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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM429; Special Conditions No. 25–407–SC]

Special Conditions: Boeing 757–200 With Enhanced Flight Vision System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 757–200 series airplanes. These airplanes, as modified by the Federal Express Corporation, will have an advanced, enhanced-flight-visibility system (EFVS). The EFVS is a novel or unusual design feature which consists of a head-up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is June 11, 2010. We must receive your comments by July 22, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM429, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM429. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, Transport Standards Staff, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2239; fax (425) 227–1320; e-mail: *dale.dunford@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for, prior public comment on these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on this proposal, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On June 23, 2009, the Federal Express Corporation applied for a supplemental type certificate for the installation and operation of a HUD and an EFVS on Boeing Model 757–200. The original type certificate for the 757–200 airplanes is A2NM, revision 27, dated July 16, 2009.

The Boeing Model 757–200 is a transport-category, cargo-carrying airplane that operates with a crew of two and that carries no passengers. The model 757–200 airplane has a wing span of 125 feet, a length of 155 feet, a maximum takeoff gross weight of 255,000 pounds, is powered by two Pratt and Whitney PW2037, PW2040, PW2043, or Rolls-Royce RB211 turbofan engines, and has a maximum range of 3,900 nautical miles.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of 14 CFR 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards, and airport features. At the same time, the image may partially obscure the pilot's direct outside compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside compartment view. The FAA intent is that the pilot will be able to use a combination of the information seen in the image, and the natural view of the outside scene seen through the image, as safely and effectively as a pilot compartment view without an EVS image, that is compliant with § 25.773.

Although the FAA has determined that the existing regulations are not adequate for certification of EFVSs, it believes that EFVSs could be certified through application of appropriate safety criteria. Therefore, the FAA has determined that special conditions should be issued for certification of EFVS to provide a level of safety equivalent to that provided by the standard in § 25.773.

Note: The term "enhanced vision system" (EVS) in this document refers to a system

comprised of a head-up display, imaging sensor(s), and avionics interfaces that display the sensor imagery on the HUD, and overlay that imagery with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems that displayed the sensor imagery, with or without other flight information, on a head-down display. For clarity, the FAA created the term "enhanced flight visibility system" (EFVS) to refer to certain EVS systems that meet the requirements of the new operational rules—in particular, the requirement for a HUD and specified flight information—and which can be used to determine "enhanced flight visibility." An EFVS can be considered a subset of a system otherwise labeled EVS.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125, and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an EFVS to meet visibility requirements.

Prior to this rule change, the FAA issued Special Conditions No. 25–180–SC, which applied to an EVS installed on Gulfstream Model G–V airplanes. Those special conditions addressed the requirements for the pilot compartment view and limited the scope of the intended functions permissible under the operational rules at the time. The intended function of the EVS imagery was to aid the pilot during the approach, and allow the pilot to detect and identify the visual references for the intended runway down to 100 feet above the touchdown zone. However, the EVS imagery alone was not to be used as a means to satisfy visibility requirements below 100 feet.

The recent operational rule change expands the permissible application of certain EVSs that are certified to meet the new EFVS standards. The new rule will allow the use of an EFVS for operation below the minimum descent altitude or decision height to meet new visibility requirements of § 91.175(l). The purpose of these special conditions is not only to address the issue of the "pilot compartment view," as was done by Special Conditions No. 25–180–SC, but also to define the scope of intended function consistent with § 91.175(l) and (m).

Type Certification Basis

Under the provisions of 14 CFR 21.101, the Federal Express Corporation must show that the Boeing Model 757–200 airplanes, as modified, comply with the regulations in the U.S. type-certification basis established for those airplanes. The U.S. type-certification basis for the airplanes is established in accordance with § 21.21 and 21.17, and the type certification application date. The U.S. type-certification basis for these airplane models is listed in Type Certificate Data Sheet No. A2NM, revision 27, dated July 16, 2009, which covers all variants of the 757 airplanes.

In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions. Also, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* part 25 as amended) do not contain adequate or appropriate safety standards for the Boeing Model 757–200 airplanes, modified by Federal Express, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type-certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate, to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The Boeing Model 757–200 airplanes will incorporate an EFVS, which is a novel or unusual design feature. The EFVS is a novel or unusual design feature because it projects a video image derived from a FLIR camera through the HUD. The EFVS image is projected in the center of the "pilot compartment view," which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify "visual references for the intended runway" [see § 91.175(l)(3)] to continue the approach below decision height or minimum descent altitude. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than he or she can see them through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that detected by natural pilot vision. On a dark night, thermal differences of objects which are not detectable by the naked eye are easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the naked eye but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that it can be accurately interpreted by the pilot.

The EFVS image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal flight-crew duties and adequately see outside the window through the image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that only displays stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically) which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image, but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared-sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (*i.e.,* the ability to see the outside view through the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system intended to

provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment. Therefore, safety standards are needed for each of the following factors:

- An acceptable degree of image transparency;
- Image alignment;
- Lack of significant distortion; and
- The potential for pilot confusion or misleading information.

Section 25.773, Pilot compartment view, specifies that "Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew * * *" In issuing § 25.773, the FAA did not anticipate the development of the EFVS and does not consider that § 25.773 adequately addresses the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

Discussion

The EFVS is intended to present an enhanced view during the landing approach. This enhanced view would help the pilot see and recognize external visual references, as required by § 91.175(l), and to visually monitor the integrity of the approach, as described in FAA Order 6750.24D ("Instrument Landing System and Ancillary Electronic Component Configuration and Performance Requirements," dated March 1, 2000).

Based on this approved functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—in visibility conditions much lower than those for conventional Category I.

The purpose of these special conditions is to ensure that the EFVS to be installed can perform the following functions:

- Present an enhanced view that aids the pilot during the approach.
- Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard instrument-approach procedure.
- Display an image that the pilot can use to detect and identify the "visual references for the intended runway" required by 14 CFR 91.175(l)(3), to continue the approach with vertical guidance to 100 feet height above the touchdown-zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (*i.e.,* 14 CFR parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

1. The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown.
2. The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.
3. An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information seen in the image and the natural view of the outside scene, seen through the image, as safely and effectively as the pilot would use a pilot compartment view without an EFVS image that is compliant with § 25.773. This is the fundamental objective of the special conditions.

The FAA will also apply additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as §§ 25.1301 and 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety.

Image-characteristics criteria include the following:

- Resolution,
- Luminance,
- Luminance uniformity,
- Low-level luminance,
- Contrast variation,
- Display quality,
- Display dynamics (*e.g.,* jitter, flicker, update rate, and lag), and
- Brightness controls.

Installation criteria address visibility and access to EFVS controls, and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high-intensity radiated fields (HIRF) and lightning protection.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 757–200 airplanes. Should the Federal Express Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Boeing 757–200 airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Boeing Model 757–200 airplanes modified by the Federal Express Corporation.

1. The EFVS imagery on the HUD must not degrade the safety of flight, or interfere with the effective use of outside visual references for required pilot tasks, during any phase of flight in which it is to be used.
2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

a. The EFVS design must minimize unacceptable display characteristics or artifacts (*e.g.* noise, "burlap" overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Automatic control of EFVS display brightness must be sufficiently effective, in dynamically changing background (ambient) lighting conditions, to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety.

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand

without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust control.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information, displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, Traffic Alert and Collision Avoidance System (TCAS) resolution advisories, or unusual-attitude recovery cues.

e. The EFVS image and the HUD symbols—which are spatially referenced to the pitch scale, outside view and image—must be scaled and aligned (*i.e.,* conformal) to the external scene. In addition, the EFVS image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase workload. Airplane attitudes or cross-wind conditions may cause certain symbols (*e.g.,* the zero-pitch line or flight path vector) to reach field-of-view limits such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance which makes the pilot aware that they are no longer displayed conformally (for example, "ghosting").

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval. If the HUD has not been previously approved, it must be found to meet the basic HUD certification criteria documented in the HUD issue paper.

3. The safety and performance of the pilot tasks associated with the use of the pilot compartment view must not be degraded by the display of the EFVS image. Pilot tasks which must not be degraded by the EFVS image include:

a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. The EFVS must be shown to be compliant with these requirements, under the provisions of §§ 91.175(l) and 121.651, with the following intended functions:

a. Presenting an image that would aid the pilot during a straight-in instrument approach.

b. Enable the pilot to determine that the "enhanced flight visibility," as required by § 91.175(l)(2) and referenced in § 121.651, is adequate for descent and operation below minimum descent altitude/decision height.

c. Enabling the pilot to use the EFVS imagery to detect and identify the "visual references for the intended runway," required by § 91.175(l)(3), to continue the approach with vertical guidance to 100 feet height above touchdown-zone elevation.

5. Use of EFVS for instrument-approach operations must be in accordance with the provisions of § 91.175(l) and (m), and § 121.651 where applicable. Appropriate limitations must be stated in the Operating Limitations section of the airplane flight manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on June 11, 2010.

Jeffrey Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–16166 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0132; Directorate Identifier 2009–NM–096–AD; Amendment 39–16355; AD 2010–14–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, –200B, and –200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Model 747–100, 747–200B, and –200F series airplanes. That AD currently requires inspections to detect cracking in the upper row of fasteners holes of the skin lap joints in the fuselage lower lobe, and repair if necessary. This new AD reduces the maximum interval of the post-modification inspections. This AD results from reports of fatigue cracking on modified airplanes. We are issuing this AD to detect and correct fatigue cracking in the longitudinal lap joints of the fuselage lower lobe, which could lead to the rapid decompression of the airplane and the inability of the structure to carry fail-safe loads.

DATES: This AD is effective August 6, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of August 6, 2010.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 94–17–01, Amendment 39–8996 (59 FR 41653, August 15, 1994). The existing AD applies to certain Model 747 airplanes. That NPRM was published in the **Federal Register** on February 25, 2010 (75 FR 8554). That NPRM proposed to continue to require inspections for cracking in the upper row of fasteners holes of the skin lap joints in the fuselage lower lobe, and repair, if necessary. The NPRM proposed to reduce the maximum interval of the post-modification inspections.

Comments

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

Request To Clarify Term in Paragraph (i)(2) of the NPRM

Boeing requests that we add a note below paragraph (i)(2) of the NPRM to clarify the term "remove" to mean "to

trim out all three fastener rows of the overlapping skin common to the lap joint." Boeing states that the term "remove" is not specific enough in this context, and it is inconsistent with the terminology used in the structural repair manual and Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009.

