressure differential testing performed in accordance with ASTM F 1140, "*Standard Test Methods for Internal Pressurization Failure Resistance of Unrestrained Packages for Medical Applications*", ASTM D 3078, "*Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission*" or a generic test method outlined in a proposed new Appendix E to Part 173.

Additional test methods that may be used to confirm pressure differential capability are the hydrostatic pressure test in § 178.605 and the International Safe Transit Association's "*ISTA 3A, Packaged-Products for Parcel Delivery System Shipment 70 kg (150 lb) or Less.*" However, the ISTA 3A test method is considered more costly and complex due to the high cost of equipment and specialized operators needed to conduct it.

We have recently had the privilege of working with the German Federal Institute for Materials Research and Testing (BAM) on the problematic issue of calculating vapor pressures for liquids at the transportation reference temperatures (50–55 °C) as well as for mixtures and solutions. The proposed table in Appendix E of this notice provides guidance on determining these values based on the relationship between boiling points and vapor pressures. It allows the shipper or product manufacturer to estimate the required capability (test pressure) of their packaging based on the individual constituent in a mixture or solution with either the lowest boiling point or the highest vapor pressure at 50 °C. We invite comments on this potentially very positive initiative.

C. Combined Enhanced Pressure Differential Capability Standard and Incorporation of Revised ICAO Technical Instructions Packaging Provisions

Laboratory studies have shown that testing inner packagings or receptacles of commercially available combination packaging designs intended or marketed as authorized for transportation by aircraft achieves an approximate effectiveness rating of 95 percent, with the current compliance rate among shippers unknown. The current compliance rate for the use of liners or secondary means of positive closure by shippers is estimated to be at least 70 to 90 percent, with an effectiveness rate of 95 to 100 percent. Consequently, we have decided to propose in this notice a combination of both regulatory alternatives to achieve our objective of a cost-effective systems approach to safety that provides redundancy where necessary and promotes compliance by issuing regulations that are clear and easier to understand.

D. Vibration Testing

Section 173.27(c) of the HMR prescribes a pressure differential capability standard for inner packagings of combination packagings intended for air transport. In addition, in accordance with § 178.608, combination packagings must be capable of passing a prescribed vibration test. As discussed in detail elsewhere in this preamble, in order to substantially decrease the likelihood of a hazardous materials release in air transport, we are proposing to prescribe specific test protocols and standards for determining whether an inner package or receptacle is capable of meeting the pressure differential requirements specified in the regulations. However, we are not proposing to revise the current vibration capability standard. Testing to ascertain conformance with a pressure differential capability standard is significantly more cost effective than testing to ascertain conformance with a vibration capability standard. Vibration testing generally requires more expensive equipment and specially trained operators. Moreover, laboratory studies have concluded that the application of a secondary means of closure to a packaging capable of withstanding the pressure differentials encountered in air transport substantially reduces the overall failure rate of packages.

It is our understanding that a number of shippers and packaging vendors currently use random vibration tests, such as those in the ISTA 3A or ASTM D 4169 standards, in combination with pressure differential testing for packagings intended for air transport. While the HMR prescribe a specific vibration test protocol, it appears that the recognized random vibration test methods, combined with pressure differential testing, achieve the intent of the test protocols in the HMR—that is, to ensure that the packaging will withstand environmental conditions normally encountered in air transportation. In our opinion, the use of sequential or combined pressure differential and vibration testing in accordance with ISTA, ASTM, or other test protocols would exceed the current capability standards for pressure differential and vibration for packages intended for air transportation. We would consider that inner containers demonstrating conformance to these standards would not be required to

undergo further testing for pressure or vibration capability standards when placed in an outer packaging for packages intended for air transportation. As discussed in greater detail in Section III of this notice, for certain types of packagings, the HMR provide for separate testing of packaging components so that if one component conforms to the applicable performance standard, the secondary components need not meet those standards.

V. Rulemaking Analysis and Notices

A. Statutory/Legal Authority for This Rulemaking

This NPRM is published under authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was reviewed by the Office of Management and Budget (OMB). The proposed rule is a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034). We have completed a regulatory evaluation and placed it in the docket for this rulemaking.

In this rulemaking, we considered three regulatory alternatives: (1) Require a secondary means of closure on inner packagings or a liner in all combination packaging designs containing liquids; (2) require testing to determine whether an inner packaging intended to contain liquids is capable of withstanding the reduced pressures of air transport; or (3) require a combination of both regulatory alternatives. We are proposing the combination alternative, number 3. Costs for the combination alternative range from $2.2M to $5.7M while net benefits range from $41.6M to $67.9M. at a 7% discount rate over a 10-year period. Benefit-cost ratios for the combination alternative range from 7.3:1 to 31.5:1. We invite commenters to address the potential costs of the enhanced packaging requirements in this notice, including the number of inner and outer packaging designs that would be affected.

C. Executive Order 13132

This notice has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice preempts State, local and Indian tribe requirements but does not propose any regulation with substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) preempting State, local and Indian tribe requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This notice addresses covered subject item (5) described above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard.

Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the notice and not later than two years after the date of issuance. The effective date of Federal preemption of this notice will be 90 days from publication in the **Federal Register**.

D. Executive Order 13175

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

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

The Regulatory Flexibility Act (5 U.S.C. 601–611) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. A regulatory evaluation for this NPRM, which includes a detailed small business impact analysis, is in the public docket for this rulemaking. Based on the analysis in the public docket, I certify that while this notice will impact a significant number of small entities, it will not have a significant economic impact on a substantial number of small entities.

This notice has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure potential impacts of draft rules on small entities are properly considered.

F. Unfunded Mandates Reform Act of 1995

This notice does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

G. Paperwork Reduction Act

PHMSA currently has an approved information collection under Office of Management and Budget (OMB) Control Number 2137–0572, "Testing Requirements for Non-Bulk Packaging," with an expiration date of March 31, 2010. This NPRM may result in an increase in the annual burden and costs of this information collection due to proposed changes to require packaging manufacturers to conduct testing to confirm that a combination packaging intended for the air transportation of liquid hazardous materials is capable of withstanding the pressures encountered on board aircraft and to maintain a documented record of the test results.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection

unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule, and estimates the information collection and recordkeeping burden as proposed in this rule to be as follows:

OMB Control No.: 2137–0572.

Annual Number of Respondents: 1,496.

Annual Number of Responses: 29,712.

Annual Burden Hours: 54,525.

Annual Burden Costs: $1,557,779.25.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number 202–395–6974. If these proposed requirements are adopted in a final rule, PHMSA will submit the revised information collection and recordkeeping requirements to OMB for approval.

H. Environmental Assessment

The National Environmental Policy Act (NEPA), §§ 4321–4375, requires Federal Agencies to analyze regulatory actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations order Federal Agencies to conduct an environmental review considering (1) the need for the action, (2) alternatives to the action, (3) environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

Purpose and Need. As discussed elsewhere in this preamble, PHMSA proposes to amend requirements in the Hazardous Materials Regulations to enhance the integrity of inner packagings or receptacles of combination packagings containing liquid hazardous material by ensuring they remain intact when subjected to the reduced pressure and other forces encountered in air transportation. In order to substantially decrease the likelihood of an unintentional hazardous materials release to the environment, the proposed amendments in this notice prescribe specific test protocols and standards for determining whether an inner packaging or receptacle is capable of meeting the pressure differential requirements specified in the regulations and aligns the HMR with international air transportation standards.

Alternatives. PHMSA considered four possible alternatives to strengthen packaging requirements for air shipments of liquid hazardous materials:

Alternative 1: Do nothing. Under this alternative, the current regulatory scheme applicable to air shipment of hazardous liquids would continue in place. We rejected this alternative because newly identified safety risks would not be addressed.

Alternative 2: Require that friction and screw type closures of inner packagings intended to contain liquids as part of a combination packaging to be secured by a secondary means of closure. Under this alternative, we would adopt the packaging amendments included in the 2011–2012 edition of the ICAO Technical Instructions. Specifically, we would require friction and screw type closures of inner packagings intended to contain liquids as part of a combination packaging to be secured by a secondary means of closure. For liquids assigned to Packing Groups II or III, a leakproof liner could be used to satisfy the secondary closure requirement where it could not be applied or would be impracticable to apply. For liquids of Packing Group I, a secondary means of closure, absorbent material and a leakproof liner would be required. We rejected Alternative 2. While it would address many of the safety issues associated with the transportation of liquid hazardous materials, Alternative 2 alone does not represent a comprehensive systems-oriented regulatory solution and would not address problems associated with the current pressure differential capability standard.

Alternative 3: Require enhanced pressure differential capability requirements on all inner packagings intended to contain liquids as part of a combination packaging. Currently, the HMR require that all packages transported by air and for which retention of liquids is a basic function must be capable of withstanding, without leakage, a certain pressure differential, which is usually 95 kilopascals (kPa) (§ 173.27[c]). This integrity standard applies to both specification and non-specification packaging. Under this alternative, we would require packaging manufacturers to conduct testing to confirm that a combination packaging intended for the air transportation of liquid hazardous materials is capable of withstanding the pressures encountered on board aircraft and to maintain a documented record of the test results. We rejected this alternative. While it would address many of the safety issues associated with the transportation of liquid hazardous materials, Alternative 3 alone does not represent a comprehensive systems-oriented regulatory solution. Moreover, it does not address critical international harmonization issues.

Alternative 4: Adopt the provisions in both Alternatives 2 and 3. Under this alternative, PHMSA would adopt the new and revised regulatory provisions summarized in the discussion of Alternatives 2 and 3 above. This is the selected alternative. The proposed testing requirements will enhance safety by ensuring that all liquid hazardous materials shipments are contained in packages capable of withstanding normal conditions encountered in air transport and packaged to reduce the possibility of damage that could lead to an incident. It also harmonizes domestic packaging requirements with international standards, thereby reducing confusion, promoting safety, and facilitating efficient transportation.

Analysis of Environmental Impacts. Hazardous materials are substances that may pose a threat to public safety or the environment during transportation because of their physical, chemical, or nuclear properties. The hazardous material regulatory system is a risk management system that is prevention-oriented and focused on identifying a safety hazard and reducing the probability and quantity of a hazardous material release. Releases of hazardous materials can result in explosions or fires, while radioactive, toxic, infectious, or corrosive hazardous

materials can have short- or long-term exposure effects on humans or the environment.

The potential for environmental damage or contamination exists when packages of hazardous materials are involved in accidents or en route incidents resulting from cargo shifts, valve failures, package failures, loading, unloading, collisions, or handling problems. The release of hazardous materials can cause the loss of ecological resources and the contamination of air, aquatic environments, and soil. Contamination of soil can lead to the contamination of ground water. For the most part, the adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be reduced or eliminated through prompt clean-up/decontamination of the accident scene.

We have reviewed the risks associated with transporting combination packages containing liquid hazardous materials by aircraft and by surface transportation to and from aircraft. The amount of liquid hazardous material contained in air-eligible combination packages to which this notice of proposed rulemaking applies is minimal and ranges anywhere from 0.5L to 220L. However, hazardous materials that pose the highest risk to humans and the environment are packaged in much smaller quantities when transported by aircraft thereby minimizing any consequences to both should a package fail and release its contents. For these reasons, we conclude there will be little or no impact to the environment if the provisions proposed in this NPRM are adopted.

Consultation and Public Comment. We invite commenters to address potential environmental impacts associated with the proposals in this NPRM.

I. Privacy Act

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

J. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

2. In § 171.7, in paragraph (b) table, the following changes are made:

a. Under the source "American Society for Testing and Materials," the organization's telephone number and website address are added and the material entries "ASTM D 3078, Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission," "ASTM D 4991, Standard Test Method for Leakage Testing of Empty Rigid Containers by Vacuum," "ASTM D 6653, Standard Test Methods for Determining the Effects of High Altitude on Packaging Systems by Vacuum Method" and "ASTM F 1140, Standard Test Methods for Internal Pressurization Failure Resistance of Unrestrained Packages for Medical Applications" are added in appropriate numerical order;

b. The new source entry "International Safe Transit Association, 1400 Abbott Road, Suite 160, East Lansing, MI 48823–1900. (517) 333–3437. *http://www.ista.org.*" is added and, the material entry "ISTA 3A, Packaged-Products for Parcel Delivery System Shipment 70 kg (150 lb) or Less" is added to the "Source and name of material" column and the reference entry "Part 173, appendix E" is added to the corresponding "49 CFR reference" column.

The additions read as follows:

§ 171.7 Reference material.

* * * * *

(b) List of informational materials not requiring incorporation by reference. * * *

Source and name of material	49 CFR reference
* * * * * * *	
American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, PA 19428. Noncurrent ASTM Standards are available from: Engineering Societies Library, 354 East 47th Street, New York, NY 10017. Telephone: (610) 832–9585. Web site: *http://www.astm.org.*	
ASTM D 3078 "Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission"	Part 173, appendix E.
ASTM D 4991 Standard Test Method for Leakage Testing of Empty Rigid Containers by Vacuum	Part 173, appendix E.
ASTM D 6653 Standard Test Methods for Determining the Effects of High Altitude on Packaging Systems by Vacuum Method.	Part 173, appendix E.
* * * * * * *	
ASTM F 1140 Standard Test Methods for Internal Pressurization Failure Resistance of Unrestrained Packages for Medical Applications.	Part 173, appendix E.
* * * * * * *	
International Safe Transit Association, 1400 Abbott Road Suite 160, East Lansing, MI 48823–1900. Telephone: (517) 333–3437. Web site: *http://www.ista.org.*	

Source and name of material	49 CFR reference
ISTA 3A, Packaged-Products for Parcel Delivery System Shipment 70 kg (150 lb) or Less	Part 173, appendix E.
* * * * * * *	

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

4. In § 173.27, paragraphs (a), (c)(2), (d) and (e) are revised to read as follows:

§ 173.27 General requirements for transportation by aircraft.

(a) The requirements of this section are in addition to requirements prescribed elsewhere under this part and apply to packages offered or intended for transportation aboard aircraft.

* * * * *

(c) * * *

(2) Any packaging design not already subject to § 178.605, for which the retention of liquid is a basic function (*e.g.,* the inner packagings of a combination packaging), must be capable of withstanding without leakage the greater of—

(i) An internal pressure that produces a gauge pressure of not less 75 kPa (11 psig) for liquids in Packing Group III of Class 3 or Division 6.1; or 95 kPa (14 psig) for other liquids in accordance with an appropriate test method that produces the required pressure differential between the inside and outside of an applicable packaging; or

(ii) A pressure related to the vapor pressure of the liquid to be conveyed, determined by one of the following:

(A) The total gauge pressure measured in the receptacle (i.e., the vapor pressure of the material and the partial pressure of air or other inert gases, less 100 kPa (15 psia)) at 55 °C (131 °F), multiplied by a safety factor of 1.5; determined on the basis of a filling temperature of 15 °C (59 °F) and a degree of filling such that the receptacle is not completely full at a temperature of 55 °C (131 °F) or less;

(B) 1.75 times the vapor pressure at 50 °C (122 °F) less 100 kPa (15 psia); or

(C) 1.5 times the vapor pressure at 55 °C (131 °F) less 100 kPa (15 psia).

(iii) The capability of a packaging to withstand an internal pressure without leakage that produces the specified pressure differential must be determined by successfully testing design samples or prototypes. The appropriate test method and test duration selected must be based on packaging type (*e.g.,* material of construction) in accordance with paragraph (a) of Appendix E to this part. Examples of acceptable test methods to determine pressure differential capability are identified in Appendix E to this part. For a liquid hazardous material where the vapor pressure is unknown, the initial boiling point may be used to determine minimum packaging requirements as specified in the Appendix E Table of this part. For one or more liquid hazardous materials contained in a mixture or solution, the individual constituent with the highest vapor pressure at 50 °C or the lowest initial boiling point (at sea level) may be used to determine minimum packaging requirements for the entire mixture or solution as specified in this section.

(iv) Testing must be verifiable and appropriately documented. Supporting documentation must be made available for inspection by a representative of the Department upon request and for at least 90 days once the package is offered for transportation.

* * * * *

(d) *Closures.* The body and closure of any packaging must be constructed so as to be able to adequately resist the effects of temperature and vibration occurring in conditions normally incident to air transportation. Inner packaging or receptacle closures must be held securely, tightly and effectively in place by secondary means. Examples of such methods include: Adhesive tape, friction sleeves, welding or soldering, positive locking wires, locking rings, induction heat seals, and child-resistant closures. The closure device must be so designed that it is unlikely that it can be incorrectly or incompletely closed. For other than liquids of Packing Group I, when a secondary means of closure cannot be applied or is impracticable to apply to an inner packaging containing liquids, this requirement may be satisfied by securely closing the inner packaging and placing it in a leakproof liner before placing the inner packaging in its outer packaging. A liquid of Packing Group I with a secondary means of closure applied must be packaged and closed in accordance with paragraph (e)(1) of this section.

(e) *Absorbent materials.* Except as otherwise provided in this subchapter, liquid hazardous materials of Classes 3, 4, or 8, or Divisions 5.1 or 6.1 that are packaged and offered for transport in glass, earthenware, plastic, or metal inner packagings must be packaged using absorbent material as follows:

(1) Packing Group I liquids on passenger-carrying and cargo-carrying aircraft must be contained in an inner packaging with a secondary means of closure applied that is further packaged in a rigid leakproof liner or rigid intermediate packaging containing sufficient absorbent material to absorb the entire contents of the inner packaging before being placed in its outer package.

(2) Absorbent material must not react dangerously with the liquid (see §§ 173.24 and 173.24a.).

* * * * *

5. In part 173, appendix E is added to read as follows:

Appendix E to Part 173—Test Procedures for Packagings Intended to Meet Pressure Differential Requirements for Air Transport

(a) *Test method.* Testing for pressure differential capability may be conducted using internal hydraulic or pneumatic pressure (gauge) or external vacuum methods. External vacuum tests are not acceptable if the specified pressure differential is not achieved or maintained. The external vacuum test is also not normally suitable for: Flexible packagings; packagings filled and closed under an absolute atmospheric pressure lower than 95 kPa or an altitude greater than 1,500 feet; and packagings intended for the transport of high vapor pressure liquids (*i.e.,* vapor pressures greater than 111 kPa @ 50 °C or 130 kPa @ 55 °C). Metal packagings and composite packagings other than plastic (*e.g.,* glass, porcelain, or stoneware), including their closures, must be subjected to the test pressure for at least 5 minutes. Plastic packagings, including their closures, must be subjected to the test pressure for at least 30 minutes. The minimum test pressure is one that produces an internal pressure (gauge) of not less 75 kPa (11 psig) for liquids in Packing Group III of Class 3 or Division 6.1; or 95 kPa (14 psig) for other liquids in accordance with an appropriate test method that produces the required pressure differential between the inside and outside of an applicable packaging. The following

standards are examples of acceptable methods that may be used to determine pressure differential capabilities of a packaging design:

(i) For non-flexible (i.e., "rigid") inner packagings:

(A) ASTM D 4991, "*Standard Test Method for Leakage Testing of Empty Rigid Containers by Vacuum*."

(B) ASTM D 6653, "*Standard Test Methods for Determining the Effects of High Altitude on Packaging Systems by Vacuum Method*."

(C) International Safe Transit Association, "*ISTA 3A, Packaged-Products for Parcel Delivery System Shipment 70 kg (150 lb) or Less*."

(ii) For flexible inner packagings:

(A) ASTM D 3078, "*Standard Test Method for Determination of Leaks in Flexible Packaging by Bubble Emission*."

(B) *ASTM F 1140,* "*Standard Test Methods for Internal Pressurization Failure Resistance of Unrestrained Packages for Medical Applications*."

(iii) The hydrostatic pressure test under § 178.605 of this subchapter.

(iv) *Generic flexible test method.* This test procedure is used to evaluate a flexible bag or pouch to determine pressure differential capabilities. The test specimens and the number of samples must be chosen at random, to permit an adequate determination of representative performance. When conducting the pressure differential test to meet the requirements for air transport, a minimum of three (3) representative specimens of each flexible inner packaging must be tested. Testing must be conducted on the flexible packaging (primary receptacle or secondary packaging) to establish pressure differential capabilities. Test specimens must be prepared and tested at ambient laboratory conditions.

(A) To begin the procedure, lay flexible container on flat surface and, at one of the bottom corners, cut an access hole approximately ¼″ long across the corner. Insert a 4″ × ¼;″ plastic guide tube into the cut corner of the bag. Leave a minimum of 2″ of tubing extending from the corner of the bag. This tube is used as a guide to insert the copper tube. Seal the bag according to the manufacturer's instructions while maintaining the 2″ extension on the outside of the bag. Position the bag to guide the copper tube into the bag where the plastic tube is extending out of the flexible bag. To seal the cut end of the bag, use sponge rubber to protect the bag from the clamps. Clamp the flat area of the copper tube with quick clamps. Place the bag on a flat surface and rest for 30 minutes.

(B) After 30 minutes, slowly pressurize the sample to 2–3 psi. Hold for one minute. Continue to increase the pressure until a pressure of 95 kPa (14 psig) is reached. Once the desired pressure is reached, conduct the test and monitor for 30 minutes. Upon completion of the test, submerge the bag in water, or other appropriate means, to check for leakage. Disconnect the pressure hoses from each of the fittings and inspect each specimen carefully and note any leakage that may have occurred or damage to the specimen. Document results of test on test report for packaging design.

(b) *Table.* For a liquid where the boiling point, initial boiling point or vapor pressure is known, the following table prescribes the corresponding minimum test pressure for packagings subject to pressure differential requirements in § 173.27(c). For a mixture or solution, the individual constituent with the highest vapor pressure at 50 °C or the individual constituent with the lowest initial boiling point may be used to determine the minimum test pressure its packaging must be capable of withstanding for the mixture or solution as a whole.

(Initial) Boiling Point in °C	≥48 °C	≥45 °C	≥40 °C	≥35 °C	≥30 °C	≥25 °C	≥20 °C
Vapor Pressure @ 50 °C in kPa	≤111 °C	≤125 °C	≤150 °C	≤175 °C	≤205 °C	≤240 °C	≤300 °C
Required Minimum Test Pressure in kPa	95 kPa [1]	120 kPa	165 kPa	210 kPa	260 kPa	320 kPa	425 kPa

NOTE 1: 75 kPa (minimum) for liquids in Packing Group III of Class 3 or Division 6.1.

Issued in Washington, DC, on May 7, 2010 under authority delegated in 49 CFR part 106.

Magdy El-Sibaie,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 2010–11384 Filed 5–13–10; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 75, No. 93

Friday, May 14, 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

May 10, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Forest Service

Title: 36 CFR Part 228, Subpart C—Disposal of Mineral Materials.

OMB Control Number: 0596–0081.

Summary of Collection: The Forest Service (FS) is responsible for overseeing the management of National Forest System land. The Multiple-Use Mining Act of 1955 (30 U.S.C. 601, 603, 611–615) gives the FS specific authority to manage the disposal of mineral materials mined from National Forest land. FS uses form FS–2800–9, "Contract for the Sale of Mineral Materials" to collect detailed information on the planned mining and disposal operations as well as a contract for the sale of mineral materials.

Need and Use of the Information: FS will use information collected from the public to ensure that environmental impacts of mineral material disposal are minimized. A review of the operating plan provides the authorized officer the opportunity to determine if the proposed operation is appropriate and consistent with all applicable land management laws and regulations. The information also provides the means of documenting planned operations and the terms and conditions that the FS deems necessary to protect surface resources. If FS did not collect this information, a self-policing situation would exist.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,266.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10,665.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–11511 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 10, 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.

Foreign Agricultural Service

Title: Certificate for Quota Eligibility (CQE).

OMB Control Number: 0551–0014.

Summary of Collection: 5 (a)(i) of the Harmonized Tariff Schedule of the United States authorize the Secretary to establish a raw-cane sugar tariff-rate quota (TRQ). 5 (b)(1) authorize the U.S. Trade Representative to allocate the raw-cane sugar tariff-rate quota among supplying countries. Certificates of Quota Eligibility (CQE) are issued to the 40 countries that receive TRQ allocations to export sugar to the United States. The CQE is completed by the certifying authority in the foreign country that certifies that the sugar

being exported to the United States was produced in the foreign country that has the TRQ allocation. The Foreign Agriculture will collect information using form FSA–961.

Need and Use of the Information: FAS will collect the following information: (1) Country of origin or area of the eligible raw cane sugar; (2) quota period; (3) quantity of raw cane sugar to be exported; (4) details of the shipment (shipper, vessel, port of loading); and (5) additional details if available at the time of shipment (consignee, address of consignee, expected date of departure, expected date of arrival in the U.S., expected port of arrival). The information will help determine if the quantity to be imported is eligible to be entered under the TRQ.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 200.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–11513 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the Rural Economic Development Loan and Grant Program.

DATES: Comments on this notice must be received by July 13, 2010, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Director, Specialty Programs Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3225, 1400 Independence Ave., SW., Washington, DC 20250–3225, Telephone (202) 720–1400.

SUPPLEMENTARY INFORMATION:

Title: Rural Economic Development Loan and Grant Program.

OMB Number: 0570–0035.

Expiration Date of Approval: September 30, 2010.

Type of Request: Revision of a currently approved information collection.

Abstract: Under this program, loans and grants are provided to electric and telecommunications utilities that have borrowed funds from the Agency. The purpose of the program is to encourage these electric and telecommunications utilities to promote rural economic development and job creation projects such as business start-up costs, business expansion, community development, and business incubator projects. The utilities must use program loan funds to make a pass-through loan to an ultimate recipient such as a business. The utility is responsible for fully repaying its loan to the government even if the ultimate recipient does not repay its loan. The intermediary must use program grant funds, along with its required contribution, to create a revolving loan fund that the utility will operate and administer. Loans to the ultimate recipient are made from the revolving loan fund for a variety of community development projects. The information requested is necessary and vital in order for the Agency to be able to make prudent and financial analysis decisions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Rural Utilities Service Electric and Telecommunications Borrowers.

Estimated Number of Respondents: 120.

Estimated Number of Responses per Respondent: 17.

Estimated Number of Responses: 2,075.

Estimated Total Annual Burden on Respondents: 4,966.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0043.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 6, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–11558 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Intent to Hold Public Forums to Solicit Feedback From the Public Regarding the Section 523 Mutual Self-Help Housing Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service, USDA published a document in the **Federal Register** of February 2, 2010, concerning upcoming public forums and request for comments regarding the Section 523 Mutual Self-Help Housing Program. Notice is hereby given that the forums scheduled for June 4, 2010 in Vermont and June 11, 2010 in Iowa have been cancelled.

FOR FURTHER INFORMATION CONTACT: Carolyn L. Bell, *carolyn.bell@wdc.usda.gov* or (202) 720–1532.

Dated: May 4, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–11559 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Forest Service

McKelvie Geographic Area Range Allotment Management Planning on the Samuel R. McKelvie National Forest, Bessey Ranger District in Nebraska

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of the public comment period.

SUMMARY: The Bessey Ranger District is extending the public comment period an additional 126 days for the notice of availability published in the **Federal Register** March 12, 2010 (FR Vol. 75, No. 48, p. 11882) concerning the range allotment management planning on the McKelvie Geographic Area, Samuel R. McKelvie National Forest, Bessey Ranger District in Nebraska. The original notice provided for a comment period to end April 26, 2010. The Forest Service is extending the comment period until September 1, 2010. This project would revise Rangeland Allotment Management Plans (RAMP) for all allotments within the McKelvie Geographic Area on the McKelvie National Forest and analyze continuation of grazing within the constraints of the Revised Nebraska Land and Resource Management Plan (NLRMP).

DATES: Comments must be received in writing by September 1, 2010.

ADDRESSES: *Send written comments to:* Mark Lane, Interdisciplinary Team Leader, Attention: SRM RAMP, USDA Forest Service, 125 North Main Street, Chadron, Nebraska 69337; via electronic mail to *comments-rocky-mountain-nebraska@fs.fed.us.*

Please include on the subject line: McKelvie Allotment Management Planning DEIS Comments. The public is not required to send duplicate comments via regular mail when submitting by e-mail. Please confine written comments to issues pertinent to the proposed alternatives of the Draft EIS. All comments, including names and addresses when provided, will be placed in the record will be available for public inspection and copying. Those wishing to inspect comments are encouraged to call ahead to facilitate meeting with the Forest Service.

FOR FURTHER INFORMATION CONTACT: Terry T. Baker, Bessey District Ranger (308) 533–2257 or Mark Lane (308) 432–0323.

SUPPLEMENTARY INFORMATION: Comments received to date and those submitted until September 1, 2010 will provide the public with an opportunity to review and comment on the range allotment management planning on the Samuel R. McKelvie National Forest.

Dated: May 3, 2010.

Terry T. Baker,

District Ranger, Bessey Ranger District, Nebraska National Forest.

[FR Doc. 2010–11466 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) RAC Admin Updates, (4) Public Comment, (5) FY08 and FY09 New Project Presentations and Voting if Time Allows, (6) FY10 New Project Presentations and Voting if Time Allows, (7) General Discussion, (8) Meeting Schedule, (9) Adjourn.

DATES: The meeting will be held on May 24, 2010, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest, Grindstone Ranger District Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988 or Laurie Trombley, Glenn/Colusa RAC Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 160, Stonyford, CA 95979.

FOR FURTHER INFORMATION CONTACT: Laurie Trombley, Glenn/Colusa RAC Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 160, Stonyford, CA 95979 (530) 963–3128, e-mail: *ltrombley@fs.fed.us;* Eduardo Olmedo, District Ranger, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt St., Willows, CA 95988 (503) 934–3316, e-mail: *eolmedo@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by May 17, 2010 have the opportunity to address the committee at those sessions.

Dated: May 4, 2010.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 2010–11268 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Mt. Baker-Snoqualmie (MBS) Resource Advisory Committee (RAC) will meet in North Bend, Washington on June 1 and 2, 2010. The committee is meeting to evaluate grant proposals for the 2009, 2010, and 2011 RAC allocations.

DATES: The meeting will be held on Tuesday, June 1, 2010 and on Wednesday June 2, 2010, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Snoqualmie Ranger District located at 902 S.E. North Bend Way, North Bend, Washington, 98045–9545 in Building 9.

FOR FURTHER INFORMATION CONTACT: Jim Franzel, District Ranger, Snoqualmie Ranger District, phone (425) 888–1421, e-mail *jfranzel@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 committee will hear oral presentations from grant submitters and, at the conclusion of the meeting, recommend grant funding opportunities to the MBS Forest Supervisor. More information will be posted on the Mt. Baker-Snoqualmie National Forest Web site at: *http://www.fs.fed.us/r6/mbs/projects/rac.shtm.*

Comments may be sent via e-mail to *jfranzel@fs.fed.us* or via facsimile (fax) to 425–8881910. 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 Snoqualmie Ranger District office at 902 S.E. North Bend Way during regular office hours (Monday through Friday 8 a.m.–4:30 p.m.).

Dated: May 6, 2010.

Cynthia Tencick,

Acting Forest Supervisor.

[FR Doc. 2010–11408 Filed 5–13–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Forest Service

South Gifford Pinchot National Forest Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Gifford Pinchot National Forest Resource Advisory Committee will meet in Stevenson, Washington. 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 make recommendations on 36 proposals for Title II funding of projects.

DATES: The meeting will be held on Thursday, June 17, 2010, 9 a.m–5 p.m.

ADDRESSES: The meeting will be held at the Skamania County Courthouse Annex, 170 NW Vancouver, Ave., Stevenson, WA 98648. Written comments should be sent to Chris Strebig 10600 51st Circle, Vancouver, WA 98682. Comments may also be sent via e-mail to: *cstrebig@fs.fed.us* or via facsimile to 360–891–5045.

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 Gifford Pinchot National Forest. Visitors are encouraged to call ahead to 360–891–5005 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Chris Strebig, Public Affairs Specialist, at (360) 891–5005, or write to Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

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: Review ongoing Title II projects, elect a committee chair and vicechair, request an indirect project percentage, and provide a public open forum time. 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. Public input sessions will be provided and individuals who made written requests by June 15th will have the opportunity to address the Committee at those sessions.

Dated: May 6, 2010.

Kristie L. Miller,

Acting Deputy Forest Supervisor.

[FR Doc. 2010–11442 Filed 5–13–10; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2009–0034]

New Performance Standards for Salmonella and Campylobacter in Young Chicken and Turkey Slaughter Establishments; New Compliance Guides

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing new performance standards for the pathogenic micro-organisms *Salmonella* and *Campylobacter* for use in young chicken and turkey slaughter establishments. The new performance standards were developed in response to a charge from the Food Safety Working Group. The Agency tentatively plans to implement these new performance standards for chilled carcasses in July 2010. The new standards are based on recent FSIS Nationwide Microbiological Baseline Data Collection Programs: The Young Chicken Survey and the Young Turkey Survey. The Agency invites comments on the new performance standards.

FSIS is also announcing that it has posted on its Web site the third edition of the compliance guide for controlling *Salmonella* and *Campylobacter* in poultry and a compliance guide on pre-harvest management to reduce *E. coli* O157:H7 contamination in cattle. FSIS issues guidance documents to present current Agency thinking on specific topics related to food safety. Though Agency guidance documents are recommendations rather than regulatory requirements and are revised as new information becomes available, FSIS encourages meat and poultry establishments to follow this guidance. FSIS requests comments on these guidance documents.

DATES: Comments are due by July 13, 2010.

ADDRESSES: Comments may be submitted by either of the following methods:

Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5474, Beltsville, MD 20705–5474.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2009–0034. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or to comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D., Deputy Assistant Administrator for Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, Room 349–E, Jamie Whitten Building, 14th and Independence, SW., Washington, DC 20250–3700; telephone (202) 205–0495, fax (202) 720–2025; *daniel.engeljohn@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

FSIS is the public health regulatory agency in the U.S. Department of Agriculture (USDA) that is responsible for ensuring that the nation's commercial supply of meat, poultry, and processed egg products is safe, wholesome, and appropriately labeled and packaged. FSIS is a participant in the President's Food Safety Working Group (FSWG), which was created by President Obama in March 2009 to recommend improvements to the U.S. food safety system. The FSWG is chaired by Secretary of Agriculture Tom Vilsack and Health and Human Services Secretary Kathleen Sebelius. In July 2009, the FSWG published Key Findings (*FSWG Key Findings*) recommending a new, public health-focused approach to food safety based on three core principles: Prioritizing prevention, strengthening surveillance and enforcement, and improving response and recovery.

The FSWG charged FSIS with "cutting *Salmonella* risk in Poultry Products" by "develop[ing] new standards to reduce

the prevalence of *Salmonella* in turkey and poultry" and by "establish[ing] a *Salmonella* verification program with the goal of having 90 percent of poultry establishments meeting the new standards by the end of 2010." These new *Salmonella* standards will be applied to sample sets from establishments included in the Agency's *Salmonella* Verification Program in the place of the performance standards for young chickens (as broilers) codified at 9 CFR 381.94 and the standards for turkeys announced in a **Federal Register** Notice of February 17, 2005. The FSWG further charged FSIS with "develop[ing] a new performance standard for *Campylobacter* for young chickens and turkeys." This notice announces that FSIS has developed such performance standards. The notice also describes the estimated public health impact that is likely to result if these standards are met.

The performance standards for young chickens and turkeys set out in this notice are based on the Agency's recent Nationwide Microbiological Baseline Data Collection Programs: The Young Chicken Baseline Survey (YCBS), and the Young Turkey Baseline Survey (YTBS).

From July 2007 to June 2008, the YCBS collected and analyzed 6,550 samples at 182 establishments that slaughtered young chickens and produced whole carcasses under Federal inspection. Rinsate samples were taken both at re-hang and post-chill locations, from whole carcasses that were shaken in bags together with 400 mL of sample rinse solution. "Re-hang" refers to the location in the process after the picker and prior to evisceration of the bird. "Post-chill" refers to the point in the process where the carcasses exit the immersion chiller or other chill media (such as ice) after all slaughter interventions have taken place, but before entering coolers or proceeding to further processing.

These samples were analyzed by different methods to estimate the prevalence or "qualitative" rate and the levels or "quantitative" measures (colony forming units per milliliter or cfu/mL) of two human pathogens, *Salmonella* and *Campylobacter,* and four non-pathogenic "indicator organisms" that track process control: Generic *Escherichia coli,* Aerobic Plate Count (APC), *Enterobacteriaceae,* and total coliforms. Re-hang sample results were compared with post-chill sample results, and the comparison confirmed that microbial loads are significantly reduced by the time the carcasses reach post-chill.

The Agency has used the post-chill sample results from the YCBS, weighted by volume, to estimate the prevalence of *Salmonella* and *Campylobacter* on inspected and passed young chicken carcasses. These prevalence estimates constitute the new performance standards announced in this notice. These performance standards will apply to all young chickens, including roasters and Cornish game hens. The Agency intends to use the same sample collection and analysis procedures that it used in the baseline.

The YTBS report is being prepared for publication. In the YTBS, FSIS collected and analyzed 1,442 carcass sponge samples at the re-hang and post-chill locations from young turkeys (including young breeder turkeys) slaughtered in 58 Federal establishments from August 2008 to July 2009. Inspection program personnel used two sponges, each moistened with 25 mL of solution, for each carcass sampled at the two locations. They swiped each sponge over 100 cm^2 of the thigh and back of one half of the carcass (50 cm^2 on each part). One of the two sponges used at each location was used to analyze for *Salmonella* and the other for *Campylobacter.* For *Salmonella* samples, each sponge plus the 25 mL of solution was enriched to determine the presence or absence of *Salmonella.* For *Campylobacter* samples, from each 25 mL sponge sample portion, 1–1.3 mL was extracted for the direct plating test, which is referred to as the "1 mL" procedure.

The 1 mL procedure provides data on levels of organisms present but is relatively insensitive because of the small size of the sample portion analyzed and thus detects positive samples with higher levels of organisms. The remaining 24 mL of solution, which contains the sample sponge, was enriched so as to detect positive samples with low levels of organisms and thus to help estimate prevalence. Thus, the sample results were used to estimate the prevalence or "qualitative" rate and the levels or "quantitative" measures of the same organisms as for the YCBS. The Agency used the post-chill sample results from the YTBS, weighted by volume, to estimate the prevalence of *Salmonella* and *Campylobacter* at post-chill. The Agency then used those estimates of prevalence to develop the new performance standards announced in this notice. The sample collection and analysis procedures used in assessing compliance with the performance standard will be the same as used in the baseline. A technical paper on the method used to develop the performance standards is posted at the FSIS Web site with this notice at *http://www.fsis.usda.gov/Regulations_&_Policies/2010_Notices_Index/index.asp.*

These performance standards are derived from the poultry baseline surveys and from 2008–2009 *Salmonella* Verification Program data. FSIS estimated the potential public health impacts of the proposed performance standards.[1] For estimating potential public health impacts regarding the *Salmonella* standards, the Agency used both the baseline data and the more current verification data because of changes observed in the industry since the collection of the baseline data, which may lead to slight underestimates of prevalence relative to other approaches. For estimating the potential impact of the *Campylobacter* standards, only baseline data were available. Note that FSIS's estimates of the potential reductions in human illnesses from *Salmonella* and *Campylobacter* should be considered separately; it is not appropriate from a scientific standpoint to add them together. A technical paper on the method used to develop the potential public health impacts is posted at the FSIS Web site with this notice at *http://www.fsis.usda.gov/Regulations_&_Policies/2010_Notices_Index/index.asp.*

FSIS intends to conduct more frequent baseline studies, at intervals not greater than every four years, and to make appropriate adjustments to these performance standards based on the results of the studies. Given the performance standards discussed in this notice, the Agency requests comments on practical and realistic goals for reducing the prevalence of microbial pathogens.

Salmonella Performance Standards

Salmonella bacteria are among the most frequently-reported causes of foodborne illness. The bacteria live in the intestinal tract of humans and other animals, including birds. *Salmonella* contamination of raw meat and poultry products occurs during slaughter operations, as well as during the live-animal rearing process (*e.g.,* on-farm contamination can coat the exterior of the bird and remain attached to the skin). Currently, such events cannot be

[1] These estimates include a variety of assumptions. An area of considerable uncertainty is the determination of the number of attributed illness because the existence of *Salmonella* or *Campylobacter* itself does not mean that there is a human health impact because the true FSIS share of *Salmonella* and *Campylobacter* illnesses caused from consumption of poultry is unknown.

eliminated, and contamination of *raw* carcasses will result unless a lethality antimicrobial treatment is applied (*e.g.,* irradiation). These events, however, can be minimized. *Salmonella* and, to a lesser extent, *Campylobacter* may increase on pre-cooked poultry if subjected to temperature abuse. However, levels present on and in raw poultry product would only survive on the product presented for human consumption if it is not cooked thoroughly. Also, if poultry is improperly handled, *Salmonella* and *Campylobacter* can cross-contaminate other foods or food contact surfaces.

Among *Salmonella*-contaminated poultry carcasses, the number of *Salmonella* organisms is generally low. It is thought that human cases of salmonellosis likely result when those small numbers of *Salmonella* bacteria are subject to conditions that allow them to grow to sizeable doses between production and consumption. Because the occurrence of any *Salmonella* on a carcass poses a potential hazard for consumers, measuring contamination, and thus setting standards, refers to estimated prevalence of *Salmonella* among samples collected from facilities and not to the quantitative level of individual samples. A different approach is needed for *Campylobacter,* as explained below. The Appendix to this notice provides a detailed history of Agency actions regarding *Salmonella.*

New Salmonella Standard for Young Chickens

The estimated prevalence of *Salmonella* in young chicken carcasses at post-chill based on volume-weighted YCBS baseline data collected from July 2007 through June 2008 is 7.5%. Based upon its evaluation of this new baseline data, the Agency has concluded that it should revise its performance standard to further improve establishment control of *Salmonella* in young chickens in order to reduce illnesses attributed to this product. The Agency will lower the performance standard to the current level indicated by the new baseline data accordingly, revise establishment categories, and continue to publish the names of establishments that do not meet the new Category 1 criteria. The Agency will continue its qualitative approach to analyzing *Salmonella* samples for presence/absence under the new performance standard, leaving unchanged the current sample procedures for *Salmonella* requiring 51 samples per set. Inspection program personnel will continue to collect 400 mL of rinsate for each sample, from which a 30 mL portion is analyzed.

Under the new performance standard, the Agency will:

- Establish a new performance standard of 7.5 percent based on the estimated prevalence of *Salmonella*-positive results from the 2007–8 YCBS data.
- Continue collecting and analyzing a 51-sample set.
- Set 5 out of 51 positive samples as the maximum number of positives allowed to achieve the new performance standard, which will provide an 80 percent probability of an establishment meeting the standard when operating at the 7.5% performance standard.
- Continue the Category 1/2/3 approach as determined by an establishment's most recent sets:
  - Category 1 = two consecutive sets with no more than two positives;
  - Category 2T = two positives or fewer in last set, 3 or more positives in prior set;
  - Category 2 = last set with 3–5 positives, any result in prior set;
  - Category 3 = last set with six or more positives, any result in prior set.
- Continue publishing Category 2 and 3 establishments based on the performance standard in effect when the last sample set was begun. FSIS will continue to follow the criteria it uses to select establishments for posting—Category 2 and 3 establishments are posted, Category 1 and 2T establishments are not posted, and establishments in a product class will not be published if 90 percent of its eligible establishments are in Category 1 and no establishment is in Category 3.
- Prioritize the scheduling of testing of young chicken establishments that are not meeting the new standard.

Under the current performance standard, approximately 82 percent of young chicken establishments eligible for the *Salmonella* Verification Program are in Category 1. Under the new performance standard, approximately 57 percent of eligible establishments would be in the new Category 1, representing a significant tightening beyond the current Category 1. Another 28 percent is in new Category 2, and 15 percent is in new Category 3.

The Agency's experience after 2006 with the industry response to *Salmonella* policies implemented that year leads the Agency to estimate that approximately half of the 15 percent of establishments that would not meet the new standard will improve their food safety systems to do so during the first two years of implementation. Much of that improvement, we believe, would likely occur in the first year. This would result in a shift of 7–8 percent of establishments meeting the new standard. This improved performance, when added to the 85 percent of establishments that already meet the new standard, would result in more than 90 percent of establishments meeting the new standard and thus, meeting the FSWG goal to be accomplished by the end of 2010.

The Agency has applied a model to estimate the potential public health impact of the proposed performance standards. The model contains considerable uncertainty about the relationship between the rate of contamination on raw carcasses and human illness as well as assumptions about how establishments will change their behavior as a result of the new guidance. Under the assumption that the 7–8 percent of establishments improving performance to meet the new standard would improve to the average of those establishments that already meet the new standard, the Agency estimates that after the first two years of implementation, it is possible that approximately 26,000 human illnesses would be averted annually when compared to the period prior to implementation of the standard. This would be a reduction of approximately 12 percent of human illnesses from the current 220,000 attributed to this cause, as discussed in the public health impacts paper referenced above. This would be a permanent structural reduction of 26,000 illnesses averted for each future year as compared to before implementation.

Additional public health benefits could potentially be realized as more establishments move into the new Category 1 status. The Agency will carefully analyze data on individual establishments to see if further public health benefits can be projected if establishments increasingly move into the new Category 1 status.

Campylobacter Performance Standard for Young Chickens

Campylobacter species, including *C. jejuni, C. coli,* and *C. lari,* can be isolated from the intestinal tract of poultry and poultry products. The two most frequently occurring *Campylobacter* species of clinical significance for human consumption of food are *C. jejuni* and *C. coli.* These species are the ones most often isolated in poultry products.

Until the recent baselines, the Agency had limited data on *Campylobacter,* in part because of difficulties with available methodology to account for presence and numbers of this pathogen. In 2005, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) was asked to

address *Campylobacter,* particularly with regard to the analytical utility of methodologies for the upcoming YCBS. In its final report (*NACMCF on Campylobacter methodology*), the NACMCF recommended that FSIS adapt the direct plating enumeration methodology to detect and enumerate *Campylobacter* that had been developed by USDA's Agricultural Research Service (ARS).

In the YCBS, accordingly, rinsate samples were analyzed using two distinct procedures adapted from the ARS methodology. A quantitative detection and enumeration procedure was used to analyze both re-hang and post-chill rinsate samples, and a qualitative detection method, which included an enrichment step, was used only with the rinsates obtained from post-chill samples. FSIS is revising its Microbiology Laboratory Guidebook, Section 41.00, to include these qualitative and direct plating quantitative procedures for the isolation, identification, and enumeration of *C. jejuni/coli/lari* present in poultry rinses and sponges. FSIS will use these procedures in the verification testing for *Campylobacter* that it intends to conduct, as discussed in this notice.

With the methodology employed in the baseline and in the verification testing described in this notice, all 51 samples taken for a set are to be analyzed both for *Salmonella,* using the standard Agency method, and *Campylobacter.* Each portion of sample rinsate used for *Campylobacter* analysis will be subdivided into two portions, one of 1 mL and one of 30 mL. The 1 mL and the 30 mL portions of this test are begun in the laboratory at the same time. The result for the 1 mL portion is available before the result for the 30 mL portion. The 1 mL portion is plated for both qualitative (presence/absence) and quantitative (enumeration) results. The 30 mL portion is first enriched and then plated for qualitative (presence/absence) results only. The 30 mL enrichment-based test laboratory procedure increases the practical sensitivity of testing primarily by accommodating significantly larger test portions. Thus it can detect as few as 1 bacterial cell (referred to as Colony Forming Unit or CFU) per 30 mL portion. Therefore the theoretical Limit of Detection (LOD) per portion is calculated as 0.03 CFU per mL.

The 1 mL direct plating test procedure, on the other hand, is relatively less sensitive in practice because of its much smaller size and has a LOD of 1 CFU per mL rather than 0.03 CFU per mL, which means that direct plating with the 1 mL portion will tend to detect samples with higher contamination. Detecting samples with higher contamination is crucial to addressing the public health concerns with regard to *Campylobacter* contamination. If the 1 mL portion is qualitatively negative, then the 30 mL portion will be used to determine whether the sample is positive or negative for *Campylobacter.* As the 1 mL procedure is relatively less sensitive and detects samples with higher contamination, positive 1 mL results are considered positive for the 30 mL procedure as well. This approach, which was used in the YCBS, will conserve limited laboratory resources without having a negative impact on the verification program.

The 1 mL procedure offers the benefit of providing quantitative data by enumerating the organisms present in these higher-load samples, thus informing the Agency about the prevalence of high-load samples. The 30 mL procedure can detect lower-load samples when necessary but, because of the enrichment step required, cannot provide meaningful quantitative data on initial contamination levels.

New Performance Standard for Campylobacter in Young Chicken Carcasses

In light of the FSWG recommendations discussed above, FSIS has concluded that it should foster and encourage improved establishment control of *Campylobacter* in young chickens by setting a performance standard based upon the YCBS prevalence. The performance standard for *Campylobacter* comprises two factors based on YCBS prevalence: One specifying the percentage of 1 mL portions that are positive, and the other specifying the percentage of total sample-specific positive results counting either the 1 mL or the 30 mL rinsate portions as positive. Accordingly, the Agency will:

- Test each of the 51 samples in a *Salmonella* verification set for *Campylobacter* using the initial 1 mL quantitative portion. If the 1 mL procedure is negative, the 30 mL procedure will be performed.
- Establish a performance standard for the 1 mL portion at 10.4 percent, which is the YCBS estimated prevalence for 1 mL portions, with no more than 8 positive samples from the 1 mL results.
- Establish the performance standard for the sample-specific positive results, which is the YCBS estimated sample-specific prevalence for 1 mL and 30 mL results combined, at 46.7 percent with no more than 27 of 51 samples positive in any combination of 30 mL and 1 mL results. As the 1 mL procedure is relatively less sensitive and detects samples with higher contamination, positive 1 mL results will be considered positive for the 30 mL procedure as well.

This standard will allow the Agency to gauge both overall frequency of contamination and the frequency of greater than expected carcass contamination levels. The 1 mL component of the standard was added based on the Agency's understanding that higher than expected numbers of *Campylobacter* on chicken carcasses present a different challenge to public health than with *Salmonella. Campylobacter* is found more frequently, but it is not able to grow at temperatures below approximately 86 degrees Fahrenheit. Thus, high levels of this pathogen are unlikely at the point of consumption, unless they were present at high levels before the product left the establishment. Conversely, *Salmonella* can grow at colder temperatures, but positive carcasses tend to have low initial levels of contamination. This *Campylobacter* performance standard therefore addresses the need to minimize the frequency of greater than expected levels of *Campylobacter* contamination on carcasses.

After 90 percent of eligible establishments have been sampled for two full sets, which the Agency estimates will be accomplished by 2012, the Agency will consider setting establishment categories 1/2/3 for *Campylobacter* under the new performance standard (separate from *Salmonella*) and publishing *Campylobacter* Category 2/3 establishments.

Based on the Agency's experience with the industry response to *Salmonella* policies implemented in 2006 (discussed above), the Agency estimates that 50 percent of establishments that at present would not meet the new *Campylobacter* standard would likely improve their food safety systems to meet the standard during the first two years of implementation. Assuming 75 percent of establishments meeting the new standard, the public health impact model for *Campylobacter* estimates that after the first two years of implementation, it is possible, not withstanding considerable uncertainty, that approximately 39,000 human illnesses would be averted annually as compared to the period before implementation, a reduction of approximately 10 percent from the current 400,000 attributed to this cause, as discussed in the potential public

health impacts paper referenced above. This result could yield a permanent structural reduction of 39,000 illnesses averted for each future year as compared to before implementation. Note however that past reductions in *Salmonella* prevalence do not necessarily imply that industry has the resources and the technical ability to further reduce pathogen levels. There is likely a lower limit to pathogen levels that can be achieved with current technologies.

Additional public health benefits could potentially be realized if the Agency decides to implement a Category 1/2/3 approach, and establishments move into the new Category 1 status. As with the *Salmonella* verification program, the Agency will analyze data on individual establishments sampled in the YCBS to evaluate whether further benefits could be predicted if establishments increasingly move into a hypothetical *Campylobacter* Category 1 status.

This *Campylobacter* testing program would require additional funding in fiscal year 2011 to implement because of its associated demand on laboratory resources. New employees will need to be hired and trained, and laboratory supplies purchased, to run the tests. The President's budget request for fiscal year 2011 includes a funding request for this testing.

Salmonella Performance Standard for Young Turkey Carcasses

The Agency has decided to take a different approach to *Salmonella* in turkeys. Past FSIS sampling data suggest that the prevalence of *Salmonella*-positive broiler and turkey carcasses was similar (FSIS 1995 Broiler chicken baseline study; FSIS 1998 Young turkey baseline study; Baseline Data). FSIS sampling data from the YTBS suggest that the prevalence of *Salmonella*-positive whole young turkey carcasses is now substantially less than the prevalence of *Salmonella*-positive young chicken carcasses. The prevalence estimate at post-chill for whole young turkey carcasses was about 1.7 percent, more than a 10-fold decrease from the prevalence estimated from the previous turkey baseline. The Agency notes, furthermore, that under the Category 1/2/3 approach used since 2006, more than 90 percent of young turkey slaughter establishments have been in Category 1 and none in Category 3. Thus, the Category 2 establishments from this class have not been published.

At the very low positive rates seen in whole young turkey carcasses, sample sets much larger than those currently collected (*i.e.*, many more than 56 samples per set) would be necessary to detect real differences in establishment performance. The Agency believes that resources that have been used in tracking category status for this product can be better utilized to address more pressing public health concerns, including pathogens found in ground turkey and turkey parts that have an increasing market share for the young turkey product class.

For these reasons, the Agency has decided to establish an acceptable positive rate for whole young turkey carcasses that is lower than the current acceptable positive rate, but high enough that an establishment actually operating at the YTBS prevalence will have at least a 99 percent probability of meeting the new standard. The 99 percent probability chosen for the new acceptable positive rate would allow fewer positive results in a set of 56 samples than under the current turkey carcass performance standard. This approach will permit the Agency to better utilize its resources, to focus its activities on public health issues, and, at the same time, to continue to monitor or evaluate industry performance. Specifically, the Agency will:

- Establish a new performance standard of 1.7 percent for post-chill with no more than 4 positive samples in a 56-sample set, providing an approximate 99.7 percent probability of an establishment meeting the standard when actually operating at the performance standard.
- Continue the 56-sample set under the new standard.
- Publish the names of establishments that do not meet the performance standard in their last set based on that set having begun after implementation of this new standard.
- Exclude young turkey slaughter establishments from posting if 90 percent of establishments meet the new performance standard.
- Prioritize scheduling of testing at turkey establishments not meeting the new standard.

Based on current FSIS *Salmonella* Verification Program data on establishment performance levels, 82 percent of eligible establishments would initially meet the new performance standard for turkeys with no more than 4 positive samples out of 56 in the last set. This level of performance would come close to meeting the FSWG goal of 90 percent of establishments meeting the new standard by the end of 2010. Using our public health impact model, the Agency estimates approximately 100 human illnesses averted annually after the first two years of implementation as compared to the period before implementation, a reduction of approximately 1.5 percent from the current 9,000 attributed to this cause, as discussed in the public health impacts paper referenced above. This public health impact could yield a permanent structural reduction in illnesses.

The Agency believes that this performance standard, setting a level below the current standard for Category 1, will provide an incentive for the turkey industry to continue to improve its process control. As noted above, FSIS estimates that only 82 percent of turkey establishments will meet the new standard under their current performance levels. Since the Agency plans to begin publishing the names of establishments that do not meet the new standard, the Agency has concluded that a significant incentive will be established for immediate improvement in the turkey industry and for consistent maintenance of good performance. This new approach can be accomplished under the current sampling and testing infrastructure and current funding levels. The agency plans to commence publishing the names of establishments that do not meet the standard in sets begun after implementation of the new standard.

Campylobacter Performance Standard for Young Turkey Carcasses

The estimated prevalence of *Campylobacter* at post-chill derived from the YTBS is about 1.1 percent. As it did with its approach to *Salmonella* in young turkeys discussed above, the Agency is setting a low performance standard for *Campylobacter* with an acceptable positive rate that provides a higher probability of meeting the standard when an establishment is actually operating at the standard. Unlike with *Campylobacter* in young chickens, however, the percent positive in young turkeys is so low, especially with the 24 mL results (as described above), that a single performance standard is indicated for any combination of 1 mL or 24 mL results. FSIS intends to:

- Establish a new performance standard at the YTBS prevalence of 1.1 percent with no more than 3 positive samples in a 56-sample set from any combination of 1 mL or 24 mL results, providing an approximate 99.7 percent probability of an establishment meeting the standard when actually operating at the performance standard.
- Continue the 56-sample set under the new standard.
- Prioritize scheduling of testing at young turkey establishments not meeting the new standard.
- After 90 percent of establishments have been sampled for two full sets

(estimated by 2012), post names of establishments that do not meet the standard in the last set on the Agency Web site.

• Exclude young turkey slaughter establishments from posting if 90 percent of establishments meet the new standard.

Based on our estimates, 81 percent of eligible establishments would initially meet the new performance standard. Using our public health impact model, the Agency estimates that approximately half of the establishments that would not now meet the new standard will improve their performance to do so. This assumption provides an estimate of approximately 100 human illnesses averted after the first two years of implementation as a permanent structural reduction as compared to before implementation. This result would be a reduction of approximately five percent from the current 1,700 illnesses attributed to this cause, as discussed in the potential public health impacts paper referenced above.

The Agency plans to begin posting the names establishments that do not meet the new standard in 2012. The Agency believes this plan provides an incentive for further improvements in process control in the turkey industry and for consistent maintenance of good performance.

Compliance Guides

The agency has posted on its Significant Guidance Documents Web page (Significant Guidance) the third edition of a compliance guide for poultry slaughter. The guide includes new pre-harvest recommendations for controlling *Salmonella* and recommendations for controlling *Campylobacter* in poultry. FSIS has also posted on its Significant Guidance Documents Web page a compliance guide on known practices for pre-harvest management to reduce *E. coli* O157:H7 contamination in cattle. This guide focuses on the prevention of *E. coli* O157:H7 through reduced fecal shedding and during live animal holding before slaughter.

These two compliance guides represent current FSIS thinking, and FSIS encourages establishments to begin using them. The guides present recommendations and not regulatory requirements.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this document, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/Regulations_&_Policies/2010_Notices_Index/index.asp.* FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade and farm groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is available on the FSIS Web page. Through the Listserv and the Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an e-mail subscription service that provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password-protect their accounts.

Done, at Washington, DC, on May 10, 2010.

Alfred V. Almanza,

Administrator.

Appendix

Salmonella has been a major concern for the Agency for many years. In 1996 FSIS published the final rule "Pathogen Reduction; Hazard Analysis and Critical Control Point (PR/HACCP) Systems" (61 FR 38806; Jul. 25, 1996), which established, among other measures, pathogen reduction performance standards for *Salmonella* bacteria for certain slaughter establishments and for establishments producing certain raw ground products (9 CFR 310.25(b)(1)and 381.94(b)(1)). *Salmonella* was selected as the target organism because it was at that time the most common cause of foodborne illness known to be associated with meat and poultry products. It is present to varying degrees in all major species, and interventions targeted at reducing it may be beneficial in reducing contamination by other enteric pathogens.

The pathogen reduction performance standards established for *Salmonella* in the PR/HACCP Final Rule covered raw product classes including carcasses of cows/bulls, steers/heifers, market hogs, broilers (young chickens), and ground beef, ground chicken, and ground turkey. The Agency later developed a performance standard for turkeys based on a 1997 baseline survey (*2005 Turkey Performance Standard*). In the PR/HACCP final rule, FSIS required that the prevalence of *Salmonella* contamination in each of the major species and in raw ground products be reduced by each establishment to a level below the current national baseline prevalence.

These *Salmonella* performance standards reflected the estimated prevalence found by the Agency's nationwide microbiological baseline surveys, which were conducted before the PR/HACCP rule was adopted (*Baseline Data*). Each performance standard was a target prevalence for a given product class using the same sample portion and collection and analytical procedures that were used in the baseline, for example, 20 percent positive for whole young chicken carcasses from 400-mL rinse samples collected at post-chill.

The PR/HACCP rule also established a *Salmonella* Verification Program, in which FSIS inspection personnel assess industry performance by collecting product samples from individual establishments over the course of a defined number of sequential days of production to complete a sample set, with product samples being sent to FSIS laboratories for analysis. Establishments were made subject to sampling if they produced sufficient product annually to complete a sample set, which for young chicken slaughter establishments means approximately 20,000 birds slaughtered per year. The PR/HACCP rule further specified the maximum number of *Salmonella*-positive samples acceptable per sample set consisting of a specified number of samples.

The Agency selected the maximum number of positive samples acceptable per set so as to meet two objectives. The Agency determined a number that would provide a reasonable probability of passing the set for an establishment that in actuality is operating precisely at the performance standard. The Agency also wanted the number chosen to provide a relatively high probability of failing the set for an establishment that in actuality is operating precisely at the performance standard. This relatively high probability of failing the set was intended to encourage establishments to minimize the chance of failure by aiming at tighter process control and lower numbers of positives.

The Agency chose an "80 percent rule"—*i.e.*, an establishment actually operating at the performance standard has an approximately 80 percent chance of passing the set and therefore an approximately 20 percent chance of failing. For young chickens, the baseline prevalence was estimated to be 20.0 percent of carcasses positive for *Salmonella,* and using the "80 percent rule" resulted in a requirement that there be no more than 12 positive samples out of a 51-sample set. For turkeys, the baseline prevalence was estimated to be about 19.6 percent of carcasses positive for *Salmonella,* and using the "80 percent rule" resulted in a requirement that there be no more than 13 positive samples out of a 56-sample set. This same approach is used for the new performance standards announced in this notice.

In the 1996 PR/HACCP rule, FSIS indicated that the pathogen reduction

performance standards would be changed as new data became available, and that the Agency would periodically repeat its baseline surveys to obtain updated data. FSIS intends to use the new *Salmonella* performance standard for young chickens that it is announcing in this Notice in the place of the performance standard codified at 9 CFR 381.94.

In that regulation, FSIS stated that an establishment that failed to meet the standard in three consecutive sample sets would be considered to have failed to maintain sanitary conditions and to maintain an adequate HACCP plan. The Agency said the failure would cause it to suspend inspection at the establishment. In December 2001, the U.S. Court of Appeals for the Fifth Circuit (*Supreme Beef Processors, Inc.* v. *USDA,* 275 F.3d 432) affirmed a ruling by the U.S. District Court for the Northern District of Texas (*Supreme Beef Processors, Inc.* v. *USDA,* 113 F. Supp. 2d 1048) that USDA did not have the authority to suspend inspection at an establishment solely on the basis of *Salmonella* test results for the raw meat product produced at the establishment. FSIS had suspended inspection at Supreme Beef Processors, Inc., for failing the standard in three consecutive Agency sample sets. The District Court held that 21 U.S.C. 604(m)(4) focused on a processor's plant and not on the condition of its meat. The Court further held that the presence of *Salmonella* in the finished product did not render the product "injurious to health" within the meaning of § 601(m)(4). The Appellate Court agreed, and further held that 21 U.S.C. 601(m)(4), and hence the *Salmonella* performance standards, cannot be used to regulate the characteristics of incoming raw materials used in the raw ground beef.

Since the *Supreme Beef* case, FSIS has used results from its verification testing program as a measure of establishment process control for reducing exposure of the public to pathogens. FSIS expects establishments to control their processes to ensure that public exposure to pathogens is minimized. The Agency has found that using pathogen reduction performance standards in this way is effective in encouraging improved establishment control of pathogens.

After our review and evaluation of the testing results for several years, in which the frequency with which *Salmonella* was found in testing at young chicken establishments rose, FSIS published a **Federal Register** Notice on February 27, 2006 (71 FR 9772–9777; *Docket 04–026N*). This notice, among other things, announced a new Agency policy for reporting the results from the Agency's *Salmonella* testing program and established three performance categories for establishments. Performance Category 1 was set at an upper limit of no more than half the standard. Category 2 was set at more than half but not exceeding the standard. Category 3 was for establishments exceeding the standard. Thus, for young chickens, Category 1 performance for a set was defined as no more than six positive samples out of a 51-sample set, Category 2 as more than six but no more than 12 positives, and Category 3 as more than 12 positives in a set. For turkeys, Category 1 was defined as no more than six positive samples out of a 56-sample set, Category 2 as more than six but no more than 13 positives, and Category 3 as more than 13 positives in a set.

In the 2006 **Federal Register** Notice, FSIS stated that it intended to track establishment performance with respect to the different product classes sampled for *Salmonella* over the next year and, after that time, publish the names of establishments in Categories 2 and 3 for any product class that did not have 90 percent of its establishments in Category 1. After the 2006 **Federal Register** notice, the Agency added a second feature to its *Salmonella* testing and reporting program. In addition to having 90 percent of eligible establishments in Category 1, in order to be exempt from having any of its establishments published, a product class must not have any establishment in Category 3.

In 2008, FSIS published a notice in the **Federal Register** (73 FR 4767–4774; Jan. 28, 2008) explaining certain policy decisions relating to the *Salmonella* program and announcing that the Agency would begin publishing monthly results of completed FSIS verification sets for establishments in Categories 2 and 3, beginning with young chicken slaughter establishments. In that notice, the Agency clarified that Category 1 status requires two successive sets at no more than half the standard, but that Categories 2 and 3 are determined by the most recent set. Since publishing that notice, the Agency has created a Category 2T for establishments whose most recent set was at Category 1 level but whose prior set was above half the standard. Such establishments are counted in aggregate statistics but are not published individually. Publication of Category 2 and 3 young chicken establishments began in March 2008, and FSIS continues to publish the names of these establishments on or about the 15th of each month. The production class of whole young turkey carcasses has had more than 90 percent of establishments in Category 1 and no establishments in Category 3 and thus has not had Category 2 establishments published. The Agency believes that publishing Category 2 and 3 establishments has provided an effective incentive for improving performance.

[FR Doc. 2010–11545 Filed 5–13–10; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

[Docket No. 100427198–2060–01]

Privacy Act System of Records

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice of amended Privacy Act System of Records: COMMERCE/CENSUS–10 and 5.

SUMMARY: The Department of Commerce (Commerce) publishes this notice to announce the effective date of a Privacy Act System of Records notice entitled COMMERCE/CENSUS–5, Decennial Census Program.

DATES: The system of records becomes effective on May 14, 2010.

ADDRESSES: For a copy of the system of records please mail requests to: Chief Privacy Officer, Privacy Office, Room HQ—8H168, U.S. Census Bureau, Washington, DC 20233–3700.

FOR FURTHER INFORMATION CONTACT: Chief Privacy Officer, Privacy Office, Room HQ—8H168, U.S. Census Bureau, Washington, DC 20233–3700, 301–763–6560.

SUPPLEMENTARY INFORMATION: On March 18, 2010, the Department of Commerce published and requested comments on a proposed amended Privacy Act System of Records notice entitled COMMERCE/CENSUS–5, Decennial Census Program (75 FR 13076). That notice proposed to combine the American Community Survey, and the Population and Housing Census Records of the 2000 Census Including Preliminary Statistics for the 2010 Decennial Census, into the COMMERCE/CENSUS–5, Decennial Census Program. No comments were received in response to the request for comments. By this notice, the Department is adopting the proposed amended system as final without changes effective May 14, 2010.

Dated: May 7, 2010.

Brenda Dolan,

U.S. Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 2010–11548 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Marine Mammal Stranding Report/Marine Mammal Rehabilitation Disposition Report

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 July 13, 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 and instructions should be directed to Patricia Lawson, 301–713–2322 or *patricia.lawson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The marine mammal stranding report provides information on strandings so that the National Marine Fisheries Service (NMFS) can compile and analyze by region the species, numbers, conditions, and causes of illnesses and deaths in stranded marine mammals. NMFS requires this information to fulfill its management responsibilities under the Marine Mammal Protection Act (16 U.S.C. 1421a). The NMFS is also responsible for the welfare of marine mammals while in rehabilitation status. The data from the marine mammal rehabilitation disposition report are required for monitoring and tracking of marine mammals held at various NMFS-authorized facilities. This information is submitted primarily by volunteer members of the marine mammal stranding networks who are authorized by NMFS.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include the Internet through the NMFS National Marine Mammal Stranding Database and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0178.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; and business or other for-profit organizations.
Estimated Number of Respondents: 400.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 2,400.
Estimated Total Annual Cost to Public: $2,448.

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: May 11, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–11544 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Applications and Reporting Requirements for the Incidental Take of Marine Mammals by Specified Activities (Other Than Commercial Fishing Operations) Under the Marine Mammal Protection Act (fka Applications and Reporting Requirements for the Incidental Take of Marine Mammals by Specified Activities Under the Marine Mammal Protection Act)

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 July 13, 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 and instructions should be directed to Jeannine Cody, (301) 713–2289 or *Jeannine.Cody@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361 *et. seq.*) prohibits the "take" of marine mammals unless otherwise authorized or exempted by law. Among the provisions that allow for lawful take of marine mammals, sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), within a specified geographical region, if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted: (1) If the Secretary, acting by delegation through the National Marine Fisheries Service (NMFS), finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and (2) if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

Issuance of an incidental take authorization (ITA) under section 101(a)(5)(A) or (D) of the MMPA requires three sets of information collection: (1) A complete application for an ITA, as set forth in NMFS' implementing regulations at 50 CFR 216.104, which provides the information necessary for NMFS to make the necessary statutory determinations; (2) information relating to required monitoring; and (3) information related to required reporting. These collections of information enable NMFS to: (1) Evaluate the proposed activity's impact on marine mammals; (2) arrive at the appropriate determinations required by the MMPA and other applicable laws prior to issuing the authorization; and (3) monitor impacts of activities for which take authorizations have been issued to determine if predictions regarding impacts on marine mammals were valid.

II. Method of Collection

Applicants may transmit an electronic application file or report (*e.g.* .doc or .pdf file) via e-mail, or deliver paper forms via hand delivery, the U.S. Postal Service, or by an overnight delivery service.

III. Data

OMB Control Number: 0648–0151.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Non-profit institutions; state, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 71.

Estimated Time per Response: 339 hours for an Incidental Harassment Authorization (IHA) application; 310 hours for an IHA interim report (if applicable); 422 hours for an IHA draft annual report; 163 hours for an IHA final annual report (if applicable); 1,100 hours for the initial preparation of an application for new regulations; 70 hours for an annual Letter of Authorization (LOA) application; 220 hours for a LOA draft annual report; 65 hours for a LOA final annual report (if applicable); 625 hours for a LOA draft comprehensive report; and 300 hours for a LOA final comprehensive report (if applicable). Response times will vary for the public based upon the complexity of the requested action.

Estimated Total Annual Burden Hours: 27,814.

Estimated Total Annual Cost to Public: $358,000 in capital costs (if applicable) and $3,575 in recordkeeping/reporting costs.

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: May 10, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–11502 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Highly Migratory Species Dealer Reporting Family of Forms

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 July 13, 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 and instructions should be directed to Craig Cockrell, (301) 713–2347 or *Craig.Cockrell@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the National Marine Fisheries Service (NMFS) is responsible for management of the Nation's marine fisheries. NMFS must also carry out, as necessary and appropriate, obligations the United States undertakes internationally regarding tuna management through the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). NMFS must collect domestic landings data for Atlantic highly migratory species (HMS) via dealer reports in order to provide information vital for fishery management. In addition, the United States must monitor the import, export, and re-export of bluefin tuna, frozen bigeye tuna, and swordfish in order to comply with international obligations established through membership in the International Commission for the Conservation of Atlantic Tunas (ICCAT). ICCAT has implemented a trade monitoring program for bluefin tuna, frozen bigeye tuna, and swordfish to discourage illegal, unregulated, and unreported fishing activities as well as to further understand catches of and international trade in these species. Similar objectives are the basis for the Southern bluefin tuna (BFT) trade monitoring program established by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). Although the United States is not a member of the CCSBT, effective management of the Southern bluefin tuna resource is in the best interest of affected parties in the United States. Thus, the United States has implemented the CCSBT trade monitoring program, along with the analogous ICCAT programs.

This collection serves as a family of forms for Atlantic HMS dealer reporting requirements, including for the purchase of HMS from fishermen, and the import, export, and/or re-export of HMS.

II. Method of Collection

Information is submitted via mail or fax.

III. Data

OMB Control Number: 0648–0040.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,456.

Estimated Time per Response: 5 minutes each for catch and statistical documents and re-export certificates; 1 minute for tagging; 2 hours for validation; 15 minutes for HMS International Trade biweekly report; 15 minutes for Southeast Region HMS biweekly dealer report and Northeast Region trip tickets; 3 minutes for Southeast Region HMS biweekly dealer negative reporting; 15 minutes for Atlantic BFT biweekly dealer report; 2 minutes for Atlantic BFT landing cards.

Estimated Total Annual Burden Hours: 6,794.

Estimated Total Annual Cost to Public: $11,612 in recordkeeping/reporting costs.

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: May 10, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–11497 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820]

Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 8, 2010, the Department of Commerce ("the Department") published the preliminary results of the antidumping duty administrative review for certain hot-rolled carbon steel flat products from India ("Indian Hot-Rolled"). *See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Preliminary Results of Antidumping duty Administrative Review, and Intent to Rescind in Part*, 75 FR 1031 (January 8, 2010) ("Preliminary Results"). The review covers one respondent, Essar Steel Limited ("Essar"). The period of review ("POR") is December 1, 2007, through November 30, 2008. We invited parties to comment on our Preliminary Results. We did not receive any comments and we have made no changes for the final results of review.

EFFECTIVE DATE: May 14, 2010.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or James Terpstra, AD/CVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1168 and (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2010, the Department published the *Preliminary Results*. Since the *Preliminary Results*, we have not received any comments from interested parties.

Scope of the Order

The merchandise subject to this order is certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in the scope of this order are vacuum-degassed, fully stabilized (commonly referred to as interstitial-free "IF")) steels, high-strength low-alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low-carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

* Alloy hot-rolled carbon steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials ("ASTM") specifications A543, A387, A514, A517, A506).
* Society of Automotive Engineers ("SAE")/American Iron &Steel Institute ("AISI") grades of series 2300 and higher.
* Ball bearings steels, as defined in the HTSUS.
* Tool steels, as defined in the HTSUS.
* Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
* ASTM specifications A710 and A736.
* United States Steel ("USS") Abrasion-resistant steels (USS AR 400, USS AR 500).
* All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
* Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled carbon steel covered by this order, including: vacuum-degassed fully stabilized; high-strength low-alloy; and the substrate for motor lamination steel may also enter under

the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to this order is dispositive.

Rescission of Review in Part

In the *Preliminary Results*, we found that the claims by Ispat Industries Limited ("Ispat"), JSW Steel Limited ("JSW"), and Tata Steel Limited ("Tata") that they made no shipments of subject merchandise during the POR were consistent with import data provided by U.S. Customs and Border Protection ("CBP"). Accordingly, we stated our intent to rescind the administrative review with respect to these companies. See *Preliminary Results*, 75 FR at 1033. We received no comment concerning our intent to rescind. We continue to find that Ispat, JSW and Tata had no shipments of hot-rolled products from India during the POR for the final results of this review. As such we are rescinding the review with respect to Ispat, JSW and Tata.

Adverse Facts Available

For the final results, we continue to find that, by failing to provide information we requested, Essar, did not act to the best of its ability. Thus, we continue to find that the use of adverse facts available ("AFA") is warranted for this company under sections 776(a)(2) and (b) of the Tariff Act of 1930, as amended ("the Act"). See *Preliminary Results*, 75 FR at 1033–1036.

As we explained in the *Preliminary Results*, the rate of 28.25 percent selected as the AFA for Essar is the highest calculated margin from the investigation in this case as adjusted to account for countervailing duties imposed to offset export subsidies. Further, as discussed in the *Preliminary Results*, we continue to find that the use of the rate of 28.25 percent as an AFA rate is sufficiently high to ensure that Essar does not benefit from failing to cooperate in our review by refusing to respond to our questionnaire. We consider the 28.25 percent rate corroborated "to the extent practicable" in accordance with section 776(c) of the Act. See *Preliminary Results*, 75 FR at 1033–1036.

Final Results of the Review

As a result of this review, we determine find that the following dumping margin exists for the period December 1, 2007, through November 30, 2008.

Producer/Manufacturer	Rate Adjusted for Export Subsidies
Essar	28.25 %

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.*, companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain hot-rolled carbon steel flat products from India entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 23.87 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Administrative Protective Order

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 5, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11602 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838, A–533–840, A–570–893, A–549–822]

Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China and Thailand: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 4, 2010, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the People's Republic of China (PRC), and Thailand, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted expedited (120-day) sunset reviews for these orders pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping.

FOR FURTHER INFORMATION CONTACT: FOR FURTHER INFORMATION: Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4929.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2005, the Department published the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil*, 70 FR 5143 (February 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India*, 70 FR 5147 (February 1, 2005); *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005); and *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand*, 70 FR 5145 (February 1, 2005).

On January 4, 2010, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand, pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Review*, 75 FR 103 (January 4, 2010) (Notice of Initiation).[1]

The Department received a notice of intent to participate from the Ad Hoc Shrimp Trade Action Committee (petitioner) and the American Shrimp Processors Association (ASPA) within the deadline specified in 19 CFR 351.218(d)(1)(i). The petitioner claimed interested party status under section 771(9)(C) of the Act stating that its individual members are each producers in the United States of a domestic like product. ASPA claimed interested party status under section 771(9)(E) of the Act stating that it is a trade association, the majority of whose members are producers and/or processors of a domestic like product in the United States.

The Department received complete substantive responses to the *Notice of Initiation* from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the orders on certain frozen warmwater shrimp from Brazil, the PRC, or Thailand, nor was a hearing requested. We received a substantive response from the Seafood Exporters Association of India (SEAI), which is a trade association whose membership consists of Indian producers and exporters of the subject merchandise, within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). On February 12, 2010, ASPA submitted rebuttal comments to SEAI's substantive response. We determined that SEAI's substantive response was not adequate because it failed to provide the volume and value of its members' exports of subject merchandise to the United States for several specific time periods enumerated by 19 CFR 351.218(d)(3)(iii)(B–E). *See* the March 2, 2010, memorandum entitled "Adequacy Determination in Antidumping Duty Sunset Review of Certain Frozen Warmwater Shrimp from India." On March 4, 2010, SEAI requested that the Department reconsider its adequacy finding. On March 30, 2010, we notified SEAI that we continued to find that its substantive response was inadequate. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited (120-day) sunset reviews of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand.

Scope of the Orders

The products covered by the orders include certain frozen warmwater shrimp and prawns whether wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the orders, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the orders. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the orders.

Excluded from the orders are: 1) breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); 2) shrimp and prawns generally classified in the

[1] The Notice of Initiation also announced the initiation of the sunset review of the antidumping duty order on certain frozen warmwater shrimp from the Socialist Republic of Vietnam. However, the results of that sunset review will be discussed within a separate **Federal Register** notice in the context of a full sunset review in that case.

[2] "Tails" in this context means the tail fan, which includes the telson and the uropods.

Pandalidae family and commonly referred to as coldwater shrimp, in any state of processing; 3) fresh shrimp and prawns whether shell–on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); 4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); 5) dried shrimp and prawns; 6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); 7) certain dusted shrimp; and 8) certain battered shrimp. Dusted shrimp is a shrimp–based product: 1) that is produced from fresh (or thawed–from-frozen) and peeled shrimp; 2) to which a "dusting" layer of rice or wheat flour of at least 95 percent purity has been applied; 3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; 4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and 5) that is subjected to IQF freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by the orders are currently classified under the following HTSUS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the "Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, India, the People's Republic of China, and Thailand" from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration (Decision Memo), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room 1117 of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on certain frozen warmwater shrimp from Brazil, India, the PRC, and Thailand would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted–Average Margin (percent)
Brazil	
Netuno Alimentos S.A./ Maricultura Netuno S.A./ Netuno USA, Inc. (collectively, Netuno)*	7.94
Central de Industrializacao de Distribuicao de Alimentos Ltda./Cia. Exportadora de Produtos do Mar (Produmar)	4.97
Norte Pesca	67.80
All–Others Rate	7.05
*Netuno is the successor–in-interest to Empresa de Armazenagem Frigorifica Ltda./ Maricultura Netuno S.A.	
India.	
Devi Sea Foods Ltd.	4.94
Hindustan Lever Ltd.	15.36
Nekkanti Seafoods Ltd.	9.71
All–Others Rate	10.17
PRC[3]	
Allied Pacific Group	80.19
Hilltop International**	82.27
Shantou Red Garden Foodstuff Co., Ltd.	27.89
PRC–Wide Rate	112.81
Separate Rate	53.68
**Hilltop International is the successor–in-interest to Yelin Enterprise Hong Kong.	
Thailand[4].	
The Union Frozen Products Co., Ltd.	5.34
All–Others Rate	5.34

[3] Zhanjiang Guolian Aquatic Products Co., Ltd. was excluded from the antidumping duty order because it was found to have a *de minimis* margin in the less–than-fair–value (LTFV) investigation.

[4] The LTFV margins for Thailand were amended as a result of *Implementation of the Findings of the WTO Panel in United States–Antidumping Measure on Shrimp From Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp From Thailand*, 74 FR 5638, 5639 (January 30, 2009). The Rubicon Group, comprised of Andaman Seafood Co., Ltd., Wales & Co. Universe Limited, Chanthaburi Frozen Food Co., Ltd., Chanthaburi Seafoods Co., Ltd., Intersia Foods Co., Ltd. (formerly Y2K Frozen Foods Co., Ltd.), Phatthana Seafood Co., Ltd., Phatthana Frozen Food Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Thai International Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Sea Wealth Frozen Food Co., Ltd., and Thai I–Mei Frozen Foods Co., Ltd. were revoked from the antidumping duty order effective January 16, 2009, also as a result of this determination. *See also Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part*, 74 FR 52452 (October 13, 2009).

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: May 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11704 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XU87

Marine Mammals; File No. 15126

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NMFS National Marine Mammal Laboratory, (Responsible Party: Dr. John Bengtson, Director), Seattle, WA, has been issued a permit to conduct research on marine mammals.

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
- Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Amy Sloan, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On March 8, 2010, notice was published in the **Federal Register** (75 FR 10463) that a request for a permit to conduct research on ribbon seals (*Phoca fasciata*), spotted seals (*P. largha*), ringed seals (*P. hispida*), harbor seals (*P. vitulina*), and bearded seals (*Erignathus barbatus*) had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The permit authorizes capture, sampling, tagging, and harassment of seals in the North Pacific Ocean, Bering Sea, Arctic Ocean and coastal regions of Alaska to investigate their foraging ecology, habitat requirements, vital rates, and effects of natural and anthropogenic factors on their populations. The permit expires on May 30, 2015.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 10, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–11608 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Notice of the Re-Opening of the Deadline To Receive Nominations for the National Advisory Council on Minority Business Enterprise

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA), U.S. Department of Commerce, solicited nominations for individuals to serve on the National Advisory Council on Minority Business Enterprise (NACMBE) pursuant to a **Federal Register** Notice published on March 29, 2010 (75 FR 15413). The March 29, 2010 notice provided that all nominations must be received on or before May 3, 2010. On May 3, 2010, MBDA published a **Federal Register** Notice (75 FR 23238) extending the deadline for the receipt of nominations until May 10, 2010. This notice re-opens the nomination period for NACMBE membership and allows for the receipt of nominations on or before 5 p.m. Eastern Daylight Time (EDT) on June 30, 2010. The purpose of this notice is to allow the public additional time to submit nominations. The requirements for submitting nominations and the evaluation criteria for selecting members contained in the March 29, 2010 notice shall continue to apply in their entirety and, for convenience, are being republished in this notice.

Nominations submitted on or before May 10, 2010 will be considered by MBDA and persons do not need to resubmit their nomination materials, although they may amend or revise such nomination materials on or before the new deadline of June 30, 2010. Nominations received after May 10, 2010 and on or before the new deadline of June 30, 2010 will also be considered for NACMBE membership. The purpose of the NACMBE is to advise the Secretary of Commerce (Secretary) on key issues pertaining to the growth and competitiveness of the nation's Minority Business Enterprises (MBEs).

DATES: Complete nomination packages for NACMBE membership must be received by the Department of Commerce on or before June 30, 2010 at 5 p.m. (EDT).

ADDRESSES: Nomination packages may be submitted through the mail or may be submitted electronically. Interested persons are encouraged to submit nominations electronically. The deadline is the same for nominations submitted through the mail and for nominations submitted electronically.

1. *Submission by Mail:* Nominations sent by mail should be addressed to the U.S. Department of Commerce, Minority Business Development Agency, Office of Legislative, Education and Intergovernmental Affairs, *Attn:* Stephen Boykin, 1401 Constitution Avenue, NW., Room 5063, Washington, DC 20230. Applicants are advised that the Department of Commerce's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may therefore wish to use a guaranteed overnight delivery service to ensure nomination packages are received by the Department of Commerce by the deadline set forth in this notice.

2. *Electronic Submission:* Nomination sent electronically should be addressed to: *NACMBEnominations@mbda.gov.* Please include "NACMBE Nomination" in the title of the e-mail.

FOR FURTHER INFORMATION CONTACT: Stephen Boykin, MBDA Office of Legislative, Education and Intergovernmental Affairs, at (202) 482–1712 or by e-mail at: *NACMBEnominations@mbda.gov.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to Executive Order 11625, as amended, the Department of Commerce, through the Minority Business Development Agency (MBDA), is charged with promoting the growth and competitiveness of the nation's minority business enterprise. NACMBE is being established in the Department of Commerce as a discretionary advisory committee in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, and with the concurrence of the General Services Administration. The NACMBE will be administered primarily by MBDA.

Although MBDA has received many applications and is still considering all applications received to date, the Agency is seeking a broader applicant pool. By re-opening the application period, the Agency also hopes to have a broader applicant pool to reflect greater ethnic, gender, and industry diversity. Persons who have previously submitted nominations remain under consideration and do not need to resubmit their nomination materials, although they may amend such nomination materials on or before the closing date of June 30, 2010

Objectives and Scope of Activities: NACMBE will advise the Secretary on key issues pertaining to the growth and

competitiveness of the nation's MBEs, as defined in Executive Order 11625, as amended, and 15 CFR 1400.1. NACMBE will provide advice and recommendations on a broad range of policy issues that affect minority businesses and their ability to successfully access the domestic and global marketplace. These policy issues may include, but are not limited to:

- Methods for increasing jobs in the health care, manufacturing, technology, and "green" industries;
- Global and domestic barriers and impediments;
- Global and domestic business opportunities;
- MBE capacity building;
- Institutionalizing global business curriculums at colleges and universities and facilitating the entry of MBEs into such programs;
- Identifying and leveraging pools of capital for MBEs;
- Methods for creating high value loan pools geared toward MBEs with size, scale and capacity;
- Strategies for collaboration amongst minority chambers, trade associations and nongovernmental organizations;
- Accuracy, availability and frequency of economic data concerning minority businesses;
- Methods for increasing global transactions with entities such as but not limited to the Export-Import Bank, OPIC and the IMF; and
- Requirements for a uniform and reciprocal MBE certification program.

The advice and recommendations provided by NACMBE may take the form of one or more written reports. NACMBE will also serve as a vehicle for an ongoing dialogue with the MBE community and with other stakeholders.

The Secretary has determined that the establishment of NACMBE is necessary and in the public interest in connection with MBDA's duties and responsibilities in advancing the growth and competitiveness of MBEs pursuant to Executive Order 11625, as amended.

Membership: NACMBE shall be composed of not more than 25 members. The NACMBE members shall be distinguished individuals from the nonfederal sector appointed by the Secretary. The members shall be recognized leaders in their respective fields of endeavor and shall possess the necessary knowledge and experience to provide advice and recommendations on a broad range of policy issues that impact the ability of MBEs to successfully participate in the domestic and global marketplace. NACMBE shall have a balanced membership reflecting a diversity of industries, ethnic backgrounds and geographical regions, and to the extent practicable, gender and persons with disabilities.

NACMBE members shall be appointed as Special Government Employees for a two-year term and shall serve at the pleasure of the Secretary. Members may be re-appointed to additional two-year terms, without limitation. The Secretary may designate a member or members to serve as the Chairperson or Vice-Chairperson(s) of NACMBE. The Chairperson or Vice-Chairperson(s) shall serve at the pleasure of the Secretary.

NACMBE members will serve without compensation, but will be allowed reimbursement for reasonable travel expenses, including a per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, as amended, for persons serving intermittently in federal government service. NACMBE members will serve in a solely advisory capacity.

Eligibility. In addition to the above criterion, eligibility for NACMBE membership is limited to U.S. citizens who are not full-time employees of the Federal Government, are not registered with the U.S. Department of Justice under the Foreign Agents Registration Act and are not a federally-registered lobbyists pursuant to the Lobbying Disclosure Act of 1995, as amended, at the time of appointment to the NACMBE.

Nomination Procedures and Selection of Members: The Department of Commerce is accepting nominations for NACMBE membership for the upcoming 2-year charter term beginning in April 2010. Members shall serve until the NACMBE charter expires in April 2012, although members may be re-appointed by the Secretary without limitation. Nominees will be evaluated consistent with the factors specified in this notice and their ability to successfully carryout the goals of the NACMBE.

For consideration, a nominee must submit the following materials: (1) Resume, (2) personal statement of interest, including a summary of how the nominee's experience and expertise would support the NACMBE objectives; (3) an affirmative statement that the nominee is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and (4) an affirmative statement that: (a) The nominee is not currently a federally-registered lobbyist and will not be a federally-registered lobbyist at the time of appointment and during his/her tenure as a NACMBE member, or (b) if the nominee is currently a federally-registered lobbyist, that the nominee will no longer be a federally-registered lobbyist at the time of appointment to the NACMBE and during his/her tenure as a NACMBE member. All nomination information should be provided in a single, complete package by the deadline specified in this notice. Nominations packages should be submitted by either mail or electronically, but not by both methods. Self-nominations will be accepted.

NACMBE Members will be selected in accordance with applicable Department of Commerce guidelines and in a manner that ensures that NACMBE has a balanced membership. In this respect, the Secretary seeks to appoint members who represent a diversity of industries, ethnic backgrounds and geographical regions, and to the extent practicable, gender and persons with disabilities.

All appointments shall be made without discrimination on the basis of age, ethnicity, gender, disability, sexual orientation, or cultural, religious, or socioeconomic status. All appointments shall also be made without regard to political affiliations.

Dated: May 10, 2010.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2010–11596 Filed 5–13–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898]

Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on chlorinated isocyanurates ("chlorinated isos") from the People's Republic of China ("PRC"). The period of review ("POR") for this administrative review is June 1, 2008, through May 31, 2009. Because the Department is rescinding the review of Zhucheng Taisheng Chemical Co., Ltd. ("Zhucheng"), this administrative review only covers one producer/exporter of the subject merchandise, *i.e.,* Hebei Jiheng Chemical Co., Ltd. ("Jiheng").

We preliminarily determine that Jiheng made sales in the United States at prices below normal value ("NV"). If these preliminary results are adopted in

our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the POR for which the importer-specific assessment rates are above *de minimis.* We invite interested parties to comment on these preliminary results.

DATES: *Effective Date:* May 14, 2010.

FOR FURTHER INFORMATION CONTACT: Brandon Petelin or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–8173 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2005, the Department published in the **Federal Register** the antidumping duty order on chlorinated isos from the PRC.[1] On June 1, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on chlorinated isos from the PRC for the period June 1, 2008, through May 31, 2009.[2] On June 29, 2009, in accordance with 19 CFR 351.213(b)(2), Zhucheng, a foreign producer/exporter of subject merchandise, requested that the Department review its sales of subject merchandise. On June 30, 2009, in accordance with 19 CFR 351.213(b)(2), Jiheng, a foreign producer/exporter of subject merchandise, requested that the Department review its sales of subject merchandise.

On July 29, 2009, the Department initiated the administrative review of the antidumping duty order on chlorinated isos from the PRC covering the period June 1, 2008, through May 31, 2009.[3] On August 4, 2009, the Department issued its antidumping duty questionnaire to both Jiheng and Zhucheng. However, on October 7, 2009, because the Department determined that Zhucheng did not have standing to request an administrative review, the Department issued a **Federal Register** Notice stating that it intended to rescind the administrative review with respect to Zhucheng.[4] On August 17, 2009, Clearon Corporation and Occidental Chemical Corporation, domestic producers of chlorinated isos (collectively "Petitioners"), submitted an entry of appearance in the underlying administrative review.

On September 8, 2009, Jiheng submitted its section A questionnaire response ("AQR"). On September 23, 2009, Jiheng submitted its sections C and D questionnaire responses ("CQR and DQR", respectively). On December 16, 2009, the Department issued a supplemental questionnaire to Jiheng. On January 7, 2010, Jiheng submitted its supplemental questionnaire response ("1st SQR"). On March 16, 2010, the Department issued a second supplemental questionnaire to Jiheng. On March 26, 2010, Jiheng submitted its second supplemental questionnaire response ("2nd SQR").

On January 5, 2010, the Department requested that the Office of Policy provide a list of surrogate countries for this review, which it did on January 25, 2010.[5] On January 26, 2010, the Department issued a letter to interested parties seeking comments on surrogate country selection and surrogate values. On February 12, 2010, in the memorandum regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm" from the Deputy Assistant Secretary for Import Administration, dated February 12, 2010, the Department exercised its discretion to toll deadlines for the duration of the partial shutdown of the Federal Government from February 5 through February 11, 2010.[6] Thus, all deadlines in this segment of the proceeding were extended by 7 days.

On February 12, 2010, Jiheng submitted comments regarding the selection of a surrogate country. On February 16, 2010, Jiheng submitted publicly available information in order to value Jiheng's factors of production ("FOPs"). Also, on February 16, 2010, Arch Chemicals, Inc. ("Arch"), a United States importer of subject merchandise from Jiheng, submitted surrogate value information from *Chemical Weekly* for certain chemicals used in Jiheng's production of the subject merchandise. On February 23, 2010, Petitioners submitted publicly available information to value certain FOPs. On March 1, 2010, the Department published a notice in the **Federal Register** extending the time limit for the preliminary results of review until May 10, 2010.[7]

Scope of the Order

The products covered by this order are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid ($Cl_3(NCO)_3$), (2) sodium dichloroisocyanurate (dihydrate) ($NaCl_2(NCO)_3(2H_2O)$), and (3) sodium dichloroisocyanurate (anhydrous) ($NaCl_2(NCO)_3$). Chlorinated isos are available in powder, granular, and tableted forms. This order covers all chlorinated isos. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.50.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

On April 9, 2008, the Department issued a final scope ruling stating that Chinese-origin chlorinated isos imported into Canada from the PRC by Capo Industries, Ltd., which are then processed and exported by Capo to the United States, are within the scope of the antidumping duty order covering chlorinated isos from the PRC. The Department found that Capo's processing in Canada is essentially a repackaging operation with respect to Chinese-origin product and does not substantially transform the chlorinated isos imported from the PRC by Capo.

[1] *See Notice of Antidumping Duty Order: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 36561 (June 24, 2005).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 74 FR 26202 (June 1, 2009).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review* 74 FR 37690 (July 29, 2009) ("*Initiation Notice*").

[4] *See Chlorinated Isocyanurates from the People's Republic of China, Notice of Intent to Partially Rescind Administrative Review,* 74 FR 51557 (October 7, 2009).

[5] *See* Memorandum regarding: Request for Surrogate-Country Selection: 2008–2009 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China, dated January 5, 2010; *see also* Memorandum regarding: Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China, dated January 25, 2010 ("Surrogate Country List").

[6] *See* Memorandum regarding: Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snow Storm, dated February 12, 2010.

[7] *See Chlorinated Isocyanurates From the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administration Review,* 75 FR 9160 (March 1, 2010).

On March 23, 2009, the Department issued a final scope ruling stating that chlorinated isos produced and exported from Vietnam by Tian Hua (Vietnam) SPC Industries Ltd. are not within the scope of the antidumping duty order covering chlorinated isos from the PRC because Tian Hua demonstrated on the record of the scope inquiry that it produces chlorinated isos in its production facilities in Vietnam.

Partial Rescission of Review

The Department is hereby rescinding the administrative review with respect to Zhucheng, covering the period of June 1, 2008, through May 31, 2009. The Department's regulations at 19 CFR 351.213(b)(2) state that an exporter or producer covered by an antidumping order may request that the Department conduct an administrative review of only that party during the anniversary month of the publication of an antidumping order. On June 29, 2009, pursuant to 19 CFR 351.213(b)(2), Zhucheng submitted a timely request for an administrative review of the antidumping duty order on chlorinated isos from the PRC purporting to be a producer and exporter of subject merchandise. In a letter dated August 24, 2009, however, Zhucheng explained that, in the process of preparing its section A questionnaire response for this review, it discovered that the actual producer and exporter of the subject merchandise was Zhucheng Taisheng Angmu Chemical Co., Ltd., with whom Zhucheng claims to be affiliated.[8] Therefore, because Zhucheng requested a review as a producer/exporter but was neither a producer nor an exporter of the subject merchandise during the POR, Zhucheng is not entitled to request an administrative review pursuant to 19 CFR 351.213(b)(2).

Because Zhucheng did not have standing to request an administrative review, the Department previously issued a **Federal Register** Notice of its intent to partially rescind the review with respect to Zhucheng, as the Department had initiated a review of Zhucheng in error.[9] Thus, the Department hereby rescinds the administrative review with respect to Zhucheng for the period June 1, 2008, through May 31, 2009.