We agree that clarification is necessary for the reasons provided by the commenter. We have added this information to paragraph (i)(2) of this final rule.

Request To Add an Exception Clause to Paragraph (k)(4) of the NPRM

Boeing requests that we add an exception clause to paragraph (k)(4) that states "AMOCs approved previously in accordance with AD 94–17–01 are approved as AMOCs for the corresponding provisions of this AD, with the exception of paragraphs (h) and (i) of this AD." Boeing states that the exception ensures that operators meet the intent of the requirement to lower the repetitive inspection intervals from 3,000 flight cycles to 1,000 flight cycles, as required by paragraphs (h) and (i) of this AD.

We agree with the request. We have revised paragraph (k)(4) of this final rule accordingly.

Request To Revise Paragraphs (g)(1), (g)(2), and (g)(3) of the NPRM

Boeing requests that we add "locations on" before the word "airplanes" in paragraphs (g)(1), (g)(2), and (g)(3) of the NPRM. Boeing states that the current phrasing in the NPRM does not allow an operator to differentiate inspection thresholds between lap joints with different installation times and types of modifications on the same airplane.

We agree with the request. We have revised paragraphs (g)(1), (g)(2), and (g)(3) of this final rule accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 23 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection (required by AD 94–17–01).	244	$85	$0	$20,740 per inspection cycle.	7	$145,180 per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–8996 (59 FR 41653, August 15, 1994) and by adding the following new airworthiness directive (AD):

2010–14–10 The Boeing Company: Amendment 39–16355. Docket No. FAA–2010–0132; Directorate Identifier 2009–NM–096–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 6, 2010.

Affected ADs

(b) This AD supersedes AD 94–17–01, Amendment 39–8996.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–200B, and 747–200F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009.

Subject

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

Unsafe Condition

(e) This AD results from reports of fatigue cracking. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking in the fuselage lower lobe longitudinal lap joints, which

could lead to the rapid decompression of the airplane and the inability of the structure to carry fail-safe loads.

Compliance

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

Restatement of Requirements of AD 94–17–01, With Revised Compliance Times for Post-Modification Inspection and Revised Service Information

Initial External High Frequency Eddy Current Inspection

(g) Perform an external high frequency eddy current inspection to detect cracks in the upper row of fasteners in the modified lap joints in accordance with Boeing Service Bulletin 747–53A2267, Revision 3, dated March 26, 1992; or Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009; at the time specified in paragraph (g)(1) or (g)(2) or (g)(3) of this AD, as applicable. As of the effective date of this AD, only Revision 4 may be used.

(1) For locations on airplanes on which the full modification required by AD 90–06–06, Amendment 39–6490, has been accomplished in accordance with Revision 2 of Boeing Service Bulletin 747–53A2267, dated March 29, 1990; or Revision 3, dated March 26, 1992; or Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009: Prior to the accumulation of 10,000 flight cycles after accomplishment of the full modification.

(2) For locations on airplanes on which the full modification required by AD 90–06–06 has been accomplished in accordance with Boeing Service Bulletin 747–53A2267, dated March 28, 1986; or Revision 1, dated September 25, 1986: Prior to the accumulation of 7,000 flight cycles after accomplishment of the full modification.

(3) For locations on airplanes on which the optional modification has been accomplished in accordance with Boeing Service Bulletin 747–53A2267, Revision 2, dated March 29, 1990, or Revision 3, dated March 26, 1992; or Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009: Prior to the accumulation of 7,000 flight cycles after accomplishment of the optional modification.

Repetitive External High Frequency Eddy Current Inspections

(h) If no cracking is detected during the inspection required by paragraph (g) of this AD, repeat the inspection required by paragraph (g) of this AD at the earlier of the times specified in paragraphs (h)(1) and (h)(2) of this AD, and thereafter at intervals not to exceed 1,000 flight cycles.

(1) Within 3,000 flight cycles after the last inspection required by paragraph (g) of this AD.

(2) Within 1,000 flight cycles after the last inspection required by paragraph (g) of this AD or 500 flight cycles after the effective date of this AD, whichever occurs later.

Repair

(i) If any cracking is detected during any inspection required by paragraph (g) of this AD, prior to further flight, repair in accordance with Section 53–30–03 of the Boeing 747 Structural Repair Manual (SRM); or Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009; except as required by paragraph (j) of this AD; and repeat the inspection required by paragraph (g) of this AD at the times specified in paragraph (i)(1) of this AD. As of the effective date of this AD, use only Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009.

(1) As of the effective date of this AD: If the repair specified in the Boeing 747 SRM does not include removing the lap joint and the upper row of countersunk fasteners, repeat the inspection required by paragraph (g) of this AD at the earlier of the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD, and thereafter at intervals not to exceed 1,000 flight cycles.

(i) Within 3,000 flight cycles after the last inspection required by paragraph (g) of this AD.

(ii) Within 1,000 flight cycles after the last inspection required by paragraph (g) of this AD, or within 500 flight cycles after the effective date of this AD, whichever occurs later.

(2) If the repair specified in the Boeing 747 SRM includes removing the lap joint and the upper row of countersunk fasteners, such repair constitutes terminating action for the inspection requirements of this AD. To "remove" means to trim out all three fastener rows of the overlapping skin common to the lap joint.

Exception to the Service Bulletin

(j) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009, specifies contacting Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (k) of this AD. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests-faa.gov.*

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

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

(4) AMOCs approved previously in accordance with AD 94–17–01 are approved as AMOCs for the corresponding provisions of this AD, with the exception of paragraphs (h) and (i)(1) of this AD.

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 747–53A2267, Revision 4, dated March 26, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

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

Issued in Renton, Washington, on June 23, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–15924 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0454; Directorate Identifier 2008–NM–156–AD; Amendment 39–16353; AD 2010–14–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–400, 747–400D, and 747–400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 747–400, 747–400D, and 747–400F series airplanes. For all airplanes, this AD requires installing new pump control and time delay relays, doing related investigative and corrective actions if necessary, and changing the wiring for the center and main fuel tank override/jettison fuel pumps; and, for certain airplanes, installing new relays and wiring for the horizontal stabilizer override/jettison fuel pumps. This AD also requires a revision to the maintenance program to incorporate Airworthiness Limitation No. 28–AWL–24 and No. 28–AWL–26. For certain airplanes, this AD also requires installing an automatic shutoff system for the horizontal stabilizer tank fuel pumps and installing new integrated display system software. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent uncommanded operation of certain override/jettison pumps which could cause overheat, electrical arcs, or frictional sparks, and could lead to an ignition source inside a fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective August 6, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 6, 2010.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 747–400, 747–400D, and 747–400F series airplanes. That NPRM was published in the **Federal Register** on June 2, 2009 (74 FR 26317). That NPRM proposed to require installing new pump control and time delay relays, doing related investigative and corrective actions if necessary, and changing the wiring for the center and main fuel tank override/jettison fuel pumps; and, for certain airplanes, installing new relays and wiring for the horizontal stabilizer override/jettison fuel pumps. That NPRM also proposed to require a revision to the maintenance program to incorporate Airworthiness Limitation No. 28–AWL–24 and No. 28–AWL–26. For certain airplanes that NPRM proposed to require installing an automatic shutoff system for the horizontal stabilizer tank fuel pumps and installing new integrated display system software.

Explanation of Revised Service Information

Boeing has published Boeing Service Bulletins 747–28A2280 and 747–28A2281, both Revision 1, both dated November 25, 2009. In the NPRM, we referred to the original issues of Boeing Alert Service Bulletin 747–28A2280, dated August 7, 2008; and Boeing Alert Service Bulletin 747–28A2281, dated December 13, 2007. We referred to the original versions of these service bulletins as the appropriate sources of service information for accomplishing certain proposed actions. The procedures in Revision 1 of these service bulletins are essentially the same as those in the original issue of these service bulletins. Revision 1 clarifies certain work instructions and specifies that no further work is necessary for airplanes on which the actions in the original issue were performed. Boeing Service Bulletin 747–28A2281, Revision 1, dated November 25, 2009, also removes airplanes having variable numbers RT966 and RT967 from the effectivity. These airplanes are not equipped with horizontal stabilizer tanks and therefore are not affected by the identified unsafe condition.

Boeing has also published Boeing Service Bulletin 747–28A2262, Revision 2, dated August 13, 2009. In the NPRM, we referred to Boeing Service Bulletin 747–28A2262, Revision 1, dated May 8, 2008, for accomplishing the installation of a new automatic shutoff system for the horizontal stabilizer tank (HST) fuel pumps, before or at the same time as the actions in Boeing Service Bulletin 747–28A2281. The procedures in Boeing Service Bulletin 747–28A2262, Revision 2, dated August 13, 2009, are essentially the same as those in Boeing Service Bulletin 747–28A2262, Revision 1, dated May 8, 2008. Revision 2 clarifies certain work instructions and specifies that no further work is necessary for airplanes on which the actions in Revision 1 were performed.

Therefore, we have changed this AD to refer to these revised service bulletins as the appropriate sources of service information for the applicable actions. We have also added a new paragraph (i) to this AD that specifies that actions done before the effective date of this AD in accordance with the previous issues of these service bulletins are acceptable for compliance with the corresponding requirements of this AD.

Comments

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

Request to Clarify Certain Language

Boeing asks that the term “Integrated Display System (IDS)” be changed to “IDS software” in all applicable sections of the NPRM. Boeing states that this change clarifies that the actions in the NPRM are for a software change to the IDS and not a change to the IDS hardware.

We agree with the Boeing comment for the reason given. We have added the word “software” after all references to the IDS in this AD.

Request To Remove Certain Airplanes

Boeing asks that Model 747–400D and –400F airplanes be removed from paragraph (l) of the NPRM. Boeing states that Model 747–400D and –400F airplanes are not affected by the horizontal stabilizer tank (HST) changes because those airplanes do not have a HST.

We agree with the Boeing comment for the reason provided. We have removed Model 747–400D and –400F airplanes from paragraph (m) of this AD (paragraph (m) was referred to as paragraph (l) in the NPRM).

Request To Remove Airplane Flight Manual (AFM) Limitation

Boeing asks that we remove the reference to the following AFM limitations: "The 17,000-lb center wing tank (CWT) minimum fuel amount to select the CWT override/jettison pumps ON during takeoff" and "There is no change to the maximum zero fuel gross weight found in the airplane flight manual." Boeing states that the NPRM should be consistent with the AFM certificate limitations contained in AD 2007–13–04, Amendment 39–15108 (72 FR 33859, June 20, 2007). Boeing adds that in discussions regarding AFM limitations in this AD it was agreed that AFM limitations were not required for an obvious pilot action driven by engine indicating and crew alerting system (EICAS) messages.

We agree with the Boeing comment for the reasons provided and because the certification limitation for CWT minimum fuel is covered by EICAS messages, which makes it redundant. We have removed the subject limitations and changed the FAA letter concerning these limitations referred to in Note 3 of this AD.

Request To Remove Airworthiness Limitation (AWL) 28–AWL–26

Boeing asks that we remove the requirement to revise the maintenance program by incorporating AWL No. 28–AWL–26 of Section 9, "Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs)" of the Boeing 747–400 Maintenance Planning Data Document D621U400–9. Boeing states that, with the introduction of IDS–506 software, it has implemented a status level EICAS message for the relays that control the Uncommanded-ON state of the main 2 and main 3 tank fuel override/jettison pumps. Boeing adds that these messages are now consistent with the center tank Uncommanded-ON messages. Boeing notes that the EICAS message will detect a relay that remains latched when in the un-powered condition. Boeing concludes that for this reason, the need to perform the operational test found in Section 28–31–00 of the Boeing 747–400 airplane maintenance manual (AMM), and called out in AWL No. 28–AWL–26, is not necessary.

We disagree with the Boeing comment. The AWL is part of the airplane type design, and a design change has not been proposed to change the AWL. However, under the provisions of paragraph (p)(1) of the AD, we will consider removing the requirement if sufficient data are submitted to substantiate that a project has been completed showing that removing the requirement would provide an acceptable level of safety. We have made no change to the AD in this regard.

Request To Clarify the Requirements for Airplanes With a Deactivated HST

Japan Airlines (JAL) asks that we clarify the NPRM requirements for airplanes with a deactivated HST. JAL states that it decided to deactivate the HST system in accordance with Boeing Service Bulletins 747–28–2310, dated December 18, 2008; and 747–28–2314, dated December 9, 2008. JAL adds that the service bulletins specify removing components, including the pumps on horizontal stabilizer fuel tank (HSFT), and reworking the system wiring. JAL notes that after the service bulletins have been incorporated, paragraphs (g)(2), (h)(2), and (l) of the NPRM will not apply. JAL asks that an additional description be included in the AD which clarifies that the requirements in those paragraphs are only for airplanes with an active HSFT. JAL suggests clarifying the applicability as follows: "For Model 747–400 series airplanes with the active horizontal stabilizer tank." In lieu of that sentence, JAL suggests a note that specifies the following: "The airplanes with the horizontal stabilizer tank deactivated in accordance with Boeing Service Bulletin are not applicable." JAL concludes that this additional description will save on superfluous paperwork.

We partially agree with the JAL comments. We agree that the applicability should be clarified for airplanes with a deactivated HST because those airplanes have adequately addressed the unsafe condition. However, we do not agree with using the language JAL provided because it leaves "active" open to interpretation. Deactivation of a HST according to the applicable Boeing service bulletin referred to in Table 3 of this AD is the only acceptable method of compliance. We have added new paragraphs (n) and (o) to this AD (and reidentified subsequent paragraphs) to provide optional terminating action if the HST is deactivated and to reinstate the requirements if the HST is later reactivated.

Request for Analytical Justification of the Compliance Time

Lufthansa German Airlines (Lufthansa) asks that we provide justification (including statistical and probabilistic background) for the compliance time in the NPRM. Lufthansa reiterates the NPRM requirements and notes that it assumes that the failure probability is part of the determination of the proposed compliance time of 60 months for the installations and wiring changes.

We acknowledge the commenter's request and provide the following explanation. As stated in the preamble of the NPRM, "The pump is normally commanded off if the fuel level goes below the pump inlet, but if a single failure in the pump control circuitry occurs, a pump can continue to run after it is commanded off. Uncommanded operation of certain override/jettison pumps could cause overheat, electrical arcs, or frictional sparks, and could lead to an ignition source inside a fuel tank." This ignition source can come from several sources seen in service that were not originally anticipated in the airplane design. Examples of those are friction in the pump which could lead to very high internal surface temperatures caused by mechanical failures or ingestion of debris into the pump, and electrical faults leading to internal arcs or pump case burn-through. Since there are several pumps in multiple fuel tanks, depending on the configuration of the airplane, there are several possible single failures on a given airplane. This is a single failure which cannot be reliably predicted with statistical and probabilistic methods.

Currently, we are reliant on crew procedures to shut off the pumps early to mitigate the single failure risk. We are aware of accounts of pilots failing to turn pumps off due to the relatively short time between the points when the tank reaches the desired shutoff level and the pump runs dry. Given the multiple sources of a single failure that can cause ignition, and acknowledging the limited effectiveness of the current mitigating actions, we consider that this is an issue that requires action to return to the failsafe intent of the design.

When we determine that a safety issue warrants AD action, we ascertain how quickly that issue can be eliminated based on the actions proposed by the manufacturer and other related factors.

This determination includes the safety issue, the time necessary to perform the work on an airplane, the number of affected operators, and parts availability. For major modification involving large fleets, and requiring specialized facilities, we consider the overall industry ability to perform the modification on all affected airplanes in a timely manner. Based on these considerations, we determine a compliance time that minimizes risk, as well as the impact on commercial airlines. We try to align compliance times with the majority of operators' maintenance schedules, but that is dependent on the severity of the unsafe condition. In light of this analysis, we have determined that a 60-month compliance time is appropriate for this AD. We have made no change to the AD in this regard.

Requests To Extend Compliance Time

Lufthansa also states that the 60-month compliance time is not in line with its heavy maintenance overlay schedule, which is based on the latest approved maintenance review board document, and asks for an extension to 72 months. Air Transport Association (ATA), on behalf of its member United Airlines (United), asks that the compliance time be extended to 72 months in order to allow accomplishment of the proposed modifications during heavy maintenance visits. KLM Royal Dutch Airlines (KLM) asks that the compliance time be extended to 8 years, which enables KLM to schedule the modification during a D-check without additional downtime requirements. JAL also asks that the compliance time be extended to 8 years because accomplishing the modification is extensive work which can only be done during an M check for heavy maintenance. Cargolux also asks that the compliance time be extended to 8 years to coincide with its D-check heavy maintenance interval.

We do not agree with the commenters' requests. In developing an appropriate compliance time for the modification, we considered the safety implications and the practical aspect of accomplishing the modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In consideration of these items, and as noted under the Request for Analytical Justification of the Compliance Time, we have determined that a 60-month compliance time will ensure an acceptable level of safety and allow the modification to be done during scheduled maintenance intervals for most affected operators. However, under the provisions of paragraph (p)(1) of the AD, we will consider requests to adjust the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have made no change to the AD in this regard.

Cargolux adds that if the compliance time is extended to 8 years, in the interim, it proposes to have the override jettison pump push buttons replaced with switches having a configuration "D" master module within 6 months after the effective date of the forthcoming AD. Cargolux states that this will prevent the "cap pop-up" or "jamming" condition of the switch.

We disagree with the Cargolux proposal to replace push buttons as mitigating action to allow for extending the compliance time to 8 years, because its replacement is insufficient to mitigate the unsafe condition caused by possible single failures. We are aware of the problems with the push buttons and we are considering a separate rulemaking action. The faulty pressure switches are not related to this unsafe condition because they are not part of the pump power control circuit. We have made no change to the AD in this regard.

Request To Increase Work Hours and Include Parts Cost in the Costs of Compliance

ATA, on behalf of United, states that the estimate for labor and parts in the NPRM is understated. United notes that Boeing Alert Service Bulletin 747–28A2281, dated December 13, 2007, estimates that it would take 101 to 107 work hours per product to install relays and wiring for the HST. United adds that this service bulletin also includes the kits of parts necessary for the modification, and indicates that the pricing for the kits can be obtained from Boeing spares. United also states that the work hours are underestimated for Boeing Alert Service Bulletin 747–28A2280, dated August 7, 2008; and Boeing Service Bulletin 747–28A2262, Revision 1, dated May 8, 2008.

We infer that the commenter is asking to increase the work hours and include the cost of certain parts. We do not agree that the work hours are underestimated. The cost information in an AD describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this AD. We agree that the parts cost, which was inadvertently omitted from the Costs of Compliance table in the service bulletin, should be included because all three of these service bulletins have been revised. We have changed the Estimated Costs table to reduce certain work hours and increase the parts cost in the first row of the table to match Boeing Service Bulletins 747–28A2280 and 747–28A2281, both Revision 1, both dated November 25, 2009; and Boeing Service Bulletin 747–28A2262, Revision 2, dated August 13, 2009. We have also included the parts cost in the third row of the table, and changed the costs per product and fleet costs in the table accordingly.

Explanation of Change to Applicability

We have changed the applicability in this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Explanation of Additional Change to "Certificate Limitations" Section

We have removed the fourth note under "Certificate Limitations" in this AD for consistency with prior FAA approvals. The note specified the following: "The CWT and the HST may be emptied normally during an emergency."

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Explanation of Additional Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work hour to $85 per work hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD would affect 102 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $85 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installing relays/changing wiring for center and main fuel tanks	369 to 389	$75,007 to $75,894.	$106,372 to $108,959.	102	$10,849,944 to $11,113,818.
Installing new IDS software and revising the AFM when done (prior/concurrent action).	2 to 3	$0	Up to $255	Up to 102	Up to $26,010.
Installing relays and wiring for horizontal stabilizer tank (HST)	73 to 79	$5,778 to $6,486.	$11,983 to $13,201.	74	$886,742 to $976,874.
Installing a new automatic shutoff for the HST	44	$4,112	$7,852	74	$581,048.
Revising the maintenance program	1	$0	$85	102	$8,670.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–14–08 The Boeing Company: Amendment 39–16353. Docket No. FAA–2009–0454; Directorate Identifier 2008–NM–156–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 6, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category; as identified in Boeing Service Bulletins 747–28A2280, Revision 1, dated November 25, 2009, and 747–28A2281, Revision 1, dated November 25, 2009.

Note 1: This AD requires revisions to certain operator maintenance documents to include a new inspection. Compliance with this inspection is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this inspection, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (p)(1) of this AD. The request should include a description of changes to the required inspection that will ensure the continued operational safety of the airplane.