Non-Market Economy Country

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping duty investigations and administrative reviews and continues to do so in this review.[10] No interested party in this case has argued that we should do otherwise. Designation as an NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the "Act"). Accordingly, we calculated normal value ("NV") in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it, in most instances, to base NV on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information in the surrogate market economy country or countries considered to be appropriate by the Department. *See* section 773(c)(1) of the Act. When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act. Further, the Department normally values all FOPs in a single surrogate country. *See* 19 CFR 351.408(c)(2). The sources of the surrogate factor values are discussed under the "Normal Value" section below and in the Surrogate Value Memorandum, which is on file in the Central Records Unit ("CRU"), Room 1117 of the main Commerce Department building.[11]

In examining which country to select as its primary surrogate for this proceeding, the Department determined that India, Indonesia, the Philippines, Ukraine, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* Surrogate Country List. On January 26, 2010, the Department issued a request for interested parties to submit comments on surrogate country selection. On February 12, 2010, Jiheng submitted comments regarding the selection of a surrogate country. On February 23, 2010, Petitioners submitted FOP surrogate value information that included several values obtained from India.

Jiheng argues that the Department should continue to use India as the surrogate country for this segment of the proceeding, as it has in previous segments, because, in this case, India produces comparable merchandise and there are publicly available data with which to value the reported FOP information. All parties which submitted surrogate value data submitted only Indian-sourced data.

After evaluating interested parties' comments, the Department determined that India is the appropriate surrogate country for this review. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise, *i.e.,* calcium hypochlorite; and (3) India provides the best opportunity to use reliable, publicly available data to value the FOPs. On the record of this review, we have usable surrogate financial data from India, but no such surrogate financial data from any other potential surrogate country. Additionally, all of the data submitted by both Jiheng and the Petitioners for our consideration as potential surrogate values are sourced from India.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a surrogate country, we have selected India as the surrogate country and accordingly have calculated NV using Indian prices to value the respondents' FOPs, when available and appropriate. *See* Surrogate Value Memorandum. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value FOPs until 20 days after the date of publication of the preliminary results.[12]

[8] *See* Letter from Zhucheng Taisheng, "Chlorinated Isocyanurates from China; Inquiry Regarding Status of Administrative Review" (August 24, 2009) ("Inquiry Regarding Status of Administrative Review").

[9] *See Clorinated Isos/PRC* 10/7/2009.

[10] *See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 52645 (September 10, 2008); *see also Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 3560 (January 21, 2009).

[11] *See* Memorandum regarding: 2008–2009 Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Surrogate Value Memorandum for the Preliminary Results, dated May 10, 2010 ("Surrogate Value Memorandum").

[12] In accordance with 19 CFR 351.301(c)(1), for the final results of this administrative review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy country, then a separate-rate analysis is not necessary to determine whether it is independent from government control.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers* at 20589.

The evidence provided by Jiheng supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies. *See* Jiheng's AQR at Exhibit A3.1 through Exhibit A5.

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates.

The evidence placed on the record of this administrative review by Jiheng demonstrates an absence of *de facto* government control with respect to Jiheng's exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide. See* Jiheng's AQR at pages A–12 through A–18.

Date of Sale

19 CFR 351.401(i) states that:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

Jiheng reported the shipment date as the date of sale because it claims that, for its U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the shipment date, and for many of its sales the shipment date occurs on or before the invoice date. Jiheng also stated that selecting the shipment date as the date of sale insures a consistent methodology for selecting the date of sale with previous segments in which Jiheng has participated. We have preliminarily determined that the shipment date is the most appropriate date to use as Jiheng's date of sale in accordance with our long-standing practice of determining the date of sale as the date on which the final terms of sale are established.[13] Evidence on the record demonstrates that, with respect to Jiheng's sales to the United States, sometimes the shipment date occurs prior to the invoice date,[14] and it is the Department's practice to use shipment date as the date of sale when the shipment date occurs prior to the invoice date.[15] Though not a dispositive factor for this POR, we note that we used the shipment date as the sale date in the prior POR.[16]

Fair Value Comparisons

To determine whether sales of chlorinated isos to the United States by Jiheng were made at less than NV, we compared export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice, pursuant to section 771(35) of the Act.

Export Price

Jiheng sold the subject merchandise directly to unaffiliated purchasers in the United States prior to importation into the United States. Therefore, we have used EP in accordance with section 772(a) of the Act because the use of the constructed export price methodology is not otherwise indicated. We calculated EP based on the price, including the appropriate shipping terms, to the first unaffiliated purchasers reported by Jiheng. To this price, we added amounts for components that were supplied free of charge or reimbursed by the customer, where applicable, pursuant to section 772(c)(1)(A) of the Act.[17]

information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

[13] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany,* 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

[14] *See* Jiheng's CQR at page C–15.

[15] *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada,* 68 FR 52741 (September 5, 2003), and accompanying Issues and Decision Memorandum at Comment 3.

[16] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 27104 (June 8, 2009) (unchanged in *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 66087 (December 14, 2009)).

[17] *See* Memorandum regarding: Analysis for the Preliminary Results of the 2008–2009 Administrative Review of Chlorinated Isocyanurates from the People's Republic of China: Hebei Jiheng Chemical Company Ltd. (May 10,

Continued

Jiheng reported that its U.S. customer(s) provided it with certain raw materials and packing materials free of charge. For Jiheng's products that contained inputs provided free of charge by a customer,[18] we added to the U.S. price paid by Jiheng's customer the built-up cost (*i.e.,* the surrogate value for these raw materials and packing materials multiplied by the reported FOPs for these items).[19]

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department will base NV on FOPs in NMEs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. We used the FOPs reported by the respondent for materials, energy, labor, by-products, and packing. These reported FOPs included various FOPs provided free of charge by a customer as discussed in the "Export Price" section, above.

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a market-economy country and pays for it in market-economy currency, the Department may value the factor using the actual price paid for the input.[20] Jiheng reported that it did not purchase any inputs from market economy suppliers for the production of the subject merchandise. *See* Jiheng's DQR at page D–9.

With regard to the Indian import-based surrogate values, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[21] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. No. 100–576 (1988), at 590. Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an "unspecified" country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOPs reported by Jiheng for the POR. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we selected, where possible, publicly available data, which represent an average non-export value and are contemporaneous with the POR, product-specific, and tax-exclusive. As appropriate, we adjusted input prices by including freight costs to render them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit in *Sigma Corp.* v. *United States,* 117 F. 3d 1401, 1408 (Fed. Cir. 1997). For a detailed description of all surrogate values used for Jiheng, *see* the Surrogate Value Memorandum.

Except as noted below, we valued raw material inputs using the weighted-average unit import values derived from the *Monthly Statistics of the Foreign Trade of India,* as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the World Trade Atlas, available at *http://www.gtis.com/wta.htm* ("WTA"). Where we could not obtain publicly available information contemporaneous with the POR with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index ("WPI") as published in the *International Financial Statistics* of the International Monetary Fund. *See* Surrogate Value Memorandum. We further adjusted these prices to account for freight costs incurred between the supplier and respondent.

To value truck freight, we used the freight rates published by *http://www.infobanc.com,* "The Great Indian Bazaar, Gateway to Overseas Markets." The logistics section of the website contains inland freight truck rates between many large Indian cities. The truck freight rates are for the period August 2008 through May 2009 and, therefore, are contemporaneous with the POR. *See* Surrogate Value Memorandum.

The Department valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department adjusted the average brokerage and handling rate for inflation. *See* Surrogate Value Memorandum.

2010) ("Jiheng's Preliminary Analysis Memorandum").

[18] Jiheng stated that its customer sourced materials from both market-economy and NME suppliers. Jiheng further stated that it does not know the names of the market-economy suppliers. *See* Jiheng's DQR at page D–8.

[19] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China,* 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 17.

[20] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div. of Ill* v. *United States,* 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[21] *See, e.g., Frontseating Service Valves from the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination,* 73 FR 62952 (October 22, 2008) (unchanged in *Frontseating Service Valves from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009); and *China National Machinery Import & Export Corporation* v. *United States,* 293 F. Supp. 2d 1334 (CIT 2003), affirmed 104 Fed. Appx. 183 (Fed. Cir. 2004).

To value calcium chloride, barium chloride, zinc sulfate, and sulfuric acid, we used *Chemical Weekly* data. We adjusted these values for taxes and to account for freight costs incurred between the supplier and the respondent.

Jiheng reported that its U.S. customer(s) provided certain raw materials and packing materials free of charge. For Jiheng's products that included raw materials and packing materials provided free of charge by its customer, consistent with the Department's practice and section 773(c)(1)(B) of the Act, we used the built-up cost (*i.e.,* the surrogate value for these raw materials and packing materials multiplied by the reported FOPs for these items) in the NV calculation.[22] Where applicable, we also adjusted these values to account for freight costs incurred between the port of exit and Jiheng's plants. *See* Surrogate Value Memorandum, and Jiheng's Preliminary Analysis Memorandum.

To value electricity, we used price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication entitled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India," dated March 2008. These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to industries in India. *See* Surrogate Value Memorandum.

To value water, we used the Maharashtra Industrial Development Corporation ("MIDC") water rates available at *http://www.midcindia.com/water-supply. See* Surrogate Value Memorandum.

To value steam coal, we used data obtained for grades B and C coal reported in the December 2007 Coal India Limited Circular. *See* Surrogate Value Memorandum.

To value steam, we used data obtained from the Indian financial statements of Hindalco Industries Limited. *See* Surrogate Value Memorandum.

Jiheng reported chlorine, hydrogen gas, ammonia gas, and sulfuric acid as by-products in the production of subject merchandise. We find in this administrative review that Jiheng has appropriately reported its by-products and, therefore, we have granted Jiheng a by-product offset for the quantities of these reported by-products. We valued chlorine gas with POR data obtained from the financial statements of Bihar Caustic & Chemicals, Kanoria Chemicals & Industries Limited, DCM Shriram Consolidated Ltd., all of which are Indian producers and sellers of chlorine gas. We valued hydrogen gas with POR data obtained from the financial statements of Bihar Caustic & Chemicals and DCM Shriram Consolidated Ltd., both of which are Indian producers and sellers of hydrogen gas. *See* Surrogate Value Memorandum.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's Web site.[23] Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Jiheng. *See* Surrogate Value Memorandum.

For packing materials, we used the per-kilogram values obtained from the WTA and made adjustments to account for freight costs incurred between the PRC supplier and Jiheng's plants. *See* Surrogate Value Memorandum.

To calculate surrogate values for factory overhead, selling, general, and administrative expenses ("SG&A"), and profit for the preliminary results, we used financial information from both Kanoria Chemicals and Industries Limited ("Kanoria") and Aditya Birla Chemicals (India) Limited ("Aditya") for the year ending March 31, 2009. From this information, we were able to determine average factory overhead as a percentage of the total raw materials, labor, and energy ("ML&E") costs, average SG&A as a percentage of ML&E plus overhead (*i.e.,* cost of manufacture), and an average profit rate as a percentage of the cost of manufacture plus SG&A. *See* Surrogate Value Memorandum for a full discussion of the calculation of these ratios.

Currency Conversion

Where the factor valuations were reported in a currency other than U.S. dollars, in accordance with section 773A(a) of the Act, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

Preliminary Results

We preliminarily determine that the following weighted-average dumping margin exists:

Manufacturer/exporter	Margin (percent)
Hebei Jiheng Chemical Co., Ltd	11.65

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs. *See* 19 CFR 351.309(d). The Department requests that parties submitting written comments provide an executive summary and a table of authorities as well as an additional copy of those comments electronically.

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. *See* 19 CFR 351.310(d).

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days

[22] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China,* 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 17.

[23] *See* Expected Wages of Selected NME Countries (December 9, 2009), *available at http://ia.ita.doc.gov/wages; see also, 2009 Calculation of Expected Non-Market Economy Wages,* 74 FR 65092 (December 9, 2009). The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics,* ILO, (Geneva), Chapter 5B: Wages in Manufacturing. The years of the reported wage rates range from 2006 to 2007.

after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we will calculate exporter/importer (or customer) -specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer) -specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer) -specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer) -specific *ad valorem* ratios based on the estimated entered value. Where an importer (or customer) -specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).

Cash Deposit Requirements

Further, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For Jiheng, the cash deposit rate will be the company-specific rate established in the final results of review (except, if the rate is zero or *de minimis,* a zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 285.63 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11605 Filed 5–13–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–914]

Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Preliminary Results of the 2008–2009 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a timely request from one importer, FitMAX Inc. ("FitMAX"), the Department of Commerce (the "Department") is conducting the 2008–2009 administrative review of the antidumping duty order on light-walled rectangular pipe and tube ("LWR") from the People's Republic of China ("PRC"). We have preliminarily determined that sales have been made below normal value ("NV") by the exporter participating in the instant administrative review. If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on entries of subject merchandise during the period of review ("POR") for which the importer-specific assessment rate is above *de minimis.*

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

DATES: *Effective Date:* May 14, 2010.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3518 and (202) 482–5193, respectively.

Background

On June 24, 2008, the Department published its final determination of sales at less-than-fair-value in the antidumping duty investigation of LWR from the PRC. *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China,* 73 FR 35652 (June 24, 2008). On August 5, 2008, the Department published its antidumping duty order on LWR from the PRC. *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008). On August 3, 2009, the Department published a notice of opportunity to request an administrative review of the above-referenced order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 38397 (August 3, 2009). Based on a timely request from FitMAX for an administrative review, the Department initiated an administrative review of the antidumping duty order on LWR from the PRC with respect to the Sun Group Inc. (the "Sun Group"), a producer/exporter of subject merchandise imported by FitMAX. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 48224 (September 22, 2009) ("*Initiation Notice*").

On September 25, 2009, the Department issued an antidumping duty questionnaire to the Sun Group. The Sun Group submitted responses to the Department's questionnaire from October through December 2009. We

issued supplemental questionnaires to, and received responses from, the Sun Group from November 2009 through April 2010. Petitioners [1] submitted comments to the Department regarding the questionnaire and supplemental questionnaire responses of the Sun Group in November 2009.

On January 13, 2010, the Department provided parties with an opportunity to submit publicly available information on surrogate countries and values for consideration in these preliminary results. On January 26, 2010, Petitioners submitted comments on surrogate country selection, and on March 22, 2010, and April 5, 2010, Petitioners submitted comments on surrogate values. The Sun Group submitted comments on surrogate values on March 19, 2010, and April 12, 2010.

Period of Review

The POR is January 20, 2008, through July 31, 2009.

Scope of Order

The merchandise that is the subject of the order is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to the order is currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

[1] Petitioners are Atlas Tube, Bull Moose Tube Company and Searing Industries, Inc.

Non-Market-Economy ("NME") Treatment

The Department considers the PRC to be an NME country. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended (the "Act"), any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See also Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007). The Department has not revoked the PRC's status as an NME country. None of the parties to this proceeding has contested such treatment. Therefore, in these preliminary results of review, we have treated the PRC as an NME country and applied our current NME methodology in accordance with section 773(c) of the Act.

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations. *See Initiation Notice,* 74 FR at 48224. The process requires exporters and producers to submit a separate-rate status application. *See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* (April 5, 2005) ("*Policy Bulletin 05.1*") available at *http://ia.ita.doc.gov.*[2] However, the standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test set out in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*").

A. Separate Rate Applicant

1. Wholly Chinese-Owned

The Sun Group stated that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether this respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The evidence provided by the Sun Group supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) There is an absence of restrictive stipulations associated with the exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the company; and (3) there are formal measures by the government decentralizing control of the company. *See* the Sun Group's Section A Response, dated October 27, 2009 ("SAR"), at 2–8.

[2] *Policy Bulletin 05.1* states: "[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of 'combination rates' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise *both* exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation." *See Policy Bulletin 05.1* at 6 (emphasis in original).

b. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that the evidence on the record supports a preliminary finding of *de facto* absence of governmental control with respect to the Sun Group based on record statements and supporting documentation showing that the company: (1) Sets its own export prices independent of the government and without the approval of a government authority; (2) has the authority to negotiate and sign contracts and other agreements; (3) has autonomy from the government regarding the selection of management; and (4) retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses. *See* SAR at 8–10.

The evidence placed on the record of this administrative review by the Sun Group demonstrates an absence of *de jure* and *de facto* government control with respect to the exporters' exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Therefore, we have preliminarily granted the Sun Group separate rate status.

Selection of a Surrogate Country

In antidumping proceedings involving NME countries, the Department, pursuant to section 773(c)(1) of the Act, will generally base NV on the value of the NME producer's factors of production ("FOP"). In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise.

In the instant review, the Department has determined that India, the Philippines, Indonesia, Thailand, Ukraine, and Peru are countries that are at a level of economic development comparable to that of the PRC. *See* Letter to All Interested Parties, from Howard Smith, Re: 2008–2009 Administrative Review of Light-Walled Rectangular Pipe and Tube from the People's Republic of China (PRC), dated January 13, 2010. Based on evidence placed on the record, we have determined that it is appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (1) It is at a level of economic development comparable to the PRC pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. *See* Petitioners' January 26, 2010, surrogate country comments; *see also* the Sun Group's March 19, 2010, and Petitioners' March 22, 2010, and April 5, 2010, surrogate value comments. Thus, to calculate NV, we are using Indian prices, when available and appropriate, to value the FOPs of the Sun Group, the mandatory respondent. We have obtained and relied upon publicly available information wherever possible. *See* "Memorandum To The File, from Melissa Blackledge, Re: Administrative Review of Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Surrogate Values," dated May 10, 2010 ("Surrogate Values Memo").

Fair Value Comparisons

To determine whether the Sun Group's sales of subject merchandise to the United States were made at prices below NV, we compared the constructed export price ("CEP") of the sales to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

In accordance with section 772(b) of the Act, we based the U.S. price for the Sun Group's sale on CEP because this sale was made by its U.S. affiliate, which purchased subject merchandise, produced and sold by the Sun Group through one affiliate, FitMAX. In accordance with section 772(c)(2)(A) of the Act, we calculated CEP by deducting, where applicable, the following expenses from the gross unit price charged to the first unaffiliated customer in the United States: Foreign inland freight, foreign brokerage and handling, international freight, U.S. brokerage and handling, and U.S. inland freight. Further, in accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), where appropriate, we deducted from the starting price the following selling expenses associated with economic activities occurring in the United States: Indirect selling expenses, credit, and inventory carrying costs. Because the Sun Group and FitMAX did not incur short-term U.S. dollar borrowings during the POR, we based their interest rate on the Federal Funds Interest Rate for the calculation of their U.S. credit expenses and inventory carrying costs incurred in the United States. As explained in *Policy Bulletin 98.2, Imputed Credit Expenses and Interest Rates,* February 23, 1998, available at *http://ia.ita.doc.gov,* if a respondent had no short-term debt in U.S. dollars during the POR, it is the Department's practice to "use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made" in order to calculate the U.S. short-term interest percentage rate. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars from Latvia,* 71 FR 7016 (February 10, 2006), and accompanying Issues and Decision Memorandum at Comment 4. In addition, pursuant to section 772(d)(3) of the Act, we made an adjustment to the starting price for CEP profit. We based movement expenses on either surrogate values where the service was purchased from a PRC provider, and actual expenses where service was purchased from a market-economy provider in a market-economy currency. For details regarding our CEP calculations, and for a complete discussion of the calculation of the U.S. price for the Sun Group, *see* "Memorandum To The File, From Melissa Blackledge, Light-Walled Rectangular Pipe and Tube from the People's Republic of China—Preliminary Analysis Memorandum for the Sun Group Co., Ltd.," dated May 10, 2010, at 5 ("Analysis Memo").

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using FOP methodology if the merchandise is exported from an NME

country and the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department uses an FOP methodology because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under its normal methodologies. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part,* 70 FR 39744, 39754 (July 11, 2005), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2003–2004 Administrative Review and Partial Rescission of Review,* 71 FR 2517, 2521 (January 17, 2006). Thus, we calculated NV by adding together the value of the FOPs, general expenses, profit, and packing costs.[3] Specifically, we valued material, labor, energy, and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit surrogate value of the factor. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the U.S. Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). We increased the calculated costs of the FOPs for surrogate general expenses and profit. *See* Analysis Memo at 4.

Selected Surrogate Values

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by the respondent for the POR. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below).

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. We added to each Indian import surrogate value, a surrogate freight cost calculated from the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. *See Sigma Corp.*

For these preliminary results, in accordance with the Department's practice, we used data from the Indian Import Statistics in order to calculate surrogate values for most of the respondent's material inputs. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive. *See, e.g., Pure Magnesium from the People's Republic of China: Preliminary Results of 2007–2008 Antidumping Duty Administrative Review,* 74 FR 27090 (June 8, 2009), unchanged in *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 66089 (December 14, 2009). The record shows that the Indian import statistics represent import data that are contemporaneous with the POR, product-specific, and tax-exclusive.

In calculating surrogate values from import statistics, in accordance with the Department's practice, we disregarded statistics for imports from NME countries and countries deemed to maintain broadly available, non-industry-specific subsidies which may benefit all exporters to all export markets (*i.e.,* Indonesia, South Korea, and Thailand). *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006); and *China Nat'l Machinery Import & Export Corp.* v. *United States,* 293 F. Supp. 2d 1334, 1336 (Ct. Int'l. Trade 2003), aff'd 104 Fed. Appx. 183 (Fed. Cir. 2004). Additionally, we excluded from our calculations imports that were labeled as originating from an unspecified country because we could not determine whether they were from an NME country.

We used the following surrogate values in our preliminary results of review (*see* Surrogate Values Memo for details). We valued raw and packing materials using February 2008 through July 2009 weighted-average Indian import values derived from the *World Trade Atlas* online ("*WTA*"). *See http://www.gtis.com/wta.htm.* The Indian import statistics that we obtained from the *WTA* were published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and are contemporaneous with the POR. *See* Surrogate Values Memo at 1.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication entitled "Electricity Tariff & Duty and Average Rates of Electricity Supply in India", dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. *See* Surrogate Values Memo at 3.

We valued water using the industrial water rates from the Maharashtra Province of India ("MPI") for April, May, and June 2009. *See http://www.midcindia.org/MIDCWebSite/WaterSupply.* We averaged 378 industrial water rates within the MPI; 189 for the "inside industrial areas" usage category; and 189 for the "outside industrial areas" usage category to obtain a single water rate. These averages exclude industrial areas where either no data were reported or a "0" was reported. *See* Surrogate Values Memo at 4.

We valued truck freight using a per-unit average rate calculated from data on the following Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this website contains inland freight truck rates between many large Indian cities. *See* Surrogate Values Memo at 5.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank. *See* Surrogate Values Memo at 5.

[3] We based the values of the FOPs on surrogate values (*see* "Selected Surrogate Values" section below).

We valued international freight expenses using freight quotes from Maersk Sealand, a market-economy shipper. Specifically, we calculated a simple average of quotes for shipments from the PRC to the United States occurring during the POR. *See* Surrogate Values Memo at 5.

For direct labor, indirect labor, and packing labor, consistent with 19 CFR 351.408(c)(3), we valued labor using the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in December 2009, available at *http://ia.ita.doc.gov/wages/index.html.* Since this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the Sun Group. *See* Surrogate Values Memo at 3.

Lastly, we valued selling, general and administrative expenses, factory overhead costs, and profit using the contemporaneous 2007–2008 financial statements of Zenith Birla (India) Limited, an Indian producer of merchandise that is identical to subject merchandise. *See* Surrogate Values Memo at 6.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information with which to value FOPs in the final results of review within 20 days after the date of publication of the preliminary results of review.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates can be accessed at the Web site of Import Administration at *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Review

We preliminarily determine that the following margins exist for the following respondents during the period January 20, 2008, through July 31, 2009:

LIGHT-WALLED RECTANGULAR PIPE AND TUBE FROM THE PRC

Company	Weighted-average margin (percent)
The Sun Group Inc	219.50

PRC-wide rate	Margin (percent)
PRC-Wide Rate	264.64

We will disclose the calculations used in our analysis to parties to these proceedings within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs from interested parties may be submitted not later than 30 days of the date of publication of this notice, pursuant to 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit a list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

Any interested party may request a hearing within 30 days of publication of this notice. Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the briefs.

The Department will issue the final results of these reviews, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions for the company subject to this review directly to CBP 15 days after publication of the final results of these reviews. For assessment purposes for the Sun Group, the Department calculated an importer-specific assessment rate for LWR from the PRC on a per-unit basis. Specifically, the Department divided the total dumping margins (calculated as the difference between normal value and export price) for the importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. The Department will direct CBP to assess an importer-specific assessment rate based on the resulting per-unit (*i.e.,* per-kilogram) rate by the weight in kilograms of the entry of the subject merchandise during the POR. However, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) For the exporter listed above, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* no cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed review; (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 10, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–11603 Filed 5–13–10; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED PROCUREMENT LIST

Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be provided by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: 6/14/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to provide the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide the services to the Government.

2. If approved, the action will result in authorizing small entities to provide the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List to be provided by the nonprofit agencies listed:

Services

Service Type/Location: Basewide Custodial, Naval Air Station, Joint Reserve Base, (Air Force Buildings Only), 301st CONF/LGC—NAS/JRB, Fort Worth, TX.
NPA: On Our Own Services, Inc., Houston, TX.
Contracting Activity: Dept. of the Air Force, FA6675 301 LRS LGC, Naval Air Station JRB, TX.
Service Type/Location: Grounds Maintenance, Naval Air Station, Joint Reserve Base, (Air Force Property Only), 1710 Burke Street, Fort Worth, TX.
NPA: On Our Own Services, Inc., Houston, TX.
Contracting Activity: Dept. of the Air Force, FA6675 301 LRS LGC, Naval Air Station JRB, TX.

Patricia Briscoe,
Deputy Director, Business Operations.

[FR Doc. 2010–11539 Filed 5–13–10; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a product and a service to be provided by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: *Effective Date:* 6/14/2010.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 3/12/2010 (75 FR 11863–11864) and 3/26/2010 (75 FR 14575–14576), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide a product and a service and impact of the additions on the current or most recent contractors, the Committee has determined that the product and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will provide a product and a service to the Government.

2. The action will result in authorizing small entities to provide a product and a service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with a product and a service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and service are added to the Procurement List:

Product

NSN: 5970–00–419–3164—Electrical Tape.
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, NC.
Contracting Activity: Defense Logistics Agency, DES DSCR Contracting Services OFC, Richmond, VA.
Coverage: C-List for 100% of the government requirements for the Defense Supply Center Richmond, Richmond, VA.

Service

Service Type/Location: Package Reclamation Service, Defense Depot Warner Georgia (DDWG), Robins Air Force Base, Warner Robins, GA.
NPA: Georgia Industries for the Blind, Bainbridge, GA.
Contracting Activity: Defense Logistics Agency, Defense Distribution Center, New Cumberland, PA.

Deletions

On 3/5/2010 (75 FR 10223–10224) and 3/12/2010 (75 FR 11863–11864), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

USB Flash Drive, Flip Style

NSN: 7045–01–568–4206—1 GB, no encryption.
NSN: 7045–01–568–4207—1GB, with encryption.

USB Flash Drive with Password Protection

NSN: 7045–01–558–4983—512MB.
NSN: 7045–01–558–4984—USB Flash Drive.

USB Flash Drive with 256-bit AES Encryption

NSN: 7045–01–558–4989—512MB.
NSN: 7045–01–558–4990—USB Flash Drive.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Pen, Retractable, Transparent, Cushion Grip "VISTA"

NSN: 7520–01–484–5268.
NPA: Industries of the Blind, Inc., Greensboro, NC.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. 2010–11540 Filed 5–13–10; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, May 19, 2010; 2 p.m.–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: May 11, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–11728 Filed 5–12–10; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, May 19, 2010, 9 a.m.–12 noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Pending Decisional Matter: Infant Bath Seats—Final Rule.
2. Baby Walkers—Final Rule and Revocation of the Ban of Certain Baby Walkers.

A live Webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated May 11, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–11729 Filed 5–12–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 10–19]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 10–19 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 11, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Transmittal No. 10–19

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAY 06 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-19, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $218 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeanne Farmer

Jeanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 10-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 48 million
Other	$170 million
TOTAL	$218 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: two (2) RQ-7B SHADOW 200 Unmanned Aircraft Systems (UAS), communication equipment to include 4 Ground Control Stations, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical and logistics support services, and other related elements of logistics support.

(iv) Military Department: Army (UEC, UEB, OOB)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 6 May 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia – RQ-7B SHADOW 200 Unmanned Aircraft Systems

The Government of Australia has requested a possible sale of two (2) RQ-7B SHADOW 200 Unmanned Aircraft Systems (UAS), communication equipment to include 4 Ground Control Stations, support equipment, spare and repair parts, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. government and contractor engineering, technical and logistics support services, and other related elements of logistics support. The estimated cost is $218 million.

Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. Australia's efforts in peacekeeping and humanitarian operations in Iraq and in Afghanistan have served U.S. national security interests. This proposed sale is consistent with those objectives and facilitates burden sharing with our allies.

The proposed sale of the RQ-7B SHADOW 200 systems will improve Australia's capability to support ongoing ground operations in Afghanistan. Australia will also use the enhanced capability in future contingency operations encompassing humanitarian assistance, disaster relief, and stability operations in the Asia-Pacific region. Australia will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be AAI Corporation in Hunt Valley, Maryland. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of four contractor representatives to Australia to support delivery of the RQ-7B SHADOW 200 UAS in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The RQ-7B SHADOW Unmanned Aircraft System is a twin-boom pusher layout, similar to the RQ-2 Pioneer and RQ-5 Hunter, has a 13 foot wingspan, weighs 350 lbs and flies at around 14,000ft at 70 knots with around four hours endurance. It can carry a GPS system for autonomous operations. SHADOW 200 is used to locate, recognize and identify targets up to 125km from a brigade tactical operations center. The system recognizes tactical vehicles by day and night from an altitude of 8,000ft and at a slant range of 3.5km.

2. The AN/APX-100 transponder system provides automatic identification of the aircraft. The system receives, decodes, and replies to interrogations on modes 1,2,3/A,4.C and S from all suitable equipped challenging airborne and ground facilities. The receiver operates on 1,300 MHZ and the transmitter section operates on a frequency of 1090MHZ. Because these frequencies are in the UHF band, the operational range is limited to line-of-site. The transponder is classified Secret if MODE IV or MODE S fill is installed in the equipment with a crypto device.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2010–11581 Filed 5–13–10; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Intent To Grant an Exclusive License; FIXMO U.S. INC.

AGENCY: National Security Agency, DoD.

ACTION: Notice.

SUMMARY: The National Security Agency hereby gives notice of its intent to grant FIXMO U.S. INC., a revocable, non-assignable, exclusive, license to practice the following Government-Owned invention as described in U.S. Patent Application Serial No.11/999,050 entitled: "Method of Tamper Detection for Digital Device," which was allowed by the U.S. Patent & Trademark Office on September 4, 2009, in the field of information security.

The above-mentioned invention is assigned to the United States Government as represented by the National Security Agency.

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with any supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the National Security Agency Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541.

FOR FURTHER INFORMATION CONTACT: Marian T. Roche, Director, Technology Transfer Program, 9800 Savage Road, Suite 6541, Fort George G. Meade, MD 20755–6541, telephone (443) 479–9569.

Dated: May 11, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–11582 Filed 5–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2010–OS–0052]

Privacy Act of 1974; System of Records; Correction

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

ACTION: Notice to amend a system of records; correction.

SUMMARY: On April 23, 2010 (75 FR 21250), DoD published a notice announcing its intent to amend an existing Privacy Act system of records. In one instance an incorrect system ID number was cited. This notice corrects that error.

DATES: Effective May 14, 2010.

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

SUPPLEMENTARY INFORMATION: On April 23, 2010, DoD published a notice announcing its intent to amend an existing Privacy Act system of records: The NSA Police Operational Files. Subsequent to the publication of that notice, DoD discovered that the system ID number was missing a zero in one instance (page 21251). This notice corrects that information.

The system ID number on page 21250 is correct.

Correction

In the notice (FR Doc. 2010–9393), published on April 23, 2010 (75 FR 21250) make the following correction. On page 21251, in the second column, line 1, correct the system ID number "GNSA 2" to read "GNSA 20".

Dated: May 11, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–11580 Filed 5–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Capacity Building for Traditionally Underserved Populations—Technical Assistance for American Indian Vocational Rehabilitation Services Projects; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.406.

Dates:

Applications Available: May 14, 2010.

Deadline for Transmittal of Applications: June 28, 2010.

Deadline for Intergovernmental Review: August 27, 2010.

I. Funding Opportunity Description

Purpose of Program: The Capacity Building Program for Traditionally Underserved Populations under section 21(b)(2)(C) of the Rehabilitation Act of 1973, as amended (the Act), (29 U.S.C. 718(b)(2)(C)) provides outreach and technical assistance to minority entities and American Indian Tribes in order to enhance their capacity to carry out activities funded under the Act and to promote their participation in activities funded under the Act.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

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:

Capacity Building Programs for Traditionally Underserved Populations: Technical Assistance for American Indian Vocational Rehabilitation Services (AIVRS) Projects

Program Authority: 29 U.S.C. 718(b)(2)(C); American Recovery and Reinvestment Act of 2009, Pub. L. 111–5 (ARRA).

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.

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 grant.

Estimated Available Funds: $280,000 per budget year, $1,400,000 over a five-year period from the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (ARRA).

Maximum Award: We will reject any application that proposes a budget exceeding $280,000 for a single budget period of 12 months. The Assistant Secretary for OSERS 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:* 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.

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 84.406.

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: May 14, 2010.

Deadline for Transmittal of Applications: June 28, 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.7. *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 27, 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. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) you must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *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, CFDA number 84.406, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that

you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under *For Further Information Contact* (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Tom Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 5147, 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 84.406), 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 84.406), 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*.

The funds awarded through this program were appropriated under the American Recovery and Reinvestment Act of 2009, Public Law 111–5 (ARRA), and are subject to additional accountability and transparency reporting requirements, which are described in section 1512(c) of the ARRA. Grantees receiving funds provided by the ARRA must be able to distinguish these funds from any other funds they receive through this program. Recipients of ARRA funds will be required to submit quarterly reports on the expenditure of these funds no later than 10 days after the end of each calendar quarter through a centralized reporting Web site administered by the Office of Management and Budget (OMB): *http://www.federalreporting.gov*. The information reported at this Web site will be available to the Department, the White House, OMB, and the public on *http://www.Recovery.gov*. Further detail on the reporting requirements under ARRA can be found at *http://www.recovery.gov/?q=node/579*.

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 Capacity Building Program for Traditionally Underserved Populations: Technical Assistance Center for American Indian Vocational Rehabilitation Services (AIVRS) Projects is to establish a training and technical assistance center (the AIVRS TA Center) to support projects funded under the AIVRS program authorized under section 121 of the Act in order to improve the provision of VR services to, and the employment outcomes of, American Indians with disabilities.

In order to measure the success of the AIVRS TA Center in helping AIVRS project grantees to meet this goal, the AIVRS TA Center 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. In addition to providing comprehensive qualitative and quantitative information regarding the number of AIVRS project grantees served, Tribal affiliation, geographic distribution and services provided, the annual performance reports must include data on the following performance measures:

Objective 1: Reduce the number of AIVRS grantees with excessive balances remaining in their grant accounts by 20 percent by the end of the first year of the AIVRS TA Center's grant and by 10 percent each subsequent year through the provision of targeted technical assistance.

Measure 1: Of those AIVRS grantees with excessive balances that received assistance from the AIVRS TA Center, the percent change in the number of AIVRS grantees with excessive balances in their account.

Objective 2: Reduce the number of AIVRS grantees that may be considered high risk, as identified by the Department in 34 CFR 80.12(a), by 20 percent by the end of the first year of the AIVRS TA Center's grant and by 10 percent each subsequent year through the provision of targeted technical assistance.

Measure 2: Of those AIVRS grantees that are considered high risk, as identified by the Department in 34 CFR 80.12(a), that received assistance from the AIVRS TA Center, the percent change in the number of AIVRS grantees that are considered high risk, by the end of the first year of the grant.

Objective 3: Measurably increase the employment outcome rate of the AIVRS projects through the provision of targeted technical assistance.

Measure 3: The percentage of AIVRS projects receiving targeted technical assistance from the AIVRS TA Center that demonstrate a measurable increase in their employment outcome rate.

These three measures constitute the Department's indicators of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these three measures in conceptualizing the design, implementation, and evaluation of their proposed project.

Applicants will also be required to provide a description on how they plan to satisfy this requirement. Successful applicants will be required to collect, and report quantitative data used to calculate the results submitted in their annual performance reports and must be able to demonstrate that the data used is valid and verifiable.

VII. Agency Contact

For Further Information Contact: Tom Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 5147, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7343 or by e-mail: *tom.finch@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: May 11, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11607 Filed 5–13–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Capacity Building Program for Traditionally Underserved Populations—Technical Assistance for American Indian Vocational Rehabilitation Services Projects

Catalog of Federal Domestic Assistance (CFDA) Number: 84.406.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority under the Capacity Building program for Traditionally Underserved Populations to fund a grant that will establish a training and technical assistance center to support the projects funded under the American Indian Vocational Rehabilitation Services (AIVRS) program authorized under section 121 of the Rehabilitation Act of 1973, as amended (Act). The Assistant Secretary may use this priority for competitions in fiscal year 2010 and later years. We take this action to improve the provision of vocational rehabilitation (VR) services to, and the employment outcomes of, American Indians with disabilities through the provision of training and technical assistance to projects funded under the AIVRS program.

DATES: *Effective Dates:* This priority is effective June 14, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Finch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5147, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7343 or by e-mail: *tom.finch@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.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The Capacity Building Program for Traditionally Underserved Populations under section 21(b)(2)(C) of the Act (29 U.S.C. 718(b)(2)(C)) provides outreach and technical assistance to minority entities and American Indian tribes in order to enhance their capacity to carry out activities funded under the Act and to promote their participation in activities funded under the Act.

Program Authority: 29 U.S.C. 718(b)(2)(C).

We published a notice of proposed priority for this program in the **Federal Register** on November 12, 2009 (74 FR 58260). That notice contained background information and our reasons for proposing the particular priority.

Public Comment: In response to our invitation in the notice of proposed priority, six parties submitted comments on the proposed priority.

Generally we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments received follows.

Comment: Six commenters expressed concern regarding the adequacy of resources proposed to support the AIVRS technical assistance center (the AIVRS TA Center). Specifically, these commenters noted that the amount of funding proposed for the AIVRS TA Center is significantly less than the funding provided for the Regional Technical Assistance and Continuing Education (TACE) centers. They also questioned whether it was sufficient to fund a single center to serve 79 AIVRS grantees located in 25 States. In addition to concerns about the adequacy of funding, these commenters emphasized that the AIVRS TA Center will face geographic, cultural, linguistic, and resource challenges.

Discussion: In the background discussion of the proposed AIVRS TA Center priority, the Department indicated that it plans to use American Recovery and Reinvestment Act (ARRA) funds in the amount of $1.4 million for one grantee over a five-year period, approximately $280,000 per year. We believe that this is a significant investment that will help AIVRS projects improve outcomes for American Indians with disabilities.

We do not believe it is appropriate to compare the funding for the AIVRS TA Center with the funding provided to the TACE centers, because the scope of the services to be provided by the AIVRS TA Center is much narrower than the scope of services provided by the 10 TACE centers. The AIVRS TA Center is designed to focus solely on AIVRS grantees' specialized needs for assistance with program and financial management. Specifically, the AIVRS TA Center will provide training to AIVRS grantees on: (1) The principles, requirements, and practices that serve as the foundation of the VR process and service provision; (2) the application of Federal rules, regulations, and guidance applicable to the AIVRS program; and (3) appropriate financial management practices, including expending grant funds in a timely manner. In contrast, the purpose of the TACE centers is to provide a broad integrated sequence of training activities that focuses on meeting the recurring and common training needs of rehabilitation personnel in a Federal region or other large multi-State geographical area.

For this reason, we believe it is not appropriate to compare the resources used to support the TACE centers with the resources the Department expects to use to support the AIVRS TA Center.

Moreover, it is important to note that the work of the AIVRS TA Center will complement the services provided by the TACE centers, because AIVRS grantees are among the many State VR agency partners eligible to receive services from the TACE centers. Therefore, in addition to the specialized program and financial management assistance AIVRS grantees can receive through the AIVRS TA Center, they may be eligible to request technical assistance and continuing education services from the regional TACE centers.

We also believe that the resources available to the AIVRS TA Center will be sufficient for it to provide its services to AIVRS grantees, despite the number of grantees and the geographic, cultural, and linguistic diversity of the projects funded under the AIVRS program. We anticipate that the AIVRS TA Center will provide training and technical assistance that is targeted to AIVRS grantees with a demonstrated need for training that focuses on the areas identified in the priority, rather than broadly disseminating training on generally applicable principles to all AIVRS grantees. Furthermore, the Department plans to use the cooperative agreement process to ensure that the AIVRS TA Center provides its training and technical assistance in a culturally appropriate manner to the AIVRS grantees its serves.

Changes: None.

Comment: Six commenters noted that training and technical assistance to be provided by the AIVRS TA Center must be delivered in a culturally appropriate manner to tribal VR directors and staff. Specifically, the commenters emphasized the need for the AIVRS TA Center to be under the control and direction of an organization that appreciates the complexity and diversity of Native American culture and that has a long-standing record of dealing with culturally diverse populations.

Discussion: The Department recognizes the unique nature of the AIVRS programs. It is precisely for this reason that the Department is using the available ARRA funds to establish an AIVRS TA Center, which will focus solely on the technical assistance needs of AIVRS grantees. We agree that it is essential that the AIVRS TA Center deliver its training and technical assistance services in a culturally appropriate manner, and, therefore, we have added such a requirement to the priority. Moreover, the Department intends to award this grant as a cooperative agreement to ensure that there is substantial involvement, communication, and collaboration between the Department and the grantee in carrying out the activities of the center. Through this involvement, communication, and collaboration, we intend to ensure that the AIVRS TA Center fulfills the priority's requirement of providing training and technical assistance to AIVRS personnel in a culturally appropriate manner.

Changes: The Department has added language to the priority that requires the AIVRS TA Center, in coordination with the Department, to provide the listed training and technical assistance services in a culturally appropriate manner.

Comment: Six commenters requested that the final priority allow the AIVRS TA Center to use its funds to support formal academic preparation (at the undergraduate and graduate levels) of existing personnel employed by AIVRS grantees.

Discussion: The Department already sponsors both Long-Term and Short-Term VR Training programs to prepare students and professional staff interested in careers in VR. Through these programs, AIVRS staff are eligible to apply for financial support available to individuals pursuing undergraduate or graduate degrees in a variety of VR specialties. As noted earlier in this notice, AIVRS staff may also receive training from the regional TACE centers, which are designed to serve State VR agencies and their partners by providing training activities that focus on meeting the recurrent and common training needs of employed rehabilitation personnel.

Changes: None.

Comment: Six commenters stated that there should be linkages between the existing TACE centers and the AIVRS TA Center in order to maximize available funding for technical assistance for AIVRS grantees and State VR agencies.

Discussion: RSA has identified certain areas where AIVRS grantees require more intensive technical assistance and training than can be provided by the TACE centers. These areas include but are not limited to: understanding the principles, requirements, and practices that serve as the foundation of the VR process and services provision; understanding and applying Federal rules, regulations, and guidance applicable to the AIVRS program; and implementing appropriate financial management practices, including expending grant funds in a timely manner. While AIVRS grantees are included among the State VR agency partners eligible for the services provided by the TACE centers, the primary focus of the TACE centers is to improve the performance and compliance of State VR agencies. However, the TACE centers may be able to provide certain training and technical assistance to AIVRS grantees that would be beyond the narrow focus of the AIVRS TA Center, but within the scope of services the TACE centers provide. In order to ensure that the services of the AIVRS TA Center complement, and do not unnecessarily duplicate, the services potentially available to the AIVRS grantees from the TACE centers, the Department has added a requirement to the priority to address this concern.

Changes: The Department has added, as one of the requirements of the AIVRS TA Center under the priority, that the AIVRS TA Center must collaborate with the regional TACE centers to ensure that the services provided by the AIVRS TA Center and the TACE centers complement, and do not unnecessarily duplicate, each other.

Final Priority:

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority to support a technical assistance center under section 21(b)(2)(C) of the Rehabilitation Act of 1973, as amended (the Act), to improve project management and the delivery of vocational rehabilitation (VR) services to American Indians with disabilities under the American Indian Vocational Rehabilitation Services (AIVRS) program (the AIVRS TA Center). The Department intends to award this grant as a cooperative agreement to ensure that there is substantial involvement (*i.e.,* significant communication and collaboration) between the Rehabilitation Services Administration (RSA) and the grantee in carrying out the activities of the center. (34 CFR 75.200(b)(4))

In coordination with the Department, the AIVRS TA Center must, in a culturally appropriate manner—

(1) Provide training and technical assistance to AIVRS grantees to improve their understanding of the principles, requirements, and practices that serve as the foundation of the VR process and VR service provision (*e.g.,* the determination of eligibility, the development of individualized plans for employment, and the requirement to provide informed consumer choice);

(2) Provide comprehensive training to AIVRS staff on the regulatory requirements and grants management practices that are necessary for the proper administration of AIVRS projects including, but not limited to, requirements found in 34 CFR parts 369 and 371 and the Education Department General Administrative Regulations (EDGAR);

(3) Provide comprehensive training on requirements and practices associated with fiscal management found in EDGAR, the cost principles of the Office of Management and Budget (OMB) Circular A–87, and general fiscal management practices;

(4) Provide guidance on the need to utilize community resources and build relationships with State VR agencies in order to expand the range of the employment choices available for consumers and of the financial

resources projects can leverage in order to provide the services consumers need;

(5) Provide training on how the AIVRS projects can improve inter- and intra-tribal communication regarding confidentiality and the development of cooperative agreements with State VR agencies and Federal entities (*e.g.,* the Department of the Interior and the Bureau of Indian Affairs);

(6) Provide technical assistance on methods associated with measuring project performance, including the development of goals, performance measures, and efficiency models, and on the reporting of performance data;

(7) Identify other technical assistance and training needs of the AIVRS projects;

(8) Provide technical assistance to AIVRS project directors that will allow them to develop the skills and capacity necessary to train AIVRS project staff themselves and build an infrastructure that sustains training and technical assistance for these projects; and

(9) Collaborate with the regional TACE centers to ensure that the services provided by the AIVRS TA Center and the TACE centers complement, and do not unnecessarily duplicate, each other.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed priority.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document 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: May 11, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11606 Filed 5–13–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—International Exchange of Knowledge and Experts in Disability and Rehabilitation Research

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–6.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for a DRRP.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for a DRRP. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 14, 2010.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, Potomac Center Plaza, Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *marlene.spencer@ed.gov.* You must include "Proposed Priority for a DRRP on International Exchange of Knowledge and Experts" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@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.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for DRRP competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 5133, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Program Authority: 29 U.S.C. 762(g) and 764(b)(6).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority:

This notice contains one proposed priority. *International Exchange of Knowledge and Experts in Disability and Rehabilitation Research*.

Background

The Rehabilitation Act provides that NIDRR may award grants to conduct a program for international rehabilitation research, demonstration, and training (29 U.S.C. 764(b)(6)). The purposes of NIDRR's international disability and rehabilitation research program are to—

1. Develop new knowledge and methods in the rehabilitation of individuals with disabilities in the United States;
2. Cooperate with and assist in developing and sharing information found useful in other nations in the rehabilitation of individuals with disabilities; and
3. Initiate a program to exchange experts and technical assistance in the field of rehabilitation of individuals with disabilities with other nations as a means of increasing the levels of skill of rehabilitation personnel.

The international program is a component of NIDRR's overall knowledge translation (KT) effort. NIDRR adopted the conceptual framework of KT to help guide its efforts to promote the effective use of high-quality findings from disability and rehabilitation research and development (R&D). In this regard, KT refers to a multidimensional, active process of ensuring that new knowledge and products gained via R&D will be used to improve the lives of individuals with disabilities and to promote their full participation in society. KT includes the assessment of research findings to ensure that information to be disseminated is based on scientifically rigorous research and is relevant to key stakeholders (*e.g.,* rehabilitation service providers, educators, clinicians, and individuals with disabilities and their families). We have incorporated these core elements into this proposed priority.