Subject

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

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent uncommanded operation of certain override/jettison pumps which could cause overheat, electrical arcs, or frictional sparks, and could lead to an ignition source inside a fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Installations and Wiring Changes

(g) Within 60 months after the effective date of this AD, do the actions in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For Model 747–400, 747–400D, and 747–400F series airplanes: Install new pump control and time delay relays and do related investigative and all applicable corrective actions, and change the wiring for the center and main fuel tanks override/jettison fuel pumps, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28A2280, Revision 1, dated November 25, 2009. Do all related investigative and applicable corrective actions before further flight.

(2) For Model 747–400 series airplanes: Install new relays and wiring for the horizontal stabilizer override/jettison fuel pumps in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28A2281, Revision 1, dated November 25, 2009.

Prior/Concurrent Requirements

(h) Prior to or concurrently with the actions required by paragraph (g) of this AD, do the applicable actions in paragraphs (h)(1) and (h)(2) of this AD.

(1) For Model 747–400, 747–400D, and 747–400F series airplanes identified in paragraphs (h)(1)(i), (h)(1)(ii), and (h)(1)(iii) of this AD: Install new integrated display system (IDS) software in accordance with the

Accomplishment Instructions of the applicable service bulletin listed in paragraph (h)(1)(i), (h)(1)(ii), or (h)(1)(iii) of this AD.

(i) For Model 747–400, 747–400D, and 747–400F series airplanes that have General Electric engines, except airplanes having variable numbers (V/Ns) RL429, RL430, RL473, RL511, and RL521: Boeing Service Bulletin 747–31–2376, dated September 5, 2006.

(ii) For Model 747–400 and 747–400F series airplanes that have Pratt & Whitney engines except airplanes having V/Ns RL456, RL492, and RL502: Boeing Service Bulletin 747–31–2377, dated September 5, 2006.

(iii) For Model 747–400 and 747–400F series airplanes that have Rolls Royce engines: Boeing Service Bulletin 747–31–2378, dated September 5, 2006.

(2) For Model 747–400 series airplanes except V/Ns RM403, RM441 through RM443 inclusive, and RM445: Install a new automatic shutoff system for the horizontal stabilizer tank (HST) fuel pumps in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28A2262, Revision 2, dated August 13, 2009.

Credit for Actions Done According to Previous Issues of Service Bulletins

(i) Actions done before the effective date of this AD in accordance with the applicable service information contained in Table 1 of this AD are acceptable for compliance with the corresponding actions required by paragraphs (g) and (h) of this AD.

TABLE 1—CREDIT SERVICE INFORMATION

Document	Revision	Date
Boeing Alert Service Bulletin 747-28A2280	Original	August 7, 2008.
Boeing Alert Service Bulletin 747-28A2281	Original	December 13, 2007.
Boeing Service Bulletin 747–28A2262	Original	March 15, 2007.
Boeing Service Bulletin 747–28A2262	1	May 8, 2008.

Maintenance Program Revision

(j) Concurrently with accomplishing the actions required by paragraph (g) of this AD, revise the maintenance program by incorporating Airworthiness Limitation (AWL) No. 28–AWL–24 and No. 28–AWL–26 of Section 9, "Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs)," of the Boeing 747–400 Maintenance Planning Data (MPD) Document D621U400–9, Revision April 2008. The inspection interval for AWL No. 28–AWL–24 and AWL No. 28–AWL–26 starts on the date the modification is incorporated.

No Alternative Inspections or Inspection Intervals

(k) After accomplishing the action specified in paragraph (j) of this AD, no alternative actions or intervals may be used unless the inspections or inspection intervals are approved as an AMOC in accordance with the procedures specified in paragraph (p)(1) of this AD.

Acceptable Action for Certain ADs

(l) For Model 747–400, –400D, and –400F series airplanes: Installing new IDS software in accordance with paragraph (h)(1) of this AD is an acceptable method of compliance for the action in the applicable AD paragraph listed in Table 2 of this AD.

TABLE 2—ACTIONS FOR WHICH PARAGRAPH (H)(1) OF THIS AD IS AN ACCEPTABLE METHOD OF COMPLIANCE (NO CERTIFICATE LIMITATIONS)

The action in—	Of—
(1) Paragraph E	AD 90–09–06, amendment 39–6581.
(2) Paragraph (b)	AD 91–13–10 R1, amendment 39–8158.
(3) Paragraph (d)(1)	AD 96–07–09, amendment 39–9558.
(4) Paragraph (a)(3)(iii)	AD 2000–02–22, amendment 39–11540.
(5) Paragraph (a)(2)(ii)	AD 2000–12–21, amendment 39–11799.
(6) Paragraph (d)(2)(iv)	AD 2003–16–16, amendment 39–13269.
(7) Paragraph (d)(1)	AD 2004–10–05, amendment 39–13635.

(m) For Model 747–400 series airplanes with a horizontal stabilizer fuel tank and with horizontal stabilizer tank fuel pump auto-shutoff installed: Installing new IDS software in accordance with paragraph (h)(1) of this AD is an acceptable method of compliance for the action in the applicable AD paragraph listed in Table 3 of this AD, provided the certificate limitations included in the following statement are incorporated into the Limitations Section of the applicable airplane flight manual (AFM) in place of the certificate limitation required by the AFM revision specified in the applicable AD listed in Table 3 of this AD. This may be done by inserting a copy of this AD in the AFM.

CERTIFICATE LIMITATIONS

Center Wing Tank:

The center wing tank (CWT) fuel quantity indication system must be operative to dispatch with CWT mission fuel.

If the FUEL LOW CTR L or R message is displayed, both CWT override/jettison pump(s) must be selected OFF.

If the FUEL PRESS CTR L or R message is displayed, the corresponding CWT override/jettison pump must be selected OFF.

Horizontal Stabilizer Tank:

The following additional limitations must be followed if the horizontal stabilizer tank (HST) is fueled and used:

The HST fuel quantity indication system must be operative to dispatch with HST mission fuel.

If either the FUEL PMP STB L or R message is displayed while on the ground, both HST pumps must be selected OFF.

If either the FUEL PRES STB L or R message is displayed, both HST pumps must be selected OFF.

Defueling:

Prior to defueling any fuel tanks, perform a lamp test of the respective Fuel Pump Low Pressure indication lights. When defueling, the Fuel Pump Low Pressure indication lights must be monitored and the fuel pumps positioned to OFF at the first indication of fuel pump low pressure. When defueling with passengers on board, fuel pump switches must be selected OFF at or above approximately 7,000 pounds (3,200 kilograms) for the CWT, 3,000 pounds (1,400 kilograms) for main tanks, and 2,100 pounds (1,000 kilograms) for the HST. (These requirements apply for defueling or transferring between tanks.)

Warnings and Notes Applicable to All Fuel Operations

Warning

Do not reset a tripped fuel pump circuit breaker.

Warning

Do not cycle CWT and HST pump switches from ON to OFF to ON with any continuous low pressure indication present.

Note

In a low fuel situation, both CWT override/jettison pumps may be selected ON and all CWT fuel may be used.

Note

In a low fuel situation, both HST transfer pumps may be selected ON and all HST fuel may be used.

Note

The limitations contained in these certificate limitations supersede any conflicting basic airplane flight manual limitations."

Note 2: When a statement identical to that in paragraph (m) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Note 3: The certificate limitations in paragraph (m) of this AD are also included as an enclosure to FAA Letter 140S–09–191, dated June 23, 2009.

TABLE 3—ACTIONS FOR WHICH PARAGRAPH (H)(1) OF THIS AD IS AN ACCEPTABLE METHOD OF COMPLIANCE (WITH CERTIFICATE LIMITATIONS)

The action in—	Of—
(1) Paragraph (a)	AD 2001–12–21, amendment 39–12277.
(2) Paragraph (a)	AD 2001–21–07, amendment 39–12478.
(3) Paragraph (c)(2)	AD 2002–19–52, amendment 39–12900.
(4) Paragraph (a)	AD 2002–24–52, amendment 39–12993.

Optional Terminating Action for Paragraphs (g)(2), (h)(2), and (m) of this AD: Deactivation of the HST

(n) Deactivation of the HST, in accordance with the applicable Boeing service information in Table 4 of this AD, terminates the requirements of paragraphs (g)(2), (h)(2), and (m) of this AD, except as provided by paragraph (o) of this AD. Deactivation of the HST before the effective date of this AD in accordance with the applicable service information in Table 5 of this AD also terminates the requirements of paragraphs (g)(2), (h)(2), and (m) of this AD, except as provided by paragraph (o) of this AD.

TABLE 4—DEACTIVATION SERVICE INFORMATION

Boeing Service Information	Revision	Date
Service Bulletin 747–28–2247	Original	November 26, 2002.
Service Bulletin 747–28–2265	Original	February 22, 2006.
Service Bulletin 747–28–2272	Original	February 21, 2006.
Service Bulletin 747–28–2274	1	May 21, 2008.
Service Bulletin 747–28–2275	4	February 2, 2009.
Service Bulletin 747–28–2279	2	October 16, 2007.
Service Bulletin 747–28–2285	3	August 30, 2007.
Service Bulletin 747–28–2293	2	March 4, 2008.
Service Bulletin 747–28–2295	2	January 19, 2009.
Service Bulletin 747–28–2296	Original	July 13, 2007.
Service Bulletin 747–28–2300	1	June 2, 2008.
Service Bulletin 747–28–2310	Original	December 18, 2008.
Service Bulletin 747–28–2314	Original	December 9, 2008.

TABLE 5—DEACTIVATION CREDIT SERVICE INFORMATION

Boeing Service Information	Revision	Date
Service Bulletin 747–28–2274	Original	March 13, 2006.
Service Bulletin 747–28–2275	Original	June 12, 2006.
Service Bulletin 747–28–2275	1	March 16, 2007.
Service Bulletin 747–28–2275	2	July 2, 2007.
Service Bulletin 747–28–2275	3	March 11, 2008.
Service Bulletin 747–28–2279	Original	June 12, 2006.
Service Bulletin 747–28–2279	1	May 25, 2007.
Service Bulletin 747–28–2285	Original	January 23, 2007.
Service Bulletin 747–28–2285	1	May 9, 2007.
Service Bulletin 747–28–2285	2	August 3, 2007.
Service Bulletin 747–28–2293	Original	May 9, 2007.
Service Bulletin 747–28–2293	1	August 29, 2007.
Service Bulletin 747–28–2295	Original	November 17, 2006.
Service Bulletin 747–28–2295	1	March 20, 2008.
Service Bulletin 747–28–2300	Original	January 16, 2008.

Reactivation of the HST

(o) For any airplane on which the HST is reactivated, the HST must be reactivated in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For any airplane on which the HST is reactivated, the requirements of paragraphs (g)(2), (h)(2), and (m) of this AD must be done before further flight following the reactivation, or within 60 months after the effective date of this AD, whichever occurs later. For a reactivation method to be approved, the reactivation method must meet the certification basis of the airplane, and the approval must specifically reference this AD.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Douglas Bryant, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6505; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

Material Incorporated by Reference

(q) You must use the service information contained in Table 6 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 6—REQUIRED MATERIAL INCORPORATED BY REFERENCE

Boeing Service Information	Revision	Date
Service Bulletin 747–28A2280	1	November 25, 2009.
Service Bulletin 747–28A2281	1	November 25, 2009.
Section 9, "Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs)," of the 747–400 Maintenance Planning Data (MPD) Document D621U400–9.	April 2008	April 2008.
Service Bulletin 747–28A2262	2	August 13, 2009.
Service Bulletin 747–31–2376	Original	September 5, 2006.
Service Bulletin 747–31–2377	Original	September 5, 2006.
Service Bulletin 747–31–2378	Original	September 5, 2006.

If you accomplish the optional actions specified in this AD, you must use the service information specified in Table 7 of this AD, as applicable, to perform those actions unless the AD specifies otherwise.

TABLE 7—OPTIONAL MATERIAL INCORPORATED BY REFERENCE

Boeing Service Information	Revision	Date
Service Bulletin 747–28–2247	Original	November 26, 2002.
Service Bulletin 747–28–2265	Original	February 22, 2006.
Service Bulletin 747–28–2272	Original	February 21, 2006.
Service Bulletin 747–28–2274	1	May 21, 2008.
Service Bulletin 747–28–2275	4	February 2, 2009.
Service Bulletin 747–28–2279	2	October 16, 2007.
Service Bulletin 747–28–2285	3	August 30, 2007.
Service Bulletin 747–28–2293	2	March 4, 2008.
Service Bulletin 747–28–2295	2	January 19, 2009.
Service Bulletin 747–28–2296	Original	July 13, 2007.
Service Bulletin 747–28–2300	1	June 2, 2008.
Service Bulletin 747–28–2310	Original	December 18, 2008.
Service Bulletin 747–28–2314	Original	December 9, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

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

Issued in Renton, Washington, on June 17, 2010.

Robert D. Breneman,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–15935 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0641; Directorate Identifier 2010–NM–130–AD; Amendment 39–16354; AD 2010–14–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100B, 747–200B, 747–200F, 747–300, 747–400, 747–400F, and 747SP Series Airplanes Equipped with Rolls-Royce RB211–524 Series Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 747–100B, 747–200B, 747–200F, 747–300, 747–400, 747–400F, and 747SP series airplanes. This AD requires repetitive detailed and high frequency eddy current inspections of the forward and aft sides of the strut front spar chord for cracks and fractures at each strut location, and corrective actions if necessary. This AD results from reports of cracks and fractures in the nacelle strut front spar chord assembly. We are issuing this AD to detect and correct cracks and fractures of the nacelle strut front spar chord assembly. Fracture of the front spar chord assembly could lead to loss of the strut upper link load path and consequent fracture of the diagonal brace, which could result in in-flight separation of the strut and engine from the airplane.

DATES: This AD is effective July 19, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 19, 2010.

We must receive comments on this AD by August 16, 2010.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ken Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We have received a report that an operator found a cracked strut number 2 upper chord on a Rolls-Royce-powered airplane while accomplishing the actions specified in Boeing Service Bulletin 747–54–2213. The upper chord was 50 percent cracked and had to be replaced. The airplane had accumulated approximately 10,500 total flight cycles and 83,700 total flight hours.

In addition, two other operators reported finding two cracks on two Rolls-Royce RB211-powered airplanes on the strut number 1 upper chord. Both cracks were repaired and neither upper chord had to be replaced. The upper chords on these two airplanes had accumulated approximately 9,300 and 16,100 total flight cycles and 78,100 and 56,700 total flight hours respectively.

This condition, if not corrected, could result in the loss of the strut upper link load path. Continued operation without the strut upper link load path could result in the fracture of the diagonal brace, and subsequent separation of the strut and engine from the airplane during flight.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–54A2224, Revision 3, dated May 20, 2010. Revision 3 of this service bulletin was issued, among other reasons, to add Model 747–100B, 747–200B, 747–200F, 747–300, 747–400, 747–400F, and 747SP equipped with Rolls-Royce RB211–524 series engines. This service bulletin describes procedures for repetitive detailed inspections and high frequency eddy current (HFEC) inspections of the forward and aft sides of the strut front spar chord assemblies for cracks and fractures at each strut location, and corrective actions if necessary. Corrective actions include contacting Boeing for additional instructions if any crack or fracture is found, and repairing any cracks and fractures.

Other Related Rulemaking

On December 30, 2009, we issued AD 2010–01–10, Amendment 39–16168 (75 FR 3150, January 20, 2010), applicable to certain Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes equipped with General Electric (GE) CF6–45 or –50 series engines, or equipped with Pratt & Whitney JT9D–3 or –7 (excluding –70) series engines. That AD currently requires repetitive inspections to detect cracks and fractures of the strut front spar chord assembly (including the forward side) at each strut location, and

repair if necessary. That AD requires a one-time inspection for cracking of the forward side of the front spar chord assembly on the inboard and outboard struts, installation of a cap skin doubler for certain airplanes, and repair if necessary. Certain actions provided in that AD terminate the repetitive inspections of the forward side of the strut front spar chord assembly; the inspections of the aft side assembly are not terminated and continue to be required. That AD referred to Boeing Alert Service Bulletin 747–54A2224, Revision 1, dated November 16, 2006, to address the identified unsafe condition on Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes equipped with GE CF6–45 or –50 series engines, or equipped with Pratt & Whitney JT9D–3 or –7 (excluding –70) series engines.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the Service Information."

Differences Between the AD and the Service Information

Boeing Alert Service Bulletin 747–54A2224, Revision 3, dated May 20, 2010, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Interim Action

We consider this AD interim action. If final action is later identified, we might consider further rulemaking then.

FAA's Justification and Determination of the Effective Date

Continued operation without the strut upper link load path could result in the fracture of the diagonal brace, and subsequent separation of the strut and engine from the airplane during flight. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure structural integrity of the engine support structure and the short compliance time involved with this action, this AD must be issued immediately.

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0641; Directorate Identifier 2010–NM–130–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–14–09 The Boeing Company: Amendment 39–16354. Docket No. FAA–2010–0641; Directorate Identifier 2010–NM–130–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 19, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–100B, 747–200B, 747–200F, 747–300, 747–400, 747–400F, and 747SP series airplanes; certificated in any category; equipped with Rolls-Royce RB211–524 series engines; as identified in Boeing Alert Service Bulletin 747–54A2224, Revision 3, dated May 20, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from reports of cracks and fractures in the nacelle strut front spar chord assembly. The Federal Aviation Administration is issuing this AD to detect and correct cracks and fractures of the nacelle strut front spar chord assembly. Fracture of the front spar chord assembly could lead to loss of the strut upper link load path and consequent fracture of the diagonal brace, which could result in in-flight separation of the strut and engine from the airplane.

Compliance

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

Inspections of the Forward and Aft Sides of the Strut Front Spar Chord Assemblies

(g) Before the accumulation of 8,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later: Perform a detailed inspection and a high frequency eddy current (HFEC) inspection for cracking or fracturing in the forward and aft sides of the strut front spar chord, in accordance with Parts 1 and 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2224, Revision 3, dated May 20, 2010. If no cracking or fracturing is found, repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles.

Corrective Actions

(h) If any crack or fracture is found during any inspection required by this AD: Before further flight, repair the crack or fracture using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ken Paoletti, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6434; fax (425) 917–6590. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 747–54A2224, Revision 3, dated May 20, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

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

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

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

Issued in Renton, Washington, on June 21, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–16046 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0071; Airspace Docket No. 10–AAL–1]

RIN 2120–AA66

Amendment of Norton Sound Low and Control 1234L Offshore Airspace Areas; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Norton Sound Low and Control 1234L Offshore Airspace Areas in Alaska. This action will lower the airspace floors to provide controlled airspace beyond 12 miles from the coast of the United States given that there is a requirement to provide Instrument Flight Rules (IFR) en route Air Traffic Control (ATC) services and within which the United States is applying domestic ATC procedures.

DATES: Effective date 0901 UTC, September 23, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, 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:

History

On Wednesday, March 31, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to modify two Alaskan Offshore Airspace Areas, Norton Sound Low, and Control 1234L (75 FR 16024). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception of editorial changes, this amendment is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the Norton Sound Low and Control 1234L Offshore Airspace Areas in Alaska.

The Norton Sound Low Offshore Airspace Area will be modified by lowering the offshore airspace floor to 1,200 feet mean sea level (MSL) at the following airports; within 73 miles of Clarks Point, King Salmon, Kivalina, Kwethluk, Napakiak, Scammon Bay, Shaktooklik, and Tooksook Bay; within 74 miles of Elim and Manokotak, and within 72.5 miles of Red Dog.

The Control 1234L Offshore Airspace Area will be modified by lowering the offshore airspace floor to 1,200 feet above the surface within 73 miles of Nikolski, and Toksook Bay Airports.

Offshore airspace areas are published in paragraph 2003 of FAA Order 7400.9T dated August 27, 2009 and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The offshore airspace areas listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies offshore airspace areas in Alaska.

ICAO Considerations

As part of this action relates to navigable airspace outside the United States, this rule is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace and Rules Group, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 2003—Offshore Airspace Areas.