For more than two decades, NIDRR has promoted the sharing of information and products generated by disability and rehabilitation R&D in the United States (U.S.) and other countries. For example, NIDRR has sponsored the development of the Database of International Rehabilitation Research at the Center for International Rehabilitation Research Information and Exchange (CIRRIE, 2009). This database includes almost 90,000 citations from international rehabilitation research projects conducted outside of the U.S. (CIRRIE, 2009). It has been used as a source of data for systematic reviews on diverse disability and rehabilitation topics, such as virtual reality training applications (Erren-Wolters, van Dijk, de Kort, Ijzerman, & Jannink, 2007) and best practices for treating individuals with hip fracture (Beaupre, Jones, Saunders, Johnston, Buckingham, & Majumdar, 2005).

NIDRR funding of international R&D activities also has led to new methods for providing access to prosthetics (Wu, Casanova, & Smith, 2004) and wheelchairs (Armstrong, Reisinger, & Smith, 2007) for individuals with disabilities in developing countries. Additionally, NIDRR has sponsored the exchange of researchers between the U.S. and other countries to share international perspectives on the experience of individuals with disabilities and on the research approaches for creating knowledge to promote the independence and well being of individuals with disabilities (*see* CIRRIE, 2009).

The knowledge base generated by disability and rehabilitation researchers is growing in the U.S. and in other countries. New and improved methods for the efficient international exchange of this information and expertise will help shape future disability and rehabilitation R&D and will facilitate research-based rehabilitation practice in the U.S. and in other countries.

References

Armstrong, W., Reisinger, K., & Smith, W.

(2007). Evaluation of CIR-whirlwind wheelchair and service provision in Afghanistan. Disability and Rehabilitation, 29(11–12), 935–948.

Beaupre, L., Jones, C., Saunders, L., Johnston, D., Buckingham, J., & Majumdar, S. (2005). Best practices for elderly hip fracture patients: A systematic overview of the evidence. Journal of General Internal Medicine, 20(11), 1019–1025.

CIRRIE. (2009). Center for International Rehabilitation Research Information and Exchange. See *http://cirrie.buffalo.edu/index.php*.

Erron-Wolters, C., Van Dijk, H., de Kort, A., Ijzerman, M., & Jannink, M. (2007). Virtual reality for mobility devices: Training applications and clinical results: A review. International Journal of Rehabilitation Research, 30, 91–96.

Wu, Y., Casanova, H., Smith, W. (2004). CIR casting system: A new approach for making transtibial sockets. Technical Brief, from REHABDATA database. See *http://www.naric.com/research/record.cfm?search=2&rec=103139*.

Proposed Priority: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability and Rehabilitation Research Project (DRRP) to serve as a Center for International Exchange of Knowledge and Experts in Disability and Rehabilitation Research (Center). This Center must promote improved education, employment, health, and community living outcomes for individuals with disabilities by developing and implementing methods for the international exchange of knowledge generated by disability and rehabilitation research and development (R&D). Under this priority, the Center must contribute to the following outcomes:

(a) A well-maintained, publicly accessible, and searchable database containing citations of publications from disability and rehabilitation R&D that was conducted in other countries. The Center must contribute to this outcome by assuming the operation of an existing database presently operated by the Center for International Rehabilitation Research Exchange (CIRRIE). The Center must establish sound strategies and approaches to ensure that the database is comprehensive, easy to use, and up-to-date at all times.

(b) Improved methods for the identification and domestic dissemination of findings from R&D generated by disability and rehabilitation R&D personnel in other countries. The Center must contribute to this outcome by developing or identifying, evaluating, and applying methods for the identification of research findings to be disseminated in the U.S. The application of these methods must lead to information on the methodological rigor with which the R&D was conducted, as well as the relevance of findings to U.S. stakeholders (*e.g.,* researchers, rehabilitation service providers, educators, clinicians, and individuals with disabilities and their families). The Center also must identify or develop, and then evaluate and implement, sustainable methods for domestic dissemination of relevant findings produced by disability and rehabilitation R&D personnel from other countries. Given the breadth of disability and rehabilitation R&D conducted in countries outside of the U.S. and the large number of countries or global regions that produce disability and rehabilitation R&D, applicants must propose and justify the specific substantive area of disability and rehabilitation research upon which they will focus. Applicants must also propose and justify the countries or global regions they will target as the sources of disability and rehabilitation R&D.

(c) Improved cross-cultural and cross-national awareness and expertise among personnel from NIDRR-funded grants. The Center must contribute to this outcome by administering an international exchange of R&D personnel from NIDRR-funded projects and disability and rehabilitation R&D personnel from other countries. The Center must establish criteria for reviewing and selecting personnel to participate in the exchange. These criteria must emphasize the extent to which proposed exchanges will promote cross-cultural and cross-national awareness and expertise among NIDRR grantees and contribute to the quality and relevance of disability and rehabilitation research conducted in the U.S.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of Costs and Benefits: The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through research and development. Another benefit of this proposed priority is that the establishment of a new DRRP will improve the lives of individuals with disabilities. The new DRRP will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to perform regular activities in the community.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document 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: May 11, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11618 Filed 5–13–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)—Effective Vocational Rehabilitation (VR) Service Delivery Practices

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–8

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for an RRTC on Effective Vocational Rehabilitation (VR) Service Delivery Practices. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 14, 2010.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *marlene.spencer@ed.gov.* You must include the term "Proposed Priority for a Center on Effective Vocational Rehabilitation Service Delivery Practices" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by e-mail: *marlene.spencer@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.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for RRTC competitions in FY 2010 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in Room 5133, 550 12th Street, SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 701 *et seq.*).

RRTC Program

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the *General*

Rehabilitation Research and Training Centers (RRTC) Requirements priority that it published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Applicants for RRTC grants must also demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority:

This notice contains one proposed priority.

Effective Vocational Rehabilitation (VR) Service Delivery Practices

Background:

The Rehabilitation Act calls upon the Federal Government to play a leadership role in promoting the employment of individuals with disabilities, especially individuals with significant disabilities, in part by assisting States and service providers in fulfilling the aspirations of individuals with disabilities for meaningful and gainful employment and independent living (29 U.S.C. 701(b)(2)). Thirty-seven years after the Rehabilitation Act was enacted, VR service practitioners are providing services to individuals with the most significant disabilities largely without the benefit of research documenting the effectiveness of their service models or of specific VR practices (Pruett, Swett, Chan, Rosenthal, & Lee, 2008).

According to the Rehabilitation Services Administration's (RSA's) most recent data, 56 percent of all individuals who exited the VR program after receiving services under an individualized plan for employment achieved an employment outcome (RSA's Quarterly Cumulative Caseload Report (RSA–113)). In the regulations for the Department's State VR program, an employment outcome is defined as entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in 34 CFR 361.5(b)(11), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice (*see* 34 CFR 361.5(b)(16)).

However, there is tremendous variation in the employment outcomes and the earnings levels among VR customers. More knowledge about what accounts for the variation in outcomes among VR subpopulations is needed in order to improve employment outcomes, especially for those subpopulations with the poorest outcomes. RSA's public access database (the RSA–911 Case Service Report) provides detailed information on over 600,000 VR case closures per year and is a good source of information about outcomes among VR customers.

In addition, while research funded by NIDRR and others has led to improved knowledge about employment service systems, rehabilitation technology, VR-related translational research, and interventions for disability-specific populations, the level of evidence for promising practices is not yet compelling, leaving VR professionals with few evidence-based practices (Pruett, Swett, Chan, Rosenthal, & Lee, 2008; Casper & Carloni, 2007; Dew & Alan, 2005). Research is needed to identify promising VR practices and to determine the effectiveness of those practices. Research also is needed to develop, evaluate, and advance innovative interventions that will improve employment outcomes for VR customers.

References

Casper, E.S. & Carloni, C. (2007). Assessing the underutilization of supported employment services. Psychiatric Rehabilitation Journal, 30(3), 182–188.

Dew, D.W. & Alan, G.M. (Eds.). (2005). Innovative methods for providing VR services to individuals with psychiatric disabilities (Institute on Rehabilitation Issues Monograph No. 30). Washington, DC: The George Washington University, Center for Rehabilitation Counseling Research and Education.

Pruett, S., Swett, E., Chan, F., Rosenthal., D., & Lee, G. (2008). Empirical Evidence Supporting the Effectiveness of Vocational Rehabilitation. Journal of Rehabilitation, 74(1), 56–63.

Rehabilitation Act of 1973, as amended. 29 U.S.C. 701 et seq.

U.S. Department of Education. Rehabilitation Services Administration. (2009). Rehabilitation Services Administration's Quarterly Cumulative Caseload Report (RSA–113).

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Rehabilitation Research and Training Center (RRTC) on Effective Vocational Rehabilitation (VR) Service Delivery Practices. This RRTC must conduct research that contributes to new knowledge of VR service delivery practices that produce high-quality employment outcomes for VR customers. This RRTC will contribute to improved employment outcomes by generating new knowledge about effective practices that can be used by State VR agencies in serving their customers. This RRTC must focus on the delivery of VR services that are authorized in the Rehabilitation Act of 1973, as amended (Rehabilitation Act) (29 U.S.C. 701 *et seq.*). NIDRR will fund this research effort as a cooperative agreement in order to ensure close interaction between the grantee and staff from NIDRR and the Rehabilitation Services Administration (RSA).

Under this priority, the RRTC must contribute to the following outcomes:

(a) Increased knowledge of the variations among State VR agencies in achieving quality employment outcomes, including but not limited to wages and hours of work, for subpopulations of individuals with significant disabilities, as defined in the Rehabilitation Act (29 U.S.C. 705(21)(A) and (D)), who have lower than average employment outcomes rates, wages, and hours of work. The RRTC must contribute to this outcome by analyzing relevant RSA datasets that provide information on the outcomes of these subpopulations of individuals with significant disabilities and by systematically gathering input from VR counselors and administrators, RSA staff, VR customers, and community rehabilitation programs. This analysis will help to identify promising practices by identifying agencies that demonstrate statistically better than average employment outcome rates and quality employment outcomes for these subpopulations of VR customers. The

RRTC must complete this work within six months of award of the cooperative agreement.

(b) Improved knowledge of specific VR service delivery practices that have strong potential for improving employment outcomes for the subpopulations of VR customers identified in paragraph (a) of this priority. The RRTC must contribute to this outcome by conducting in-depth case studies of VR agencies where data demonstrate quality employment outcomes that are statistically better than average for the subpopulations of VR customers identified in paragraph (a) above compared to VR agencies that demonstrate average employment outcomes for the same subpopulations. NIDRR and RSA staff must approve the topics for the case studies and the agencies that will serve as sites for these studies. The applicant must budget to conduct two to three in-depth case studies. These case studies must identify the elements of the promising practices, the barriers to and facilitators of the implementation of the practices, and the outcomes of the practices. The RRTC must complete this work by the end of year two of the cooperative agreement.

(c) New knowledge of VR service delivery practices that are effective in producing high-quality employment outcomes for VR customers, especially those identified in paragraph (a) of this priority. The RRTC must contribute to this outcome by conducting research that rigorously tests the service delivery practices identified in paragraph (b) of this priority. The RRTC must test at least one intervention in each of the sites that are the subjects of the case studies.

(d) Enhanced likelihood of adoption of service delivery practices that demonstrate effectiveness as described in paragraph (c) of this priority. The RRTC must contribute to this outcome by developing implementation strategies and tools that will facilitate introduction and use of newly identified effective practices in other VR settings.

In addition, through coordination with the NIDRR Project Officer, this RRTC must—

- Collaborate with existing RSA grantees, including Regional Technical Assistance and Continuing Education (TACE) Centers, RSA's Technical Assistance Network, and RSA's National Technical Assistance Coordinator to disseminate new knowledge to key stakeholders; and
- Collaborate with existing NIDRR grantees, including the RRTC on VR, the Center on Effective Delivery of Rehabilitation Technology by VR Agencies, and the Research and Technical Assistance Center on VR Program Management.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority:

We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register.**

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this proposed regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through research and development.

Another benefit of this proposed priority is that the establishment of a new RRTC will improve the lives of individuals with disabilities. The new RRTC will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to obtain, retain, and advance in employment through VR services.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request 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: May 11, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11616 Filed 5–13–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–13–000]

Credit Reforms in Organized Wholesale Electric Markets; Notice of Agenda for Technical Conference

May 5, 2010.

As announced in the Notice of Technical Conference issued on April 15, 2010, Commission staff will hold a technical conference on May 11, 2010. The purpose of this conference is to discuss the proposal in the Credit Reforms in Organized Wholesale Electric Markets Notice of Proposed Rulemaking[1] regarding whether Independent System Operator (ISO)/Regional Transmission Operators (RTOs) should adopt certain tariff revisions to clarify their status as a party to each transaction so as to eliminate ambiguity regarding their ability to "set-off" market obligations and whether this proposal will have additional ramifications. The conference will be held from 9 a.m. to 12:30 p.m. (EDT), in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons are invited to attend, and registration is not required.

The agenda is attached. There will be two panels. The first panel will discuss the issue from the perspective of the ISO/RTO as market administrator but will also include the perspective of regulatory oversight in related markets. The second panel will discuss the issue from both a market participant perspective and a legal perspective.

As previously announced, a free webcast of this event will be available. Anyone with internet access who desires to view this event can do so by navigating *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the meeting by a phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call 703–993–3100.

This conference will be transcribed. Transcripts of the meeting will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a fax to 202–208–2106 with required accommodations.

For more information, please contact Sarah McKinley, 202–502–8368, *sarah.mckinley@ferc.gov,* for logistical issues, and Scott Miller, 202–502–8456, *scott.miller@ferc.gov,* or Christina Hayes 202–502–6194, *christina.hayes@ferc.gov,* for other concerns.

Kimberly D. Bose,

Secretary.

Notice of Proposed Rulemaking on Credit Reforms in Organized Electric Markets May 11, 2010 Commission Meeting Room

Agenda

9–9:05 a.m.: Welcome and Administrative Details by Commission Staff.

9:05–10:35 a.m.: Panel I Market Administrator Perspective.

Panelists

Vincent Duane, General Counsel and Vice President, PJM Interconnection, L.L.C.;

Michael Holstein, Chief Financial Officer, Midwest Independent Transmission System Operator, Inc.;

Daniel J. Shonkwiler, Senior Counsel, California Independent System Operator Corporation;

Ananda K. Radhakrishnan, Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission.

10:35–11 a.m.: Break.

11–12:30 p.m.: Panel II Market and Legal Perspectives.

Panelists

Alex Catto, Kirkland & Ellis LLP, on behalf of the Committee of Chief Risk Officers;

Harold S. Novikoff, Wachtell, Lipton, Rosen & Katz;

Stephen J. Dutton, Barnes & Thornburg;

Todd Brickhouse, Vice President—Treasurer, Old Dominion Electric Cooperative.

[FR Doc. 2010–11534 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *Credit Reforms in Organized Wholesale Electric Markets,* 130 FERC ¶ 61,055 (2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2615–037]

FPL Energy Maine Hydro LLC, Madison Paper Industries, and Merimil Limited Partnership; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

May 6, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2615–037.

c. *Date Filed:* March 31, 2010.

d. *Applicant:* FPL Energy Maine Hydro LLC, Madison Paper Industries, and Merimil Limited Partnership.

e. *Name of Project:* Brassua Hydroelectric Project.

f. *Location:* The existing project is located on the Moose River in Somerset County, Maine. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Frank H. Dunlap, FPL Energy Maine Hydro LLC, 26 Katherine Drive, Hallowell, Maine 04347; Telephone (207) 629–1817.

i. *FERC Contact:* John Costello (202) 502–6119 or *john.costello@ferc.gov*

j. The deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, recommendations,

preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link. For a simpler method of submitting text-only comments, click on "Quick Comment."

k. This application has been accepted for filing and is ready for environmental analysis.

l. The existing Brassua Project includes: (1) A 1,789-foot-long dam consisting of: (a) An earth dike 410 feet long with 100 feet of concrete core wall; (b) a concrete-faced earth dike 342.5 feet long; (c) a concrete Ambursen dam 284 feet long with a height of 52 feet above the stream bed; (d) a 18.5-foot fishway (inactive); and (e) a 734-foot earth dike with a concrete core wall; (2) a 9,700-acre reservoir (known as Brassua Lake) with a normal pool elevation 1,074.0 feet (U.S.G.S. datum) and maximum drawdown of 31 feet, extending 7.75 miles upstream; (3) a reinforced-concrete intake structure; (4) a 110-foot-long, 13-foot square penstock; (5) a 32-foot-high, 32-foot-wide and 60-foot-long powerhouse; (6) a 4.18–MW generating unit; (7) a 40-foot-wide, 15-foot-deep and 60-foot-long tailrace; (8) a substation; (9) a 0.5-mile-long, 34.5-kV (kilovolt) transmission line; and (10) appurtenant facilities. The earth sections of the dam are topped with 33.5-inch-high wave barriers (Jersey barriers).

The Brassua Project is operated as a seasonal storage facility where water releases are determined by downstream demands for hydroelectric generation in the Kennebec River and for flood control. Reservoir fluctuations follow an annual cycle under which reservoir levels are reduced during the fall and winter to provide additional flows downstream as well as to make storage volume available for spring snow melt and runoff. After the spring refill, flow is released for the Brassua reservoir to provide summer minimum instream flows as well as water for industrial and municipal uses. Specific project operation requirements are discussed below.

The current license allows the licensees to operate the Brassua Project in peaking mode from July 1st through August 31st and from November 6th through the start of spring freshnet (normally mid-May) of each year. The licensee is required to cease peaking operation and resume normal operation in which flows through the project are maintained constant on a daily basis from spring freshnet through June 30th and from September 1st through November 5th of each year.

The current license requires the licensee to release the following minimum flows and maintain the following target water levels to protect fish and aquatic habitat and to benefit the reproductive efforts of the landlocked salmon population in the Moose River. All Minimum flow releases are maintained through the turbine or deep gates and discharged in the lower Moose River below the dam.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of interventions, comments, recommendations, preliminary terms and conditions, and fishway prescriptions	July 5, 2010.
Commission issues EA	December 17, 2010.
Filing of comments on EA	January 16, 2011.
Filing of modified terms and conditions	March 17, 2011.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in § 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3)

evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11526 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10482–014, 10481–064, and 9690–106]

AER NY–Gen, LLC; Eagle Creek Hydro Power, LLC; Eagle Creek Water Resources, LLC; Eagle Creek Land Resources, LLC; Notice of Application for Transfer of Licenses, and Soliciting Comments and Motions To Intervene

May 7, 2010.

On April 30, 2010, AER NY–Gen, LLC (transferor) and Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC (transferees) filed an application for transfer of licenses for the Swinging Bridge Project No. 10482, the Mongaup Falls Project No. 10481, and the Rio Project No. 9690, located on the Mongaup River in Sullivan and Orange Counties, New York.

Applicants seek Commission approval to transfer the licenses for the three above projects from the transferor to the transferee.

Applicant Contact: For transferor: Mr. Joseph Klimaszewski, AER NY–Gen, LLC, 613 Plank Road, Forestburgh, New York, 12777; phone (845) 856–3920. For the transferee: Mr. Paul Ho, Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC, 400 Frank W. Burr Boulevard, Suite 37, Teaneck, NJ 07666; phone (201) 287–4474.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii)(2008) and the instructions on the Commission's website under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–9690–106, P–10481–064, P–10482–014) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11531 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–361–000]

Tennessee Gas Pipeline Company; Notice of Application

May 6, 2010.

Take notice that on April 30, 2010, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP10–361–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon an inactive supply pipeline located in federal waters in the West Cameron area, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by calling (713) 420–5751 (telephone) or (713) 420–1601 (fax), *susan.halbach@elpaso.com*, Debbie Kalisek, Regulatory Analyst, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by calling (713) 420–3292 (telephone) or (713) 420–1605 (fax), *debbie.kalisek@elpaso.com*, or to Thomas G. Joyce, Manager, Certificates, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, or by calling (713) 420–3299 (telephone) or (713) 420–1605 (fax), *tom.joyce@elpaso.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to

the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11520 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–255–000]

Federal Energy Regulatory Commission; Texas Gas Transmission, LLC; Notice of Application

May 6, 2010.

Take notice that on April 29, 2010, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed with the Federal Energy Regulatory Commission an application under section 7 of the Natural Gas Act to amend the certificates associated with eight of its storage fields so they are consistent with each field's current operating characteristics, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In its application, Texas Gas states it has conducted a comprehensive review of its storage operations and determined that eight of its fields' operating characteristics differ from the operating parameters approved by the Commission. Texas Gas states that these amendments will have no effect on Texas Gas' existing agreements, services, rates, or FERC Gas Tariff. Texas Gas states that these amendments will have no environmental effects, as no new construction is required. The result of these amendments will be to allow Texas Gas to provide additional storage capacity and peak day design deliverability to the market consistent with the demonstrated capabilities of each storage field.

Any questions regarding this application should be directed to J. Kyle Stephens, Vice President, Regulatory Affairs, Texas Gas Transmission, LLC, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, or by e-mail to *kyle.stephens@bwpmlp.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11519 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–16–001]

Acacia Natural Gas Corporation; Notice of Baseline Filing

May 7, 2010.

Take notice that on May 5, 2010, Acacia Natural Gas Corporation (Acacia) submitted a correction to its April 27, 2010, baseline filing of its Statement of Operating Conditions for the interruptible transportation services provided under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, May 17, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11532 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–20–000]

Regency Intrastate Gas LP; Notice of Baseline Filing

May 7, 2010.

Take notice that on April 30, 2010, Regency Intrastate Gas LP (Regency) submitted its baseline filing of its Statement of Operating Conditions for transportation services provided under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday, May 17, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11529 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 7, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–65–000.

Applicants: Consolidated Edison Company of New York,

Description: Section 203 Application of Consolidated Edison Company of New York, Inc.

Filed Date: 05/07/2010.

Accession Number: 20100507–5075.

Comment Date: 5 p.m. Eastern Time on Friday, May 28, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1203–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits revised tariff sheets of the PJM Open Access Transmission Tariff.

Filed Date: 05/07/2010.

Accession Number: 20100507–0212.

Comment Date: 5 p.m. Eastern Time on Friday, May 28, 2010.

Docket Numbers: ER10–1204–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits the executed interconnection service agreement.

Filed Date: 05/07/2010.

Accession Number: 20100507–0213.

Comment Date: 5 p.m. Eastern Time on Friday, May 28, 2010.

Docket Numbers: ER10–1205–000.

Applicants: FirstEnergy Generation Mansfield Unit 1.

Description: FirstEnergy Generation Mansfield Unit 1 Corp. submits tariff

filing per 35.12: Mansfield 1 BBR Power Sales Tariff to be effective 5/6/2010.

Filed Date: 05/07/2010.

Accession Number: 20100507–5056.

Comment Date: 5 p.m. Eastern Time on Friday, May 28, 2010.

Docket Numbers: ER10–1206–000.

Applicants: Koch Supply & Trading, LP.

Description: Koch Supply & Trading, LP submits tariff filing per 35.12: Baseline Tariff Filing to be effective 5/7/2010.

Filed Date: 05/07/2010.

Accession Number: 20100507–5089.

Comment Date: 5 p.m. Eastern Time on Friday, May 28, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–11536 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

May 6, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER98–1643–015; ER98–1643–014.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits updated market power study.

Filed Date: 04/23/2010.

Accession Number: 20100427–0013.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 22, 2010.

Docket Numbers: ER98–1734–020; ER00–3251–023; ER01–1147–011; ER01–1919–017; ER99–2404–016; ER01–513–029.

Applicants: Commonwealth Edison Company; Exelon Generation Company; PECO Energy Company; Exelon Energy Company; Exelon New England Power Marketing, LP; Exelon Framingham, LLC; Exelon New Boston, LLC; Exelon West Medway, LLC; Exelon Wyman, LLC.

Description: Amended Quarterly Report of Exelon.

Filed Date: 04/30/2010.

Accession Number: 20100430–5291.

Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: ER05–1232–019; ER09–335–005; ER07–1117–010.

Applicants: J.P. Morgan Ventures Energy Corporation, BE KJ LLC.

Description: J.P. Morgan Ventures Energy Corporation and BE KJ LLC's Supplement to Updated Market Power Analysis and Order Nos. 697 and 697–A Compliance Filing.

Filed Date: 05/05/2010.

Accession Number: 20100505–5114.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER06–560–008.

Applicants: Credit Suisse Energy LLC.

Description: Revised Appendix B of Credit Suisse Energy LLC.

Filed Date: 05/05/2010.

Accession Number: 20100505–5113.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER08–1226–005; ER08–1225–007; ER08–1111–006.

Applicants: Cloud County Wind Farm, LLC, Pioneer Prairie Wind Farm I, LLC, Arlington Wind Power Project LLC.

Description: Supplement to Notice of Change in Status of Arlington Wind Power Project LLC, *et. al.*

Filed Date: 05/04/2010.

Accession Number: 20100504–5154.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER09–393–002.

Applicants: West Oaks Energy, LLC.

Description: West Oaks Energy, LLC submits Notice of Non-Material Change in Status in compliance with Commission's reporting requirements adopted in Order 652.

Filed Date: 05/04/2010.

Accession Number: 20100504–0218.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 25, 2010.

Docket Numbers: ER10–622–001.

Applicants: Macquarie Energy LLC.

Description: Notice of Non-Material Change in Status of Macquarie Energy LLC.

Filed Date: 04/30/2010.

Accession Number: 20100430–5510.

Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Docket Numbers: ER10–1077–001.

Applicants: Otay Mesa Energy Center, LLC.

Description: Otay Acquisition Company, LLC submits an amendment to its notice of succession to Otay Mesa Energy Center, LLC, which was filed 4/22/2010.

Filed Date: 04/27/2010.

Accession Number: 20100428–0202.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 18, 2010.

Docket Numbers: ER10–1179–000.

Applicants: American Electric Power Service Corporation.

Description: Request of American Electric Power Service Corporation to Update Depreciation Expense Inputs in Formula Rate.

Filed Date: 05/03/2010.

Accession Number: 20100503–5155.

Comment Date: 5 p.m. Eastern Time on Monday, May 24, 2010.

Docket Numbers: ER10–1185–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc submits redacted copies of informational filing of qualification in

the Forward Capacity Market for the 2013–2014 Capacity Commitment Period.

Filed Date: 05/04/2010.

Accession Number: 20100505–0208.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 19, 2010.

Docket Numbers: ER10–1186–000.

Applicants: DTE Energy Supply, LLC.

Description: DTE Energy Supply, LLC submits tariff filing per 35.12: DTE Energy Supply Baseline Filing to be effective 5/14/2010.

Filed Date: 05/05/2010.

Accession Number: 20100505–5014.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1187–000.

Applicants: Woodland Biomass Power Ltd.

Description: Woodland Biomass Power Ltd. submits tariff filing per 35.12: Woodland Biomass Baseline Tariff to be effective 5/14/2010.

Filed Date: 05/05/2010.

Accession Number: 20100505–5015.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1188–000.

Applicants: DTE Stoneman, LLC.

Description: DTE Stoneman, LLC submits tariff filing per 35.12: DTE Stoneman Baseline Filing, to be effective 5/14/2010.

Filed Date: 05/05/2010.

Accession Number: 20100505–5016.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1189–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Small Generator Interconnection Agreement Facilities Maintenance Agreement dated 4/19/10 with Lakeview Cogeneration, LLC *etc.*

Filed Date: 05/05/2010.

Accession Number: 20100505–0103.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1190–000.

Applicants: ISO New England Inc., New England Power Pool.

Description: ISO New England Inc submits revised tariff sheets that temporarily remove from the ISO Tariff provisions *etc.*

Filed Date: 05/05/2010.

Accession Number: 20100505–0216.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1191–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits a letter agreement with Calico Solar, LLC.

Filed Date: 05/05/2010.

Accession Number: 20100505–0214.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1192–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits five executed Wholesale Market Participation Agreements.

Filed Date: 05/05/2010.

Accession Number: 20100505–0215.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1193–000.

Applicants: Consolidated Edison Company of New York,

Description: Consolidated Edison Company of New York, Inc submits Faculties Agreement by and between Con Edison and Central Hudson, dated as of 2/8/2010.

Filed Date: 05/05/2010.

Accession Number: 20100505–0217.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1194–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator submits a Generator Interconnection Agreement.

Filed Date: 05/05/2010.

Accession Number: 20100505–0219.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1195–000.

Applicants: Sierra Pacific Power Company.

Description: NV Energy submits an executed Engineering and Procurement Agreement with Spring Valley Wind LLC.

Filed Date: 05/05/2010.

Accession Number: 20100506–0208.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1196–000.

Applicants: PJM Interconnection, LLC, PJM Settlement, Inc.

Description: PJM Interconnection, LLC submits Eleventh Revised Sheet No. 1 *et al* and the Amended and Restated Operating Agreement.

Filed Date: 05/05/2010.

Accession Number: 20100506–0218.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 26, 2010.

Docket Numbers: ER10–1197–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits amended Interconnection Facilities Agreement between SCE and Dillon Wind, LLC, Second Revised Service Agreement 3 under SCE's Transmission Owner Tariff, *etc.*

Filed Date: 05/06/2010.

Accession Number: 20100506–0226.

Comment Date: 5 p.m. Eastern Time on Thursday, May 27, 2010.

Docket Numbers: ER10–1198–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revised rate sheets reflecting the cancellation of the agreement for Interconnectional and Cooperative Use of Certain Pacific Intertie Microwave Facilities *etc.*

Filed Date: 05/06/2010.

Accession Number: 20100506–0227.

Comment Date: 5 p.m. Eastern Time on Thursday, May 27, 2010.

Docket Numbers: ER10–1199–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits letter agreement with Solar Millennium, LLC.

Filed Date: 05/06/2010.

Accession Number: 20100506–0228.

Comment Date: 5 p.m. Eastern Time on Thursday, May 27, 2010.

Docket Numbers: ER10–1200–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits a revised rate sheet reflecting the cancellation of the Coordinated Operations Agreement with Pacific Gas and Electric Company.

Filed Date: 05/06/2010.

Accession Number: 20100506–0229.

Comment Date: 5 p.m. Eastern Time on Thursday, May 27, 2010.

Docket Numbers: ER10–1201–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation submits a fully executed generation interconnection agreement dated 4/16/10 with IPA Coleto Creek, LLC *et al.*

Filed Date: 05/06/2010.

Accession Number: 20100506–0230.

Comment Date: 5 p.m. Eastern Time on Thursday, May 27, 2010.

Docket Numbers: ER10–1202–000.

Applicants: Jersey Central Power & Light.

Description: Jersey Central Power & Light submits tariff filing per 35.12: Market-Based Rate Power Sales Tariff to be effective 5/6/2010.

Filed Date: 05/06/2010.

Accession Number: 20100506–5096.

Comment Date: 5 p.m. Eastern Time on Thursday, May 27, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–11–000.

Applicants: Southwest Power Pool Inc.

Description: Request to Modify January 15, 2010 Authorization Order of Southwest Power Pool, Inc.

Filed Date: 05/06/2010.

Accession Number: 20100506–5106.

Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ES10–31–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Amendment to Section 204 Application of Midwest Independent Transmission System Operator, Inc.

Filed Date: 05/06/2010.

Accession Number: 20100506–5098.

Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Docket Numbers: ES10–41–000.

Applicants: National Grid USA.

Description: Application of National Grid USA on behalf of National Grid Generation LLC to Issue Securities.

Filed Date: 04/30/2010.

Accession Number: 20100430–5503.

Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR08–4–000; RR08–4–001; RR08–4–002.

Applicants: North American Electric Reliability Corporation.

Description: North American Electric Reliability Corporation submits supplemental information regarding the March 5, 2010 Violation Severity Level Compliance Filing.

Filed Date: 05/05/2010.

Accession Number: 20100505–5112.

Comment Date: 5 p.m. Eastern Time on Thursday, May 20, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–11537 Filed 5–13–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–65–000]

Louisiana Public Service Commission v. Entergy Corporation; Entergy Services, Inc.; Entergy Louisiana, LLC; Entergy Arkansas, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Gulf States Louisiana, LLC; Entergy Texas, Inc.; Notice of Complaint

May 6, 2010.

Take notice that on May 5, 2010, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, and pursuant to Sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), Louisiana Public Service Commission (Complainant) filed a formal complaint against Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Texas, Inc., and Entergy Gulf States Louisiana, LLC (collectively Entergy or Respondents), seeking changes in the costs included in the Entergy rough equalization bandwidth formula, to be effective no later than the 2010 bandwidth calculation and for future bandwidth dockets.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11522 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2589–057—Michigan]

Marquette Board of Light and Power; Notice of Availability of Environmental Assessment

May 6, 2010.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), the Office of Energy Projects has prepared an Environmental Assessment (EA) regarding Marquette Board of Light and Power's plan to repair the Tourist Park Dam of the Marquette Hydroelectric Project (FERC No. 2589) located on the Dead River in Marquette County, Michigan. This EA concludes that the proposed repair, with staff's recommended mitigation measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at*http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments on the EA should be filed within 30 days from the issuance date of this notice under docket No. P–2589–057. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. In lieu of electronic filings, comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. For further information, contact Rachel Price at (202) 502–8907.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11525 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–244; EL00–98–228]

San Diego Gas & Electric Company; Notice of Filing

May 7, 2010.

Take notice that on May 4, 2010, The California Power Exchange Corporation filed a refund report, pursuant to the Commission's November 20, 2008, *Order on Rehearing and Motions for Clarification and Accounting,* 125 FERC ¶ 61,214.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 25, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11533 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER10–912–000; ER10–913–000; ER10–914–000]

NASDAQ OMX Commodities Clearing—Contract Merchant LLC; NASDAQ OMX Commodities Clearing—Delivery LLC; NASDAQ OMX Commodities Clearing—Finance LLC; Notice of Filing

May 6, 2010.

Take notice that, on May 3, 2010, NASDAQ OMX Commodities Clearing—Contract Merchant LLC, NASDAQ OMX Commodities Clearing—Delivery LLC, and NASDAQ OMX Commodities Clearing—Finance LLC filed a supplement to its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 24, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11524 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–194–000]

Central New York Oil and Gas Company, LLC; Notice of Filing

May 6, 2010.

Take notice that on April 27, 2010, Central New York Oil and Gas Company, LLC (CNYOG), Two Brush Creek Boulevard, Suite 200, Kansas City, MO 64112, filed an application, pursuant to section 7(c) of the Natural Gas Act (NGA) and Parts 157 and 284 of the Commission's Rules and Regulations, for: (i) A certificate of public convenience and necessity authorizing CNYOG to construct and operate additional compression and appurtenant facilities to increase the throughput capacity of its existing North and South Laterals of Stagecoach Storage Facility; (ii) a blanket certificate authorizing CNYOG to provide firm wheeling services using North and South Laterals; (iii) authority to charge negotiated rates, subject to a cost-based recourse rate alternative, for the proposed wheeling services; (iv) approval of CNYOG's proposed cost-of-service based recourse rate methodology, subject to a post-construction compliance filing to reflect actual costs; and (v) any waivers of Commission regulations necessary to approve the authorizations requested in the application. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Based on the firm commitments for firm wheeling services, CNYOG proposed to install a 15,000 hp of gas-fired compression facility near the interconnect between the North Lateral and Millennium Pipeline, and a 17,000 hp of high-speed electric motor driven compression facility near the interconnect between the South Lateral and Tennessee Gas Pipeline Company. This additional compression will supplement the approximately 36,900 hp of compression already in place at the Stagecoach Central Compression Station, and increase the maximum throughput capacity of the North and South Laterals to approximately 560 MMcf/d and 728 MMcf/d respectively. The increased throughput capacity is necessary to provide up to 325 MMcf/d of firm wheeling capacity between receipt and delivery points on the North and South Laterals, without injection or withdrawal of the gas from the Stagecoach storage reservoir. CNYOG proposes a start date of October 1, 2011.

Any questions regarding the application are to be directed to William F. Demarest, Jr., Husch Blackwell Sanders LLP, 750 17th St., NW., Suite 1000, Washington, DC 20006; phone number (202) 378–2300 or by e-mail at *william.demarest@huschblackwell.com.*

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11527 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1184–000]

Blackstone Wind Farm II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 6, 2010.

This is a supplemental notice in the above-referenced proceeding of Blackstone Wind Farm, LLCs application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 26, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11523 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–64–000]

Public Utilities Commission of the State of California; Notice of Petition for Declaratory Order

May 7, 2010.

Take notice that on May 4, 2010, pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207, the Public Utilities Commission of the State of California (CPUC) filed a petition for declaratory order, requesting the Commission to find that the decisions, which promote Combined Heat and Power systems (*i.e.,* cogeneration) of 20 megawatts or less, are not preempted by the Federal Power Act (FPA), 16 U.S.C. 824, *et seq.,* Public Utilities Regulatory Policies Act (PURPA), 16 U.S.C. 824–a–1, *et seq.,* or Commission regulations. The CPUC also requests exemption from paying filing fees, pursuant to Rule 207(c) of the Commission Rules, 18 CFR 385.207(c), and 18 CFR 381.108(a).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 3, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11530 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–21–000]

Enterprise Alabama Intrastate, LLC; Notice of Petition for Rate Approval

May 6, 2010.

Take notice that on May 3, 2010, Enterprise Alabama Intrastate, LLC (Enterprise Alabama) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. Enterprise Alabama states it is filing to justify its current system-wide transportation rate of 47.93 cents per MMBtu.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on May 14, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11518 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–11–000]

Energy Efficiency of Natural Gas Infrastructure and Operations Conference; Supplemental Notice of Public Conference

May 3, 2010.

As announced in the "Notice of Public Conference" issued on March 31, 2010, a public conference will be held on May 25, 2010, from 9 a.m. to 3 p.m. (EST) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. Members of the Commission are expected to attend and participate in the conference.

The purpose of this conference is to explore issues related to efficiency measures on the interstate natural gas grid as well as waste heat recovery opportunities. This conference will also provide an opportunity for interested parties to express their views and suggestions regarding ongoing efforts at the Commission to promote efficiency measures.

A free Webcast of this event is available through *http://www.ferc.gov.*

Anyone with Internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for Webcasts and offers the option of listening to the conference via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 866–208–3372 (voice) or (202) 208–8659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For information about the conference, please contact Pamela Romano at (202) 502–6854 or *pamela.romano@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11535 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–413–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

May 6, 2010.

Take notice that on May 5, 2010, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon in place an inactive offshore supply lateral, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Tennessee proposes to abandon approximately 7.51 miles of 10-inch diameter pipeline (Line No. 523M–2700) and associated meter and appurtenances located within the Eugene Island Area of the Outer Continental Shelf. Tennessee states that the subject facilities have been out of service since it was damaged by Hurricane Ike in September 2008. Tennessee asserts that is has not provided transportation service to any shippers through Line No. 523M–2700 for more than twelve months and there are no firm contracts associated with the receipt points located on the line. Tennessee estimates the cost to construct similar facilities today is approximately $18.4 million.

Any questions regarding the application should be directed to Susan T. Halbach, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, at (713) 420–5751 (telephone) or (713) 420–1601 (facsimile); Debbie Kalisek, Analyst, Certificates & Regulatory Compliance, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, at (713) 420–3292 (telephone) or (713) 420–1605 (facsimile).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11521 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP10–465–000]

Gulf South Pipeline Company; Notice of Technical Conference

May 6, 2010.

The Commission's March 31, 2010, Order in the above-captioned proceeding directed that a technical conference be held to address operation and technical issues raised by Gulf South Pipeline Company's (Gulf South) pooling proposal and to further discuss concerns related to Gulf South's justifications for its proposed pooling modification.[1]

Take notice that Commission Staff will convene a technical conference in the above-referenced proceeding on Thursday, May 27, 2010 at 1 p.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Robert Mclean at (202) 502–8156 or e-mail *Robert McLean@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11528 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–000]

Increasing Market and Planning Efficiency Through Improved Software; Notice of Technical Conference To Discuss Increasing Market and Planning Efficiency Through Improved Software

May 7, 2010.

Take notice that Commission staff will convene technical conferences on the following dates to discuss increasing market and planning efficiency through improved software.

[1] *Gulf South Pipeline Company,* 130 FERC ¶ 61,272 (2010).

The development of improved optimization solution algorithms and hardware processing speed will allow more realistic power system market models to be solved in a sufficiently short amount of time for such models to be adopted into market operation software. Smarter software is a valuable tool for improving the efficiency of electricity market operations and system planning, and can be beneficial for increased penetration of locationally-constrained variable resources (for example, wind and solar), demand resources, flexible assets, and storage technologies.

Staff will hold conferences in June 2010 to discuss increasing market and planning efficiency through improved software and hardware. The conferences will bring together diverse experts from ISOs/RTOs, the software industry, government, research centers and academia for the purposes of stimulating discussion and sharing of information about the technical aspects of these issues and identifying fruitful avenues for research.

The three conferences are organized as described below.

Enhanced Day-Ahead ISO and RTO Unit-Commitment Market Models

Dates: June 2–3, 2010.

Speaker Nomination Deadline: May 14, 2010.

This conference will focus on improving the performance of the day-ahead market and the integration of variable resources, demand resources (DR, DG, and storage) and other technologies by developing unit-commitment models that can accommodate more complex physical and market constraints. Improvements in formulations and solution techniques for unit-commitment will be presented and discussed. Better modeling will be discussed for both new and existing assets. Technology-specific modeling issues and bidding parameters will be discussed for a wide range of resources including wind, solar, demand resources (DR, DG, and storage), electric vehicles, dispatchable transmission, and combined cycle generating stations. Additional topics discussed at this conference will include co-optimization (with respect to energy, reserves, ramp rates, and network topology), flexible dispatch, settlement calculations, transmission switching, and development of a unit-commitment test bed to benchmark the speed and efficiency of solution techniques.

Enhanced Wide-Area Planning Models

Dates: June 9–10, 2010.

Speaker Nomination Deadline: May 17, 2010.

This conference will focus on enabling a more efficient planning and cost allocation process through the employment of better large-scale transmission expansion and economic planning models. Integration of more components of the planning process into a single modeling framework should lead to an overall improvement in planning efficiency. Better models are required to efficiently plan transmission investments in an environment of competitive markets with locationally-constrained variable resources. Discussions at the conference will include issues surrounding the integration and modeling of variable energy resources and demand resources (DR, DG, and storage) in planning software. Additional issues to be discussed include planning under uncertainty, optimal selection of transmission investments among alternatives, modeling generation expansions in transmission planning models, market-based investment models, and development of a planning model test bed to benchmark models and techniques. Algorithmic approaches in economic planning will also be presented and discussed.

Enhanced Real-Time Optimal Power Flow Market Models

Dates: June 23–24, 2010.

Speaker Nomination Deadline: May 24, 2010.

This conference will focus on improving dispatch of generation assets, integration of variable energy resources and demand resources (DR, DG, and storage) and utilization of flexible transmission assets through the development of a large-scale AC optimal power flow (AC OPF) model with sufficient usability and speed to facilitate better unit-commitment and real-time dispatch, including the optimal dispatch and pricing of reactive power from generators, transmission assets and load. Development of an AC power system test bed to benchmark the speed of solution techniques will be discussed.

The technical conferences will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to participate in the conference, on a space-available basis. However, the presentations and discussions at these particular conferences are intended to focus on the computational and modeling aspects of these issues. We expect that participants with technical understanding of operations research, power system engineering, mathematical modeling, and/or computer science will probably benefit most from attendance.

Participants wishing to present a paper or to speak must nominate themselves by emailing Eric Krall and Tom Dautel (*see* contact information below) the proposed speaker's name, organization, e-mail, phone number, and address, along with a title and description of the proposed presentation. Speaker nominations must be submitted by the respective deadline listed above for each conference. Due to time constraints, we may not be able to accommodate all those interested in speaking.

Further notices with a detailed agenda for each conference will be issued shortly after each speaker nomination deadline. Following the conferences, a comment date will be set for the filing of post-conference comments.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call 866 208–3676 (toll free). For TTY, call 202 502–8659.

A free webcast of this event will be available through the FERC Web site. Webcast viewers will not be able to participate during the technical conference. Anyone with Internet access interested in viewing the webcast of this conference can do so by navigating to Calendar of Events at *http://www.ferc.gov.* The events will contain a link to the webcast. The Capitol Connection provides technical support for the webcasts and offers the option of listening to the conferences via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information about these conferences, please contact:

Eric Krall (Technical Information), Office of Energy Policy and Innovation, (202) 502–6214, *Eric.Krall@ferc.gov.*

Tom Dautel (Technical Information), Office of Energy Policy and

Innovation, (202) 502–6196, *Thomas.Dautel@ferc.gov.*

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–11538 Filed 5–13–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8990–4]

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 05/03/2010 through 05/07/2010 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, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register.**

EIS No. 20100168, Final EIS, NIH, MD, National Institute of Health (NIH), Transport of Laboratory Personnel Potentially Exposed to Infectious Agents from Fort Detrick, Frederick, MD to the National Institutes of Health Clinical Center, Bethesda, MD, Wait Period Ends: 06/16/2010, Contact: Valerie Nottingham 301–480–8056.

EIS No. 20100169, Final Supplement, BR, CA, Mormon Island Auxiliary Dam Modification Project, Addressing Hydrologic, Seismic, Static, and Flood Management Issues, Sacramento and El Dorado Counties, CA, Wait Period Ends: 06/14/2010, Contact: Matthew See 916–989–7192.

EIS No. 20100170, Final EIS, FHWA, IL, TIER 1—Elgin O'Hare—West Bypass Study, To Identify Multimodal Transportation Solutions, Cook and DuPage Counties, IL, Wait Period Ends: 06/14/2010, Contact: Matt Fuller 217–492–4625.

EIS No. 20100171, Final Supplement, FHWA, NH, I–93 Highway Improvements, from Massachusetts State Line to Manchester, NH, Funding, NPDES and U.S. Army COE Section 404 Permits Issuance, Hillsborough and Rockingham Counties, NH, Wait Period Ends: 06/14/2010, Contact: Jamison S. Sikora 602–228–3057 Ext. 107.

EIS No. 20100172, Final EIS, USFS, WY, Rattlesnake Forest Management Project, Proposes to Implement Multiple Resource Management Action, Bearlodge Ranger District, Black Hills National Forest, Crook County, WY, Wait Period Ends: 06/14/2010, Contact: Elizabeth Krueger 307–283–1361.

EIS No. 20100173, Final EIS, NPS, AL, Tuskegee Airmen National Historic Site, General Management Plan, Implementation, Tuskegee, AL, Wait Period Ends: 06/14/2010, Contact: Amy Wirsching 404–507–5708.

Amended Notices

EIS No. 20100073, Draft EIS, USA, AK, Resumption of Year-Round Firing Opportunities at Fort Richardson, Proposal to Strengthen Unit Preparedness and Improve Soldier and Family Quality of Life by Maximizing Live-Fire Training, Fort Richardson, AK, Comment Period Ends: 06/14/2010, Contact: Robert Hall 907–384–2546.

Revision to FR Notice Published 03/12/2010: Extending Comment Period from 05/10/2010 to 06/14/2010.

Dated: May 11, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–11587 Filed 5–13–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:57 a.m. on Tuesday, May 11, 2010, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision and resolution activities.

In calling the meeting, the Board determined, on motion of Director Thomas J. Curry (Appointive), seconded by Vice Chairman Martin J. Gruenberg, concurred in by Director John C. Dugan (Comptroller of the Currency), Director John E. Bowman (Acting Director, Office of Thrift Supervision), and Chairman Sheila C. Bair, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: May 11, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–11641 Filed 5–12–10; 11:15 am]

BILLING CODE P

GOVERNMENT ACCOUNTABILITY OFFICE

Board of Governors of the Patient-Centered Outcomes Research Institute (PCOR)

AGENCY: Government Accountability Office (GAO).

ACTION: Correction on address for Letters of Nomination.

SUMMARY: The Patient Protection and Affordable Care Act gave the Comptroller General of the United States responsibility for appointing 19 members to the Board of Governors of the Patient-Centered Outcomes Research Institute. hi addition, the Directors of the Agency for Healthcare Research and Quality and the National Institutes of Health, or their designees, are members of the Board. The Comptroller General is required to make appointments not later than 6 months after the date of enactment of the Act. Board members must meet the qualifications listed in Section 6301 of the Act. For these appointments, I am announcing the following: Letters of nomination and resumes should be submitted by June 30th 2010 to ensure adequate opportunity for review and consideration of nominees prior to appointment. Letters of nomination and

resumes can be sent to either the e-mail or mailing address listed below.

ADDRESSES: Nominations can be submitted by either of the following:

- *E-mail: PCORI@gao.gov.*
- *Mail:* GAO Health Care, *Attention:* PCOR Institute Board of Governors, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: GAO: Office of Public Affairs, (202) 512–4800. [Sec. 6301, Pub. L. 111–148]

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2010–11404 Filed 5–13–10; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115; Docket 2010–0083; Sequence 27]

Submission for OMB Review; Notification of Ownership Changes

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning notification of ownership changes. A request for public comments was published in the **Federal Register** at 75 FR 9603, on March 3, 2010. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 14, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0115 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0115" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0115". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0115" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. *Attn:* Hada Flowers/IC 9000–0115.