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 56°42′59″ N., long. 160°00′00″ W., north by a line 12 miles from and parallel to the U.S. coastline to the intersection with 164°00′00″ W., longitude near the outlet to Kotzebue Sound, then north to the intersection with a point 12 miles from the U.S. coastline, then north by a line 12 miles from and parallel to the shoreline to lat. 68°00′00″ N., to lat. 68°00′00″ N., long. 168°58′23″ W., to lat. 65°00′00″ N., long. 168°58′23″ W., to lat. 62°35′00″ N., long. 175°00′00″ W., to lat. 59°59′57″ N., long. 168°00′08″ W., to lat. 57°45′57″ N., long. 161°46′08″ W., to lat. 58°06′57″ N., long. 160°00′00″ W., to the point of beginning; and that airspace extending upward from 1,200 feet MSL north of the Alaska Peninsula and east of 160° W. longitude within 73 miles of the Port Heiden NDB/DME, AK, and north of the Alaska Peninsula and east of 160° W. longitude within an 81.2-mile radius of the Perryville Airport, AK, and north of the Alaska Peninsula and east of 160° W. longitude within a 72.8-mile radius of the Chignik Airport, AK, and within a 35-mile radius of lat. 60°21′17″ N., long. 165°04′01″ W., and within a 73-mile radius of the Chevak Airport, AK, and within a 73-mile radius of the Clarks Point Airport, AK, and within a 73-mile radius of the Elim Airport, AK, and within a 45-mile radius of the Hooper Bay Airport, AK, and within a 73-mile radius of the King Salmon Airport, AK, and within a 73-mile radius of the Kivalina Airport, AK, and within a 74-mile radius of the Kotzebue VOR/DME, AK, and within a 73-mile radius of the Kwethluk Airport, AK, and within a 74-mile radius of the Manokotak Airport, AK, and within a 73-mile radius of the Napakiak Airport, AK, and within a 77.4-mile radius of the Nome VORTAC, AK, and within a 71NM radius of the New Stuyahok Airport, AK, and within a 73-mile radius of the Noatak Airport, AK, and within a 72.5-mile radius of the Red Dog Airport, AK, and within a 73-mile radius of the Scammon Bay Airport, AK, and within a 73-mile radius of the Shaktoolik Airport, AK, and within a 74-mile radius of the Selawik Airport, AK, and within a 73-mile radius of the St. Michael Airport, AK, and within a 73-mile radius of the Toksook Bay Airport, AK, and within a 30-mile radius of lat. 66°09′58″ N., long. 166°30′03″ W., and within a 30-mile radius of lat. 66°19′55″ N., long. 165°40′32″ W., and that airspace extending upward from 700 feet MSL within 8 miles west and 4 miles east of the 339° bearing from the Port Heiden NDB/DME, AK, extending from the Port Heiden NDB/DME, AK, to 20 miles north of the Port Heiden NDB/DME, AK, and within a 25-mile radius of the Nome Airport, AK.

* * * * *

Control 1234L, AK [Amended]

That airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N., long. 160°00′00″ W., then south along 160°00′00″ W. longitude, until it intersects the Anchorage Air Route Traffic Control Center (ARTCC) boundary; then southwest, northwest, north, and northeast along the Anchorage ARTCC boundary to lat. 62°35′00″ N., long. 175°00′00″ W., to lat. 59°59′57″ N., long. 168°00′08″ W., to lat. 57°45′57″ N., long. 161°46′08″ W., to the point of beginning; and that airspace extending upward from 1,200 feet above the surface within a 26.2-mile radius of Eareckson Air Station, AK, within an 11-mile radius of Adak Airport, AK, and within 16 miles of

Adak Airport, AK, extending clockwise from the 033° bearing to the 081° bearing from the Mount Moffett NDB, AK, and within a 10-mile radius of Atka Airport, AK, and within a 10.6-mile radius from Cold Bay Airport, AK, and within 9 miles east and 4.3 miles west of the 321° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 20 miles northwest of Cold Bay Airport, AK, and 4 miles each side of the 070° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 13.6 miles northeast of Cold Bay Airport, AK, and within a 26.2-mile radius of Eareckson Air Station, AK, and west of 160° W. longitude within an 81.2-mile radius of Perryville Airport, AK, and within a 73-mile radius of the Nikolski Airport, AK, within a 74-mile radius of the Manokotak Airport, AK, and within a 73-mile radius of the Clarks Point Airport, AK and west of 160° W. longitude within a 73-mile radius of the Port Heiden NDB/DME, AK, and within a 10-mile radius of St. George Airport, AK, and within a 73-mile radius of St. Paul Island Airport, AK, and within a 20-mile radius of Unalaska Airport, AK, extending clockwise from the 305° bearing from the Dutch Harbor NDB, AK, to the 075° bearing from the Dutch Harbor NDB, AK, and west of 160° W. longitude within a 25-mile radius of the Borland NDB/DME, AK, and west of 160° W. longitude within a 72.8-mile radius of Chignik Airport, AK; and that airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eareckson Air Station, AK, and within a 7-mile radius of Adak Airport, AK, and within 5.2 miles northwest and 4.2 miles southeast of the 061° bearing from the Mount Moffett NDB, AK, extending from the 7-mile radius of Adak Airport, AK, to 11.5 miles northeast of Adak Airport, AK and within a 6.5-mile radius of King Cove Airport, and extending 1.2 miles either side of the 103° bearing from King Cove Airport from the 6.5-mile radius out to 8.8 miles, and within a 6.4-mile radius of the Atka Airport, AK, and within a 6.3-mile radius of Nelson Lagoon Airport, AK, and within a 6.3-mile radius of the Nikolski Airport, AK, and within a 6.4-mile radius of Sand Point Airport, AK, and within 3 miles each side of the 172° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 13.9 miles south of Sand Point Airport, AK, and within 5 miles either side of the 318° bearing from the Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of Sand Point Airport, AK, and within 5 miles either side of the 324° bearing from the Borland NDB/DME, AK, extending from the 6.4-mail radius of Sand Point Airport, AK, to 17 miles northwest of the Sand Point Airport, AK, and within a 6.6-mile radius of St. George Airport, AK, and within an 8-mile radius of St. Paul Island Airport, AK, and 8 miles west and 6 miles east of the 360° bearing from St. Paul Island Airport, AK, to 14 miles north of St. Paul Island Airport, AK, and within 6 miles west and 8 miles east of the 172° bearing from St. Paul Island Airport, AK, to 15 miles south of St. Paul Island Airport, AK, and within a 6.4-mile radius of Unalaska Airport, AK, and within 2.9 miles each side of the 360° bearing from the Dutch Harbor NDB, AK, extending from the 6.4-mile radius of Unalaska Airport, AK, to 9.5 miles north of Unalaska Airport, AK; and that airspace extending upward from the surface within a 4.6-mile radius of Cold Bay Airport, AK, and within 1.7 miles each side of the 150° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 7.7 miles southeast of Cold Bay Airport, AK, and within 3 miles west and 4 miles east of the 335° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 12.2 miles northwest of Cold Bay Airport, AK.

Issued in Washington, DC, June 23, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–16076 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0114]

RIN 1625–AA08

Special Local Regulations; Macy's Fourth of July Fireworks Spectator Vessels Viewing Areas, Hudson River, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the Hudson River in the vicinity of New York, NY, for the Macy's July 4th fireworks display. This temporary special local regulation is intended to restrict certain vessels from designated portions of the Hudson River during the fireworks event. This regulation is necessary to provide for the safety of life on navigable waters by controlling vessel movement and establishing public viewing areas for the fireworks event.

DATES: This rule is effective from 7 p.m. on July 4, 2010 until 11:30 p.m. on July 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0114 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0114 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LTJG Eunice James, Sector New York Waterways Management Division, Marine Events Branch. Coast Guard; telephone (718) 354–4163, e-mail *Eunice.A.James@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient information regarding the event was not received in time to publish a NPRM followed by a final rule before the effective date, thus making the publication of a NPRM impractical. A delay or cancellation of the event in order to allow for a notice and comment period is contrary to the public interest in having this event occur on July 4 as scheduled.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during the event and immediate action is necessary to prevent possible loss of life or property. Also, a delay or cancellation of the fireworks event in order to allow for publication in the **Federal Register** is contrary to the public's interest in having this event occur as scheduled.

Basis and Purpose

This temporary special local regulation is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display. Based on the inherent hazards associated with fireworks, the Captain of the Port New York has determined that fireworks launches proximate to

watercraft pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, darkness punctuated by bright flashes of light, and debris falling into the water has the potential to result in serious injuries or fatalities. This special local regulation temporarily establishes a regulated area to restrict vessel movement around the location of the launch platforms to reduce the risk associated with the launch of fireworks.

Discussion of Rule

MACY's is sponsoring their 34th Annual Macy's Fourth of July Fireworks on the waters of the Hudson River. This temporary special local regulation is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display will occur from 9:20 p.m. until 9:50 p.m. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before and immediately after the fireworks launch, this rule is effective and will be enforced from 7 p.m. until 10:30 p.m. on July 4, 2010.

If the event is cancelled due to inclement weather, then this special local regulation will be effective from 7 p.m. until 11:30 p.m. on July 5, 2010.

The special local regulation will encompass all waters of the Hudson River south of a line drawn from Pier 11A, Weehawken, NJ, to West 70th Street, New York, NY, and north of a line drawn from the northwest corner of Pier 40, New York, NY to a point at position 40°43′51.2″ N, 074°01′41.5″ W, Jersey City Pier, NJ. All geographic coordinates are North American Datum of 1983 (NAD 83).

The Captain of the Port New York will establish five limited access areas within the boundaries of the special local regulation. Access to these areas will be restricted to vessels of a certain size. The five limited access areas are: (1) A "buffer zone" around the fireworks launch barges, designated area ALPHA, limited to all vessels tending the barges; (2) a "spectator area" designated BRAVO in which access is limited to vessels less than 20 meters in length (65.6ft); (3) "spectator area" designated CHARLIE in which access is limited to vessels greater than 20 meters in length (65.6ft); (4) "spectator area" designated DELTA in which access is limited to vessels greater than 20 meters in length (65.6ft); and (5) a "spectator area" designated ECHO in which access is limited to vessels less than 20 meters in length (65.6ft).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port New York or the designated on-scene representative. Entry into, transiting, or anchoring within the regulated area is prohibited unless authorized by the Captain of the Port New York, or the designated on-scene representative. The Captain of the Port New York or the on-scene representative may be contacted via VHF Channel 16.

Public notifications will be made prior to the event via the Local Notice to Mariners, and marine information broadcasts.

Regulatory Analyses

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

Regulatory Planning and Review

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

This determination is based on the limited time that vessels will be restricted from the fireworks display area. The temporary safety zone will only be in effect for approximately four hours during the evening hours. The Coast Guard expects insignificant adverse impact to mariners from the zone's activation as the event has been extensively advertised in the public. Also, affected mariners may request authorization from the Captain of the Port New York or the designated on-scene representative to transit the zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the Hudson River, in the vicinity of New York City, NY from 7 p.m. to 10:30 p.m. on July 4th, 2010.

This temporary special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for only four hours on a single day during the late evening for this fireworks event. Although the special local regulation will apply to the entire width of the river, traffic will be allowed to pass through the area with the permission of the Captain of the Port New York or the designated on-scene representative. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves the promulgation of a special local regulation regulating vessel traffic on a portion of the lower Hudson River during the launching of fireworks. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T0144 to read as follows:

§ 100.35T0144 Special Local Regulation; Macy's July Fourth Fireworks Spectator Vessel Viewing Area, Hudson River, New York, NY.

(a) *Regulated Area.* The regulated area includes all waters of the Hudson River within the following points (NAD 83): all navigable waters of the Hudson River bounded by a line drawn east from approximate position 40°46′35.43″ N, 074°00′7.53″ W in New Jersey, to a point in approximate position 40°46′16.98″ N, 073°59′52.34″ W in New York, thence south along the Manhattan shoreline to approximate position 40°44′48.98″ N, 074°00′41.06″ W, then west to approximate position 40°44′55.91″ N, 074°01′24.94″ W, then north along the New Jersey shoreline and back to the point of origin.

(1) *Area ALPHA:* all navigable waters of the Hudson River bounded by a line drawn east from approximate position 40°46′35.43″ N, 074°00′7.53″ W in New Jersey, to a point in approximate position 40°46′16.98″ N, 073°59′52.34″ W in New York, thence south along the Manhattan shoreline to approximate position 40°44′48.98″ N, 074°00′41.06″ W, then west to approximate position 40°44′55.91″ N, 074°01′24.94″ W; then north along the New Jersey shoreline and back to the point of origin. (NAD 83).

(2) *Area BRAVO:* All navigable waters of the Hudson River bounded by a line drawn east from approximate position 40°46′35.43″ N, 074°00′37.53″ W in New Jersey, across the Hudson River to a point in approximate position 40°46′16.98″ N, 073°59′52.34″ W in New York, thence north along the Manhattan shoreline to approximate position 40°46′31.38″ N, 073°59′ 37.46″ W, then west to approximate position 40°46′47.71″ N, 074°00′19.73″ W, then south along the New Jersey shoreline and back to the point of origin.(NAD 83).

(3) *Area CHARLIE:* All navigable waters of the Hudson River bounded by a line drawn east from a point in New Jersey in approximate position 40°46′47.71″ N, 074°00′19.73″ W in New Jersey to approximate position 40°46′31.38″ N, 073°59′37.46″ W in New York, thence north along the Manhattan shoreline to approximate position 40°46′47.60″ N, 073°59′22.26″ W, then west to a point in New Jersey in

approximate position 40°47′03.39″ N, 074° 00′00.19″ W, then south along the New Jersey shoreline back to the point of origin.(NAD 83).

(4) *Area DELTA:* All navigable waters of the Hudson River bounded by a line drawn east from approximate position 40°44′ 55.56″ N, 074°01′ 21.18″ W in New Jersey, to a point in New York in approximate position 40°44′ 48.98″ N, 074°00′41.06″ W, then south along the Manhattan shoreline to approximate position 40°44′21.84″ N, 074°00′41.78″ N, then west to a point in approximate position 40°44′23.91″ N, 074°01′29.05″ W in Hoboken, NJ, then north along the New Jersey shoreline back to the point of origin.(NAD 83).

(5) *Area ECHO:* All navigable waters of the Hudson River bounded by a line drawn east from a point in New Jersey in approximate position 40°44′23.91″ N, 074°01′29.05″ W; to approximate position 40°44′21.84″ N, 074°00′41.78″ W; then south along the Manhattan shoreline to approximate position 40°43′49.63″ N, 074°00′49.65″ W; then west to a point in 40°43′50.60″ N, 074°01′51.00″ W in Hoboken New Jersey, then north along the New Jersey shoreline back to the point of origin.(NAD 83).

(b) *Special local regulations.* (1) In accordance with the general regulations is § 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited unless the vessel is in an area designated for vessels of that size or entry is otherwise authorized by the Captain of the Port New York, or the designated on-scene representative.

(2) Vessels are authorized by the Captain of the Port New York to enter areas of this special location regulation in accordance with the following restrictions:

(i) Area ALPHA is restricted to vessels engaged in conducting the fireworks display and tending to the launch barges.

(ii) Area BRAVO access is limited to vessels greater than 20 meters (65.6ft) in length.

(iii) Area CHARLIE access is limited to vessels less than 20 meters (65.6ft) in length.

(iv) Area DELTA access is limited to vessels greater than 20 meters (65.6ft) in length.

(v) Area ECHO access is limited to vessels less than 20 meters (65.6ft) in length.

(3) All persons and vessels in the regulated areas shall comply with the instructions of the Coast Guard Captain of the Port New York or the designated on-scene representative. On-scene representatives comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(c) *Enforcement Period:* This section will be enforced from 7 p.m. to 10:30 p.m. on July 4, 2010, and if the fireworks display is postponed, it will be effective from 7 p.m. until 11:30 p.m. on July 5, 2010.

Dated: June 14, 2010.

R.R. O'Brien, Jr.,

Captain, U.S. Coast Guard, Captain of the Port New York.

[FR Doc. 2010–16262 Filed 6–30–10; 11:15 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0035]

Drawbridge Operation Regulations; Chelsea River, Chelsea and East Boston, MA, Event—Road Race

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the P.J. McArdle Bridge across the Chelsea River, mile 0.3, between Chelsea and East Boston, Massachusetts. This deviation allows the bridge to remain in the closed position from 8 a.m. to 5 p.m. on July 24, 2010. This deviation is necessary to facilitate a public event, the Chelsea River Revel 5K Road Race.

DATES: This deviation is effective from 8 a.m. through 5 p.m. on July 24, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0035 and are available online at *http://www.regulations.gov,* inserting USCG–2010–0035 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John McDonald, Project Officer, First Coast Guard District, telephone (617) 223–8364, *john.w.mcdonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The P.J. McArdle Bridge, across the Chelsea River at mile 0.3, between Chelsea and East Boston, Massachusetts, has a vertical clearance in the closed position of 21 feet at mean high water and 30 feet at mean low water. The bridge opens on signal at all times as required by 33 CFR 117.593.

The owner of the bridge, the City of Boston, requested a temporary deviation to facilitate a public event, the Chelsea River Revel 5K Road Race.

This deviation allows the bridge to remain closed from 8 a.m. to 5 p.m. on July 24, 2010. Vessels able to pass under the closed draw may do so at any time.

The commercial waterway users that transit the Chelsea River were advised of the requested bridge closure period and offered no objection.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 22, 2010.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2010–16113 Filed 7–1–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0536]

Drawbridge Operation Regulations; Charles River, Boston, MA, Public Event

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the Craigie Bridge across the Charles River, mile 1.0, at Boston, Massachusetts. The deviation is necessary to facilitate public safety during the Boston Pops Fireworks Spectacular, by allowing the bridge to remain in the closed position

to evacuate pedestrian traffic after the conclusion of the public event.

DATES: This deviation is effective from 11 p.m. on July 4, 2010, through 1 a.m. on July 5, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0536 and are available online at *http://www.regulations.gov,* inserting USCG–2010–0536 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John W. McDonald, Project Officer, First Coast Guard District, *john.w.mcdonald@uscg.mil,* telephone (617) 223–8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Craigie Bridge, across the Charles River at mile 1.0, at Boston, Massachusetts, has a vertical clearance in the closed position of 13.5 feet at normal pool elevation above the Charles River Dam. The existing drawbridge operation regulations are listed at 33 CFR 117.591(e).

The waterway is predominantly a recreational waterway supporting various size vessels. This yearly holiday event and the annual short term bridge closure necessary to facilitate the evacuation of the large number of pedestrians viewing the fireworks display are well known to local boating interests and no objections have been received in past years.

The owner of the bridge, the Massachusetts Department of Transportation (Mass DOT), requested a temporary deviation to facilitate public safety during this public event, the 2010 Boston Pops Fireworks Spectacular.

Under this temporary deviation, in effect from 11 p.m. on July 4, 2010 through 1 a.m. on July 5, 2010, the Craigie Bridge at mile 1.0, across the Charles River at Boston, Massachusetts, may remain in the closed position.

Vessels that can pass under the bridge without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 22, 2010.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2010–16117 Filed 7–1–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0520]

Drawbridge Operation Regulations; Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Commander, Ninth Coast Guard District, issued a temporary deviation from the regulation governing the operation of the Lake Shore Drive Bridge at Mile 0.32, Columbus Drive Bridge at mile 0.62, Michigan Avenue Bridge at Mile 0.85, State Street Bridge at Mile 1.05, LaSalle Street Bridge at Mile 1.29, and the Franklin Street Bridge at Mile 1.47 over the Main Branch of the Chicago River, Monroe Street Bridge at Mile 1.99, Adams Street Bridge at Mile 2.08, Halsted Street Bridge at Mile 4.47 over the South Branch of the Chicago River, at Chicago, IL. This deviation will temporarily change the operating schedule of the bridges to accommodate the City's Bank of America Shamrock Shuffle 8K Run, Rock N Roll Chicago Half Marathon, Illinois Special Olympics Rubber Duck Race, Chicago Triathlon, Ready to Run Chicago Marathon, Bank of America Chicago Marathon, Men's Health Urbanathlon, and the Magnificent Mile Lights Festival events. This temporary deviation allows the bridges to remain secured to masted navigation on the dates and times listed.

DATES: This deviation is effective on August 1, 2010 from 6 a.m. to 9 a.m., August 12, 2010 from noon to 1:30 p.m., August 29, 2010 from 6 a.m. to 1 p.m., September 19, 2010 from 7 a.m. to 10 a.m., September 29, 2010 from 6 a.m. to 1 p.m., October 10, 2010 from 4:30 a.m. to 11:30 a.m., October 16, 2010 from 7:30 a.m. to 9:30 a.m., and on November 20, 2010 from 6 p.m. to 8 p.m..

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0520 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0520 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, e-mail; *lee.d.soule@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The City of Chicago, Illinois, who owns and operates these drawbridges, requested a temporary deviation from the current operating regulations set forth in 33 CFR 117.391. The purpose of this request is to facilitate efficient management of all transportation needs and provide timely public safety services during these special events. The most updated and detailed current marine information for this event, and all bridge operations, is found in the Local Notice to Mariners and Broadcast Notice to Mariners issued by the Ninth District Commander. In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time periods. These deviations from the operating regulations are authorized under 33 CFR 117.35.