Instructions: Please submit comments only and cite Information Collection 9000–0115, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Michael O. Jackson, Procurement Analyst, Contract Policy Branch, GSA, (202) 208–4949 or e-mail *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–19, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.

Responses per Respondent: 1.

Total Responses: 100.

Hours per Response: 1.25.

Total Burden Hours: 125.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: May 7, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

[FR Doc. 2010–11330 Filed 5–13–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–NEW; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Patient Perceptions of the Delivery of Health Care Through the Use of an Electronic Health Record (New)—OMB No. 0990–NEW—Office of the National Coordinator for Health Information Technology.

Abstract: Recognizing the potential of health information technology (IT), Congress incorporated the Health Information Technology for Economic and Clinical Health (HITECH) Act as part of the American Recovery and Reinvestment Act of 2009, and allocated

$19.2 billion to meet the goal of meaningful use of certified EHRs for each person in the United States by 2014. The HITECH Act builds on existing federal efforts to encourage health IT adoption and use, and contains provisions that are expected to promote the widespread adoption of health IT among health care providers. Health IT experts agree that HITECH stimulus funds are likely to improve how physicians practice medicine for Medicare and Medicaid beneficiaries and, ultimately, for advancing patient-centered medical care for all Americans. However, there is an evidence gap about patients' preferences and perceptions of delivery of health care services by providers who have adopted EHR systems in their practices.

The goal of the Patient Perceptions of the Delivery of Health Care through the Use of an Electronic Health Record (Patient Perceptions of EHR) Study is to help policymakers understand how primary care practices' use of electronic health records (EHRs) affects consumers' satisfaction with (1) their medical care, (2) communication with their doctor, and (3) coordination of care. The research questions for the proposed Patient Perceptions of EHR Study are motivated by a concern that patients may have negative experiences as practices begin to use EHRs.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Screening and Recruitment Form for Primary Care Practices.	Staff at Primary Care Practices	42	1	15/60	10.5
Patient Survey	Patients at Primary Care Practices	840	1	15/60	210
Patient Focus Group	Patients at Primary Care Practices	20	1	1.5	30
Total					250.5

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–11566 Filed 5–13–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0344; 30-day notice]

Agency Information Collection Request, 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: HavBED Assessment to Prepare for Public Health Emergencies—OMB No. 0990–0344—Reinstatement with change—Office of the Assistant Secretary for Preparedness and Response (ASPR), Office of Preparedness and Emergency Operations (OPEO).

Abstract: The Office of the Secretary (OS) is requesting clearance by the Office of Management and Budget to extend data collection regarding the status of the health care system. ASPR/OPEO received expedited clearance for data collection during the 2009-H1N1 pandemic. Since September 2009 HHS has collected data on bed availability, health care system resource needs such as ventilators and health care system stress such as implementation of surge strategies. These data have proven useful to ASPR in fulfilling its responsibilities for preparedness and response.

Pursuant to section 2811 of the PHS Act, the ASPR serves as the principal advisor to the Secretary on all matters related to Federal public health and medical preparedness and response for public health emergencies. In addition to other tasks, the ASPR coordinates with State, local, and tribal public health officials and healthcare systems to ensure effective integration of Federal public health and medical assets during an emergency. ASPR's National Hospital Preparedness Program (HPP) awards cooperative agreements to each of the 50 states, the Pacific Islands, and US territories (for a total of 62 awardees) to improve surge capacity and enhance community and hospital preparedness for public health emergencies. These 62 awardees are responsible for enhancing the preparedness of the nation's nearly 6000 hospitals. These awards are authorized under section 391C–2 of the Public Health Service (PHS) Act.

For this data collection the situation will dictate how often the data will be collected using the web-based interface known as HAvBED. For a large scale emergency, data will be collected nationally from all 62 HPP awardees to include all 6000 hospitals in HAvBED system. For smaller scale events, data collection will be targeted to individual states or regions. Data may also be gathered during exercises. Notifications for data collection are sent to the affected states through the HPP program staff. The data gathered from the hospitals are reported to the HHS Secretary's Operations Center to inform situational awareness and national preparedness.

ANNUAL ESTIMATED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses/ respondent	Average burden hours per response	Total burden hours
Hospital staff (Training)	6,000	1	1	6,000
Hospital staff (data collection)	6,000	102	1	612,000
State/Territory Preparedness staff (training)	62	1	1	62
State/Territory Preparedness staff (data collection)	62	102	3	18,972
Total				31,154

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–11567 Filed 5–13–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–NEW; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Evaluation of Medicare Personal Health Records Choice Pilot—OMB No. 0990–NEW—Office of the Assistant Secretary for Planning and Evaluation.

Abstract: Since 2003, HHS has worked toward the goal of establishing electronic, longitudinal health records for Americans that can be accessed safely, across the internet, and anytime and anywhere by patients, doctors, and other health care providers. In addition to electronic health records (EHRs), where health information is created, stored and accessed mainly by health care organizations and practitioners, personal health records (PHRs), electronic, patient-centered applications and services, are gaining increasing recognition and momentum. Current PHR business models represent broad and varied uses, from disease management to health promotion, with sponsors consisting of commercial vendors, heath plans, employers, and health care providers. We know very little about why consumers, and specifically Medicare beneficiaries, elect to use PHRs and what functionality they want from a PHR. Understanding these needs will be critical if HHS and the Centers for Medicare & Medicaid Services (CMS) are to pursue PHRs as a tool to empower consumers to manage their health and have the capability to link to their provider's EHR.

In January 2009, CMS launched a new program in Arizona and Utah, the *Medicare PHR Choice Pilot* (PHRC). This pilot encourages Medicare fee-for-service (FFS) beneficiaries to take advantage of the newer, more robust Internet-based tools for tracking their health and health care services. This is the first pilot to offer a choice of PHRs to Medicare FFS beneficiaries, including PHRs with additional functionality and direct data linkages for the consumers. Pilot participants can choose among GoogleHealth™, NoMoreClipboard™, PassportMD™, and HealthTrio™, competitors in the open PHR market.

HHS' Office of the Assistant Secretary for Planning and Evaluation (ASPE) has contracted with Mathematica Policy Research to conduct an evaluation of this pilot program, including a PHR enrollee user satisfaction survey to assess barriers, facilitators, and satisfaction with the PHRs. A self-administered paper-and-pencil instrument will be the primary data collection mode for the PHRC user satisfaction survey, with telephone followup for mail nonrespondents. The one-time data collection field period is expected to be 12 weeks in Fall 2010.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Self-administered questionnaire	Medicare beneficiaries	500	1	25/60	208
Total		500			208

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–11568 Filed 5–13–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0545]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Form FDA 3486 and Addendum 3486A

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 June 14, 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 0910–0458. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@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.

Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Form FDA 3486 and Addendum 3486A—(OMB Control Number 0910–0458)—Extension

Under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards, including those prescribed in the FDA regulations, designed to ensure the continued safety, purity, and potency of such products. In addition under section 361 of the PHS Act (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States or possessions. Further, the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with current good manufacturing practice (CGMP) assuring that they meet the requirements of the act. Establishments manufacturing biological products including human blood and blood components must comply with the applicable CGMP regulations (parts 211, 606, and 820 (21 CFR parts 211, 606, and 820)) and current good tissue practice (CGTP) regulations (part 1271 (21 CFR part 1271)) as appropriate. FDA regards biological product deviation (BPD) reporting and human cells, tissues, and cellular and tissue-based product (HCT/P) deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Section 600.14, in brief, requires the manufacturer who holds the biological product license, for other than human blood and blood components, and who had control over a distributed product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drugs Evaluation and Research (CDER) as soon as possible but not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171, in brief, requires a licensed manufacturer of human blood and blood components, including Source Plasma; an unlicensed registered blood establishment; or a transfusion service who had control over a distributed product when the deviation occurred, to report to CBER as soon as possible but not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Similarly, § 1271.350(b), in brief, requires non-reproductive HCT/P establishments described in § 1271.10 to report to CBER all HCT/P deviations relating to a distributed HCT/P that relates to the core CGTP requirements, if the deviation occurred in the establishment's facility or in a facility that performed a manufacturing step for the establishment under contract, agreement or other arrangement. Form FDA 3486 is used to submit BPD reports and HCT/P deviation reports.

Respondents to this collection of information are the licensed manufacturers of biological products other than human blood and blood components, licensed manufacturers of blood and blood components including Source Plasma, unlicensed registered blood establishments, transfusion services, and establishments that manufacture non-reproductive HCT/Ps regulated solely under section 361 of the PHS Act as described in § 1271.10. The number of respondents and total annual responses are based on the BPD reports and HCT/P deviation reports FDA received in fiscal year (FY) 2008. The number of licensed manufacturers and total annual responses under 21 CFR 600.14 include the estimates for BPD reports submitted to both CBER and CDER. Based on the information from industry, the estimated average time to complete a deviation report is 2 hours. The availability of the standardized report form, Form FDA 3486, and the ability to submit this report electronically to CBER (CDER does not currently accept electronic filings) further streamlines the report submission process.

CBER has developed an addendum to Form FDA 3486. The Web-based addendum 3486A provides additional information when a BPD report has been reviewed by FDA and evaluated as a possible recall. The additional information requested includes information not contained in the Form FDA 3486 such as: (1) Distribution pattern, (2) method of consignee notification, (3) consignee(s) of products for further manufacture, (4) additional product information, (5) updated product disposition, and (6) industry recall contacts. This information is requested by CBER through e-mail notification to the submitter of the BPD report. This information is used by CBER for recall classification purposes. At this time Addendum 3486A is being used only for those BPD reports

submitted under § 606.171. CBER estimates that 5 percent of the total BPD reports submitted to CBER under § 606.171 would need additional information submitted in the addendum. CBER further estimates that it would take between 10 and 20 minutes to complete the addendum. For calculation purposes, CBER is using 15 minutes.

Activities such as investigating, changing standard operating procedures or processes, and follow-up are currently required under 21 CFR parts 211 (approved under OMB control number 0910–0139), 606 (approved under OMB control number 0910–0116), 820 (approved under OMB control number 0910–0073), and 1271 (approved under OMB control number 0910–0543) and, therefore, are not included in the burden calculation for the separate requirement of submitting a deviation report to FDA.

In the **Federal Register** of November 18, 2009 (74 FR 59556), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received on the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.14	3486	51	7.78	397	2.0	794
606.171	3486	1,533	28.78	44,120	2.0	88,240
1271.350(b)	3486	84	2.64	222	2.0	444
	3486A[2]	77	28.65	2,206	0.25	551.5
Total						90,029.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Five percent of the number of respondents (1,533 x 0.05 = 77) and total annual responses to CBER (44,125 x 0.05 = 2,206).

Dated: May 10, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–11541 Filed 5–13–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Services Act; Delegation of Authority

Notice is hereby given that I have delegated to the Director, Office of Public Health Preparedness and Response (OPHPR), with authority to redelegate, the authority to:

- Release small quantities of any material from the Strategic National Stockpile (SNS) to provide intervention for specific individual conditions and the coordination of transportation assets to meet required deadlines.
- Release small quantities of any material from the SNS for testing and evaluation or to support government-required programs of vaccinations for persons at risk for specific conditions as a result of government job requirements.
- Advance deploy any material from the SNS to remain under CDC control without release to other government or non-government organizations in order to prepare for possible response needs
- Release any material from the SNS to comply with requirements as set forth by Homeland Security Presidential Directive 21 to share stockpiled assets with other federal government organizations when the material will be replaced by the receiving organization.

This delegation became effective upon date of signature. I hereby affirm and ratify any actions taken by the Director, OPHPR, which involve the exercise of these authorities prior to the effective date of this delegation.

Dated: April 26, 2010.

Thomas Frieden,

Director, CDC.

[FR Doc. 2010–11406 Filed 5–13–10; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen

validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400. (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876. (Formerly: Dynacare Kasper Medical Laboratories.)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory.)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520. (Formerly: SmithKline Beecham Clinical Laboratories.)

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

Sterling Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

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*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the

certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: May 10, 2010.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. 2010–11550 Filed 5–13–10; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Molecular Imaging and Probe Development, June 3, 2010, 8 a.m. to June 3, 2010, 5 p.m., Little America Hotel, 500 South Main Street, Salt Lake City, UT 84101 which was published in the **Federal Register** on May 7, 2010, 75 FR 25273–25275.

The meeting will be held June 2, 2010, 7 p.m. to June 4, 2010, 4 p.m. The meeting location remains the same.

The meeting is closed to the public.

Dated: May 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11590 Filed 5–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Team Science (R24) in Diabetes, Endocrinology and Metabolic Diseases.

Date: June 7, 2010.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11593 Filed 5–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of 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 USC, 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 Institute of Mental Health Special Emphasis Panel; Blueprint Neuroscience Diversity Undergraduate Research Education Applications.

Date: June 8, 2010.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Rebecca C Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel;Services Conflict.

Date: June 10, 2010.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 7, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11594 Filed 5–13–10; 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: Oncology 1–Basic Translational Integrated Review Group, Tumor Progression and Metastasis Study Section.
Date: May 24–25, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.
Contact Person: Manzoor Zarger, MS, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Endocrinology and Reproduction.
Date: May 27–28, 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 (Virtual Meeting).
Contact Person: Krish Krishnan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11591 Filed 5–13–10; 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; Member Conflict: The Molecular Biology of Pathogens.
Date: June 1–2, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Rolf Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301–435–0952, *menzelro@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology Study Section.
Date: June 3–4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Little America Hotel, 500 South Main Street, Salt Lake City, UT 84101.
Contact Person: Lee Rosen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Development—2 Study Section.
Date: June 3–4, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: InterContinental Mark Hopkins Hotel, 999 California Street, San Francisco, CA 94108.
Contact Person: Sherry L. Dupere, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7843, Bethesda, MD 20892, (301) 435–1021, *duperes@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Epidemiology of Cancer Linked Applications.
Date: June 3, 2010.
Time: 10 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.
Date: June 7–8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Priscilla B. Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vestibular.
Date: June 8–9, 2010.
Time: 7 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Somatosensory and Chemosensory Systems Study Section.
Date: June 8–9, 2010.
Time: 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: M Catherine Bennett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensorimotor Integration Study Section.
Date: June 8, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.
Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Cognitive Neuroscience Study Section.
Date: June 8, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Edwin C Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function E Study Section.
Date: June 8, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Nitsa Rosenzweig, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–10–006: Global Health Involving Human Subjects.
Date: June 8, 2010.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 25th Street, NW., Boardroom III, Washington, DC 20037.
Contact Person: Inese Z Beitins, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7808, Bethesda, MD 20892, 301–435–1034, *beitinsi@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Instrumentation and Systems Development Study Section.
Date: June 8–9, 2010.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7849, Bethesda, MD 20892, 301–435–0483, *jacobsonrh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioengineering Research Grants.
Date: June 8–9, 2010.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844. Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Lung Growth and Injury.
Date: June 8–9, 2010.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: George M Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Control of Breathing and Pulmonary Hypertension.
Date: June 8–9, 2010.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting)
Contact Person: George M Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Integrative and Clinical Endocrinology and Reproduction Competitive Revisions.
Date: June 8, 2010.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: David Weinberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301–435–1044, *David.Weinberg@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Developmental Brain Disorders Competitive Revision.
Date: June 8, 2010.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications,
Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.
Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ARRA: Cognitive Neuroscience Competitive Revisions.
Date: June 8, 2010.
Time: 5 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.
Contact Person: Edwin C Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Ischemic Challenge.
Date: June 8, 2010.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.
Contact Person: Joseph Thomas Peterson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–443–8130.

(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: May 10, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11589 Filed 5–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: June 7–8, 2010.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Helen Lin, PhD, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Suite 800, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 5, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11588 Filed 5–13–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0387]

Navigation Safety Advisory Council; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet in Washington, DC, to discuss various issues relating to the safety of navigation. The meeting will be open to the public.

DATES: NAVSAC will meet on Tuesday, June 22, 2010, from 8 a.m. to 5 p.m. and Wednesday, June 23, 2010, from 8 a.m. to 5 p.m. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before June 4, 2010. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before June 4, 2010.

ADDRESSES: NAVSAC will meet at the Courtyard by Marriott Washington Capitol Hill/Navy Yard Hotel, Admiral I and II Conference Rooms, 140 L Street SE., Washington, DC 20003. Send written material and requests to make oral presentations to Mr. Mike Sollosi, Designated Federal Officer (DFO) of NAVSAC, Commandant (CG–5413), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–7581. This notice may be viewed in our online docket, USCG–2010–0387, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mike Sollosi, the Designated Federal Officer (DFO) of NAVSAC, telephone 202–372–1545 or e-mail at *mike.m.sollosi@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–493).

Agenda of Meeting

The agenda for the June 22–23, 2010, NAVSAC meeting is as follows:

(1) Recreational boat lighting modification.

(2) Offshore Renewable Energy Installations (OREI) NVIC 02–07 review.

(3) Designation of "narrow channels" for Inland Navigation Rule 9 application.

(4) Unmanned Autonomous Vessels COLREGS applicability.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the DFO no later than June 4, 2010. Written material for distribution at the meeting should reach the Coast Guard no later than June 4, 2010. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the DFO no later than June 4, 2010.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the DFO as soon as possible.

Dated: May 7, 2010.

Wayne A. Muilenburg,

Captain, U.S. Coast Guard, Office of Waterways Management.

[FR Doc. 2010–11517 Filed 5–13–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–18]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* May 14, 2010.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 6, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–11188 Filed 5–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Programs Eligible for Inclusion in Fiscal Year 2010 Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2010 funding agreements with self-governance tribes

and lists programmatic targets for each of the non-BIA bureaus, pursuant to section 405(c)(4) of the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2010.

ADDRESSES: Inquiries or comments regarding this notice may be directed to Sharee M. Freeman, Director, Office of Self-Governance (MS 355–H—SIB), 1849 C Street, NW., Washington, DC 20240–0001, *telephone:* (202) 219–0240, *fax:* (202) 219–1404, or to the bureau points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the "Tribal Self-Governance Act," or the "Act"), 25 U.S.C. 458aa *et seq.,* instituted a permanent self-governance program at the Department of the Interior (DOI). Under the self-governance program certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribal government.

Under section 405(c) of the Tribal Self-Governance Act, 25 U.S.C. 458ee(c), the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Tribal Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, 25 U.S.C. 458cc(b)(2), any non-BIA program, service, function or activity that is administered by Interior that is "otherwise available to Indian tribes or Indians," can be administered by a tribal government through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2), 25 U.S.C. 458cc(b)(2), also specifies "nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law."

(2) Under section 403(c) of the Act, 25 U.S.C. 458cc(c), the Secretary may include other programs, services, functions, and activities or portions thereof that are of "special geographic, historical, or cultural significance" to the self-governance tribe to assume them.

Section 403(k) of the Act, 25 U.S.C. 458cc(k), notes that the Act does not authorize funding agreements that include programs, services, functions, or activities that are inherently Federal or where the statute establishing the program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, each non-BIA bureau will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

Subparts F and G of the Self-Governance Regulations found at 25 CFR Part 1000 provides the process and timelines for negotiating self-governance funding agreements with non-BIA bureaus.

Response to Comments

Four comments on January 6, 2010 were received from an existing self-governance Tribe. (1) The suggestion was made to provide guidance on the negotiation process with non-BIA bureaus. A reference to Subparts F and G of the self-governance regulations was added to Section I Background; (2) The suggestion was made to clarify the term "we" in the last sentence of Section I Background as it relates to the entity responsible for deciding whether a function is an inherently Federal function. The word "we" was revised to read "each non-BIA bureau;" (3) A typographical error was identified and corrected; and (4) A suggestion was made strongly urging that consultation take place for the current listing. A consultation session on a Draft Notice for 2011 is planned to be held at the Self-Governance Conference being held in Phoenix, Arizona during the first week of May. Previously, non-BIA bureaus were delegated the responsibility publish their own listing. A decision was made late in the process to consolidate the listings into one Notice for 2010. Time was not available to hold a consultation session on the current listing. However, the opportunity to review and provide comments on the 2010 Draft Notice was provided to Self-Governance Tribes.

Five comments were received from two non-BIA agencies. For the National Park Service, a program entry was added to the list of eligible programs and three entries were added to the list of eligible parks in Alaska. Two format changes and one phone number correction was made for the Bureau of Reclamation entry.

II. Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior for Fiscal Year 2010

A. Bureau of Land Management (none)
B. Bureau of Reclamation (5)
  Gila River Indian Community
  Chippewa Cree Tribe of Rocky Boy's Reservation
  Hoopa Valley Tribe
  Karuk Tribe of California
  Yurok Tribe
C. Minerals Management Service (none)
D. National Park Service (3)
  Grand Portage Band of Lake Superior Chippewa Indians
  Lower Elwha S'Klallam Tribe
  Yurok Tribe
E. Fish and Wildlife Service (2)
  Council of Athabascan Tribal Governments
  Confederated Salish and Kootenai Tribes of the Flathead Reservation
F. U.S. Geological Survey (none)
G. Office of the Special Trustee for American Indians (1)
  Confederated Salish and Kootenai Tribes of the Flathead Reservation

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either "otherwise available to Indians" under Title I and not precluded by law, or may have "special geographic, historical, or cultural significance" to a participating tribe. The lists represent the most current information on programs potentially available to tribes under a self-governance funding agreement.

The Department will also consider for inclusion in funding agreements other programs or activities not included below, but which, upon request of a self-governance tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act, 25 U.S.C. 458cc(b)(2) or (c). Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Non-BIA Programs of the Bureau of Land Management (BLM)

The BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities may be available for inclusion in self-governance funding agreements, dependent upon availability of funds, the need for specific services, and the self-governance tribe demonstrating a special geographic, culture, or historical connection to the activity. Once a tribe has made initial contact with the BLM, more specific information will be provided by the respective BLM State office.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This listing is not all-inclusive, but is representative of the types of programs that may be eligible for tribal participation through a funding agreement.

a. Tribal Services

1. Minerals Management. Inspection and enforcement of Indian oil and gas operations: Inspection, enforcement and production verification of Indian coal and sand and gravel operations are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

2. Cadastral Survey. Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

b. Other Activities

1. Cultural heritage. Cultural heritage activities, such as research and inventory, may be available in specific States.

2. Forestry Management. Activities such as environmental studies, tree planting, thinning, and similar work may be available in specific States.

3. Range Management. Activities, such as revegetation, noxious weed control, fencing, construction and management of range improvements, grazing management experiments, range monitoring, and similar activities may be available in specific States.

4. Riparian Management. Activities, such as facilities construction, erosion control, rehabilitation, and other similar activities may be available in specific States.

5. Recreation Management. Activities, such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. Wildlife and Fisheries Habitat Management. Activities, such as construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

7. Wild Horse Management. Activities, such as wild horse round-ups, adoption and disposition, including operation and maintenance of wild horse facilities, may be available in specific States.

For questions regarding self-governance, contact Jerry Cordova, Bureau of Land Management, 1849 C Street, MS L St—204, NW., Washington, DC 20240, *telephone:* (202) 912–7245, *fax:* (202) 452–7701.

B. Eligible Non-BIA Programs of the Bureau of Reclamation

The mission of the Bureau of Reclamation (Reclamation) is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for agricultural, municipal and industrial water supplies; hydroelectric power generation; flood control; outdoor recreation; and enhancement of fish and wildlife habitats.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance annual funding agreement. This list was developed with consideration of the proximity of identified self-governance tribes to Reclamation projects.

1. Klamath Project, California and Oregon.

2. Trinity River Fishery, California.

3. Central Arizona Project, Arizona.

4. Rocky Boy's/North Central Montana Regional Water System, Montana.

5. Indian Water Rights Settlement Projects, as authorized by Congress.

Reclamation also has some programs (*e.g.,* drought relief) under which funding may be provided for specific tribal projects which qualify under the applicable program criteria, subject to available funding. When such projects are for the benefit of self-governance tribes, the projects, or portions thereof, may be eligible for inclusion in self-governance funding agreements.

Upon the request of a self-governance tribe, Reclamation will also consider for inclusion in funding agreements, other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Ac, 25 U.S.C. 458cc (b)(2) or (c).

For questions regarding self-governance, contact Mr. Douglas Oellermann, Policy Analyst, Native American and International Affairs Office, Bureau of Reclamation (96–43200); 1849 C Street, NW., MS 7069—MIB, Washington, DC 20240, *telephone:* (202) 513–0560, fax: (202) 513–0311.

C. Eligible Non-BIA Programs of the Minerals Management Service (MMS)

The MMS provides stewardship of America's offshore resources and collects revenues generated from mineral leases on Federal and Indian lands. The MMS is responsible for the management of the Federal Outer Continental shelf, which are submerged lands off the coasts that have significant energy and mineral resources. Within the Offshore Energy Minerals Management program, environmental impact assessments and statements and environmental studies may be available if a self-governance tribe demonstrates a special geographic, cultural or historical connection to them.

Within the Minerals Revenue Management (MRM) program, the MMS also offers mineral-owning tribes opportunities to become involved in MRM programs. These programs are good preparation for assuming other technical functions. Generally, MRM program functions are available to tribes because of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA) at 30 U.S.C. 1701. The MRM program functions that may be available to self-governance tribes include:

1. Audit of Tribal Royalty Payments. Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in MMS cooperative audits, this program is offered as an option.)

2. Verification of Tribal Royalty Payments. Financial compliance verification and monitoring activities, and production verification.

3. Tribal Royalty Reporting, Accounting, and Data Management.

Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. Tribal Royalty Valuation. Preliminary analysis and recommendations for valuation and allowance determinations and approvals.

5. Royalty Management of Allotted Leases. Mineral revenue collections of allotted leases, provided that MMS consults with and obtains written approval from affected individual Indian mineral owners to delegate this responsibility to the tribe.

6. Online Monitoring of Royalties and Accounts. Online computer access to reports, payments, and royalty information contained in MMS accounts. The MMS will install equipment at tribal locations, train tribal staff, and assist tribes in researching and monitoring all payments, reports, accounts, and historical information regarding their leases.

7. Royalty Internship Program. An orientation and training program for auditors and accountants from mineral-producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance funding agreement, but have not yet acquired mineral revenue expertise via a FOGRMA section 202 cooperative agreement, as this is the term contained in FOGRMA and implementing regulations at 30 CFR 228.4.

For questions regarding self-governance, contact Shirley M. Conway, Special Assistant to the Associate Director, Minerals Revenue Management, Minerals Management Service, (MS 5438—MIB), 1849 C Street, NW., Washington, DC 20240, *telephone:* (202) 208–3981, *fax:* (202) 208–6684.

D. Eligible Programs of the National Park Service (NPS)

The National Park Service administers the National Park System made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. The National Park Service maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This list was developed considering the proximity of an identified self-governance tribe to a national park, monument, preserve, or recreation area and programs with components that may be suitable for contracting through a self-governance funding agreement. This listing is not all inclusive, but is representative of the types of programs which may be eligible for tribal participation through funding agreements.

a. Archaeological Surveys
b. Comprehensive Management Planning
c. Cultural Resource Management Projects
d. Ethnographic Studies
e. Erosion Control
f. Fire Protection
g. Gathering Baseline Subsistence Data—Alaska
h. Hazardous Fuel Reduction
i. Housing Construction and Rehabilitation
j. Interpretation
k. Janitorial Services
l. Maintenance
m. Natural Resource Management Projects
n. Operation of Campgrounds
o. Range Assessment—Alaska
p. Reindeer Grazing—Alaska
q. Road Repair
r. Solid Waste Collection and Disposal
s. Trail Rehabilitation
t. Watershed Restoration and Maintenance
u. Beringia Research
v. Elwha River Restoration
w. Recycling Programs

Locations of National Park Service Units With Close Proximity to Self-Governance Tribes

1. Aniakchack National Monument & Preserve—Alaska.
2. Bering Land Bridge National Preserve—Alaska.
3. Cape Krusenstern National Monument—Alaska.
4. Denali National Park & Preserve—Alaska.
5. Gates of the Arctic National Park & Preserve—Alaska.
6. Glacier Bay National Park and Preserve—Alaska.
7. Katmai National Park and Preserve—Alaska.
8. Kenai Fjords National Park—Alaska.
9. Klondike Gold rush National Historical Park—Alaska.
10. Kobuk Valley National Park—Alaska.
11. Lake Clark National Park and Preserve—Alaska.
12. Noatak National Preserve—Alaska.
13. Sitka National Historical Park—Alaska.
14. Wrangell-St. Elias National Park and Preserve—Alaska.
15. Yukon-Charley Rivers National Preserve—Alaska.
16. Casa Grande Ruins National Monument—Arizona.
17. Hohokam Pima National Monument—Arizona.
18. Montezuma Castle National Monument—Arizona.
19. Organ Pipe Cactus National Monument—Arizona.
20. Saguaro National Park—Arizona.
21. Tonto National Monument—Arizona.
22. Tumacacori National Historical Park—Arizona.
23. Tuzigoot National Monument—Arizona.
24. Arkansas Post National Memorial—Arkansas.
25. Joshua Tree National Park—California.
26. Lassen Volcanic National Park—California.
27. Redwood National Park—California.
28. Whiskeytown National Recreation Area—California.
29. Hagerman Fossil Beds National Monument—Idaho.
30. Effigy Mounds National Monument—Iowa.
31. Fort Scott National Historic Site—Kansas.
32. Tallgrass Prairie National Preserve—Kansas.
33. Boston Harbor Islands National Recreation Area—Massachusetts.
34. Cape Cod National Seashore—Massachusetts.
35. New Bedford Whaling National Historical Park—Massachusetts.
36. Sleeping Bear Dunes National Lakeshore—Michigan.
37. Grand Portage National Monument—Minnesota.
38. Voyageurs National Park—Minnesota.
39. Bear Paw Battlefield, Nez Perce National Historical Park—Montana.
40. Glacier National Park—Montana.
41. Great Basin National Park—Nevada.
42. Aztec Ruins National Monument—New Mexico.
43. Bandelier National Monument—New Mexico.
44. Carlsbad Caverns National Park—New Mexico.
45. Chaco Culture National Historic Park—New Mexico.
46. White Sands National Monument—New Mexico.
47. Fort Stanwix National Monument—New York.
48. Cuyahoga Valley National Park—Ohio.
49. Hopewell Culture National Historical Park—Ohio.
50. Chickasaw National Recreation Area—Oklahoma.
51. John Day Fossil Beds National Monument—Oregon.
52. Alibates Flint Quarries National Monument—Texas.
53. Guadalupe Mountains National Park—Texas.
54. Lake Meredith National Recreation Area—Texas.
55. Ebey's Landing National Recreation Area—Washington.

56. Mt. Rainier National Park—Washington.
57. Olympic National Park—Washington.
58. San Juan Islands National Historic Park—Washington.
59. Whitman Mission National Historic Site—Washington.

For questions regarding self-governance, contact Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service, 1201 Eye Street NW., (Org. 2560, 9th Floor), Washington, DC 20005–5905, *telephone:* (202) 354–6962, *fax:* (202) 371–6609.

E. Eligible Non-BIA Programs of the Fish and Wildlife Service (Service)

The mission of the Service is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. The Service also has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Tribal Self-Governance Act. This list is not all-inclusive, but is representative of the types of Service programs that may be eligible for tribal participation through an annual funding agreement.

1. Subsistence Programs within the State of Alaska. Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs.
2. Technical Assistance, Restoration and Conservation. Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.
3. Endangered Species Programs. Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA); candidate species under the ESA may be eligible for self-governance funding agreements. These activities may include, but are not limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.
4. Education Programs. Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off national Wildlife Refuge lands in a variety of communities; and assisting with environmental education and outreach efforts in local villages.
5. Environmental Contaminants Program. Conduct activities associated with identifying and removing toxic chemicals, which help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.
6. Wetland and Habitat Conservation Restoration. Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.
7. Fish Hatchery Operations. Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit Tribes and National Wildlife Refuges that may be eligible for a self-governance funding agreement may include, but are not limited to: *E.g.* taking, rearing and feeding of fish, disease treatment, tagging, and clerical or facility maintenance at a fish hatchery.
8. National Wildlife Refuge Operations and Maintenance. Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States. Activities that may be eligible for a self-governance funding agreement may include, but are not limited to: Construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.

Locations of Refuges and Hatcheries with Close Proximity to Self-Governance Tribes:

The Service developed the list below based on the proximity of identified self-governance tribes to Service facilities that have components that may be suitable for contracting through a self-governance funding agreement.

1. Alaska National Wildlife Refuges—Alaska
2. Alchesay National Fish Hatchery—Arizona
3. Humboldt Bay National Wildlife Refuge—California
4. Kootenai National Wildlife Refuge—Idaho
5. Agassiz National Wildlife Refuge—Minnesota
6. Mille Lacs National Wildlife Refuge—Minnesota
7. Rice Lake National Wildlife Refuge—Minnesota
8. Sequoyah National Wildlife Refuge—Oklahoma
9. Tishomingo National Wildlife Refute—Oklahoma
10. Bandon Marsh National Wildlife Refuge—Washington
11. Dungeness National Wildlife Refuge—Washington
12. Makah National Fish Hatchery—Washington
13. Nisqually National Wildlife Refuge—Washington
14. Quinault National Fish Hatchery—Washington
15. San Juan Islands National Wildlife Refuge—Washington
16. Tamarac National Wildlife Refuge—Wisconsin

For questions regarding self-governance, contact Patrick Durham, Fish and Wildlife Service (MS–330), 4401 N. Fairfax Drive, Arlington VA 22203, *telephone:* (703) 358–1728, *fax:* (703) 358–1930.

F. Eligible Non-BIA Programs of the U.S. Geological Survey (USGS)

The mission of the USGS is to collect, analyze, and provide information on biology, geology, hydrology, and geography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. This information is usually publicly available and includes maps, databases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure, and dynamic processes of the earth. The USGS does not manage lands or resources. Self-governance tribes may potentially assist the USGS in the data acquisition and analysis components of its activities.

For questions regarding self-governance, contact Kaye Cook, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192, telephone 703–648–7442, fax 703–648–7451.

G. Eligible Programs of the Office of the Special Trustee for American Indians (OST)

The Department of the Interior has responsibility for what may be the largest land trust in the world, approximately 56 million acres. OST oversees the management of Indian trust assets, including income generated from leasing and other commercial activities on Indian trust lands, by maintaining, investing and disbursing Indian trust

financial assets, and reporting on these transactions. The mission of the OST is to serve Indian communities by fulfilling Indian fiduciary trust responsibilities. This is to be accomplished through the implementation of a Comprehensive Trust Management Plan (CTM) that is designed to improve trust beneficiary services, ownership information, management of trust fund assets, and self-governance activities.

A tribe operating under self-governance may include the following programs, services, functions, and activities or portions thereof in a funding agreement:

1. Beneficiary Processes Program (Individual Indian Money Accounting Technical Functions).

2. Appraisal Services Program.

Tribes/Consortia that currently perform these programs under a self-governance funding agreement with the BIA, may negotiate a separate Memorandum of Understanding (MOU) with OST that outlines the roles and responsibilities for management of these programs.

The MOU between the Tribe/Consortium and OST outlines the roles and responsibilities for the performance of the OST program by the Tribe/Consortium. If those roles and responsibilities are already fully articulated in the existing funding agreement with the BIA, an MOU is not necessary. To the extent that the parties desire specific program standards, an MOU will be negotiated between the Tribe/Consortium and OST, which will be binding on both parties and attached and incorporated into the BIA funding agreement.

If a Tribe/Consortium decides to assume the operation of an OST program, the new funding for performing that program will come from OST program dollars. A Tribe's newly-assumed operation of the OST program(s) will be reflected in the Tribe's funding agreement.

For questions regarding self-governance, contact Lee Frazier, Program Analyst, Office of External Affairs, Office of the Special Trustee for American Indians (MS 5140–MIB), 1849 C Street, NW., Washington, DC 20240–0001, *phone:* (202) 208–7587, *fax:* (202) 208–7545.

IV. Programmatic Targets

During Fiscal Year 2010, upon request of a self-governance tribe, each non-BIA bureau will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: May 5, 2010.

Ken Salazar,

Secretary.

[FR Doc. 2010–11551 Filed 5–13–10; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-LE-2010-N099] [99011-1220-0000-9B]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018-0129; Captive Wildlife Safety Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on June 30, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must send comments on or before June 14, 2010.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-5806 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018-0129.

Title: Captive Wildlife Safety Act, 50 CFR 14.250 - 14.255.

Service Form Number(s): None.

Type of Request: Extension of currently approved collection.

Affected Public: Accredited wildlife sanctuaries.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Ongoing.

Estimated Annual Number of Respondents: 750.

Estimated Total Annual Responses: 750.

Estimated Time Per Response: 1 hour

Estimated Total Annual Burden Hours: 750.

Abstract: The Captive Wildlife Safety Act (CWSA) amends the Lacey Act by making it illegal to import, export, buy, sell, transport, receive, or acquire, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, clouded leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, unless certain exceptions are met. There are several exceptions to the prohibitions of the CWSA, including accredited wildlife sanctuaries.

There is no requirement for wildlife sanctuaries to submit applications to qualify for the accredited wildlife sanctuary exemption. Wildlife sanctuaries themselves will determine if they qualify. To qualify, they must meet all of the following criteria:

- Approval by the United States Internal Revenue Service (IRS) as a corporation that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986, which is described in sections 501(c)(3) and 170(b)(1)(A)(vi) of that code.
- Do not engage in commercial trade in the prohibited wildlife species including offspring, parts, and products.
- Do not propagate the prohibited wildlife species.
- Have no direct contact between the public and the prohibited wildlife species.

The basis for this information collection is the recordkeeping requirement that we place on accredited wildlife sanctuaries. We require accredited wildlife sanctuaries to maintain complete and accurate records of any possession, transportation, acquisition, disposition, importation, or exportation of the prohibited wildlife species as defined in the CWSA (50 CFR 14, subpart K). Records must be up to date and include: (1) the names and addresses of persons to or from whom any prohibited wildlife species has been acquired, imported, exported, purchased, sold, or otherwise transferred; and (2) the dates of these transactions. Accredited wildlife sanctuaries must:

- Maintain these records for 5 years.
- Make these records accessible to Service officials for inspection at reasonable hours.
- Copy these records for Service officials, if requested.

Comments: On January 21, 2010, we published in the **Federal Register** (75 FR 3483) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on March 22, 2010. We received 155 comments during the comment period, all of which supported this information collection. Of these comments, 153 were submitted as part of an electronic letterwriting campaign and two were individual responses.

Comments: The comments submitted as part of the letterwriting campaign suggested that sanctuaries should make appropriate records available to the Service and the public. Other comments suggested that: (1) appropriate records should be made available to the Service on an annual basis; (2) we establish an electronic recordkeeping system for wildlife sanctuaries that other Federal, State or, local agencies could access; and (3) wildlife sanctuaries be accredited by an independent organization.

Response: During development of the regulations to implement the CWSA, we considered options for some type of formal accreditation mechanism for wildlife sanctuaries, but concluded that it was not practical for a number of reasons. We believe that the requirement that wildlife sanctuaries provide records on an as-needed basis is adequate to substantiate whether or not a particular wildlife sanctuary qualifies as accredited under the CWSA. In addition, the Privacy Act and the Freedom of Information Act have certain requirements pertaining to the release of information that may prohibit us from making these records openly available to the public. Since the Service is responsible for determining if a wildlife sanctuary qualifies as accredited under the CWSA, giving this responsibility to an outside organization would not be appropriate.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: May 10, 2010

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. 2010–11573 Filed 5–13–10; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6647–B, AA–6647–C, AA–6647–A2; LLAK964000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to the Akutan Corporation. The decision will approve the conveyance of surface estate in the lands described below pursuant to the Alaska Native Claims Settlement Act. The subsurface estate in these lands will be conveyed to the Aleut Corporation when the surface estate is conveyed to the Akutan Corporation. The lands are in the vicinity of Akutan, Alaska, and are located in:

Seward Meridian, Alaska

T. 70 S., R. 107 W.,
Secs. 17 to 21, inclusive;
Secs. 28 to 33, inclusive.
Containing 5,040 acres.
T. 70 S., R. 108 W.,
Secs. 13 and 14;
Secs. 22 to 27, inclusive.
Containing 2,790 acres.
T. 68 S., R. 109 W.,
Secs. 19 and 21;
Secs. 28 to 32, inclusive.
Containing 2,602 acres.
T. 69 S., R. 113 W.,
Secs. 2 and 8;
Secs. 11 to 14, inclusive;
Secs. 17 to 20, inclusive;
Secs. 23, 29 and 30.
Containing 3,910.13 acres.
Aggregating 14,362.13 acres.

Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 14, 2010 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, AK 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunications device (TTD) may contact the BLM by calling the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I Branch.

[FR Doc. 2010–11609 Filed 5–13–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP00000.L10200000.PI0000; HAG10–0256]

Meeting Notice for the John Day/Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting Notice for the John Day/Snake Resource Advisory Council.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (JDSRAC) will meet as indicated below:

DATES: The JDSRAC meeting will begin at 7 p.m. Pacific Daylight Saving Time on May 25, 2010.

ADDRESSES: The JDSRAC will meet by teleconference. For a copy of material to be discussed or the conference call number, please contact the BLM, Prineville District; information below.

SUPPLEMENTARY INFORMATION: The JDSRAC will conduct a public meeting by teleconference to discuss and come to consensus on input during the public comment period for the Blue Mountains Forests Revised Land and Resource

Management Plan. The conference call meeting is open for the public to access by telephone. Public comment is scheduled from 7:45 to 8 p.m. (Pacific Daylight Saving Time) May 25, 2010. For a copy of the information distributed to the JDSRAC members, please contact BLM Prineville District Office by telephone at 541–416–6700 or at the address listed below.

FOR FURTHER INFORMATION CONTACT: Christina Lilienthal, Public Affairs Specialist, 3050 NE Third, Prineville, OR 97754, (541) 416–6889 or e-mail: *christina_lilienthal@blm.gov.*

Stephen R. Robertson,

Associate District Manager, Prineville District Office.

[FR Doc. 2010–11569 Filed 5–13–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI00000–L16510000–PM0000]

Notice of Public Meeting, Idaho Falls District Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Idaho Falls District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The Idaho Falls District RAC will meet in Salmon, Idaho on June 22–23, 2010 for a two-day meeting at the Salmon Field Office, 1206 S. Challis, Salmon, Idaho. The first day will begin at 10:30 a.m. and adjourn at 4:30 p.m. The second day will begin at 8 a.m. and adjourn at 2:30 p.m. Members of the public are invited to attend. A comment period will be held following the introductions. All meetings are open to the public.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM Idaho Falls District, which covers eastern Idaho.

Items on the agenda will include an overview of the current issues affecting the District and Field Offices, review and approval of past meeting minutes, public comment period and a presentation of the Cooperative Weed Management Area. Agenda items and location may change due to changing circumstances. Following the presentations and overviews, tours will be conducted throughout the Salmon area to discuss numerous land policies such as the Land and Water Conservation Fund, travel management planning, thorium reclamation, and cleaning up the site popularly known as Dugout Dick's.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Sarah Wheeler, RAC Coordinator, Idaho Falls District, 1405 Hollipark Dr., Idaho Falls, ID 83401. *Telephone:* (208) 524–7550. *E-mail: Sarah_Wheeler@blm.gov.*

Dated: May 6, 2010.

Joe Kraayenbrink,

District Manager, Idaho Falls District.

[FR Doc. 2010–11549 Filed 5–13–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below. The meeting of the Council is open to the public.

DATES: The Council will conduct the meeting on Friday, June 4, 2010, from 8:30 a.m. to approximately 12:30 p.m. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided at least 5 days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

ADDRESSES: The meeting will be held in the Cheyenne room of the Little America Hotel located at 2800 West Lincolnway, Cheyenne, Wyoming. Send written comments to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@usbr.gov*.

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@usbr.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss and take appropriate actions regarding the following: (1) The Basin States Program created by Public Law 110–246, which amended the Act; (2) responses to the Advisory Council Report; and (3) other items within the jurisdiction of the Council.

Public Disclosure

Before including your name, address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 5, 2010

Brent Rhees,

Assistant Regional Director, Upper Colorado Region.

[FR Doc. 2010–11100 Filed 5–13–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–920000–L143000000–ET0000; WYW109115]

Notice of Public Meeting, Whiskey Mountain Bighorn Sheep Range Locatable Mineral Withdrawal Extension, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) will hold a public meeting in conjunction with the Whiskey Mountain Bighorn Sheep Range Locatable Mineral Withdrawal Extension to protect and preserve bighorn sheep winter range and capital investments on the land described in the Public Land Order (PLO) at 55 FR 37878 (1990).

DATES: The public meeting will be held from 6 p.m. to 8 p.m. Mountain Standard Time on Tuesday, June 15, 2010, at the Headwaters Art and Conference Center, 20 Stalnaker St., Dubois, WY.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Lander Field Office, P.O. Box 589, Lander, WY 82520, or e-mail *lander_wymail@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Janelle Wrigley, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, WY 82003; 307–775–6257; or email *janelle_wrigley@blm.gov*.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Withdrawal Extension for the Whiskey Mountain Bighorn Sheep Winter Range, which was published in the **Federal Register** on January 8, 2010 (76 FR 1076–1077), is hereby modified to schedule one public meeting as provided for by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000).

All persons who wish to submit comments in connection with the proposed withdrawal extension may present their views in writing at the public meeting or to the Wyoming State Director of the Bureau of Land Management within 30 days after the public meeting. A complete legal description can be provided by the Wyoming State Office at the address shown above or at the Lander Field Office.

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.

The withdrawal will continue to be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Donald A. Simpson,

State Director.

[FR Doc. 2010–11458 Filed 5–13–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2010–N095; 60120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written comments on this request for a permit must be received by June 14, 2010.

ADDRESSES: Submit written data or comments to the Assistant Regional Director–Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal indentifying 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.

Document Availability

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail (*see* **ADDRESSES**) or by telephone at 303–236–4256. All comments we receive from individuals become part of the official public record.

Applications

The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Holly Cooper, Colorado State University, Ft. Collins, Colorado, TE–10550A. The applicant requests a permit to take Uncompahgre fritillary butterfly (*Boloria acrocnema*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: U.S. Fish and Wildlife Service, Missouri River Fish and Wildlife Conservation Office, Bismarck, North Dakota, TE–105455. The applicant requests a renewed permit to take pallid sturgeon (*Scaphirhynchus albus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Jeffrey Coleman, Utah State University, Logan, Utah, TE–07858A. The applicant requests a permit to take *Schoenocrambe suffrutescens* (Shrubby reed-mustard) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Applicant: Scott Kamber, TRC Environmental Corporation, Laramie, Wyoming, TE–052582. The applicant requests a permit amendment to add surveys for Southwestern willow flycatchers (*Empidonax traillii extimus*) and Mexican spotted owl (*Strix occidentalis lucida*) in Arizona in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: May 3, 2010.

Michael G. Thabault,

Acting Deputy Regional Director, Denver, Colorado.

[FR Doc. 2010–11493 Filed 5–13–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA01400.L17110000.PN0000]

Notice of Temporary Order Restricting Dogs From Public Lands in the Kasha-Katuwe Tent Rocks National Monument in Sandoval County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary restriction order.

SUMMARY: Notice is hereby given that a Temporary Order is in effect authorizing the exclusion of dogs from public lands within the 5,610-acre Kasha-Katuwe Tent Rocks National Monument. This order will enhance the safety and quality of the visitor experience for 97 percent of the Monument's visitors.

DATES: This closure became effective on May 23, 2009, following completion of an Environmental Assessment for the Temporary Order and signing of the Record of Decision on May 22, 2009. The closure will remain in effect for 2 years, during which time the BLM will, through public involvement, develop a long-term management resolution of the safety issue in this area.

FOR FURTHER INFORMATION CONTACT: Thomas E. Gow, Field Manager, Rio Puerco Field Office, 435 Montaño NE., Albuquerque, New Mexico 87107–4935; or call (505) 761–8797; or e-mail *Tom_Gow@blm.gov.*

SUPPLEMENTARY INFORMATION:

1. The entry of persons with dogs is prohibited on public land in New Mexico Prime Meridian, T. 16 N., R. 5 E., and T. 17 N., R 5 E.,

2. This closure does not affect the ability of local, State, or Federal officials in the performance of their duties in the area, including the use of K–9 units in the performance of their official duties.

3. This notice was posted at the entrance booth to the National Monument and at the trailhead kiosk. The notice was also posted on the BLM–New Mexico Web site and on related New Mexico tourism/travel Web sites.

4. The following persons are exempt from this closure order:

a. Federal, State, or local law enforcement officers, while acting within the scope of their official duties;

b. Any person in the operation of a valid livestock grazing permit for the area in the conduct of activities addressed in the permit; and

c. Any person using or training a service dog for the visually impaired or other assisted needs, law enforcement, and grazing related working dogs.

Violations of these closures and restrictions are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 1 year. These actions are taken to protect public health and safety.

5. An Environmental Assessment for the Temporary Order, called Emergency Dog Closure, Kasha-Katuwe Tent Rocks National Monument, DOI–BLM–NM–A010–2009–22–EA, was completed with the signing of a Decision Record dated May 22, 2009.

Copies of this closure order and maps showing the location of the routes are available from the Rio Puerco Field Office, 435 Montaño N.E., Albuquerque, New Mexico 87107–4935.

Authority: 43 CFR 8364.1, Closure and Restriction Orders.

Edwin J. Singleton,

District Manager, Albuquerque.

[FR Doc. 2010–11615 Filed 5–13–10; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

[Docket No. OAG 134; AG Order No. 3150–2010]

RIN 1105–AB36

Supplemental Guidelines for Sex Offender Registration and Notification

AGENCY: Department of Justice.

ACTION: Notice; Proposed guidelines.

SUMMARY: The Sex Offender Registration and Notification Act (SORNA) establishes minimum national standards for sex offender registration and notification. The Attorney General issued the *National Guidelines for Sex Offender Registration and Notification* ("SORNA Guidelines" or "Guidelines") on July 2, 2008, to provide guidance and assistance to jurisdictions in implementing the SORNA standards in their sex offender registration and notification programs. These supplemental guidelines augment or modify certain features of the SORNA Guidelines in order to make a change required by the KIDS Act and to address other issues arising in jurisdictions' implementation of the SORNA requirements. The matters addressed include certain aspects of public Web site posting of sex offender information, interjurisdictional tracking and information sharing regarding sex offenders, the review process concerning jurisdictions' SORNA implementation, the classes of sex offenders to be registered by jurisdictions retroactively, and the treatment of Indian tribes newly recognized by the Federal Government subsequent to the enactment of SORNA.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before July 13, 2010. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after Midnight Eastern Time on the last day of the comment period.

ADDRESSES: Comments may be mailed to Linda M. Baldwin, Director, SMART Office, Office of Justice Programs, United States Department of Justice, 810 7th Street, NW., Washington, DC 20531. To ensure proper handling, please reference OAG Docket No. 134 on your correspondence. You may submit comments electronically or view an electronic version of these proposed guidelines at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda M. Baldwin, Director, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking; Office of Justice Programs, United States Department of Justice, Washington, DC, 202–305–2463.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

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

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

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively

redacted, all or part of that comment may not be posted on *http://www.regulations.gov*.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The reason the Department is requesting electronic comments before Midnight Eastern Time on the day the comment period closes is that the inter-agency Regulations.gov/Federal Docket Management System (FDMS), which receives electronic comments, terminates the public's ability to submit comments at Midnight on the day the comment period closes. Commenters in time zones other than Eastern may want to take this fact into account so that their electronic comments can be received. The constraints imposed by the Regulations.gov/FDMS system do not apply to U.S. postal comments, which will be considered as timely filed if they are postmarked before Midnight on the day the comment period closes.

Overview

The Sex Offender Registration and Notification Act, which is title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109–248, was enacted on July 27, 2006. SORNA (46 U.S.C. 16901 *et seq.*) establishes minimum national standards for sex offender registration and notification in the jurisdictions to which it applies. "Jurisdictions" in the relevant sense are the 50 states, the District of Columbia, the five principal U.S. territories, and Indian tribes that satisfy certain criteria. 42 U.S.C. 16911(10). SORNA directs the Attorney General to issue guidelines and regulations to interpret and implement SORNA. *See id.* 16912(b).

To this end, the Attorney General issued the *National Guidelines for Sex Offender Registration and Notification,* 73 FR 38030, on July 2, 2008. The SORNA standards are administered by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("SMART Office"), which assists all jurisdictions in their SORNA implementation efforts and determines whether jurisdictions have successfully completed these efforts. *See* 42 U.S.C. 16945; 73 FR at 38044, 38047–48.

Since the publication of the SORNA Guidelines, issues have arisen in SORNA implementation that require that some aspects of the Guidelines be augmented or modified. Consequently, the Department of Justice is proposing these supplemental guidelines, which do the following:

(1) Allow jurisdictions, in their discretion, to exempt information concerning sex offenders required to register on the basis of juvenile delinquency adjudications from public Web site posting.

(2) Require jurisdictions to exempt sex offenders' e-mail addresses and other Internet identifiers from public Web site posting, pursuant to the KIDS Act, 42 U.S.C. 16915a.

(3) Require jurisdictions to have sex offenders report international travel 21 days in advance of such travel and to submit information concerning such travel to the appropriate Federal agencies and databases.

(4) Clarify the means to be utilized to ensure consistent interjurisdictional information sharing and tracking of sex offenders.

(5) Expand required registration information to include the forms signed by sex offenders acknowledging that they were advised of their registration obligations.

(6) Provide additional information concerning the review process for determining that jurisdictions have substantially implemented the SORNA requirements in their programs and continue to comply with these requirements.

(7) Afford jurisdictions greater latitude regarding the registration of sex offenders who have fully exited the justice system but later reenter through a new (non-sex-offense) criminal conviction by providing that jurisdictions may limit such registration to cases in which the new conviction is for a felony.

(8) Provide, for Indian tribes that are newly recognized by the Federal government following the enactment of SORNA, authorization and time frames for such tribes to elect whether to become SORNA registration jurisdictions and to implement SORNA.

Proposed Supplemental Guidelines for Sex Offender Registration and Notification

Contents

I. Public Notification
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B. Internet Identifiers
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I. Public Notification

A. Juvenile Delinquents

SORNA includes as covered "sex offender[s]" juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses. *See* 42 U.S.C. 16911(1), (8). While the SORNA Guidelines endeavored to facilitate jurisdictions' compliance with this aspect of SORNA, *see* 73 FR at 38030, 38040–41, 38050, resistance by some jurisdictions to public disclosure of information about sex offenders in this class has continued to be one of the largest impediments to SORNA implementation.

Hence, the Attorney General is exercising his authority under 42 U.S.C. 16918(c)(4) to create additional discretionary exemptions from public Web site disclosure to allow jurisdictions to exempt from public Web site disclosure information concerning sex offenders required to register on the basis of juvenile delinquency adjudications. This change creates a new discretionary, not mandatory, exemption from public Web site disclosure. It does not limit the discretion of jurisdictions to include information concerning sex offenders required to register on the basis of juvenile delinquency adjudications on their public Web sites if they so wish.

The change regarding public Web site disclosure does not authorize treating sex offenders required to register on the basis of juvenile delinquency adjudications differently from sex offenders with adult convictions in other respects. Whether a case involves a juvenile delinquency adjudication in the category covered by SORNA or an adult conviction, SORNA's registration requirements remain applicable, *see* 42 U.S.C. 16913–16, as do the requirements to transmit or make available registration information to the national (non-public) databases of sex offender information, to law enforcement and supervision agencies, and to registration authorities in other jurisdictions, *see* 73 FR at 38060.

Jurisdictions are not required to provide registration information concerning sex offenders required to register on the basis of juvenile delinquency adjudications to the entities described in the SORNA Guidelines at 73 FR 38061, *i.e.,* certain school, public housing, social service, and volunteer entities, and other organizations, companies, or individuals who request notification. This reflects an exercise of the Attorney General's authority to create exceptions to required information disclosure under 42 U.S.C. 16921(b). Accordingly,

if a jurisdiction decides not to include information on a juvenile delinquent sex offender on its public Web site, as is allowed by these supplemental guidelines, information on the sex offender does not have to be disclosed to these entities.

B. Internet Identifiers

The KIDS Act, which was enacted in 2008, directed the Attorney General to utilize pre-existing legal authorities under SORNA to adopt certain measures relating to sex offenders' "Internet identifiers," defined to mean e-mail addresses and other designations used for self-identification or routing in Internet communication or posting. The KIDS Act requires the Attorney General to (i) include appropriate Internet identifier information in the registration information sex offenders are required to provide, (ii) specify the time and manner for keeping that information current, (iii) exempt such information from public Web site posting, and (iv) ensure that procedures are in place to notify sex offenders of resulting obligations. *See* 42 U.S.C. 16915a.

The SORNA Guidelines incorporate requirements (i)–(ii) and (iv), as described above. *See* 73 FR at 38055 (Internet identifiers to be included in registration information), 38066 (reporting of changes in Internet identifiers), 38063–65 (notifying sex offenders of SORNA requirements). However, while the Guidelines discouraged the inclusion of sex offenders' Internet identifiers on the public Web sites, they did not adopt a mandatory exclusion of this information from public Web site posting, which the KIDS Act now requires. *See* 42 U.S.C. 16915a(c); 73 FR at 38059–60.

The authority under 42 U.S.C. 16918(b)(4) to create additional mandatory exemptions from public Web site disclosure is accordingly exercised to exempt sex offenders' Internet identifiers from public Web site posting. This means that jurisdictions cannot, consistent with SORNA, include sex offenders' Internet identifiers (such as e-mail addresses) in the sex offenders' public Web site postings or otherwise list or post sex offenders' Internet identifiers on the public sex offender Web sites.

This change does not limit jurisdictions' retention and use of sex offenders' Internet identifier information for purposes other than public disclosure, including submission of the information to the national (non-public) databases of sex offender information, sharing of the information with law enforcement and supervision agencies, and sharing of the information with registration authorities in other jurisdictions. *See* 73 FR at 38060. The change also does not limit the discretion of jurisdictions to include on their public Web sites functions by which members of the public can ascertain whether a specified e-mail address or other Internet identifier is reported as that of a registered sex offender, *see id.* at 38059–60, or to disclose Internet identifier information to any one by means other than public Web site posting.

The exemption of sex offenders' Internet identifiers from public Web site disclosure does not override or limit the requirement that sex offenders' names, including any aliases, be included in their public Web site postings. *See* 73 FR at 38059. A sex offender's use of his name or an alias to identify himself or for other purposes in Internet communications or postings does not exempt the name or alias from public Web site disclosure.

II. Interjurisdictional Tracking and Information Sharing

A. International Travel

Certain features of SORNA and the SORNA Guidelines require the Department of Justice, in conjunction with other Federal agencies, to develop reliable means for identifying and tracking sex offenders who enter or leave the United States. *See* 42 U.S.C. 16928; 73 FR at 38066–67. To that end, the Guidelines provide that sex offenders must be required to inform their residence jurisdictions if they intend to commence residence, employment, or school attendance outside of the United States, and that jurisdictions that are so informed must notify the U.S. Marshals Service and update the sex offender's registration information in the national databases. *See* 73 FR at 38067. (Regarding the general requirement to provide registration information for inclusion in the National Sex Offender Registry and other appropriate databases at the national level, *see* 42 U.S.C. 16921(b)(1); 73 FR at 38060.) In addition, the Guidelines provide that sex offenders must be required to inform their residence jurisdictions about lodging at places away from their residences for seven days or more, regardless of whether that results from domestic or international travel. *See* 73 FR at 38056, 38066.

Since the issuance of the Guidelines, the SMART Office has continued to work with other agencies of the Department of Justice, the Department of Homeland Security, the Department of State, and the Department of Defense on the development of a system for consistently identifying and tracking sex offenders who engage in international travel. Although, as noted, the current Guidelines require reporting of international travel information in certain circumstances, the existing requirements are not sufficient to provide the information needed for tracking such travel consistently.

The authority under 42 U.S.C. 16914(a)(7) to expand the range of required registration information is accordingly exercised to provide that registrants must be required to inform their residence jurisdictions of intended travel outside of the United States at least 21 days in advance of such travel. Pursuant to 42 U.S.C. 16921(b), jurisdictions so informed must provide the international travel information to the U.S. Marshals Service, and must transmit or make available that information to national databases, law enforcement and supervision agencies, and other jurisdictions as provided in the Guidelines. *See* 73 FR at 38060. Jurisdictions need not disclose international travel information to the entities described in the SORNA Guidelines at 73 FR 38061—i.e., certain school, public housing, social service, and volunteer entities, and other organizations, companies, or individuals who request notification. *See* 42 U.S.C. 16921(b). As the international tracking system continues to develop, the SMART Office may issue additional directions to jurisdictions to provide notification concerning international travel by sex offenders, such as notice to Interpol, or notice to Department of Defense agencies concerning sex offenders who may live on U.S. military bases abroad.

While notice of international travel will generally be required as described above, it is recognized that requiring 21 days advance notice may occasionally be unnecessary or inappropriate. For example, a sex offender may need to travel abroad unexpectedly because of a family or work emergency. Or separate advance notice of intended international trips may be unworkable and pointlessly burdensome for a sex offender who lives in a northern border state and commutes to Canada for work on a daily basis. Jurisdictions that wish to accommodate such situations should include information about their policies or practices in this area in their submissions to the SMART Office and the SMART Office will determine whether they adequately serve SORNA's international tracking objectives.

B. Domestic Interjurisdictional Tracking

SORNA and the SORNA Guidelines require interjurisdictional sharing of registration information in various contexts and SORNA directs the Attorney General, in consultation with the jurisdictions, to develop and support software facilitating the immediate exchange of information among jurisdictions. *See* 42 U.S.C. 16913(c), 16919(b), 16921(b)(3), 16923; 73 FR at 38047, 38062–68. The SMART Office accordingly has created and maintains the SORNA Exchange Portal, which enables the immediate exchange of information about registered sex offenders among the jurisdictions.

Regular use of this tool is essential to ensuring that information is reliably shared among jurisdictions and that interjurisdictional tracking of sex offenders occurs consistently and effectively as SORNA contemplates. For example, if a jurisdiction sends notice that a sex offender has reported an intention to change his residence to another jurisdiction, but the destination jurisdiction fails to access the notice promptly, the sex offender's failure to appear or register in the destination jurisdiction may go unnoticed or detection of the violation may be delayed. Accordingly, to be approved as having substantially implemented SORNA, jurisdictions must, at a minimum, have a policy of regularly accessing the SORNA Exchange Portal to receive messages from other jurisdictions.

Technological improvements may facilitate the creation of new tools that may eventually replace the existing SORNA Exchange Portal. If that occurs, the SMART Office may issue directions to jurisdictions concerning the use of these new tools that jurisdictions will need to follow to be approved as substantially implementing SORNA.

C. Acknowledgment Forms

SORNA provides that sex offenders are to be informed of their registration obligations and required to sign acknowledgments that this information has been provided upon their initial registration. *See* 42 U.S.C. 16917. Even before the enactment of SORNA, similar requirements were included in the predecessor national standards for sex offender registration and notification of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (42 U.S.C. 14071(b)(1)(A), prior to its repeal by SORNA).

SORNA requires jurisdictions to provide criminal penalties for sex offenders who fail to comply with SORNA's requirements, *see* 42 U.S.C. 16913(e), and Federal criminal liability is authorized for sex offenders who knowingly fail to register or update a registration as required by SORNA under circumstances supporting Federal jurisdiction, *see* 18 U.S.C. 2250. Successful prosecution of sex offenders for registration violations under these provisions may require proof that they were aware of a requirement to register.

The acknowledgment forms signed by sex offenders regarding their registration obligations are likely to be the most consistently available and definitive proof of such knowledge. Including these forms in registration information will make them readily available in the jurisdictions in which sex offenders are initially registered, and will make them available to other jurisdictions pursuant to the provisions of SORNA and the Guidelines for transmission of registration information to other jurisdictions. *See* 42 U.S.C. 16921(b)(3); 73 FR at 38060.

The authority under 42 U.S.C. 16914(b)(8) to expand the range of required registration information is accordingly exercised to require that sex offenders' signed acknowledgment forms be included in their registration information. The existing Guidelines already provide that acknowledgment forms covering the SORNA requirements are to be obtained from registrants as part of the SORNA implementation process and thereafter. *See* 73 FR at 38063–65. As with other forms of documentary registration information, the inclusion of these forms in registration information can be effected by scanning the forms and including the resulting electronic documents in the registry databases or by including links or information that provides access to other databases in which the signed acknowledgments are available in electronic form. *See* 73 FR at 38055.

III. Ongoing Implementation Assurance

The SORNA Guidelines explain that the SMART Office will determine whether jurisdictions have substantially implemented the SORNA requirements in their programs and that jurisdictions are to provide submissions to the SMART Office to facilitate this determination. *See* 42 U.S.C. 16924–25; 73 FR at 38047–48.

SORNA itself and the Guidelines assume throughout that jurisdictions must implement SORNA in practice, not just on paper, and the Guidelines provide many directions and suggestions for putting the SORNA standards into effect. *See, e.g.,* 42 U.S.C. 16911(9), 16912(a), 16913(c), 16914(b), 16917, 16918, 16921(b), 16922; 73 FR at 38059–61, 38063–70. The Department of Justice and the SMART Office are making available to jurisdictions a wide range of practical aids to SORNA implementation, including software and communication systems to facilitate the exchange of sex offender information among jurisdictions and other technology and documentary tools. *See* 42 U.S.C. 16923; 73 FR at 38031–32, 38047.

Hence, implementation of SORNA is not just a matter of adopting laws or rules that facially direct the performance of the measures required by SORNA. It entails actually carrying out those measures and, as noted, various forms of guidance and assistance have been provided to that end. Accordingly, in reviewing jurisdictions' requests for approval as having substantially implemented SORNA, the SMART Office will not be limited to facial examination of registration laws and policies, but rather will undertake such inquiry as is needed to ensure that jurisdictions are substantially implementing SORNA's requirements in practice. Jurisdictions can facilitate approval of their systems by including in their submissions to the SMART Office information concerning practical implementation measures and mechanisms, in addition to relevant laws and rules, such as policy and procedure manuals, description of infrastructure and technology resources, and information about personnel and budgetary measures relating to the operation of the jurisdiction's registration and notification system. The SMART Office may require jurisdictions to provide additional information, beyond that proffered in their submissions, as needed for a determination.

Jurisdictions that have substantially implemented SORNA have a continuing obligation to maintain their system's consistency with current SORNA standards. Those that are grantees under the Byrne Justice Assistance Grant program will be required in connection with the annual grant application process to establish that their systems continue to meet SORNA standards. This will entail providing information as directed by the SMART Office, in addition to the information otherwise included in Byrne Grant applications, so that the SMART Office can verify continuing implementation. Jurisdictions that do not apply for Byrne Grants will also be required to demonstrate periodically that their systems continue to meet SORNA standards as directed by the SMART Office, and to provide such information

as the SMART Office may require to make this determination.

If a jurisdiction's Byrne Justice Assistance Grant funding is reduced because of non-implementation of SORNA, it may regain eligibility for full funding in later program years by substantially implementing SORNA in such later years. The SMART Office will continue to work with all jurisdictions to ensure substantial implementation of SORNA and verify that they continue to meet the requirements of SORNA on an ongoing basis.

IV. Retroactive Classes

SORNA's requirements apply to all sex offenders, regardless of when they were convicted. *See* 28 CFR 72.3. However, the SORNA Guidelines state that it will be deemed sufficient for substantial implementation if jurisdictions register sex offenders with pre-SORNA or pre-SORNA-implementation sex offense convictions who remain in the system as prisoners, supervisees, or registrants, or who reenter the system through a subsequent criminal conviction. *See* 73 FR at 38035–36, 38043, 38046–47, 38063–64. This feature of the Guidelines reflects an assumption that it may not be possible for jurisdictions to identify and register all sex offenders who fall within the SORNA registration categories, particularly where they have left the justice system and merged into the general population long ago, but that it will be feasible for jurisdictions to do so in relation to sex offenders who remain in the justice system or reenter it through a subsequent criminal conviction. *See* 73 FR at 38046.

Experience supports a qualification of this assumption in relation to sex offenders who have fully exited the justice system but later reenter it through a subsequent criminal conviction for a non-sex offense that is relatively minor in character. (Where the subsequent conviction is for a sex offense it independently requires registration under SORNA.) In many jurisdictions the volume of misdemeanor prosecutions is large and most such cases may need to be disposed of in a manner that leaves little time or opportunity for examining the defendant's criminal history and ascertaining whether it contains some past sex offense conviction that would entail a present registration requirement under SORNA. In contrast, where the subsequent offense is a serious crime, ordinary practice is likely to involve closer scrutiny of the defendant's past criminal conduct, and ascertaining whether it includes a prior conviction requiring registration under SORNA should not entail an onerous new burden on jurisdictions.

These supplemental guidelines accordingly are modifying the requirements for substantial implementation of SORNA in relation to sex offenders who have fully exited the justice system, *i.e.,* those who are no longer prisoners, supervisees, or registrants. It will be sufficient if a jurisdiction registers such offenders who reenter the system through a subsequent criminal conviction in cases in which the subsequent criminal conviction is for a felony, *i.e.,* for an offense for which the statutory maximum penalty exceeds a year of imprisonment. This allowance is limited to cases in which the subsequent conviction is for a non-sex offense. As noted above, a later conviction for a sex offense independently requires registration under SORNA, regardless of whether it is a felony or a misdemeanor.

This allowance only establishes the minimum required for substantial implementation of SORNA in this context. Jurisdictions remain free to look more broadly and to establish systems to identify and register sex offenders who reenter the justice system through misdemeanor convictions, or even those who do not reenter the system through later criminal convictions but fall within the registration categories of SORNA or the jurisdiction's registration law.

V. Newly Recognized Tribes

SORNA affords eligible federally-recognized Indian tribes a one-year period, running from the date of SORNA's enactment on July 27, 2006, to elect whether to become SORNA registration jurisdictions or to delegate their registration functions to the states within which they are located. *See* 42 U.S.C. 16927(a)(1), (2)(B); 73 FR at 38049–50. In principle there is no reason why an Indian tribe that initially receives recognition by the Federal government following the enactment of SORNA should be treated differently for SORNA purposes from other federally recognized tribes. But if such a tribe is initially recognized more than a year after the enactment of SORNA, then the limitation period of § 16927 will have passed before the tribe became the kind of entity (a federally recognized tribe) that may be eligible to become a SORNA registration jurisdiction.

Where the normal starting point of a statutory time limit for taking an action cannot sensibly be applied to a certain entity, the statute may be construed to allow the entity a reasonable amount of time to take the action. *See Chicago & Alton R.R. Co.* v. *Tranbarger,* 238 U.S. 67, 73–74 (1915); *see also Taylor* v. *Horn,* 504 F.3d 416, 426 (3d Cir. 2007) (running statutory time limit from later point where normal starting point was already past).

This principle will be applied to 42 U.S.C. 16927 to allow Indian tribes that receive Federal recognition following the enactment of SORNA a reasonable amount of time to elect whether to become SORNA registration jurisdictions as provided in that section, and to allow such tribes a reasonable amount of time for substantial implementation of SORNA if they elect to be SORNA registration jurisdictions. In assessing what constitutes a reasonable amount of time for these purposes, the Department of Justice will look to the amount of time SORNA generally affords for tribal elections and for jurisdictions' implementation of the SORNA requirements. Hence, a tribe receiving Federal recognition after SORNA's enactment that otherwise qualifies to make the election under § 16927(a) will be afforded a period of one year to make the election, running from the date of the tribe's recognition or the date of publication of these supplemental guidelines, whichever is later. Likewise, such a tribe will be afforded a period of three years for SORNA implementation, running from the same starting point, subject to up to two possible one-year extensions. *See* 42 U.S.C. 16924.

Dated: May 11, 2010.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. 2010–11665 Filed 5–12–10; 11:15 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

OLMS Listens: Office of Labor-Management Standards Stakeholder Meeting

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Notice of Public Meeting.

SUMMARY: The United States Department of Labor (DOL), Office of Labor-Management Standards (OLMS) hereby provides notice of a public meeting on a proposed change to OLMS's regulations regarding reporting requirements for employers and consultants pursuant to section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), specifically with regard to the scope of the "advice

exception" in section 203(c). The meeting will provide an opportunity for stakeholders and other interested parties to provide individual comments and suggestions. All interested parties are invited to participate.

Public Meeting Date and Time: The meeting will be held on Monday, May 24, 2010, from 10 a.m. until noon.

Location: The site for the May 24th event will be U.S. Department of Labor, Frances Perkins Building Auditorium, 200 Constitution Avenue, NW., Washington, DC 20210.

To Register and Obtain Further Information: Please call Rosetta Kelly at (202) 693–0123 or register via e-mail at *olms-public@dol.gov.* If you wish to attend, please register by Monday, May 17, 2010. When registering, you must provide your name, title, company or organization (if applicable), address, phone number and e-mail address. Individuals with disabilities may request accommodations when registering for the event.

SUPPLEMENTARY INFORMATION: LMRDA section 203 establishes reporting and disclosure requirements for employers and persons, including labor relations consultants, who enter into any agreement or arrangement whereby the consultant (or other person) undertakes activities to persuade employees as to their rights to organize and bargain collectively or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. Each party must disclose information concerning such agreement or arrangement, including related payments, and the employer, additionally, must disclose certain other payments, including payments to its own employees, to persuade employees as to their bargaining rights and to obtain certain information in connection with a labor dispute.

Pursuant to regulations issued by the Department, an employer must file a Form LM–10, Employer Report, for each fiscal year in which it entered into such an agreement or arrangement, as well for each fiscal year in which it made any persuader payments, as required under section 203. Additionally, the consultant must file a Form LM–20, Agreement and Activities report, disclosing the agreement or arrangement.

OLMS will seek comments on several significant matters concerning employer and consultant reporting pursuant to section 203. The first matter pertains to the so-called "advice exception" of 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. Under current policy, as articulated in the LMRDA Interpretative Manual and in a **Federal Register** notice published on April 11, 2001 (66 FR 18864), this so-called "advice exception" has been broadly interpreted to exclude from the reporting any agreement under which a consultant engages in activities on behalf of the employer to persuade employees concerning their bargaining rights but has no direct contact with employees, even where the consultant is orchestrating a campaign to defeat a union organizing effort.

The Department views its current policy concerning the scope of the "advice exception" as over-broad, and that a narrower construction will result in reporting that more closely reflects the employer and consultant reporting intended by the LMRDA. Regulatory action is needed to provide labor-management transparency for the public, and to provide workers with information critical to their effective participation in the workplace. As a result, the Department announced in its Fall 2009 Regulatory Agenda the intention to engage in such rulemaking to narrow the scope of the "advice exception." *See: http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200910&RIN=1215-AB79.*

Another exception to reporting is in section 203(e), which provides that no "regular officer, supervisor, or employee of an employer" is required to file a report covering services undertaken as a "regular officer, supervisor, or employee of an employer." Further, the employer is not required to file a report covering expenditures made to a "regular officer, supervisor, or employee" as compensation for service as a "regular officer, supervisor, or employee." The Department will seek comments on the application of this exemption to the scope of employer reporting under sections 203(a)(2) and (a)(3), which require employers to report payments to their own employees for purposes of causing them to persuade other employees as to their bargaining rights, and to report expenditures to "interfere with, restrain, or coerce employees" in their bargaining rights and to obtain information concerning activities of employees and labor organizations in connection with a labor dispute.

Additionally, the Department will seek comments on whether electronic filing should be mandated for Form LM–10 and LM–20 reports. Currently, labor organizations that file the Form LM–2 Labor Organization Annual Report are required by regulation to file electronically, and there has been good compliance with these requirements. It is reasonably expected that employers and consultants will have the information technology resources and capacity to file electronically, as well. An electronic filing option is planned for all LMRDA reports as part of an information technology enhancement.

Agenda: The public meeting will run from 10 a.m. to 12 p.m. on May 24, 2010, at the U.S. Department of Labor, Frances Perkins Building Auditorium, 200 Constitution Avenue, NW., Washington, DC 20210. All interested parties are invited to participate. The meeting will provide interested parties an opportunity to provide suggestions and recommendations to OLMS concerning employer and consultant reporting pursuant to section 203. In particular, comments will be solicited on the issues outlined above: The application of the "advice exemption" of LMRDA sections 203(c); the application of the "regular officer, supervisor, and employee" exemption of section 203(e); and the effect of a potential regulatory proposal requiring employers and consultants to submit reports electronically. The Department will seek comment, as well, regarding the layout of the Form LM–10 and LM–20 and the level of detail and itemization currently required to be reported on these forms. Finally, the Department invites information about how the use of labor relations consultants by employers has affected labor-management relations and about how persuader activity has changed since the enactment of the LMRDA.

Public Participation: Registration for the public meeting is free. During the meeting, participants will be invited to come up to a microphone and provide comments on the topic being discussed.

Authority and Signature:

Signed in Washington, DC, May 10, 2010.

John Lund,

Director, Office of Labor-Management Standards.

[FR Doc. 2010–11498 Filed 5–13–10; 8:45 am]

BILLING CODE 4510–CP–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet *telephonically* on May 19, 2010. The meeting will begin at 2 p.m. (ET), and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

PUBLIC OBSERVATION: For all meetings and portions thereof open to public observation, members of the public that wish to listen to the proceedings may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the Chairman may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSION(S):

- Call toll-free number: 1–(866) 451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please "*MUTE*" your telephone immediately.

STATUS OF MEETING: Open, except as noted below.

- A portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to receive a staff briefing[1] regarding the proposed response to a draft report by the Government Accountability Office ("GAO") on certain aspects of the Corporation's operations.

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(g), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

Matters To Be Considered

Open Session

1. Approval of the agenda.
2. Consider and act on Board of Directors' response to the Inspector General's Semiannual Report to Congress for the period of October 1, 2009 through March 31, 2010.
3. Public comment.
4. Consider and act on whether to authorize an executive session of the *Board* to address items listed below under *Closed Session.*

Closed Session

5. Staff briefing on proposed response to the Government Accountability Office ("GAO") draft report entitled "*Legal Services Corporation: Improvements Needed in Controls Over Grant Awards and Grant Program Effectiveness (GAO–10–540).*"
6. Consider and act on other business.
7. Consider and act on motion to adjourn meeting.

CONTACT PERSON FOR INFORMATION: Kathleen Connors, Executive Assistant to the President, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Kathleen Connors at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: May 12, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–11755 Filed 5–12–10; 4:15 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–228, NRC–2010–0178]

Aerotest Operations, Inc., Aerotest Radiography and Research Reactor; Notice of Consideration of Approval of Transfer and Conforming Amendment, Opportunity for a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Order, Notice of Application, Opportunity for Hearing and Request for Comment.

FOR FURTHER INFORMATION CONTACT: Cindy Montgomery, Project Manager, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–3398; fax number: (301) 415–1032; e-mail: *Cindy.Montgomery@nrc.gov.*

DATES: Comments must be filed by June 14, 2010. Hearing requests and petitions to intervene must be filed by June 3, 2010.

ADDRESSES: Please include Docket ID NRC–2010–0178 in the subject line of your comments. 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–2010–0178. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: 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.

For instructions on submitting comments and obtaining access to documents related to this notice, *see* Section IV., Comments.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering the issuance of an Order under Title 10 of the Code of Federal Regulations (10 CFR) Section 50.80 approving the indirect transfer of Facility Operating License No. R–98 for the Aerotest Radiography and Research Reactor (ARRR), currently held by Aerotest Operations, Inc., as owner and licensed operator of ARRR. Aerotest Operations, Inc., is a wholly-owned subsidiary of OEA Aerospace, Inc., which, in turn, is owned by Autoliv ASP, Inc. The Commission is also considering amending the license for administrative purposes to reflect the proposed indirect transfer.

According to an application for approval dated January 19, 2010, as supplemented by letters dated February 2, 2010, March 23, 2010, April 1, and 19, 2010, filed by Aerotest Operations, Inc., (Aerotest), Autoliv ASP, Inc., and X-Ray Industries, Inc., (XRI), the applicants seek approval, pursuant to 10 CFR 50.80, of the indirect transfer of control of the licensee. The indirect transfer of control would be the result of a proposed sale of 100% of the stock of Aerotest to Aerotest Holdings, LLC, a new holding company being created by XRI. XRI would be the ultimate owner of Aerotest and its facility, the ARRR, and would indirectly own 100% of Aerotest. There will be no direct transfer of the license. Aerotest would continue to own and operate the facility and hold the license.

No physical changes to the facilities or operational changes are being proposed in the application. The proposed conforming amendment

would replace references to OEA, Inc., in the license with references to "the licensee."

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the indirect transfer will not affect the qualifications of the licensee to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and Orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming 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.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below. Access to the application and supplements is discussed in Section IV., Comments. A portion of the April 1, 2010, letter contains sensitive unclassified non-safeguards information (SUNSI), and is not available to the public. See Section IV., Comments and the Order providing instructions for requesting access to the withheld information.

II. Opportunity To Request a Hearing/ Petition for Leave To Intervene

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 O1F21, 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.*

Within 20 days from the date of publication of this notice, any person(s) whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and petition for leave to intervene via electronic submission through the NRC E-Filing system. As required by The Commission's rules of practice at 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 Act 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 the transfer of control of the license 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 3, 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).

III. 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 will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

IV. Comments

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. 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 comments will not be edited to remove any identifying or contact information, the NRC cautions against including any information in a 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.

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 dated January 19, 2010 (ML100490068); as supplemented by letters dated February 2, 2010 (ML100880295), March 23, 2010 (ML100880338), April 1, 2010 (ML100980153), and April 19, 2010 (ML101120070). As discussed above in Section I., a portion of the April 1, 2010, supplement contains SUNSI and is not publically available. Instructions for requesting access to the portion of the document being withheld 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 applicant: Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037, telephone number (202) 663–8148, e-mail: *jay.silberg@pillsburylaw.com* (counsel for Aerotest).

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 addresses 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

[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.

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 10th day of May, 2010.

For the Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–252; NRC–2009–0557]

University of New Mexico; University of New Mexico AGN–201M Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of a renewed Facility Operating License No. R–102, to the University of New Mexico (the licensee), which would authorize continued operation of the University of New Mexico AGN–201M reactor, located in Albuquerque, Bernalillo County, New Mexico. Therefore, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) 51.21, the NRC is issuing this Environmental Assessment and Finding of No Significant Impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would renew Facility Operating License No. R–102 for a period of twenty years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated February 21, 2007, as supplemented by letter dated November 9, 2009. In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the AGN–201M reactor to routinely provide teaching, research, and services to numerous institutions for a period of twenty years.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action to

[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.

issue a renewed Facility Operating License No. R–102 to allow continued operation of the AGN–201M reactor and concludes there is reasonable assurance that the AGN–201M reactor will continue to operate safely for the additional period of time. The details of the NRC staff's safety evaluation will be provided with the renewed license that will be issued as part of the letter to the licensee approving its license renewal application. This document contains the environmental assessment of the proposed action.

The University of New Mexico is located in Albuquerque, New Mexico. The AGN–201M reactor is housed in the Nuclear Energy Laboratory (NEL) located near the southwest corner of the University campus. The NEL is primarily surrounded by residential areas to the west and south and the University campus to the east and north. According to the 2000 census, the population density within a radial distance of one mile from the NEL is 5,352.9 persons per square mile. The nearest permanent residence is 160 meters (174 yards) from the site and the nearest dormitory is 724 meters (792 yards).

The NEL is a one-story concrete structure with six feet of earth between one foot thick concrete walls on the south and west sides. The north and east walls are poured concrete approximately one foot thick. The roof of the building is three feet of earth between five-inch thick concrete slabs. A portion of the roof is five feet of earth between five-inch thick concrete slabs. The only outside windows in the building are located in the entrance doors.

The AGN–201M reactor is a solid, homogeneous thermal reactor, used for teaching and training of students. The reactor is operated in a sealed container at a maximum licensed power of 5.0 watts. The reactor core uses graphite-coated uranium microspheres enriched in uranium-235, dispersed in a polyethylene matrix. The reactor core consists of nine fuel discs that are separated at the mid-plane by a thin aluminum baffle. Because of the small fissile material content and low operation power level, the fission product inventory in the core is negligible. The core is contained in a gas-tight aluminum cylindrical tank. The AGN–201M reactor has two safety rods, one coarse control rod, and one fine control rod. The two safety rods and the coarse control rod are fuel-loaded while the loading of the fine control rod depends on the standard loading in use at the time. In all cases, inserting a rod adds reactivity to the system.

The licensee has not requested any changes to the facility design or operating conditions as part of this renewal request. Therefore, the proposed action should not increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There should be no increase in occupational or public radiation exposure. Therefore, license renewal should not change the environmental impact of facility operation. Data from the last five years of operation was assessed to determine the projected radiological impact of the facility on the environment during the period of the renewed license. Based on this evaluation, the NRC staff concluded that continued operation of the reactor should not have a significant environmental impact.

I. Radiological Impact

No environmental effects should result from use of this reactor. The AGN–201M reactor has a dry core of uranium-impregnated polyethylene, sealed in an aluminum tank. Because of the form of the fuel and the lack of fission product inventory, failure of equipment or release of the fuel to the outside environment will not directly or indirectly endanger the public health and safety. A probabilistic risk assessment review of the reactor (ANS Transactions, Vol. 65, p. 132–133, 1992) indicated that "in the unlikely event of release to the environment, a total whole body dose rate of 1.61×10^{-5} mrem/sec in the form of a radioactive plume has been calculated for persons located in the vicinity." This indicates that even the maximum hypothetical release accident does not endanger the public health and safety.

The core is surrounded by a 20 cm thick high density (1.75 gram/cm^3) graphite reflector followed by a 10 cm thick lead gamma shield. The core and part of the graphite reflector are sealed in a fluid-tight aluminum core tank designed to contain any fission gases that might leak from the core. A review of the licensee's annual reports from 2000–2007, excluding the report for the period July 2002 through June 2003 which was not available, reveals that there was no liquid radioactive waste released from the facility nor was there any solid waste released. In addition, no environmental radiation surveys were required to be performed outside of the facility.

Personnel exposures received during the same time period were below 50 mrem per person with the majority of the personnel receiving below 5 mrem. No changes in reactor operation that would lead to an increase in occupational dose are expected as a result of license renewal.

Radiation monitoring instrumentation available to the reactor operators includes console-mounted meters and a portable survey meter. There are remote area monitors with automatic alarms installed to monitor gamma levels at the reactor console, checkpoint three (the south side of the reactor), reactor top, and in the general lab area (near the east door). All of the detectors are energy-compensated Geiger Mueller tubes. There will be no changes to the licensed program that would affect off-site radiation and contamination levels.

II. Non-Radiological Impact

The AGN–201M reactor is conductively cooled and requires no liquid or auxiliary cooling system. The removable thermal column tank permits access to the core tank. The thermal column tank is normally filled with water to provide shielding. The tank can be filled with graphite if a thermal column is desired. The steel thermal column tank acts as secondary containment for the core tank and is fluid tight. The water tank is the third and outermost of the fluid tight containers. It is 198 cm in diameter and made of steel. It holds 1000 gallons of water and forms the fast neutron shield. The water in the tank contains chromium. To date, the water has never been removed from the tank and there are no plans to do so. The water will be drained in the event the reactor is decommissioned and removal of the water will be handled by University of New Mexico Radiation Safety. Finally, there is a 60 cm concrete block shield on the front of the reactor tank and 40 cm concrete block shields on the sides and back. There is no shielding on the top of the reactor tank.

Release of thermal effluents from the AGN–201M reactor will not have a significant effect on the environment.

Environmental Effects of Accidents

Accident scenarios are discussed in Appendix A of the University of New Mexico's Safety Analysis Report. The maximum hypothetical accident is a nuclear excursion resulting from a 2% instantaneous increase of reactivity. The total radiation dose to a person next to the reactor would be approximately one rem; therefore, the worst-case occupational doses resulting from this accident would be below the limit of 5 rem or 0.05 Sieverts (Sv) specified in 10 CFR 20.1201. Worst-case doses to members of the general public would be

below the limit of 0.1 rem (1 mSv) specified in 10 CFR 20.1301. The proposed action will not increase the probability or consequences of accidents.

National Environmental Policy Act (NEPA) Considerations

I. Endangered Species Act (ESA)

The site occupied by the AGN–201M reactor does not contain any Federally- or State-protected fauna or flora, nor do the AGN–201M reactor effluents impact the habitats of any such fauna or flora.

II. Costal Zone Management Act (CZMA)

The site occupied by the AGN–201M reactor is not located within any managed coastal zones, nor do the AGN–201M reactor effluents impact any managed costal zones.

III. National Historical Preservation Act (NHPA)

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The National Register of Historic Places (NRHP) lists several historical sites near the AGN–201M reactor site. The nearest historical site is Cottage Bakery, located approximately 0.1 miles from the AGN–201M reactor site boundary. Given the distance between the facility and Cottage Bakery, continued operation of the AGN–201M reactor will not impact this historical site.

IV. Fish and Wildlife Coordination Act (FWCA)

The licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage.

V. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the AGN–201M reactor. Disproportionately high and adverse human health effects occur when the risk or rate of exposure to an environmental hazard for a minority or low-income population is significant and exceeds the risk or exposure rate for the general population or for another appropriate comparison group. Disproportionately high environmental effects are impacts or risk of impacts on the natural or physical environment in a minority or low-income community that are significant and appreciably exceed the environmental impact on the larger community. Such effects may include ecological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing in the vicinity of the AGN–201M reactor, and all are exposed to the same health and environmental effects generated from activities at the AGN–201M reactor.

Minority Populations in the Vicinity of the AGN–201M reactor—According to 2000 census data, 51.9 percent of the population (approximately 748,000 individuals) residing within a 50-mile radius of the AGN–201M reactor identified themselves as minority individuals. The largest minority group was Hispanic or Latino (310,000 persons or 41.4 percent), followed by "Some other race" (141,500 or about 18.9 percent). According to the U.S. Census Bureau, about 51.7 percent of the Bernalillo County population identified themselves as minorities, with persons of Hispanic or Latino origin comprising the largest minority group (42.0 percent). According to census data 3-year average estimates for 2005–2007, the minority population of Bernalillo County, as a percent of total population, had increased to 55.6 percent.

Low-Income Populations in the Vicinity of the AGN–201M reactor—According to 2000 census data, approximately 19,900 families and 100,800 individuals (approximately 10.4 and 13.5 percent, respectively) residing within a 50-mile radius of the AGN–201M reactor were identified as living below the Federal poverty threshold in 1999. The 1999 Federal poverty threshold was $17,029 for a family of four.

According to Census data in the 2005–2007 American Community Survey 3-Year Estimates, the median household income for New Mexico was $41,042, while 18.4 percent of the state population and 14.2 percent of families were determined to be living below the Federal poverty threshold. Bernalillo County had a higher median household income average ($45,022) and lower percentages (14.9 percent) of individuals and families (11.1 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects; however, radiation doses from continued operations associated with the license renewal are expected to continue at current levels and would be well below regulatory limits.

Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the proposed relicensing would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the AGN–201M reactor.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the staff considered denial of the proposed action. If the Commission denied the application for license renewal, facility operations would end and decommissioning would be required with no significant impact on the environment. The environmental impacts of license renewal and this alternative action are similar. In addition, the benefits of teaching, research, and services provided by facility operation would be lost.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of the original Facility Operating License R–102 for the University of New Mexico AGN–201M dated September, 1966; and the issuance of Amendment No. 10 to R–102, which authorized the power uprate to 5.0 W(t) dated January 18, 1973.

Agencies and Persons Consulted

In accordance with the Commission's stated policy, on November 25, 2009, the staff consulted with the State of New Mexico's State Liaison Officer, regarding the environmental impact of the proposed action. A copy of the draft environmental assessment was provided to the State Liaison Officer for review. In a memorandum dated December 22, 2009, the Director of the Environmental Health Division of the State's Department of the Environment responded, expressing the State's support for the continued operation of the facility.

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 application dated February 21, 2007 [ML092170540], as supplemented by the letter dated November 9, 2009 [ML093410385]. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (1st Floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on 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 at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 5th day of May, 2010.

For the Nuclear Regulatory Commission.

Kathryn M. Brock,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–11563 Filed 5–13–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. PI2010–3; Order No. 456]

Postal Rate Case Management

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is seeking comments relevant to management of an anticipated exigent postal rate case. It has scheduled a technical conference for a public discussion based on the submissions.

DATES: Comments are due: June 9, 2010; technical conference will be held: June 16, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Public Representative
III. Ordering Paragraphs

I. Introduction

On March 2, 2010, Postmaster General John E. Potter outlined elements of a business plan designed to close a projected gap between Postal Service revenues and costs.[1] Included in the plan was a reference to a possible "modest exigent rate increase" to be effective in 2011. *Id.* The term "exigent rate increase" is commonly used to refer to rate adjustments that are due to extraordinary or exceptional circumstances. Such rate adjustments are expressly authorized by 39 U.S.C. 3622(d)(1)(E).

Following the issuance of the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109–435, 120 Stat. 3218 (2006), the Commission adopted new rules that establish procedures for handling exigent rate cases. Docket No. RM2007–1, October 29, 2007 (Order No. 43). Those new rules (Exigent Rate Case Rules) are contained in subpart E of part 3010 of the Commission's regulations. 39 CFR part 3010, subpart E.

If filed, the potential exigent rate case referred to by the Postmaster General would be the first exigent rate case received by the Commission since passage of the PAEA. While the Commission is confident that its Exigent Rate Case Rules will provide an effective procedural framework for consideration of the currently anticipated case, the Commission believes that it would be prudent to give all interested parties an opportunity to explore and discuss procedural considerations unique to exigent rate cases before the Postal Service files such a case. This belief is grounded in part on the fact that section 3622(d)(1)(E) requires the Commission to issue a decision within 90 days after the Postal Service's filing. Advance consideration of the unique procedural aspects of the proposed exigent rate case may permit early identification of solutions to any potential issues that might otherwise complicate fair and meaningful participation by interested persons.

In light of the foregoing considerations, a technical conference is scheduled for June 16, 2010, beginning at 10:00 a.m. in the Commission's hearing room. The purpose of the conference is to give interested persons the opportunity to discuss procedures for managing the Postal Service's currently anticipated exigent rate case. The proceedings will be transcribed, and a copy of the transcript will be posted on the Commission's website. Further procedures are under consideration and may be announced by further public notice. Finally, the Commission invites interested persons to file proposed topics for discussion at the conference not later than June 9, 2010.

II. Public Representative

Section 505 of title 39 requires the designation of an officer of the Commission in all public proceedings to represent the interests of the general public. The Commission hereby designates James Waclawski as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. Docket No. PI2010-3 is established for the purpose of facilitating discussion of and obtaining views on, procedural matters pertaining to rate adjustments proposed to meet exigent circumstances under part 3010, subpart E of the commission's rules of practice.
2. A technical conference will be held June 16, 2010, beginning at 10:00 a.m. in the Commission's hearing room to discuss issues related to the matters that are the subject of this proceeding.
3. Interested persons may sunbmit proposed topics for discussion on or before June 9, 2010.
4. James Waclawski is designated as the Public Representative to represent the interests of the general public in this docket.
5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–11467 Filed 5–13–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] Press Release No. 10–018, United States Postal Service, Postal Service Outlines 10–Year Plan to Address Declining Revenues, Volumes (March 2, 2010).

POSTAL REGULATORY COMMISSION

[Docket No. MC2010–24; Order No. 457]

Review of Nonpostal Services Language

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is establishing a docket to consider the Postal Service's proposed nonpostal services Mail Classification Schedule language. It solicits comments to assist in this task.

DATES: Comments are due: June 4, 2010. Reply comments are due: June 18, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

Pursuant to section 404(e) of title 39, the Commission in Order No. 154 authorized 14 activities of the Postal Service to continue as "nonpostal services."[1] By this notice, the Commission initiates Docket No. MC2010–24 to consider the Postal Service's proposed Mail Classification Schedule (MCS) language for its authorized nonpostal services.

II. Postal Service Filings

While the proceedings resulting in Order No. 154 were ongoing, the Postal Service filed proposed MCS language for six activities which the Postal Service identified as nonpostal services.[2] Of the six activities, Order No. 154 provisionally accepted language for four nonpostal services for insertion into the MCS.[3]

Further, Order No. 154 required the Postal Service to file proposed MCS language for the 10 other nonpostal services that it authorized. *Id.* at 90.[4] In response to Order No. 154, the Postal Service filed a notice of proposed MCS language for those nonpostal services.[5] One service, the Warranty Repair Program, had been temporarily allowed subject to review in Phase II of that proceeding. At the conclusion of Phase II, the Warranty Repair Program was ordered terminated. Therefore, consideration of the proposed language for that product is moot.[6] The Postal Service's Notice proposes to realign and combine these authorized nonpostal services into eight products.

The eight renamed nonpostal services are classified as follows: Market Dominant—Alliances with the Private Sector to Defray Cost of Key Postal Functions, and Philatelic Sales; Competitive—Rental, Leasing, Licensing or Other Non-Sale Disposition of Tangible Property; Advertising; Mail Services Promotion; Training Facilities and Related Services; Licensing of Intellectual Property Other than OLRP; and Equipment Repair Service.

For the two market dominant nonpostal products, the Postal Service does not propose to realign Philatelic Sales. The Postal Service proposes to align the other market dominant service, MoverSource, an alliance with a private sector company to provide change-of-address assistance, with another alliance, WhitePages. For each of these latter activities, costs are defrayed through advertising solicited by the private sector entity. The Postal Service proposes to entitle this product "Alliances with the Private Sector to Defray Cost of Key Postal Functions." *Id.* at 7.

With respect to Philatelic Sales, the Postal Service filed a notice of amendment to its proposed MCS language to incorporate into the nonpostal Philatelic Sales product its current shipping charges for philatelic order fulfillment.[7] The amendment reflects the Postal Service's proposed method for reflecting shipping fees in the MCS pursuant to Commission Order No. 391.[8]

Web-based linking agreements are divided into three separate categories. Agreements providing links to merchants' Web sites are styled "Advertising."[9] Agreements to list a vendor on *usps.com* and to promote a vendor's mailing services or product are entitled "Mail Services Promotion." *Id.* at 8. The third category of web-based alliances is the aforementioned market dominant MoverSource-WhitePages alignment.

The Postal Service proposes to maintain the alignment of services described in Order No. 154 for Training Facility and Licensing of Intellectual Property Other Than OLRP.[10] *Id.* at 6. The Postal Service restyles "Training Facility" as "Training Facilities and Related Services." *Id.* at Appendix A.

The Postal Service proposes to rename some competitive nonpostal services to reflect more accurately the nature of the activities within each service. *Id.* at 3. The Postal Service asserts that to reduce potential confusion, some nonpostal activities are realigned to be independent of the names of current vendors or programs, or the location of the activity. This permits the Postal Service to enter into a similar agreement with others, or to accept advertising for other products in other venues. *Id.* at 4. Some similar services are grouped together such as certain web-based agreements within the broader category of Advertising. *Id.* at 4–5. Additionally, the Postal Service

[1] Docket No. MC2008–1, Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, December 19, 2008 (Order No. 154); *see also* Errata Notice, January 9, 2009 (Errata), petition denied, *United States Postal Service v. Postal Regulatory Commission,* 2010 WL 1189617 No. 09–1032 (CADC, March 30, 2010).

[2] The proposed language included the following six activities: Officially Licensed Retail Products (OLRP), Passport Photo Service, Photocopying Service, Electronic Postmark (EPM), Notary Public Services, and Stored Value Cards. Docket No. MC2008–1, United States Postal Service Notice of Filing of Proposed Mail Classification Schedule Language for Six Nonpostal Services Pursuant to Order No. 120, November 7, 2008. For the convenience of interested persons, the Mail Classification Schedule language proposed by the Postal Service in this filing and two other filings, dated March 10, 2009 and April 26, 2010 and discussed further below, is attached to this order for illustrative purposes and will not be published in the *Federal Register.* The language is available on the Commission's Web site (*http://www.prc.gov*).

[3] Notary Public Services and Stored Value Cards were not authorized as nonpostal services. Order No. 154 at 40, 89.

[4] Of the 10 authorized nonpostal services, Philatelic Sales and MoverSource were classified as market dominant. The remaining eight authorized nonpostal services classified as competitive were Affiliates for Website, Affiliates—Other (Linking Only), FedEx Drop Boxes, Licensing Programs Other Than Officially Licensed Retail Products, Meter Manufacturers Marketing Program, Non-Sale Lease Agreements (Non-Government), Training Facilities, and Warranty Repair Program (in part, subject to review in Phase II). *See* Errata at Appendix I, Part B.

[5] United States Postal Service Notice of Filing of Proposed Mail Classification Schedule Language for Nonpostal Activities in Response to Order No. 154, March 10, 2009 (Notice).

[6] The Warranty Repair Program failed to meet the grandfather requirement for a nonpostal service under section 404(e) of title 39 insofar as it relates to the provision of service to others. Docket No. MC2008–1(Phase II), Phase II Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, January 14, 2010, at 31, 39 (Order No. 392); appeals docketed, *Le Page's 2000 Inc. and Le Page's Products, Inc. v. Postal Regulatory Commission,* No. 10–1031 (CADC, February 12, 2010) consolidated with *United States Postal Service v. Postal Regulatory Commission,* No. 10–1033 (CADC, February 12, 2010). The decision in Phase II regarding the Warranty Repair Program was not appealed and is final.

[7] Notice of the United States Postal Service of Amendment to Mail Classification Schedule Language for Nonpostal Activities Required to be Filed by Order No. 154, April 26, 2010.

[8] Docket No. MC2009–19, Order Approving Addition of Postal Service to the Mail Classification Schedule Product Lists, January 13, 2010, at 12–15 (Order No. 391).

[9] The Postal Service cites as current agreements Maponics, Label Universe, and Mail Service Provider agreements. *Id.* at 8.

[10] In Order No. 392, the Commission limited the scope of its licensing authorization by denying authorization for Postal Service branding of mailing and shipping products related to Postal Service operations for general retail distribution. Order No. 392 at 39; appeals docketed, *see* note 6, *infra.* The Postal Service has not filed to amend its proposed language for "Licensing of Intellectual Property Other Than OLRP" to conform to Order No. 392.

requests that web-based linking agreements providing links to merchant websites be treated as price categories rather than separate products pending review in a rulemaking on the form and content of rules for nonpostal services. *Id.* at 5. The Postal Service asserts that designating the linking agreements as price categories pending further review removes uncertainty as to whether a section 3642 proceeding to add new products to the MCS would be required for any new web-based linking agreements. *Id.*

The nonpostal service described in Order No. 154 as Non-Sale Lease Agreements (Non-Government) includes leasing of parking facilities, office space, antenna towers, advertising, storage, and retail lobby space. Order No. 154 at 66. Non-sale dispositions of real property are sometimes structured as a "license" of real property. Notice at 9–10. The FedEx Drop Boxes arrangement identified in Order No. 154 as a separate nonpostal service also involves the licensing or rental of real property. *Id.* at 10.

The Postal Service notes that the Commission did not specifically address the rental of personal property in Order No. 154 and proposes to include the rental of equipment such as forklifts within this group. The Postal Service further notes that for years it has rented personal property such as exercise and audio visual equipment as part of its training facilities operations, but charges are accounted for as part of the training operations, and the Postal Service does not recommend including them in this description. *Id.* The Postal Service proposes to retitle this group of activities "Leasing, Licensing and Other Non-Sale Disposal of Tangible Property." *Id.*

III. Notice of Filings

The Commission establishes Docket No. MC2010–24 for consideration of the Postal Service's proposed language for nonpostal products attached to this order to be included in the MCS.

As noted above, the MCS language recognized by the Postal Service is attached to this order. Part 3020 of the Commission's rules provides for establishing product lists. Subpart A of the current MCS rules includes provisions for nonpostal products. 39 CFR 3020.13(a)(6) and (b)(5). Subpart B provides for changes to the product lists initiated by the Postal Service. The Commission will treat the Postal Service's filings as a unified request to modify the product lists.[11]

Under section 3020.34 of the rules, upon review of these Postal Service filings together with comments of interested parties, the Commission may approve the requests, institute further proceedings, permit the Postal Service an opportunity to modify its request, or take other appropriate action. Pursuant to 39 U.S.C. 404(e)(5) and 39 CFR 3020.33, the Commission provides interested persons an opportunity to express views and offer comments on the planned modifications and whether they are consistent with the policies of 39 U.S.C. 3642.

Comments on the proposed nonpostal services MCS language filed by the Postal Service are due no later than June 4, 2010. Reply comments, if any, are due June 18, 2010.

Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

IV. Ordering Paragraphs

It is ordered:

1. Docket No. MC2010–24 is established to consider the Postal Service's proposed nonpostal product Mail Classification Schedule language filed with its notices of March 10, 2009 and April 26, 2010, together with the nonpostal service Mail Classification Schedule language for four nonpostal services filed November 7, 2008 referred to in the body of this order.

2. Docket No. MC2009–20 is closed.

3. Comments are due no later than June 4, 2010.

4. Reply comments are due no later than June 18, 2010.

5. The Commission appoints Emmett Rand Costich as Public Representative to represent the interests of the general public in this proceeding.

6. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–11512 Filed 5–13–10; 8:45 am]

BILLING CODE 7710–FW–S

[11] Because the Postal Service's filings are pursuant to Commission orders, the filing requirements of subpart B shall, to the extent necessary, be waived.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29265 ; File No. 812–13710]

Jackson National Life Insurance Company of New York, *et al.*

May 10, 2010.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of contract enhancements applied to purchase payments made under certain deferred variable annuity contracts.

Applicants: Jackson National Life Insurance Company of New York ("JNL New York"), JNLNY Separate Account I (the "JNLNY Separate Account"), and Jackson National Life Distributors LLC ("Distributor," and collectively "Applicants").

Summary of Application: Applicants seek an order under Section 6(c) of the Act to exempt certain transactions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the recapture, under specified circumstances, of certain contract enhancements applied to purchase payments made under the deferred variable annuity contracts described herein that JNL New York has issued and will issue through the JNLNY Separate Account (the "Contracts") as well as other contracts that JNL New York may issue in the future through its existing or future separate accounts ("Other Accounts") that are substantially similar in all material respects to the Contracts ("Future Contracts"). Applicants also request that the order being sought extend to any other Financial Industry Regulatory Authority ("FINRA") member broker-dealer controlling or controlled by, or under common control with JNL New York, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts ("Affiliated Broker-Dealers") and any successors in interest to the Applicants.

DATES: *Filing Date:* The application was filed on October 23, 2009, and amended on January 13, 2010, and April 22, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of

the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 2, 2010, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. *Applicants:* c/o Jackson National Life Insurance Company of New York, 1 Corporate Way, Lansing, Michigan 48951, *Attn:* Anthony L. Dowling, Esq.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, at (202) 551–6762, or Harry Eisenstein, Branch Chief, at (202) 551–6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. JNL New York is a stock life insurance company organized under the laws of the state of New York in July 1995. Its legal domicile and principal address is 2900 Westchester Avenue, Purchase, New York 10577. JNL New York is admitted to conduct life insurance and annuity business in Delaware, Michigan, and New York. JNL New York is ultimately a wholly-owned subsidiary of Prudential plc (London, England).

2. The JNLNY Separate Account was established by JNL New York on September 12, 1997, pursuant to the provisions of New York law and the authority granted under a resolution of JNL New York's Board of Directors. JNL New York is the depositor of the JNLNY Separate Account. The JNLNY Separate Account meets the definition of a "separate account" under the Federal securities laws and is registered with the Commission as a unit investment trust under the Act (File Nos. 811–8401). The JNLNY Separate Account will fund the variable benefits available under the Contracts. The registration statement relating to the offering of the Contracts was filed under the Securities Act of 1933 (the "1933 Act") (File Nos. 333–163323).

3. The Distributor is a wholly owned subsidiary of Jackson National Life Insurance Company, JNL New York's parent company, and serves as the distributor of the Contracts. The Distributor is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of FINRA. The Distributor enters into selling group agreements with affiliated and unaffiliated broker-dealers. The Contracts are sold by licensed insurance agents, where the Contracts may be lawfully sold, who are registered representatives of broker-dealers that are registered under the 1934 Act and are members of FINRA.

4. The Contracts require a minimum initial premium payment of $5,000 or $10,000 under most circumstances depending on the contract ($2,000 for a qualified plan contract). Subsequent payments may be made at any time during the accumulation phase but before the contract anniversary after the owner's 85th birthday. Each subsequent payment must be at least $500 ($50 under an automatic payment plan). Prior approval of JNL New York is required for aggregate premium payments of over $1,000,000.

5. The Contracts permit owners to accumulate contract values on a fixed basis through allocations to one fixed account (the "Fixed Account"). The Contracts also permit owners to accumulate contract values on a variable basis, through allocations to one or more of the sub-accounts, also referred to as investment divisions, of the JNLNY Separate Account (the "Investment Divisions," and collectively with the Fixed Account, the "Allocation Options"). Under most Contracts, 98 Investment Divisions currently are expected to be offered through the JNLNY Separate Account but additional Investment Divisions may be offered in the future and some could be eliminated or combined with other Investment Divisions in the future. Similarly, Future Contracts may offer additional or different Investment Divisions. Any changes to the Investment Divisions offered will be effected in compliance with the terms of the Contracts and with applicable state and federal laws. Each Investment Division will invest in shares of a corresponding series ("Series") of JNL Series Trust ("Trust") or JNL Variable Fund LLC ("Fund") (collectively the "Trust and Fund"). Not all Investment Divisions may be available under every Contract. The Trust and Fund are open-end management investment companies registered under the Act and their shares are registered under the 1933 Act. Jackson National Asset Management, LLC ("JNAM") serves as the investment adviser for all of the Series of the Trust and Fund. JNAM has retained sub-advisers for each Series.

6. Transfers among the Investment Divisions are permitted. The first 15 transfers in a contract year are free; subsequent transfers cost $25. Certain transfers to and from the Fixed Account are also permitted during the Contracts' accumulation phase, but are subject to certain adjustments and limitations. Dollar cost averaging and rebalancing transfers are offered at no charge and do not count against the 15 free transfers permitted each year.

7. If the owner dies during the accumulation phase of the Contracts, the beneficiary named by the owner is paid a death benefit by JNL New York. The Contracts' base death benefit, which applies unless an optional death benefit has been elected, is a payment to the beneficiary of the greater of: (i) Contract value on the date JNL New York receives proof of death and completed claim forms from the beneficiary or (ii) the total premiums paid under that Contract minus any prior withdrawals (including any withdrawal charges, recapture charges or other charges or adjustments applicable to such withdrawals).

8. The owner may also be offered certain optional endorsements (for various fees) that can change the death benefit paid to the beneficiary. The owner of a Contract may be offered the following two optional death benefits that would replace the base death benefit: (i) A Highest Anniversary Value Death Benefit which is the greatest of the contract value on the date JNL New York receives proof of death and completed claim forms from the beneficiary; or total net premiums since the contract was issued; or the greatest contract value on any contract anniversary prior to the owner's 81st birthday, adjusted for any withdrawals subsequent to that contract anniversary (including any applicable withdrawal charges, recapture charges, and other charges or adjustments for such withdrawals), plus any premium paid subsequent to that contract anniversary; and (ii) a death benefit available only in conjunction with the purchase of a particular Guaranteed Minimum Withdrawal Benefit ("GMWB") marketed under the name of LifeGuard Freedom 6 GMWB.

9. The Contracts offer fixed and variable versions of the following four types of annuity payment or "income payment": Life income, joint and

survivor, life annuity with at least 120 or 240 monthly payments guaranteed to be paid (although not guaranteed as to amount if variable), and income for a specified period of 5 to 30 years. JNL New York may also offer other income payment options. The Contracts may also offer various GMWB optional endorsements.

10. JNL New York will add an additional amount to the owner's contract value (a "Contract Enhancement") for the initial premium payment, and for each subsequent premium payment received prior to the first contract anniversary following the owner's 85th birthday. Premium payments will not be accepted on or after the first contract anniversary following the owner's 85th birthday. If the owner is age 85 at issue, premium payments will not be accepted on or after the first contract anniversary. All Contract Enhancements are paid from JNL New York's general account assets. The Contract Enhancement is equal to 6% of the premium payment.

11. JNL New York will recapture all or a portion of any Contract Enhancements by imposing a recapture charge whenever an owner: (i) Makes a total withdrawal within the recapture charge period (nine Completed Years after a premium payment) or a partial withdrawal of corresponding premiums within the recapture charge period in excess of those permitted under the Contracts' free withdrawal provision, unless the withdrawal is made for certain health-related emergencies specified in the Contracts; or (ii) returns the Contract during the free-look period.

12. The amount of the recapture charge varies, depending upon when the charge is imposed, based on Completed Years since receipt of the related premium, as follows:

CONTRACT ENHANCEMENT RECAPTURE CHARGE (AS A PERCENTAGE OF PREMIUM PAYMENTS)

Completed Years Since Receipt of Premium.	0–1	1–2	2–3	3–4	4–5	5–6	6–7	7–8	8–9	9+
Recapture Charge.	6%	5.50%	4.50%	4%	3.50%	3%	2%	1%	.50%	0%

13. A "Completed Year" is the succeeding twelve months from the date on which JNL New York receives a premium payment. Completed Years specify the years from the date of receipt of the premium and do not refer to contract years. If the premium receipt date is on the issue date of the Contract then Completed Year 0–1 does not include the first contract anniversary. The first contract anniversary begins Completed Year 1–2 and each successive Completed Year begins with the contract anniversary of the preceding contract year. If the premium receipt date is other than the issue date or a subsequent contract anniversary, there is no correlation of the contract anniversary date and Completed Years. For example, if the issue date is January 15, 2010 and a premium payment is received on February 28, 2010, then, although the first contract anniversary is January 15, 2011, the end of Competed Year 0–1 for that premium payment would be February 27, 2011, and February 28, 2011 begins Completed Year 1–2.

14. The recapture charge percentage will be applied to the corresponding premium reflected in the amount withdrawn that remains subject to a recapture charge. The amount recaptured will be taken from the Investment Divisions and the Fixed Account in the proportion their respective values bear to the contract value. The dollar amount recaptured will never exceed the dollar amount of the Contract Enhancement added to the contract.

15. JNL New York does not assess the recapture charge on any payments paid out as: Death benefits; income payments; withdrawals of earnings; withdrawals taken under the free withdrawal provision, which allows for free withdrawals up to 10% of remaining premium, less earnings; or withdrawals necessary to satisfy the required minimum distribution of the Internal Revenue Code (if the withdrawal requested exceeds the required minimum distribution, the recapture charge will not be waived on the required minimum distribution).

16. The contract value will reflect any gains or losses attributable to a Contract Enhancement described above. For purposes of determining the recapture charge and withdrawal charge, withdrawals will be allocated first to earnings, if any (which may be withdrawn free of any recapture charge and withdrawal charge), second to premium on a first-in, first-out basis, so that all withdrawals are allocated to premium to which the lowest (if any) withdrawal charges and recapture charges apply, and third to Contract Enhancements. For all purposes, other than for tax purposes, earnings are defined to be the excess, if any, of the contract value over the sum of remaining Contract Enhancements (the total Contract Enhancements, reduced by withdrawals of Contract Enhancements) and remaining premiums (the total premium, reduced by withdrawals that incur withdrawal charges and/or recapture charges, and withdrawals of premiums that are no longer subject to withdrawal charges and/or recapture charges). Contract Enhancements and any gains or losses attributable to a Contract Enhancement will be considered earnings under the Contract for tax purposes.

17. The Contracts have a "free-look" period of twenty days after the owner receives the Contract. Contract value, less the full amount of any Contract Enhancement(s) is returned upon exercise of free look rights by an owner. Therefore, 100% of the Contract Enhancement will be recaptured under all circumstances if an owner returns the Contract during the free-look period, but any gain or loss on investments of the Contract Enhancement would be retained by the owner. The dollar amount recaptured will never exceed the dollar amount of the Contract Enhancement added to the contract. A withdrawal charge will not be assessed upon exercise of free look rights.

18. In addition to the Contract Enhancement recapture charges, the Contracts may have additional charges including a withdrawal charge that applies to total withdrawals and partial withdrawals in excess of amounts permitted to be withdrawn under the Contract's free withdrawal provision. The withdrawal charges shown in the table below apply to the Contracts. The amount of the withdrawal charge depends upon the when the charge is imposed based on the Completed Years since the receipt of the related premium, as follows:

WITHDRAWAL CHARGE (AS A PERCENTAGE OF PREMIUM PAYMENTS)

Completed Years Since Receipt of Premium.	0–1	1–2	2–3	3–4	4–5	5–6	6–7	7–8	8–9	9+
Withdrawal Charge.	4.0%	3.5%	3.5%	3%	2.5%	2%	2%	2%	1%	0

19. JNL New York does not assess the withdrawal charge on any payments paid out as: Death benefits; income payments (the income date, which is the date income payments commence, cannot be sooner than 13 months from the issue date); cancellation of the Contract upon exercise of free look rights by an owner; withdrawals of earnings; withdrawals taken under the free withdrawal provision, which allows for free withdrawals up to 10% of remaining premium, less earnings; and withdrawals necessary to satisfy the required minimum distribution of the Internal Revenue Code (if the withdrawal requested exceeds the required minimum distribution, the withdrawal charge will not be waived on the required minimum distribution).

Applicants' Legal Analysis

1. Applicants state that Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts and any Future Contracts funded by the JNLNY Separate Account or Other Accounts that are issued by JNL New York and underwritten or distributed by the Distributor or Affiliated Broker-Dealers. Applicants undertake that Future Contracts funded by the JNLNY Separate Account or Other Accounts, in the future, will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 27 of the Act regulates and imposes certain restrictions on the sales of periodic payment plan certificates issued by any registered investment company. Applicants state that Subsection (i) of Section 27 of the Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Applicants submit that the recapture of the Contract Enhancement in the circumstances set forth in its application would not deprive an owner of his or her proportionate share of the issuer's current net assets. A Contract owner's interest in the amount of the Contract Enhancement allocated to his or her contract value upon receipt of a premium payment is not fully vested until nine complete years following a premium payment. Until or unless the amount of any Contract Enhancement is vested, JNL New York retains the right and interest in the Contract Enhancement amount, although not in the earnings attributable to that amount. Thus, Applicants urge that when JNL New York recaptures any Contract Enhancement it is simply retrieving its own assets, and because a Contract owner's interest in the Contract Enhancement is not vested, the Contract owner has not been deprived of a proportionate share of the JNLNY Separate Account's assets, *i.e.,* a share of the JNLNY Separate Account's assets proportionate to the Contract owner's contract value.

4. In addition, Applicants represent that it would be patently unfair to allow a Contract owner exercising the free-look privilege to retain the Contract Enhancement amount under a Contract that has been returned for a refund after a period of only a few days. If JNL New York could not recapture the Contract Enhancement, individuals could purchase a Contract with no intention of retaining it and simply return it for a quick profit. Furthermore, Applicants state that the recapture of the Contract Enhancement relating to withdrawals and to income payments within the first nine years of a premium contribution is designed to protect JNL New York against Contract owners not holding the Contract for a sufficient time period. It provides JNL New York with sufficient time to recover the cost of the Contract Enhancement, and to avoid the financial detriment that would result from a shorter recapture period.

5. Applicants represent that it is not administratively feasible to track the Contract Enhancement amount in the JNLNY Separate Account after the Contract Enhancement(s) is applied. Accordingly, the asset-based charges applicable to the JNLNY Separate Account will be assessed against the entire amounts held in the JNLNY Separate Account, including any Contract Enhancement amounts. As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract owner's contract value did not include any Contract Enhancement.

6. Applicants submit that the provisions for recapture of any Contract Enhancement under the Contracts do not violate Sections 2(a)(32) and 27(i)(2)(A) of the Act. Sections 26(e) and 27(i) were added to the Act to implement the purposes of the National Securities Markets Improvement Act of 1996 and Congressional intent. The application of a Contract Enhancement to premium payments made under the Contracts should not raise any questions as to compliance by JNL New York with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an order providing exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of the Contract Enhancements, under the circumstances described herein and in the Application, without the loss of relief from Section 27 provided by Section 27(i).

7. Applicants state that Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to

principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

8. Applicants state that it is possible that someone might view JNL New York's recapture of the Contract Enhancements as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the JNLNY Separate Account. Applicants contend, however, that the recapture of the Contract Enhancement does not violate Rule 22c–1. The recapture of some or all of the Contract Enhancement does not involve either of the evils that Section 22(c) and Rule 22c–1 were intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of a Contract Enhancement, JNL New York will redeem interests in a Contract owner's contract value at a price determined on the basis of the current net asset value of the JNLNY Separate Account. The amount recaptured will be less than or equal to the amount of the Contract Enhancement that JNL New York paid out of its general account assets. Although Contract owners will be entitled to retain any investment gains attributable to the Contract Enhancement and to bear any investment losses attributable to the Contract Enhancement, the amount of such gains or losses will be determined on the basis of the current net asset values of the JNLNY Separate Account. Thus, no dilution will occur upon the recapture of the Contract Enhancement. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Contract Enhancement. Because neither of the harms that Rule 22c-1 was meant to address is found in the recapture of the Contract Enhancement, Rule 22c–1 should not apply to any Contract Enhancement. However, to avoid any uncertainty as to full compliance with Rule 22c-1, Applicants request an order granting an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Contract Enhancement under the Contracts.

9. Applicants submit that extending the requested relief to encompass Future Contracts and Other Accounts is appropriate in the public interest because it promotes competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications prior to introducing new variable annuity contracts. Investors would receive no benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issues under the Act not already addressed in the application.

10. Applicants submit, for the reasons stated herein, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11543 Filed 5–13–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62054; File No. SR–NYSEArca–2010–34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Commentary .02 to Rule 5.32, Terms of FLEX Options, to Establish a Pilot Program To Permit FLEX Options to Trade With no Minimum Size Requirement

May 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on April 29, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Commentary .02 to Rule 5.32, Terms of FLEX Options, to establish a Pilot Program to permit FLEX Options to trade with no minimum size requirement. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the filing is to adopt rules to establish a Pilot Program to eliminate minimum value sizes for both FLEX Equity options and FLEX Index options similar to a pilot approved for the Chicago Board Options Exchange ("CBOE").[3]

Presently, the Exchange minimum value size requirements for an opening FLEX Equity transaction in any FLEX series in which there is no open interest

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 34–61439 (January 28, 2010) 75 FR 5831 (February 4, 2010).

at the time the Request for Quote is submitted is the lesser of 250 contracts or the number of contracts overlying $1 million in underlying securities. An opening FLEX Index transaction in a FLEX series in which there is no open interest requires a minimum size of $10 million Underlying Equivalent Value. The Exchange proposes to adopt a fourteen month pilot program that eliminates the minimum value size requirements for both FLEX Equity and FLEX Index options. If, in the future, the Exchange proposes an extension of the minimum value size Pilot Program, or should the Exchange propose to make the new Program permanent, the Exchange will submit, along with any filing proposing such amendments to the Program, a Pilot Program report that would provide an analysis of the Pilot covering the period during which the Program was in effect. This minimum value size report would include: (i) Data and analysis on the open interest and trading volume in (a) FLEX Equity Options with opening transaction with a minimum size of 0 to 249 contracts and less than $1 million in underlying value; (b) FLEX Index Options with opening transaction with a minimum opening size of less than $10 million in underlying equivalent value; and (ii) analysis on the types of investors that initiated opening FLEX Equity and Index Options transactions (*i.e.,* institutional, high net worth, or retail). The report would be submitted to the Commission at least two months prior to the expiration date of the Pilot Program and would be provided on a confidential basis.

The Exchange notes that any positions established under this Pilot would not be affected by the expiration of the Pilot. For example, a 10-contract FLEX Equity Option opening position that overlies less than $1 million in the underlying security and expires in January 2015 could be established during the 14-month Pilot. If the Pilot Program were not extended, the position would continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series. The proposed minimum opening transaction size elimination is based on a similar pilot approved for use on CBOE.[4]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[6] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest by eliminating a minimum size for FLEX transactions, which the Exchange believes will provide greater opportunities for investors to manage risk through the use of FLEX options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has requested that the Commission waive the 30-day operative delay.

The Commission has considered NYSE Arca's request to waive the 30-day operative delay. Because, however, the Commission does not believe, practically speaking, that a pilot should retroactively commence, the Commission is only waiving the operative delay as of the date of this notice for the reasons discussed below.

The Commission believes that shortening the 30-day operative delay to allow the commencement of the pilot as of the date of this notice is consistent with the protection of investors and the public interest. The Commission notes that the proposed rule change is substantially similar to a pilot that was previously approved by the Commission and is currently in existence for CBOE.[11] The Commission also notes that the corresponding CBOE pilot was subject to full notice and comment in the **Federal Register**, and that the Commission only received comments that supported that proposal.[12] Moreover, waiving the operative date as of the date of this notice is consistent with approval of CBOE's pilot, which allowed implementation as of the date of the Commission's approval order. For these reasons, the Commission designates the proposal to be operative upon the date of issuance of this notice.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[4] *See* Note 3 above.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *Id.*

[11] *See* CBOE Rule 24A.4 Interpretations and Policies .01(b); *see also* Securities Exchange Act Release No. 61439 (January 28, 2010) 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087).

[12] *See* Securities Exchange Act Release No. 61439 (January 28, 2010) 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087).

[13] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2010–34 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–2010–34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–34 and should be submitted on or before June 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11542 Filed 5–13–10; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7003]

Culturally Significant Objects Imported for Exhibition Determinations: "A Gift From the Desert: The Art, History and Culture of the Arabian Horse"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "A Gift from the Desert: The Art, History and Culture of the Arabian Horse," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the International Museum of the Horse, from on or about May 29, 2010, until on or about October 15, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 10, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–11604 Filed 5–13–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7002]

Waiver of Restriction on Assistance To the Central Government of the Kyrgyz Republic

Pursuant to section 7088(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8) ("the Act"), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7088(c)(1) of the Act with respect to the Government of the Kyrgyz Republic, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: May 5, 2010.

Jacob J. Lew,

Deputy Secretary of State for Management and Resources, Department of State.

[FR Doc. 2010–11597 Filed 5–13–10; 8:45 am]

BILLING CODE 4710–46–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 702X)]

CSX Transportation, Inc.—Abandonment Exemption—in Marion County, IN.

On April 26, 2010, CSX Transportation, Inc. (CSXT) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 0.82-mile line of railroad in its Northern Region, Great Lakes Division, Indianapolis Terminal Subdivision, between milepost QSZ 3.60 and milepost QSZ 4.42, known as the Speedway Running Track, in Indianapolis, Marion County, Ind. The line traverses United States Postal Service Zip Code 46222 and includes no stations.

In addition to an exemption from the prior approval requirements of 49 U.S.C. 10903, CSXT seeks exemption from 49 U.S.C. 10904 [offer of financial assistance (OFA) procedures]. In support, CSXT states that it intends to reclassify the track as excepted track and sell or lease it to Heritage-Crystal Clean (HCC), the only shipper on the line. According to CSXT, the line is no longer needed for common carrier service, and HCC wants to acquire and maintain the line to allow for expanded intra-plant operations and rail use without incurring a common carrier obligation. This request will be addressed in the final decision.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad and The Union Pacific Railroad Company—Abandonment—Portion Goshen Branch Between Firth and Ammon, In Bingham and Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 13, 2010.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 3, 2010. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 55 (Sub-No. 702X), and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) Kathryn R. Barney, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the petition are due on or before June 3, 2010.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0328 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov*."

Decided: May 7, 2010

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. 2010–11341 Filed 5–13–10; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA, USACE, and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project to widen State Route 99 from the existing four-lane facility to six lanes from the Austin Road interchange in the City of Manteca (post mile 4.9) to the Arch Road interchange in the City of Stockton (post mile 15.0), in San Joaquin County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 10, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Dominic Hoang, Project Development Engineer, FHWA, 650 Capitol Mall, #4–100, Sacramento, CA 95814; weekdays 7 a.m. to 4 p.m. (Pacific time); telephone (916) 498–5002; e-mail: *dominic.hoang@dot.gov.* For the California Department of Transportation: Gail Miller, Senior Environmental Planner, California Department of Transportation (Caltrans), 2015 E. Shields Avenue #100, Fresno, CA 93726; weekdays 8 a.m. to 5 p.m. (Pacific time); telephone (559) 243–8274; e-mail: *gail_miller@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA, and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California. The State Route 99 Manteca Widening Project would provide congestion relief along a stretch of State Route 99 from the Austin Road interchange to the Arch Road interchange, improve future traffic operations, and provide route continuity. This would be accomplished by widening State Route 99 from a four-lane facility to a six-lane facility with structural and operational improvements to interchanges within the project limits. The actions by the Federal agencies and the laws under which such actions were taken are described in the Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on March 10, 2010, and in other documents in the FHWA administrative record. The EA/FONSI and other documents are available by contacting FHWA or Caltrans at the addresses provided above. The FHWA EA/FONSI can be viewed and downloaded from the project Web site at: *http://www.dot.ca.gov/dist10/environmental/projects/99widening/index.html.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; and Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Wetlands Mitigation [23 U.S.C. 103(b)(6)(m) and 133(b)(11)]; Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Flood Disaster Protection Act, 42 U.S.C. 4001–4128; and Safe Drinking Water Act [42 U.S.C. 300(f)–300(j)(6)].

5. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; and Migratory Bird Treaty Act [16 U.S.C. 703–712].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469–469c]; Archaeological Resources

Protection Act of 1979 [16 U.S.C. 470 *et seq.*]; and Native American Graves Protection and Repatriation Act [25 U.S.C. 3001–3013].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act [7 U.S.C. 4201–4209]; American Indian Religious Freedom Act [42 U.S.C. 1996]; and The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 9675]; Superfund Amendments and Reauthorization Act of 1986; and Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of the Cultural Environment; E.O. 13007 Indian Sacred Sites; E.O.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 10, 2010.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–11547 Filed 5–13–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

United Railroad Historical Society of New Jersey

[Docket Number FRA–2010–0079]

The United Railroad Historical Society of New Jersey (URHS) of Jackson, New Jersey, has petitioned for a permanent waiver of compliance for six passenger cars from the requirements of the Railroad Safety Glazing Standards, Title 49 CFR Part 223, which require certified glazing in all windows. The identifying mark, type of car, year built, number of windows and the estimated replacement glazing cost for each car are as follows:

- New York Central "Hickory Creek," Observation/Lounge/Sleeper, 1948, 28, $35,000.
- New York Central No. 43, Tavern/Lounge, 1947, 25, $30,000.
- New York Central No. 37, Tavern/Lounge, 1947, 25, $30,000.
- Pennsylvania Railroad 1547, Coach/Lounge, 1949, 25, $28,000.
- URHS 326, Coach, 1950, 26, $30,000.
- URHS 329, Coach, 1953, 33, $33,000.

URHS has collected this historic equipment so as to operate it in conjunction with a future New Jersey Transportation Heritage Center. Part of this effort includes operating these cars on various short line railroads. For example, the New York Central "Hickory Creek" and the New York Central No. 43 periodically (10 trips/year) operate from New York, to various other destinations in the country. The other four cars: The New York Central No. 37, Pennsylvania Railroad 1547, URHS 326 and URHS 329 are operated on the Cape May Seashore Lines between Richland and Tuckahoe (15 miles); and between Cape May Court House and Cape May, New Jersey (13 miles), with a maximum speed of 30 mph. These cars were restored over the past 10 years, and all are equipped with laminated safety plate glazing.

URHS states that they are a non-profit 501(c)(3) organization and have little income so that it would be prohibitive for them to re-equip these cars with the FRA certified glazing per provisions of 49 CFR 223.15 *Requirements for existing passenger cars.* They are therefore seeking a waiver of compliance from provisions that require certified glazing for the passenger cars listed above, and presently located in Tuckahoe and Lebanon, New Jersey.

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 these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2010–0079) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 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.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on May 10, 2010.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 2010–11577 Filed 5–13–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on May 17–18, 2010, in the Magnolia Ballroom at the St. Regis Washington DC, 923 16th and K Streets, NW., from

8:30 a.m. to 5 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On both days, the Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other Veteran benefits programs. Time will be allocated for receiving public comments on the afternoon of May 17. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461–9728 or *Ersie.farber@va.gov.*

Dated: May 5, 2010.

By direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–11565 Filed 5–13–10; 8:45 am]

BILLING CODE P

Federal Register

Friday,
May 14, 2010

Part II

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2010.

SUMMARY: Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

DATES: The Commission has specified an effective date of November 1, 2010, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202–502–4597. The amendments set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on January 21, 2010 (*see* 75 FR 3525). The Commission held a public hearing on the proposed amendments in Washington, DC, on March 17, 2010. On April 29, 2010, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2010.

Authority: 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

William K. Sessions III,
Chair.

1. *Amendment:* Chapter Five, Part A, is amended in the Sentencing Table by redesignating Zones A, B, C, and D (as designated by Amendment 462, *see* USSG Appendix C, Amendment 462 (effective November 1, 1992)) as follows: Zone A (containing all guideline ranges having a minimum of zero months); Zone B (containing all guideline ranges having a minimum of at least one but not more than nine months); Zone C (containing all guideline ranges having a minimum of at least ten but not more than twelve months); and Zone D (containing all guideline ranges having a minimum of fifteen months or more).

The Commentary to § 5B1.1 captioned "Application Notes" is amended in Note 1(b) by striking "six" and inserting "nine"; and in Note 2 by striking "eight" and inserting "ten".

The Commentary to § 5C1.1 captioned "Application Notes" is amended in Note 3 in the first paragraph by striking "six" and inserting "nine"; in Note 4 by striking "eight, nine, or ten months" and inserting "ten or twelve months"; by striking "8–14" and inserting "10–16" both places it appears; by striking "sentence of four" and inserting "sentence of five" both places it appears; by striking "four" before "months community"and inserting "five"; by striking "five" after "and a sentence of" and inserting "ten"; by striking Note 6 and inserting the following:

"6. There may be cases in which a departure from the sentencing options authorized for Zone C of the Sentencing Table (under which at least half the minimum term must be satisfied by imprisonment) to the sentencing options authorized for Zone B of the Sentencing Table (under which all or most of the minimum term may be satisfied by intermittent confinement, community confinement, or home detention instead of imprisonment) is appropriate to accomplish a specific treatment purpose. Such a departure should be considered only in cases where the court finds that (A) the defendant is an abuser of narcotics, other controlled substances, or alcohol, or suffers from a significant mental illness, and (B) the defendant's criminality is related to the treatment problem to be addressed.

In determining whether such a departure is appropriate, the court should consider, among other things, (1) the likelihood that completion of the treatment program will successfully address the treatment problem, thereby reducing the risk to the public from further crimes of the defendant, and (2) whether imposition of less imprisonment than required by Zone C will increase the risk to the public from further crimes of the defendant.

Examples: The following examples both assume the applicable guideline range is 12–18 months and the court departs in accordance with this application note. Under Zone C rules, the defendant must be sentenced to at least six months imprisonment. (1) The defendant is a nonviolent drug offender in Criminal History Category I and probation is not prohibited by statute. The court departs downward to impose a sentence of probation, with twelve months of intermittent confinement, community confinement, or home detention and participation in a substance abuse treatment program as conditions of probation. (2) The defendant is convicted of a Class A or B felony, so probation is prohibited by statute (*see* § 5B1.1(b)). The court departs downward to impose a sentence of one month imprisonment, with eleven months in community confinement or home detention and participation in a substance abuse treatment program as conditions of supervised release."

In Note 7 by striking the last sentence; in Note 8 by striking "twelve" and inserting "15"; and by redesignating Note 8 as Note 9 and inserting after Note 7 the following:

"8. In a case in which community confinement in a residential treatment program is imposed to accomplish a specific treatment purpose, the court should consider the effectiveness of the residential treatment program."

Reason for Amendment: This amendment is a two-part amendment expanding the availability of alternatives to incarceration. The amendment provides a greater range of sentencing options to courts with respect to certain offenders by expanding Zones B and C of the Sentencing Table by one level each and addresses cases in which a departure from imprisonment to an alternative to incarceration (such as intermittent confinement, community confinement, or home confinement) may be appropriate to accomplish a specific treatment purpose.

The amendment is a result of the Commission's continued multi-year study of alternatives to incarceration. The Commission initiated this study in recognition of increased interest in alternatives to incarceration by all three branches of government and renewed public debate about the size of the federal prison population and the need for greater availability of alternatives to incarceration for certain nonviolent first offenders. *See generally* 28 U.S.C. 994(g), (j).

As part of the study, the Commission held a two-day national symposium at which the Commission heard from experts on alternatives to incarceration, including federal and state judges, congressional staff, professors of law

and the social sciences, corrections and alternative sentencing practitioners and specialists, federal and state prosecutors and defense attorneys, prison officials, and others involved in criminal justice. *See United States Sentencing Commission, Symposium on Alternatives to Incarceration* (July 2008). In considering the amendment, the Commission also reviewed federal sentencing data, public comment and testimony, recent scholarly literature, current federal and state practices, and feedback in various forms from federal judges.

First, the amendment expands Zones B and C of the Sentencing Table in Chapter Five. Specifically, it expands Zone B by one level for each Criminal History Category (taking this area from Zone C), and expands Zone C by one level for each Criminal History Category (taking this area from Zone D). Accordingly, under the amendment, defendants in Zone C with an applicable guideline range of 8–14 months or 9–15 months are moved to Zone B, and defendants in Zone D with an applicable guideline range of 12–18 months are moved to Zone C. Conforming changes also are made to §§ 5B1.1 (Imposition of a Term of Probation) and 5C1.1. In considering this one-level expansion, the Commission observed that approximately 42 percent of the Zone C offenders covered by the amendment and approximately 52 percent of the Zone D offenders covered by the amendment already receive sentences below the applicable guideline range.

The Commission estimates that of the 71,054 offenders sentenced in fiscal year 2009 for which complete sentencing guideline application information is available, 1,565 offenders in Zone C, or 2.2 percent, would have been in Zone B of the Sentencing Table under the amendment, and 2,734 offenders in Zone D, or 3.8 percent, would have been in Zone C. Not all of these offenders would have been eligible for an alternative to incarceration, however, because many were non-citizens who may have been subject to an immigration detainer and some were statutorily prohibited from being sentenced to a term of probation, *see, e.g.*, 18 U.S.C. 3561(a)(1) (prohibiting a defendant convicted of a Class A or Class B felony from being sentenced to a term of probation).

As a further reason for the zone expansion, Commission data indicate that courts often sentence offenders in Zone D with an applicable guideline range of 12–18 months to a term of imprisonment of 12 months and one day for the specific purpose of making such offenders eligible for credit for satisfactory behavior while in prison. *See* 18 U.S.C. 624(b). For such an offender, assuming the maximum "good time credit" is earned, the sentence effectively becomes approximately ten and one-half months. Given that prior to the amendment the highest guideline range in Zone C was 10–16 months, the Commission determined that offenders in Zone D with an applicable guideline range of 12–18 months, many of whom effectively serve a sentence at the lower end of the highest Zone C sentencing range, should be included in Zone C.

Second, the amendment clarifies and illustrates certain cases in which a departure may be appropriate to accomplish a specific treatment purpose. Specifically, it amends an existing departure provision at § 5C1.1 (Imposition of a Term of Imprisonment), Application Note 6. As amended, the application note states that a departure from the sentencing options authorized for Zone C of the Sentencing Table to accomplish a specific treatment purpose should be considered only in cases where the court finds that (A) the defendant is an abuser of narcotics, other controlled substances, or alcohol, or suffers from a significant mental illness, and (B) the defendant's criminality is related to the treatment problem to be addressed.

Under the application note as amended, the court may depart from the sentencing options authorized for Zone C (under which at least half the minimum term must be satisfied by imprisonment) to the sentencing options authorized for Zone B (under which all or most of the minimum term may be satisfied by intermittent confinement, community confinement, or home detention instead of imprisonment) to accomplish a specific treatment purpose. The application note also provides that, in determining whether such a departure is appropriate, the court should consider, among other things, two factors relating to public safety: (1) The likelihood that completion of the treatment program will successfully address the treatment problem, thereby reducing the risk to the public from further crimes of the defendant, and (2) whether imposition of less imprisonment than required by Zone C will increase the risk to the public from further crimes of the defendant. Some public comment, testimony, and research suggested that successful completion of treatment programs may reduce recidivism rates and that, for some defendants, confinement at home or in the community instead of imprisonment may better address both the defendant's need for treatment and the need to protect the public. Accordingly, the Commission amended the application note to clarify the criteria and to provide examples of such cases.

The amendment also makes two other changes to the Commentary to § 5C1.1 regarding the factors to be considered in determining whether to impose an alternative to incarceration. The amendment adds an application note providing that, in a case in which community confinement in a residential treatment program is imposed to accomplish a specific treatment purpose, the court should consider the effectiveness of the treatment program. The amendment also deletes as unnecessary the second sentence of Application Note 7.

2. *Amendment:* Chapter Five, Part H, is amended in the Introductory Commentary by striking the first paragraph and inserting the following:

"This Part addresses the relevance of certain specific offender characteristics in sentencing. The Sentencing Reform Act (the 'Act') contains several provisions regarding specific offender characteristics:

First, the Act directs the Commission to ensure that the guidelines and policy statements 'are entirely neutral' as to five characteristics—race, sex, national origin, creed, and socioeconomic status. *See* 28 U.S.C. 994(d).

Second, the Act directs the Commission to consider whether eleven specific offender characteristics, 'among others', have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence, and to take them into account in the guidelines and policy statements only to the extent that they do have relevance. *See* 28 U.S.C. 994(d).

Third, the Act directs the Commission to ensure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the 'general inappropriateness' of considering five of those characteristics—education; vocational skills; employment record; family ties and responsibilities; and community ties. *See* 28 U.S.C. 994(e).

Fourth, the Act also directs the sentencing court, in determining the particular sentence to be imposed, to consider, among other factors, 'the history and characteristics of the defendant'.

See 18 U.S.C. 3553(a)(1).

Specific offender characteristics are taken into account in the guidelines in several ways. One important specific offender characteristic is the defendant's criminal history, *see* 28 U.S.C. 994(d)(10), which is taken into account in the guidelines in Chapter Four (Criminal History and Criminal Livelihood). *See* § 5H1.8 (Criminal History). Another specific offender characteristic in the guidelines is the

degree of dependence upon criminal history for a livelihood, *see* 28 U.S.C. 994(d)(11), which is taken into account in Chapter Four, Part B (Career Offenders and Criminal Livelihood). *See* § 5H1.9 (Dependence upon Criminal Activity for a Livelihood). Other specific offender characteristics are accounted for elsewhere in this manual. *See, e.g.*, §§ 2C1.1(a)(1) and 2C1.2(a)(1) (providing alternative base offense levels if the defendant was a public official); 3B1.3 (Abuse of Position of Trust or Use of Special Skill); and 3E1.1 (Acceptance of Responsibility).

The Supreme Court has emphasized that the advisory guideline system should 'continue to move sentencing in Congress' preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.' *See United States* v. *Booker*, 543 U.S. 220, 264–65 (2005). Although the court must consider 'the history and characteristics of the defendant' among other factors, *see* 18 U.S.C. 3553(a), in order to avoid unwarranted sentencing disparities the court should not give them excessive weight. Generally, the most appropriate use of specific offender characteristics is to consider them not as a reason for a sentence outside the applicable guideline range but for other reasons, such as in determining the sentence within the applicable guideline range, the type of sentence (*e.g.,* probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, and various other aspects of an appropriate sentence. To avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct, *see* 18 U.S.C. 3553(a)(6), 28 U.S.C. 991(b)(1)(B), the guideline range, which reflects the defendant's criminal conduct and the defendant's criminal history, should continue to be 'the starting point and the initial benchmark.' *Gall* v. *United States,* 552 U.S. 38, 49 (2007).

Accordingly, the purpose of this Part is to provide sentencing courts with a framework for addressing specific offender characteristics in a reasonably consistent manner. Using such a framework in a uniform manner will help 'secure nationwide consistency,' *see Gall* v. *United States,* 552 U.S. 38, 49 (2007), 'avoid unwarranted sentencing disparities,' *see* 28 U.S.C. 991(b)(1)(B), 18 U.S.C. 3553(a)(6), 'provide certainty and fairness,' *see* 28 U.S.C. 991(b)(1)(B), and 'promote respect for the law,' *see* 18 U.S.C. 3553(a)(2)(A).

This Part allocates specific offender characteristics into three general categories.

In the first category are specific offender characteristics the consideration of which Congress has prohibited (*e.g.,* § 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status)) or that the Commission has determined should be prohibited.

In the second category are specific offender characteristics that Congress directed the Commission to take into account in the guidelines only to the extent that they have relevance to sentencing. *See* 28 U.S.C. 994(d). For some of these, the policy statements indicate that these characteristics may be relevant in determining whether a sentence outside the applicable guideline range is warranted (*e.g.,* age; mental and emotional condition; physical condition). These characteristics may warrant a sentence outside the applicable guideline range if the characteristic, individually or in combination with other such characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines. These specific offender characteristics also may be considered for other reasons, such as in determining the sentence within the applicable guideline range, the type of sentence (*e.g.,* probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, and various other aspects of an appropriate sentence."; in the second paragraph by striking "The Commission has determined that certain circumstances" and inserting the following: "In the third category are specific offender characteristics that Congress directed the Commission to ensure are reflected in the guidelines and policy statements as generally inappropriate in recommending a term of imprisonment or length of a term of imprisonment. *See* 28 U.S.C. 994(e). The policy statements indicate that these characteristics"; by striking "or to the determination of" and inserting ", the type of sentence (*e.g.,* probation or imprisonment) within the sentencing options available for the applicable Zone on the Sentencing Table, or"; by striking "incidents" and inserting "aspects"; and by striking the last paragraph and inserting the following:

"As with the other provisions in this manual, these policy statements 'are evolutionary in nature'. *See* Chapter One, Part A, Subpart 2 (Continuing Evolution and Role of the Guidelines); 28 U.S.C. 994(o). The Commission expects, and the Sentencing Reform Act contemplates, that continuing research, experience, and analysis will result in modifications and revisions.

The nature, extent, and significance of specific offender characteristics can involve a range of considerations. The Commission will continue to provide information to the courts on the relevance of specific offender characteristics in sentencing, as the Sentencing Reform Act contemplates. *See, e.g.*, 28 U.S.C. 995(a)(12)(A) (the Commission serves as a 'clearinghouse and information center' on federal sentencing). Among other things, this may include information on the use of specific offender characteristics, individually and in combination, in determining the sentence to be imposed (including, where available, information on rates of use, criteria for use, and reasons for use); the relationship, if any, between specific offender characteristics and (A) the 'forbidden factors' specified in 28 U.S.C. 994(d) and (B) the 'discouraged factors' specified in 28 U.S.C. 994(e); and the relationship, if any, between specific offender characteristics and the statutory purposes of sentencing."

Section 5H1.1 is amended by striking the first sentence and inserting the following:

"Age (including youth) may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines."

Section 5H1.3 is amended by striking the first paragraph and inserting the following:

"Mental and emotional conditions may be relevant in determining whether a departure is warranted, if such conditions, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines. *See also* Chapter Five, Part K, Subpart 2 (Other Grounds for Departure).

In certain cases a downward departure may be appropriate to accomplish a specific treatment purpose. *See* § 5C1.1, Application Note 6."

Section 5H1.4 is amended in the first paragraph by striking the first sentence and inserting the following: "Physical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines."; in the second sentence by striking "However, an" and inserting "An"; in the second paragraph by inserting "ordinarily" after "or abuse"; in the last sentence by striking "supervisory body" and inserting

"probation office"; by inserting as the third paragraph the following: "In certain cases a downward departure may be appropriate to accomplish a specific treatment purpose. *See* § 5C1.1, Application Note 6."; and in the fourth paragraph, as amended by this amendment, by striking "Similarly, where" and inserting "In a case in which".

Section 5H1.11 is amended by inserting as the first paragraph the following: "Military service may be relevant in determining whether a departure is warranted, if the military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines."; and in the second paragraph, as amended by this amendment, by striking "Military, civic" and inserting "Civic".

Section 5K2.0(d)(1) is amended by striking "third and last sentences" and inserting "last sentence".

Reason for Amendment: This multi-part amendment revises the introductory commentary to Chapter Five, Part H (Specific Offender Characteristics), amends the policy statements relating to age, mental and emotional conditions, physical condition, and military service, and makes conforming changes to § 5K2.0 (Grounds for Departure). The amendment is a result of a review of the departure provisions in the *Guidelines Manual* begun by the Commission this year. *See* 74 FR 46478, 46479 (September 9, 2009). The Commission undertook this review, in part, in response to an observed decrease in reliance on departure provisions in the *Guidelines Manual* in favor of an increased use of variances.

First, the amendment revises the introductory commentary to Chapter Five, Part H. As amended, the introductory commentary explains that the purpose of Part H is to provide sentencing courts with a framework for addressing specific offender characteristics in a reasonably consistent manner. Using such a framework in a uniform manner will help "secure nationwide consistency," *Gall* v. *United States,* 552 U.S. 38, 49 (2007), "avoid unwarranted sentencing disparities," 28 U.S.C. 991(b)(1)(B), and "promote respect for the law," 18 U.S.C. 3553(a)(2)(A).

Accordingly, the amended introductory commentary outlines three categories of specific offender characteristics described in the Sentencing Reform Act and the statutory and guideline standards that apply to consideration of each category. Courts must consider "the history and characteristics of the defendant" among other factors. *See* 18 U.S.C. 3553(a). However, in order to avoid unwarranted sentencing disparities, *see* 18 U.S.C. 3553(a)(6), 28 U.S.C. 991(b)(1)(B), courts should not give specific offender characteristics excessive weight. The guideline range, which reflects the defendant's criminal conduct and the defendant's criminal history, should continue to be "the starting point and the initial benchmark." *Gall, supra,* at 49.

The amended introductory commentary also states that the Commission will continue to provide information to the courts on the relevance of specific offender characteristics in sentencing, as contemplated by the Sentencing Reform Act. *See, e.g.,* 28 U.S.C. 995(a)(12)(A). The Commission expects that providing such information on an ongoing basis will promote nationwide consistency in the consideration of specific offender characteristics by courts and help avoid unwarranted sentencing disparities.

Second, the amendment amends several policy statements that cover specific offender characteristics addressed in 28 U.S.C. 994(d): §§ 5H1.1 (Age), 5H1.3 (Mental and Emotional Conditions), and 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction). As amended, these policy statements generally provide that age; mental and emotional conditions; and physical condition or appearance, including physique, "may be relevant in determining whether a departure is warranted, if [the offender characteristic], individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines." The Commission adopted this departure standard after reviewing recent federal sentencing data, trial and appellate court case law, scholarly literature, public comment and testimony, and feedback in various forms from federal judges.

The amendment also amends §§ 5H1.3 and 5H1.4 to provide that in certain cases described in Application Note 6 to § 5C1.1 (Imposition of a Term of Imprisonment) a departure may be appropriate.

Third, the amendment amends § 5H1.11 (Military, Civic, Charitable, or Public Service; Employment-Related Contributions; Record of Prior Good Works) to draw a distinction between military service and the other circumstances covered by that policy statement. As amended, the policy statement provides that military service "may be relevant in determining whether a departure is warranted, if the military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines." The Commission determined that applying this departure standard to consideration of military service is appropriate because such service has been recognized as a traditional mitigating factor at sentencing. *See, e.g., Porter* v. *McCollum,* 130 S. Ct. 447, 455 (2009) ("Our Nation has a long tradition of according leniency to veterans in recognition of their service, especially for those who fought on the front lines * * *").

Finally, the amendment makes conforming changes to § 5K2.0 (Grounds for Departure).

3. *Amendment:* The Commentary to § 2L1.2 captioned "Application Notes" is amended in Note 7 by striking "*Consideration*" and inserting "*Based on Seriousness of a Prior Conviction.*"

The Commentary to § 2L1.2 captioned "Application Notes" is amended by adding at the end the following:

"8. *Departure Based on Cultural Assimilation.*—There may be cases in which a downward departure may be appropriate on the basis of cultural assimilation. Such a departure should be considered only in cases where (A) the defendant formed cultural ties primarily with the United States from having resided continuously in the United States from childhood, (B) those cultural ties provided the primary motivation for the defendant's illegal reentry or continued presence in the United States, and (C) such a departure is not likely to increase the risk to the public from further crimes of the defendant.

In determining whether such a departure is appropriate, the court should consider, among other things, (1) the age in childhood at which the defendant began residing continuously in the United States, (2) whether and for how long the defendant attended school in the United States, (3) the duration of the defendant's continued residence in the United States, (4) the duration of the defendant's presence outside the United States, (5) the nature and extent of the defendant's familial and cultural ties inside the United States, and the nature and extent of such ties outside the United States, (6) the seriousness of the defendant's criminal history, and (7) whether the defendant engaged in additional criminal activity after illegally reentering the United States."

Reason for Amendment: This amendment addresses when a downward departure may be appropriate in an illegal reentry case sentenced under § 2L1.2 (Unlawfully

Entering or Remaining in the United States) on the basis of the defendant's cultural assimilation to the United States.

Several circuits have upheld departures based on cultural assimilation. *See, e.g., United States* v. *Rodriguez-Montelongo,* 263 F.3d 429, 433 (5th Cir. 2001); *United States* v. *Sanchez-Valencia,* 148 F.3d 1273, 1274 (11th Cir. 1998); *United States* v. *Lipman,* 133 F.3d 726, 730 (9th Cir. 1998). Other circuits have declined to rule on whether such a departure may be warranted. *See, e.g., United States* v. *Galarza-Payan,* 441 F.3d 885, 889 (10th Cir. 2006) ("We need not address that debate in the altered post-*Booker* landscape."); *United States* v. *Melendez-Torres,* 420 F.3d 45, 51 n.3 (1st Cir. 2005); *see also United States* v. *Ticas,* 219 F. App'x 44, 45 (2d Cir. 2007) (acknowledging that the Second Circuit has never recognized cultural assimilation as a basis for a downward departure). Some circuits, though not foreclosing the possibility of cultural assimilation departures, have stated that district courts are within their discretion to deny such departures in light of a defendant's criminal past and society's increased interest in *keeping aliens who have committed crimes out of the United States following their deportation.* *United States* v. *Roche-Martinez,* 467 F.3d 591, 595 (7th Cir. 2006); *see also Galarza-Payan, supra,* at 889–90 (stating that *in assessing the reasonableness of a sentence [] a particular defendant's cultural ties must be weighed against other factors such as (1) sentencing disparities among defendants with similar backgrounds and characteristics, and (2) the need for the sentence to reflect the seriousness of the crime and promote respect for the law*).

In order to promote uniform consideration of cultural assimilation by courts, the amendment adds an application note to § 2L1.2 providing that a downward departure may be appropriate on the basis of cultural assimilation. The application note provides that such a departure may be appropriate if (A) the defendant formed cultural ties primarily with the United States from having resided continuously in the United States from childhood, (B) those cultural ties provided the primary motivation for the defendant's illegal reentry or continued presence in the United States, and (C) such a departure is not likely to increase the risk to the public from further crimes of the defendant. The application note also provides a non-exhaustive list of factors the court should consider in determining whether such a departure is appropriate.

4. *Amendment:* Section 1B1.1 is amended by redesignating subdivisions (a) through (h) as (1) through (8), respectively; in subdivision (4) (as so redesignated) by striking "(a)" and inserting "(1)", and by striking "(c)" and inserting "(3)"; by striking the first paragraph and inserting the following: "(a) The court shall determine the kinds of sentence and the guideline range as set forth in the guidelines (*see* 18 U.S.C. 3553(a)(4)) by applying the provisions of this manual in the following order, except as specifically directed:"; by redesignating subdivision (i) as subsection (b) and, in that subsection, by striking "Refer to" and inserting "The court shall then consider"; by striking "to" before "any"; and by adding at the end "*See* 18 U.S.C. 3553(a)(5)."; and by adding at the end the following: "(c) The court shall then consider the applicable factors in 18 U.S.C. 3553(a) taken as a whole. *See* 18 U.S.C. 3553(a).".

The Commentary to § 1B1.1 is amended by adding at the end the following:

"*Background:* The court must impose a sentence 'sufficient, but not greater than necessary,' to comply with the purposes of sentencing set forth in 18 U.S.C. 3553(a)(2). *See* 18 U.S.C. 3553(a). Subsections (a), (b), and (c) are structured to reflect the three-step process used in determining the particular sentence to be imposed. If, after step (c), the court imposes a sentence that is outside the guidelines framework, such a sentence is considered a 'variance'. *See Irizarry* v. *United States,* 128 S. Ct. 2198, 2200–03 (2008) (describing within-range sentences and departures as 'sentences imposed under the framework set out in the Guidelines').".

Reason for Amendment: This amendment amends § 1B1.1 (Application Instructions) in light of *United States* v. *Booker,* 543 U.S. 220 (2005), and subsequent case law.

As explained more fully in Chapter One, Part A, Subpart 2 (Continuing Evolution and Role of the Guidelines) of the *Guidelines Manual,* a district court is required to properly calculate and consider the guidelines when sentencing. *See* 18 U.S.C. 3553(a)(4); *Booker,* 543 U.S. at 264 ("The district courts, while not bound to apply the Guidelines, must * * * take them into account when sentencing."); *Rita* v. *United States,* 551 U.S. 338, 347–48 (2007) (stating that a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall* v. *United States,* 552 U.S. 38, 49 (2007) ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.").

After determining the guideline range, the district court should refer to the *Guidelines Manual* and consider whether the case warrants a departure. *See* 18 U.S.C. 3553(a)(5). "'Departure' is a term of art under the Guidelines and refers only to non-Guidelines sentences imposed under the framework set out in the Guidelines." *Irizarry* v. *United States,* 128 S.Ct. 2198, 2202 (2008). A "variance"—*i.e.,* a sentence outside the guideline range other than as provided for in the *Guidelines Manual*—is considered by the court only after departures have been considered.

Most circuits agree on a three-step approach, including the consideration of departure provisions in the *Guidelines Manual,* in determining the sentence to be imposed. *See United States* v. *Dixon,* 449 F.3d 194, 203–04 (1st Cir. 2006) (court must consider "any applicable departures"); *United States* v. *Selioutsky,* 409 F.3d 114, 118 (2d Cir. 2005) (court must consider "available departure authority"); *United States* v. *Jackson,* 467 F.3d 834, 838 (3d Cir. 2006) (same); *United States* v. *Moreland,* 437 F.3d 424, 433 (4th Cir. 2006) (departures "remain an important part of sentencing even after *Booker*"); *United States* v. *Tzep-Mejia,* 461 F.3d 522, 525 (5th Cir. 2006) ("Post-*Booker* case law recognizes three types of sentences under the new advisory sentencing regime: (1) A sentence within a properly calculated Guideline range; (2) a sentence that includes an upward or downward departure as allowed by the Guidelines, which sentence is also a Guideline sentence; or (3) a non-Guideline sentence which is either higher or lower than the relevant Guideline sentence." (internal footnote and citation omitted)); *United States* v. *McBride,* 434 F.3d 470, 476 (6th Cir. 2006) (district court "still required to consider * * * whether a Chapter 5 departure is appropriate"); *United States* v. *Hawk Wing,* 433 F.3d 622, 631 (8th Cir. 2006) ("the district court must decide if a traditional departure is appropriate", and after that must consider a variance (internal quotation omitted)); *United States* v. *Robertson,* 568 F.3d 1203, 1210 (10th Cir. 2009) (district courts must continue to apply departures); *United States* v. *Jordi,* 418 F.3d 1212, 1215 (11th Cir. 2005) (stating that "the application of the guidelines is not complete until the departures, if any, that are warranted are appropriately considered"). *But see United States* v. *Johnson,* 427 F.3d 423, 426 (7th Cir. 2006) (stating that departures are "obsolete").

The amendment resolves the circuit conflict and adopts the three-step approach followed by a majority of

circuits in determining the sentence to be imposed. The amendment restructures § 1B1.1 into three subsections to reflect the three-step process. As amended, subsection (a) addresses how to apply the provisions in the *Guidelines Manual* to properly determine the kinds of sentence and the guideline range. Subsection (b) addresses the need to consider the policy statements and commentary to determine whether a departure is warranted. Subsection (c) addresses the need to consider the applicable factors under 18 U.S.C. 3553(a) taken as a whole in determining the appropriate sentence. The amendment also adds background commentary referring to the statutory requirements of 18 U.S.C. 3553(a) and defining the term "variance" as "a sentence that is outside the guidelines framework".

5. *Amendment:* Section 4A1.1 is amended by striking "items (a) through (f)" and inserting "subsections (a) through (e)"; in subsection (c) by striking "item" and inserting "subsection"; by striking subsection (e) and redesignating subsection (f) as (e); and in subsection (e) (as so redesignated) by striking "item" and inserting "subsection".

The Commentary to § 4A1.1 captioned "Application Notes" is amended by striking "item" and inserting "subsection" each place it appears; by striking Note 5 and redesignating Note 6 as Note 5; and in Note 5 (as so redesignated) by striking "(f)" and inserting "(e)" each place it appears.

The Commentary to § 4A1.1 captioned "Background" is amended by striking "Subdivisions" and inserting "Subsections"; by striking "implements one measure of recency by adding" and inserting "adds"; and by striking the paragraph that begins "Section 4A1.1(e)".

Section 4A1.2 is amended in subsection (a)(2) by striking "(f)" and inserting "(e)"; in subsection (k)(2) by striking subparagraph (A) and by striking "(B)"; in subsection (l) by striking "(f)" and inserting "(e)", and by striking "; § 4A1.1(e) shall not apply"; in subsection (n) by striking "and (e)"; and in subsection (p) by striking "(f)" and inserting "(e)".

The Commentary to § 4A1.2 captioned "Application Notes" is amended in Note 12(A) by striking "subdivision" and inserting "subsection".

Reason for Amendment: This amendment addresses a factor included in the calculation of the criminal history score in Chapter Four of the *Guidelines Manual.* Specifically, this amendment eliminates the "recency" points provided in subsection (e) of § 4A1.1 (Criminal History Category). Under § 4A1.1(e), one or two points are added to the criminal history score if the defendant committed the instant offense less than two years after release from imprisonment on a sentence counted under subsection (a) or (b) or while in imprisonment or escape status on such a sentence. In addition to recency, subsections (a), (b), (c), (d), and (f) add points to the criminal history score to account for the seriousness of the prior offense and the status of the defendant. These other factors remain included in the criminal history score after the amendment.

The amendment is a result of the Commission's continued review of criminal history issues. This multi-year review was prompted in part because criminal history issues are often cited by sentencing courts as reasons for imposing non-government sponsored below range sentences, particularly in cases in which recency points were added to the criminal history score under § 4A1.1(e).

As part of its review, the Commission undertook analyses to determine the extent to which recency points contribute to the ability of the criminal history score to predict the defendant's risk of recidivism. *See generally* USSG Ch. 4, Pt. A, intro. comment ("To protect the public from further crimes of the particular defendant, the likelihood of recidivism and future criminal behavior must be considered."). Recent research isolating the effect of § 4A1.1(e) on the predictive ability of the criminal history score indicated that consideration of recency only minimally improves the predictive ability.

In addition, the Commission received public comment and testimony suggesting that the recency of the instant offense to the defendant's release from imprisonment does not necessarily reflect increased culpability. Public comment and testimony indicated that defendants who recidivate tend to do so relatively soon after being released from prison but suggested that, for many defendants, this may reflect the challenges to successful reentry after imprisonment rather than increased culpability.

Finally, Commission data indicated that many of the cases in which recency points apply are sentenced under Chapter Two guidelines that have provisions based on criminal history. The amendment responds to suggestions that recency points are not necessary to adequately account for criminal history in such cases.

6. *Amendment:* The Commentary to § 2H1.1 captioned "Statutory Provisions" is amended by inserting "249," after "248,".

The Commentary to § 2H1.1 captioned "Application Notes" is amended in Note 4 by inserting "gender identity," after "gender,".

Section 3A1.1(a) is amended by inserting "gender identity," after "gender,".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 3 by inserting "gender identity," after "gender,"; and by adding after Note 4 the following:

"5. For purposes of this guideline, 'gender identity' means actual or perceived gender-related characteristics. *See* 18 U.S.C. 249(c)(4).".

The Commentary to § 3A1.1 captioned "Background" is amended in the first paragraph by striking "(*i.e.*" and all that follows through "victim)"; and by adding at the end of that paragraph the following: "In section 4703(a) of Public Law 111–84, Congress broadened the scope of that directive to include gender identity; to reflect that congressional action, the Commission has broadened the scope of this enhancement to include gender identity.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 247 the following: "18 U.S.C. 249 2H1.1"; and by inserting after the line referenced to 18 U.S.C. 1369 the following: "18 U.S.C. 1389 2A2.2, 2A2.3, 2B1.1".

Reason for Amendment: This amendment responds to the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act (division E of Pub. L. 111–84) (the "Act"). The Act created two new offenses and amended a 1994 directive to the Commission regarding crimes motivated by hate.

The first new offense, 18 U.S.C. 249 (Hate crime acts), makes it unlawful, whether or not acting under color of law, to willfully cause bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, to attempt to cause bodily injury to any person because of the actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability of any person. A person who violates 18 U.S.C. 249 is subject to a term of imprisonment of up to 10 years or, if the offense includes kidnapping, aggravated sexual abuse, or an attempt to kill, or if death results from the offense, to imprisonment for any term of years or life. The amendment amends Appendix A (Statutory Index) to refer offenses under 18 U.S.C. 249 to § 2H1.1 (Offenses Involving Individual Rights) because

that guideline covers similar offenses, *e.g.,* 18 U.S.C. 241 (Conspiracy against rights) and 242 (Deprivation of rights under color of law), and contains appropriate enhancements to account for aggravating circumstances that may be involved in a section 249 offense, *e.g.,* subsection (b)(1), which provides a 6-level increase if the offense was committed under color of law.

The Act also amended section 280003 of the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322; 28 U.S.C. 994 note), which contains a directive to the Commission regarding hate crimes. The Commission implemented that directive by promulgating subsection (a) of § 3A1.1 (Hate Crime Motivation or Vulnerable Victim). *See* USSG App. C, Amendment 521 (effective November 1, 1995). The Act broadened the definition of "hate crime" in section 280003(a) to include crimes motivated by actual or perceived "gender identity", which has the effect of expanding the scope of the directive in section 280003(b) so that it now requires the Commission to provide an enhancement for crimes motivated by actual or perceived "gender identity". To reflect the broadened definition, the amendment amends § 3A1.1 so that the enhancement in subsection (a) covers crimes motivated by actual or perceived "gender identity" and makes conforming changes to §§ 2H1.1. The amendment also deletes as unnecessary the parenthetical in the Background to § 3A1.1, which provided an example of *hate crime motivation*.

The second new offense, 18 U.S.C. 1389 (Prohibition on attacks on United States servicemen on account of service), makes it unlawful to knowingly assault or batter a United States serviceman or an immediate family member of a United States serviceman, or to knowingly destroy or injure the property of such serviceman or immediate family member, on the account of the military service of that serviceman or the status of that individual as a United States serviceman. A person who violates 18 U.S.C. 1389 is subject to a term of imprisonment of not more than 2 years in the case of a simple assault, or damage of not more than $500, of not more than 5 years in the case of damage of more than $500, or of not less than 6 months nor more than 10 years in the case of a battery, or an assault resulting in bodily injury. The Commission determined that offenses under 18 U.S.C. 1389 are similar to offenses involving assault or property damage that are already referenced to §§ 2A2.2 (Aggravated Assault), 2A2.3 (Minor Assault), and 2B1.1 (Theft, Property Destruction, and Fraud) and therefore amended Appendix A (Statutory Index) to refer the new offense to those guidelines.

7. *Amendment:* Section 8B2.1(b)(4) is amended by striking "subdivision" and inserting "subparagraph" each place it appears.

The Commentary to § 8B2.1 captioned "Application Notes" is amended in Note 2(D) by striking "subdivision" and inserting "subparagraph".

The Commentary to § 8B2.1 captioned "Application Notes" is amended by redesignating Note 6 as Note 7, and by inserting after Note 5 the following: "6. *Application of Subsection (b)(7).*—Subsection (b)(7) has two aspects.

First, the organization should respond appropriately to the criminal conduct. The organization should take reasonable steps, as warranted under the circumstances, to remedy the harm resulting from the criminal conduct. These steps may include, where appropriate, providing restitution to identifiable victims, as well as other forms of remediation. Other reasonable steps to respond appropriately to the criminal conduct may include self-reporting and cooperation with authorities.

Second, the organization should act appropriately to prevent further similar criminal conduct, including assessing the compliance and ethics program and making modifications necessary to ensure the program is effective. The steps taken should be consistent with subsections (b)(5) and (c) and may include the use of an outside professional advisor to ensure adequate assessment and implementation of any modifications."; and in Note 7, as redesignated by this amendment, by striking "subdivision" and inserting "subparagraph" each place it appears.

Section 8C2.5(f)(3) is amended in subparagraph (A) by striking "subdivision (B)" and inserting "subparagraphs (B) and (C)"; and by adding at the end the following:

"(C) Subparagraphs (A) and (B) shall not apply if—

(i) The individual or individuals with operational responsibility for the compliance and ethics program (*see* § 8B2.1(b)(2)(C)) have direct reporting obligations to the governing authority or an appropriate subgroup thereof (*e.g.,* an audit committee of the board of directors);

(ii) The compliance and ethics program detected the offense before discovery outside the organization or before such discovery was reasonably likely;

(iii) The organization promptly reported the offense to appropriate governmental authorities; and

(iv) No individual with operational responsibility for the compliance and ethics program participated in, condoned, or was willfully ignorant of the offense.".

The Commentary to § 8C2.5 captioned "Application Notes" is amended in Note 10 in the second sentence by inserting "or (f)(3)(C)(iii)" after "subsection (f)(2)"; by redesignating Notes 11 through 14 as Notes 12 through 15, respectively; and by inserting after Note 10 the following:

11. For purposes of subsection (f)(3)(C)(i), an individual has 'direct reporting obligations' to the governing authority or an appropriate subgroup thereof if the individual has express authority to communicate personally to the governing authority or appropriate subgroup thereof (A) promptly on any matter involving criminal conduct or potential criminal conduct, and (B) no less than annually on the implementation and effectiveness of the compliance and ethics program.

Section 8D1.4 is amended by striking subsections (b) and (c) and inserting the following:

(b) If probation is imposed under § 8D1.1, the following conditions may be appropriate:

(1) The organization shall develop and submit to the court an effective compliance and ethics program consistent with § 8B2.1 (Effective Compliance and Ethics Program). The organization shall include in its submission a schedule for implementation of the compliance and ethics program.

(2) Upon approval by the court of a program referred to in paragraph (1), the organization shall notify its employees and shareholders of its criminal behavior and its program referred to in paragraph (1). Such notice shall be in a form prescribed by the court.

(3) The organization shall make periodic submissions to the court or probation officer, at intervals specified by the court, (A) reporting on the organization's financial condition and results of business operations, and accounting for the disposition of all funds received, and (B) reporting on the organization's progress in implementing the program referred to in paragraph (1). Among other things, reports under subparagraph (B) shall disclose any criminal prosecution, civil litigation, or administrative proceeding commenced against the organization, or any investigation or formal inquiry by governmental authorities of which the organization learned since its last report.

(4) The organization shall notify the court or probation officer immediately upon learning of (A) any material adverse change in its business or financial condition or prospects, or (B) the commencement of any bankruptcy proceeding, major civil litigation, criminal prosecution, or administrative proceeding against the organization, or any investigation or formal inquiry by governmental authorities regarding the organization.

(5) The organization shall submit to: (A) A reasonable number of regular or unannounced examinations of its books and records at appropriate business premises by the probation officer or experts engaged by the court; and (B) interrogation of

knowledgeable individuals within the organization. Compensation to and costs of any experts engaged by the court shall be paid by the organization.

(6) The organization shall make periodic payments, as specified by the court, in the following priority: (A) Restitution; (B) fine; and (C) any other monetary sanction.".

The Commentary to § 8D1.4 captioned "Application Note" is amended in Note 1 by striking "(a)(3) through (6)"; and by striking "(c)(3)" and inserting "(b)(3)".

Reason for Amendment: This amendment makes several changes to Chapter Eight of the *Guidelines Manual* regarding the sentencing of organizations.

First, the amendment amends the Commentary to § 8B2.1 (Effective Compliance and Ethics Program) by adding an application note that clarifies the remediation efforts required to satisfy the seventh minimal requirement for an effective compliance and ethics program under subsection (b)(7). Subsection (b)(7) requires an organization, after criminal conduct has been detected, to take reasonable steps (1) to respond appropriately to the criminal conduct and (2) to prevent further similar criminal conduct.

The new application note describes the two aspects of subsection (b)(7). With respect to the first aspect, the application note provides that the organization should take reasonable steps, as warranted under the circumstances, to remedy the harm resulting from the criminal conduct. The application note further provides that such steps may include, where appropriate, providing restitution to identifiable victims, other forms of remediation, and self-reporting and cooperation with authorities. With respect to the second aspect, the application note provides that an organization should assess the compliance and ethics program and make modifications necessary to ensure the program is effective. The application note further provides that such steps should be consistent with § 8B2.1(b)(5) and (c), which also require assessment and modification of the program, and may include the use of an outside professional advisor to ensure adequate assessment and implementation of any modifications.

This application note was added in response to public comment and testimony suggesting that further guidance regarding subsection (b)(7) may encourage organizations to take reasonable steps upon discovery of criminal conduct. The steps outlined by the application note are consistent with factors considered by enforcement agencies in evaluating organizational compliance and ethics practices.

Second, the amendment amends subsection (f) of § 8C2.5 (Culpability Score) to create a limited exception to the general prohibition against applying the 3-level decrease for having an effective compliance and ethics program when an organization's high-level or substantial authority personnel are involved in the offense. Specifically, the amendment adds subsection (f)(3)(C), which allows an organization to receive the decrease if the organization meets four criteria: (1) The individual or individuals with operational responsibility for the compliance and ethics program have direct reporting obligations to the organization's governing authority or appropriate subgroup thereof; (2) the compliance and ethics program detected the offense before discovery outside the organization or before such discovery was reasonably likely; (3) the organization promptly reported the offense to the appropriate governmental authorities; and (4) no individual with operational responsibility for the compliance and ethics program participated in, condoned, or was willfully ignorant of the offense.

The new subsection (f)(3)(C) responds to concerns expressed in public comment and testimony that the general prohibition in § 8C2.5(f)(3) operates too broadly and that internal and external reporting of criminal conduct could be better encouraged by providing an exception to that general prohibition in appropriate cases.

The amendment also adds an application note that describes the "direct reporting obligations" necessary to meet the first criterion under § 8C2.5(f)(3)(C). The application note provides that an individual has "direct reporting obligations" if the individual has express authority to communicate personally to the governing authority "promptly on any matter involving criminal conduct or potential criminal conduct" and "no less than annually on the implementation and effectiveness of the compliance and ethics program". The application note responds to public comment and testimony regarding the challenges operational compliance personnel may face when seeking to report criminal conduct to the governing authority of an organization and encourages compliance and ethics policies that provide operational compliance personnel with access to the governing authority when necessary.

Third, the amendment amends § 8D1.4 (Recommended Conditions of Probation—Organizations (Policy Statement)) to augment and simplify the recommended conditions of probation for organizations. The amendment removes the distinction between conditions of probation imposed solely to enforce a monetary penalty and conditions of probation imposed for any other reason so that all conditional probation terms are available for consideration by the court in determining an appropriate sentence.

Finally, the amendment makes technical and conforming changes to various provisions in Chapter Eight.

8. *Amendment:* Section 2B1.1(c)(4) is amended by inserting "or a paleontological resource" after "resource"; and by inserting "or Paleontological Resources" after "Heritage Resources" each place it appears.

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by inserting after the paragraph that begins "'National cemetery' means" the following:

"'Paleontological resource' has the meaning given that term in Application Note 1 of the Commentary to § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources).".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 14(A) by inserting "and 18 U.S.C. 1348" after "7 U.S.C. 1 *et seq.*)".

Section 2B1.5 is amended in the heading by inserting "*or Paleontological Resources*" after "*Heritage Resources*" each place it appears.

Section 2B1.5(b) is amended in each of paragraphs (1) and (2) by inserting "or paleontological resource" after "heritage resource"; and in paragraph (5) by inserting "or paleontological resources" after "heritage resources".

The Commentary to § 2B1.5 captioned "Statutory Provisions" is amended by inserting "470aaa–5," after "16 U.S.C. §§ ".

The Commentary to § 2B1.5 captioned "Application Notes" is amended in Note 1 by redesignating subparagraphs (A) through (G) as (i) through (vii), respectively; by striking "'*Cultural Heritage Resource' Defined.*—For purposes of this guideline, 'cultural heritage resource' means any of the following:" and inserting: "*Definitions.*—For purposes of this guideline:

(A) 'Cultural heritage resource' means any of the following:"; by striking "(A)" before "has the meaning" and inserting "(I)"; by striking "(B)" before "includes" and inserting "(II)"; and by adding at the end the following:

"(B) 'Paleontological resource' has the meaning given such term in 16 U.S.C. 470aaa.".

The Commentary to § 2B1.5 captioned "Application Notes" is amended in Note 2 by striking "*Cultural Heritage*" both places it appears; by striking "cultural heritage" each place it appears; and by inserting ", *e.g.,*" after "*See*" each place it appears.

The Commentary to § 2B1.5 captioned "Application Notes" is amended in Note 5(B) by striking "cultural heritage"; in Note 6(A) by inserting "or paleontological resources" after "resources", and by striking "cultural heritage" after "involving a" each place it appears; in Note 8 by striking "cultural heritage" each place it appears; and in Note 9 by inserting "or paleontological resources" after "resources" the first place it appears; and by inserting "or paleontological resources" after "resources)".

Section 2D1.11(e) is amended in subdivisions (1)–(10) by inserting the following list I chemicals in the appropriate place in alphabetical order by subdivision as follows:

(1) "1.3 KG or more of Iodine;",

(2) "At least 376.2 G but less than 1.3 KG of Iodine;",

(3) "At least 125.4 G but less than 376.2 G of Iodine;",

(4) "At least 87.8 G but less than 125.4 G of Iodine;",

(5) "At least 50.2 G but less than 87.8 G of Iodine;",

(6) "At least 12.5 G but less than 50.2 G of Iodine;",

(7) "At least 10 G but less than 12.5 G of Iodine;",

(8) "At least 7.5 G but less than 10 G of Iodine;",

(9) "At least 5 G but less than 7.5 G of Iodine;",

(10) "Less than 5 G of Iodine;"; and in subdivisions (2)–(10), in list II chemicals, by striking the lines referenced to "Iodine", including the period, and in the lines referenced to "Toluene" by striking the semicolon and inserting a period.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 16 U.S.C. 413 the following: "16 U.S.C. 470aaa–5 2B1.1, 2B1.5"; and by inserting after the line referenced to 42 U.S.C. 1396h(b)(2) the following: "42 U.S.C. 1396w–2 2H3.1".

Reason for Amendment: This multi-part amendment responds to miscellaneous issues arising from legislation recently enacted and other miscellaneous guideline application issues.

First, the amendment responds to the Fraud Enforcement and Recovery Act of 2009, Public Law 111–21, which broadened 18 U.S.C. 1348, a securities fraud statute, to cover commodities fraud. Offenses under 18 U.S.C. 1348 are referenced in Appendix A (Statutory Index) to § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States). Section 2B1.1 includes an enhancement at subsection (b)(17)(B) that applies when specified persons who have fiduciary duties violate commodities law. "Commodities law" is defined in Application Note 14 to mean the Commodities Exchange Act (7 U.S.C. 1 *et seq.*), including the rules, regulations, and orders issued by the Commodity Futures Trading Commission. The amendment adds 18 U.S.C. 1348 to the definition of "commodities law" for purposes of subsection (b)(17)(B). The Commission determined that including 18 U.S.C. 1348 within the scope of subsection (b)(17)(B) is appropriate to reflect the expanded scope of the statute.

Second, the amendment responds to the Omnibus Public Land Management Act of 2009, Public Law 111–11, which created a new offense at 16 U.S.C. 470aaa–5 making it unlawful to remove, damage, alter, traffic in, or make a false record relating to a paleontological resource on federal land. The amendment amends Appendix A (Statutory Index) to refer offenses under 16 U.S.C. 470aaa–5 to 2B1.1 and 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources) because such offenses are similar either to offenses involving cultural heritage resources or, to the extent they involve false records, to fraud offenses. The amendment also makes technical and conforming changes to §§ 2B1.1 and 2B1.5.

Third, the amendment responds to the Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111–3, which created a new Class A misdemeanor offense at 42 U.S.C. 1396w–2 regarding the unlawful disclosure of certain protected information related to social security eligibility. The amendment amends Appendix A (Statutory Index) to refer offenses under 42 U.S.C. 1396w–2 to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information) because such offenses involve invasions of privacy.

Fourth, the amendment responds to a regulatory change in which iodine was upgraded from a List II chemical to a List I chemical. Offenses involving listed chemicals are sentenced under § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy). Because the maximum base offense level for List I chemicals (level 30) is higher than that for List II chemicals (level 28), the amendment increases the maximum base offense level for offenses involving iodine to level 30 and specifies the amount of iodine needed (1.3 kilograms) for base offense level 30 to apply.

9. *Amendment:* The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 2 in the second paragraph by striking "(i)" and inserting "(A)"; and by striking "(ii)" and inserting "(B)"; in Note 6, in the first paragraph by striking " 'is" and inserting " 'was"; and by striking "was committed by the means set forth in" and inserting "involved conduct described in".

The Commentary to § 1B1.8 captioned "Application Notes" is amended in Note 2 by striking "Probation Service" and inserting "probation office".

The Commentary to § 1B1.9 captioned "Application Notes" is amended in Note 1 by inserting "or for which no imprisonment is authorized. *See* 18 U.S.C. 3559" after "not more than five days".

The Commentary to § 1B1.11 captioned "Application Notes" is amended in Note 2 by striking "Guideline" and inserting "Guidelines".

The Commentary to § 1B1.13 captioned "Application Notes" is amended in Note 1 by striking "*Subsection*" and inserting "*Subdivision*".

The Commentary to § 2A1.1 captioned "Application Notes" is amended in Note 1 by inserting ", *see* § 2A4.1(c)(1)" after "occurs"; and by inserting ", *see* § 2E1.3(a)(2)" after "racketeering".

The Commentary to § 2A3.2 captioned "Application Notes" is amended in Note 5 by striking "kidnaping" and inserting "kidnapping" each place it appears.

The Commentary to § 2A3.3 captioned "Application Notes" is amended in Note 1 by inserting "years" before "; (B)".

The Commentary to § 2A3.5 captioned "Application Notes" is amended in Note 1 by striking "those terms in 42 U.S.C. 16911(2), (3) and (4), respectively" and inserting "the terms 'tier I sex offender', 'tier II sex offender', and 'tier III sex offender', respectively, in 42 U.S.C. 16911".

The Commentary to § 2B1.4 captioned "Application Notes" is amended in Note 1 by striking "*Subsection of*".

The Commentary to § 2B1.5 captioned "Application Notes" is amended in Note 1 by striking "299" and inserting "229"; and by striking "section 2(c) of Public Law 99–652 (40 U.S.C. 1002(c))" and inserting "40 U.S.C. 8902(a)(1)".

The Commentary to § 2B3.1 captioned "Application Notes" is amended in Note 2 by striking "(d)" and inserting "(D)".

The Commentary to § 2B4.1 captioned "Background" is amended in the fourth paragraph by striking "was recently increased from two to" and inserting "is"; and by striking "Violations" and all that follows through "to the Medicaid program." and inserting "Violations of 42 U.S.C. 1320a–7b involve the offer or acceptance of a payment to refer an individual for services or items paid for under a federal health care program (*e.g.,* the Medicare and Medicaid programs).".

The Commentary to § 2B6.1 captioned "Background" is amended by striking "§§ 511 and 553(a)(2)" and inserting "§ 511"; and by inserting "§ 553(a)(2) and" before "2321".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 3 by striking "(A)" after "(b)(2)".

The Commentary to § 2C1.2 captioned "Application Notes" is amended in Note 4 by striking "or" before "Trust" and inserting "of".

Section 2D1.1(c) is amended in each of Notes (H) and (I) to the Drug Quantity Table by striking "(25)" and inserting "(30)".

The Commentary to § 2D1.11 captioned "Application Notes" is amended in Note 6 by striking "or" after "1319(c),"; by striking "§ 5124,"; and by inserting after "9603(b)" the following: ", and 49 U.S.C. 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material)".

The Commentary to § 2D1.12 captioned "Application Notes" is amended in Note 3 by striking "or" after "1319(c),"; by striking "§ 5124,"; and by inserting after "9603(b)" the following: ", and 49 U.S.C. 5124 (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material)".

Section 2D1.14(a)(1) is amended by striking "(3)" and inserting "(5)" both places it appears.

The Commentary to § 2D2.1 captioned "Background" is amended in the last paragraph by striking "Section 6371 of the Anti-Drug Abuse Act of 1988" and inserting "21 U.S.C. 844(a)" both places it appears.

The Commentary to § 2G3.1 captioned "Application Notes" is amended in Note 1 in the paragraph that begins " 'Distribution' means" by inserting "transmission," after "production,".

Section 2H4.2(b)(1) is amended by striking "(i)" and inserting "(A)"; and by striking "(ii)" and inserting "(B)".

The Commentary to § 2K1.3 captioned "Application Notes" is amended in Note 10 by striking "(1)" and inserting "(A)"; by striking "(2)" and inserting "(B)"; by striking "(3)" and inserting "(C)"; and by striking "(4)" and inserting "(D)".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 2 by inserting "*That Is*" after "*Firearm*"; and by inserting "that is" after "semiautomatic firearm".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 10 in the first paragraph by striking "; § 4A1.2, comment. (n.3)"; in Note 11 by striking "(1)" and inserting "(A)"; by striking "(2)" and inserting "(B)"; by striking "(3)" and inserting "(C)"; and by striking "(4)" and inserting "(D)".

The Commentary to § 2K2.5 captioned "Application Notes" is amended in Note 2 by striking "(f)" and inserting "(g)"; and in Note 3 by inserting "*See* 18 U.S.C. 924(a)(4)." after "other offense.".

The Commentary to § 2L2.1 captioned "Statutory Provisions" is amended by striking "(b)," after "1325"; and by inserting ", (d)" after "(c)".

The Commentary to § 2L2.2 captioned "Statutory Provisions" is amended by striking "(b)," after "1325"; and by inserting ", (d)" after "(c)".

The Commentary to § 2M3.1 captioned "Application Notes" is amended in Note 1 by striking "12356" and inserting "12958 (50 U.S.C. 435 note)".

The Commentary to § 2M3.3 captioned "Statutory Provisions" is amended by striking "(b), (c)".

The Commentary to § 2M3.9 captioned "Application Notes" is amended in Note 3 by inserting "*See* 50 U.S.C. 421(d)." after "imprisonment.".

The Commentary to § 2M6.1 captioned "Application Notes" is amended in Note 1 in the paragraph that begins " 'Foreign terrorist" by striking "1219" and inserting "1189"; and in the paragraph that begins " 'Restricted person" by striking "(b)" and inserting "(d)".

The Commentary to § 2Q1.2 captioned "Background" is amended by striking "last two" and inserting "fifth and sixth".

Section 2Q1.6(a)(1) is amended by striking "Substance" and inserting "Substances".

The Commentary to § 2Q2.1 captioned "Application Notes" is amended in Note 3 by inserting ", Subtitle B," after "7 CFR".

Chapter Two, Part T, Subpart 2, is amended in the Introductory Commentary by striking "section" and inserting "subpart"; and by inserting "of Chapter 51 of Subtitle E" after "Subchapter J".

The Commentary to § 2X5.2 captioned "Statutory Provisions" is amended by striking "§ 1129(a),".

The Commentary to § 3C1.1 captioned "Application Notes" is amended in Note 4 by redesignating subdivisions (a) through (k) as (A) through (K); and in Note 5 by redesignating subdivisions (a) through (e) as (A) through (E).

The Commentary to § 3E1.1 captioned "Application Notes" is amended in Note 1 by redesignating subdivisions (a) through (h) as (A) through (H).

Section 5K2.17 is amended by striking "(A)" and inserting "(1)"; and by striking "(B)" and inserting "(2)".

Appendix A (Statutory Index) is amended in the line referenced to 7 U.S.C. 13(f) by striking "(f)" and inserting "(e)"; in the line referenced to 8 U.S.C. 1325(b) by striking "(b)" and inserting "(c)"; in the line referenced to 8 U.S.C. 1325(c) by striking "(c)" and inserting "(d)"; by inserting after the line referenced to 18 U.S.C. 247 the following: "18 U.S.C. 248 2H1.1"; by striking the line referenced to 18 U.S.C. 1129(a); by inserting after the line referenced to 42 U.S.C. 1320a–7b the following: "42 U.S.C. 1320a–8b 2X5.1, 2X5.2"; in the line referenced to 50 U.S.C. 783(b) by striking "(b)"; and by striking the line referenced to 50 U.S.C. 783(c).

Reason for Amendment: This two-part amendment makes various technical and conforming changes to the guidelines.

First, the amendment makes changes to the *Guidelines Manual* to promote accuracy and completeness. For example, it corrects typographical errors, and it addresses cases in which the *Guidelines Manual* provides information (such as a reference to a guideline, statute, or regulation) that has become incorrect or obsolete. Specifically, it amends:

(1) § 1B1.3 (Relevant Conduct), Application Note 6, to ensure that two quotations contained in that note are accurate;

(2) § 1B1.8 (Use of Certain Information), Application Note 2, to revise a reference to the "Probation Service";

(3) § 1B1.9 (Class B or C Misdemeanors and Infractions), Application Note 1, to reflect that some infractions do not have any authorized term of imprisonment;

(4) § 1B1.11 (Use of Guidelines Manual in Effect on Date of Sentencing),

Application Note 2, to correct a typographical error;

(5) § 2A1.1 (First Degree Murder), Application Note 1, to provide specific citations for the examples given;

(6) § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), Application Note 5, to correct typographical errors;

(7) § 2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts), Application Note 1, to correct a typographical error;

(8) § 2A3.5 (Failure to Register as a Sex Offender), Application Note 1, to ensure that the statutory definitions referred to in that note are accurately cited;

(9) § 2B1.4 (Insider Trading), Application Note 1, to correct a typographical error;

(10) § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources), Application Note 1, to provide updated citations to statutes and regulations;

(11) § 2B3.1 (Robbery), Application Note 2, to correct a typographical error;

(12) § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery), Background, to provide an updated description and reference to the statute criminalizing bribery in connection with Medicare and Medicaid referrals;

(13) § 2B6.1 (Altering or Removing Motor Vehicle Identification Numbers), Background, to update the statutory maximum term of imprisonment for violations of 18 U.S.C. 553(a)(2);

(14) § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe), Application Note 3, to ensure that the subsection relating to "loss" is accurately cited;

(15) § 2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity), Application Note 4, to correct a typographical error;

(16) § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking), in the Notes to the Drug Quantity Table, to provide updated citations to regulations;

(17) both § 2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical), Application Note 6, and § 2D1.12 (Unlawful Possession, Manufacture, Distribution, Transportation, Exportation, or Importation of Prohibited Flask, Equipment, Chemical, Product, or Material), Application Note 3, to provide a more accurate statutory citation and description;

(18) § 2D1.14 (Narco-Terrorism), subsection (a)(1), to provide an updated guideline reference;

(19) § 2D2.1 (Unlawful Possession), Commentary, to provide updated statutory references;

(20) § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter), Application Note 1, to make the definition of "distribution" in that guideline consistent with the definition of "distribution" in the child pornography guidelines;

(21) § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition), Application Notes 2 and 10, to ensure that a quotation contained in Note 2 is accurate and that a citation in Note 10 is accurate;

(22) § 2K2.5 (Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone), Application Notes 2 and 3, to provide updated statutory references;

(23) both § 2L2.1 (Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport), Statutory Provisions, and § 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization, Citizenship, or Legal Resident Status for Own Use), Statutory Provisions, to provide updated statutory references;

(24) § 2M3.1 (Gathering or Transmitting National Defense Information to Aid a Foreign Government), Application Note 1, to provide an updated reference to an executive order;

(25) § 2M3.3 (Transmitting National Defense Information), to provide an updated statutory reference;

(26) § 2M3.9 (Disclosure of Information Identifying a Covert Agent), Application Note 3, to provide an updated statutory reference;

(27) § 2M6.1 (Unlawful Activity Involving Nuclear Material, Weapons, or Facilities, Biological Agents, Toxins, or Delivery Systems, Chemical Weapons, or Other Weapons of Mass Destruction), Application Note 1, to provide updated statutory references;

(28) § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides), Background, to provide updated guideline references;

(29) § 2Q1.6 (Hazardous or Injurious Devices on Federal Lands), subsection (a)(1), to correct a typographical error;

(30) § 2Q2.1 (Offenses Involving Fish, Wildlife, and Plants), Application Note 3, to provide a more complete reference to regulations;

(31) Chapter Two, Part T, Subpart 2 (Alcohol and Tobacco Taxes), Introductory Commentary, to provide a more complete statutory reference;

(32) § 2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)), to strike an erroneous statutory reference;

(33) Appendix A (Statutory Index), to provide updated statutory references and strike an erroneous statutory reference.

Second, the amendment makes a series of changes to the *Guidelines Manual* to promote stylistic consistency in how subdivisions are designated. When dividing guideline sections into subdivisions, the guidelines generally follow the structure used by Congress to divide statutory sections into subdivisions. Thus, a section is broken into subsections (starting with "(a)"), which are broken into paragraphs (starting with "(1)"), which are broken into subparagraphs (starting with "(A)"), which are broken into clauses (starting with "(i)"), which are broken into subclauses (starting with "(I)"). For a generic term, "subdivision" is also used. When dividing application notes into subdivisions, the guidelines generally follow the same structure, except that subsections and paragraphs are not used; the first subdivisions used are subparagraphs (starting with "(A)"). The amendment identifies places in the *Guidelines Manual* where these principles are not followed and brings them into conformity.

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