Date: June 16, 2010.

M.N. Parks,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2010–16114 Filed 7–1–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0523]

RIN 1625–AA00

Safety Zone; San Diego POPS Fireworks, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the

navigable waters of San Diego Bay in support of the San Diego POPS Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Effective Date: This rule is effective in the CFR on July 2, 2010 through 10 p.m. on September 5, 2010. This rule is effective with actual notice for purposes of enforcement at 8:30 p.m. on July 2, 2010. This rule will remain in effect until 10 p.m. on September 5, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0523 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0523 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM). It would be impracticable to publish an NPRM with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be impracticable, since immediate action is needed to ensure the public's safety.

Basis and Purpose

The San Diego Symphony Orchestra and Copley Symphony Hall are sponsoring the San Diego POPS Fireworks, which will include fireworks presentations conducted from a barge in San Diego Bay. The barge will be located near the navigational channel in the vicinity of North Embarcadero.

This safety zone is necessary to provide for the safety of the crew, spectators, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone to protect vessels and persons during the fireworks presentations. The safety zone will be enforced from 8:30 p.m. to 10 p.m. on the following days: July 2–3, July 9–11, July 16–17, July 23–24, July 30–31, August 6–7, August 13–14, August 20–21, August 27–28, and September 3–5, 2010. The limits of the safety zone will be a 400 foot radius around the anchored firing barge in approximate position 32°42′12″ N, 117°10′01″ W.

The safety zone is necessary to provide for the safety of the crews, spectators, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, or his designated representative. Additionally, the sponsor will provide a chase boat to patrol the safety zone and inform vessels of the safety zone.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to pass safely around the safety zone. Furthermore, the zone will be enforced only during certain periods of the effective period. Before the periods of enforcement, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF.

Small Entities

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

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the safety zone. The Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–338 to read as follows:

§ 165.T11–338 Safety Zone; San Diego POPS Fireworks, San Diego, CA

(a) *Location.* The limits of the safety zone will be a 400 foot radius around the anchored firing barge in approximate position 32°42′13″ N., 117°10′01″ W.

(b) *Enforcement Period.* This section will be enforced from 8:30 p.m. to 10 p.m. on July 2–3, July 9–11, July 16–17, July 23–24, July 30–31, August 6–7, August 13–14, August 20–21, August 27–28, and September 3–5, 2010.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board a Coast Guard, Coast Guard Auxiliary, or local, state, or federal law enforcement vessel who has been authorized to act on the behalf of the Captain of the Port.

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

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

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

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

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

Dated: June 22, 2010.

T.H. Farris,

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

[FR Doc. 2010–16116 Filed 7–1–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0591]

RIN 1625–AA00

Safety Zones; Multiple Firework Displays in Captain of the Port, Puget Sound Area of Responsibility, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing multiple temporary safety zones restricting vessel movement in the proximity of firework discharge sites being held in the Captain of the Port, Puget Sound area of responsibility (AOR). This action is necessary to help protect the maritime public from the inherent dangers associated with fireworks displays and will do so by prohibiting entry into, transit through, or mooring within the safety zones unless authorized by the Captain of the Port or Designated Representative.

DATES: This rule is effective from 5 p.m. on July 3, 2010 until 1 a.m. on August 7, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0591 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0591 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LTJG Wanzer, Coast Guard Sector Seattle, Waterways Management Division; telephone 206–217–6175, e-mail *SectorSeattleWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to the public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objective since immediate action is needed to protect persons and vessels against the hazards associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous detonations, dangerous projectiles and falling or burning debris. Additionally, the zone should have negligible impact on vessel transits due to the fact that vessels will be limited from the area for a short time and vessels can still transit in the majority of Puget Sound during the event. Accordingly, under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

The U.S. Coast Guard is proposing to establish three temporary safety zones to ensure public safety during firework shows occurring within the Captain of the Port, Puget Sound AOR. These events may result in a number of vessels congregating near fireworks launching barges and sites. These safety zones are necessary to protect watercraft and their occupants from the hazards associated with fireworks displays. The Captain of the Port, Puget Sound may be assisted by other Federal, State and local agencies in the enforcement of this safety zone.

Due to the inherent dangers associated with such displays, the Coast Guard is taking this action to help protect the maritime public by prohibiting entry into, transit through, or mooring within the safety zones unless authorized by the Captain of the Port or his Designated Representative. This temporary final rule is necessary to protect the safety of life and property on navigable waters during these firework events and provide the marine community information on safety zone locations, size and length of time the zones will be active.

Discussion of Rule

This rule establishes three safety zones for the following firework displays: The first will encompass waters of Boston Harbor within a 200 yard radius around position 47°08.5′ N, 122°54.2′ W and will be enforced from 5 p.m. on July 3, 2010 until 1 a.m. on July 4, 2010; the second will encompass waters of Boston Harbor within a 200 yard radius around position 47°08.5′ N, 122°54.2′ W and will be enforced from 5 p.m. on July 24, 2010 until 1 a.m. on July 25, 2010; and the third will encompass waters near Stuart Island within a 700 yard radius around position 48°37.5′ N, 121°12.0′ W and will be enforced from 5 p.m. on August 6, 2010 until 1 a.m. on August 7, 2010.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this rule will restrict access to the area, the effect of the rule will not be significant because it creates safety zones that are minimal in size and short in duration.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the affected waterways during the times of enforcement. This rule will not have a significant economic impact on a substantial number of small entities because it creates safety zones that are minimal in size and short in duration.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of temporary safety zones. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–148 to read as follows:

§ 165.T13–148 Safety Zones; Multiple Firework Displays in Captain of the Port, Puget Sound Area of Responsibility, WA

(a) *Safety Zones.* The following areas are designated as safety zones:

(1) All waters of Boston Harbor encompassed within a 200 yard radius around position 47° 08.5′N, 122° 54.2′ W from 5 p.m. on July 3, 2010 until 1 a.m. on July 4, 2010.

(2) All waters of Boston Harbor encompassed within a 200 yard radius around position 47° 08.5′ N, 122° 54.2′ W from 5 p.m. on July 24, 2010 until 1 a.m. on July 25, 2010.

(3) All waters near Stuart Island encompassed within a 700 yard radius around position 48° 37.5′ N, 121° 12.0′ W from 5 p.m. on August 6, 2010 until 1 a.m. on August 7, 2010.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this Part, no person or vessel may enter, transit, moor, or anchor within the safety zones created in this section unless authorized by the Captain of the Port or his Designated Representative.

(c) *Authorization.* All persons or vessels who desire to enter the safety zones created in this section must obtain permission from the Captain of the Port or his Designated Representative by contacting either the on-scene patrol craft on VHF Ch 13 or Ch 16 or the Coast Guard Sector Seattle Joint Harbor Operations Center (JHOC) via telephone at 206–217–6002.

(d) *Effective Period.* The safety zones created in this section are effective on the dates and times noted in paragraph (a) unless canceled sooner by the Captain of the Port.

Dated: June 22, 2010.

S. W. Bornemann,

Captain, U. S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2010–16118 Filed 7–1–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0801; FRL–8832–5]

Carbaryl; Order Denying Washington Toxics Coalition Petition to Revoke Tolerances and Notice of Availability of Denial of Request to Cancel Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order and Notice of Availability.

SUMMARY: This order denies a petition requesting that EPA revoke all pesticide tolerances for carbaryl under section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA). The petition was filed on January 10, 2005 by the Washington Toxics Coalition (WTC). This order also informs the public of the availability of a response to WTC's petition to cancel all uses of carbaryl.

DATES: This Order is effective July 2, 2010. Objections and requests for hearings must be received on or before August 31, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0801. To access the electronic docket, go to *http://www.regulations.gov*, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jacqueline Guerry, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (215) 814–2184; e-mail address: *guerry.jacqueline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this order and may also request a hearing on those objections. You must file your objection or request a hearing on this order in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0801 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before August 31, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0801, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Introduction

A. What Action Is the Agency Taking?

The WTC filed a petition dated January 10, 2005 (WTC Petition) with EPA which, among other things, requested that EPA cancel all registrations for the pesticide carbaryl and revoke all carbaryl tolerances established under section 408 of the FFDCA, 21 U.S.C. 346a (Ref. 1). It should be noted that the WTC Petition generally raises a subset of identical issues raised by a petition submitted by the Natural Resources Defense Council (NRDC), which is also dated January 10, 2005 (Ref. 2). Indeed, most of the WTC Petition is virtually a verbatim recitation of the NRDC petition. The primary difference is that the WTC Petition does not address any of the tolerance-related issues raised in the NRDC petition; there is nothing in the WTC Petition which supports the request to revoke tolerances. Nonetheless, to the extent that the WTC Petition can be construed to raise tolerance-related issues, this Order relies on EPA's response to the NRDC petition and denies that portion of the WTC Petition that seeks the revocation of the carbaryl tolerances. This document also announces a notice of availability for EPA's response to WTC's Petition to cancel all uses of carbaryl, which may be found in docket number EPA–HQ–OPP–2006–0801.

B. What Is the Agency's Authority for Taking This Action?

Under section 408(d)(4) of the FFDCA, EPA is authorized to respond to a section 408(d) petition to revoke tolerances either by issuing a final rule revoking the tolerances, issuing a proposed rule, or issuing an order denying the petition. (21 U.S.C. 346a(d)(4)).

III. Statutory and Regulatory Background

A. FFDCA/FIFRA and Applicable Regulations

1. *In general*. EPA establishes maximum residue limits, or "tolerances," for pesticide residues in food and feed commodities under section 408 of the FFDCA. (21 U.S.C. 346a). Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. (21 U.S.C. 331, 342). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). Section 408 was substantially rewritten by the Food Quality Protection Act of 1996 (FQPA), which added the provisions discussed below establishing a detailed safety standard for pesticides, additional protections for infants and children, and the estrogenic substances screening program. (Public Law 104-170, 110 Stat. 1489 (1996)).

EPA also regulates pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C. 136 et seq). While the FFDCA authorizes the establishment of legal limits for pesticide residues in food, FIFRA requires the approval of pesticides prior to their sale and distribution, (7 U.S.C. 136a(a)), and establishes a registration regime for regulating the use of pesticides. FIFRA regulates pesticide use in conjunction with its registration scheme by requiring EPA review and approval of pesticide labels and specifying that use of a pesticide inconsistent with its label is a violation of Federal law. (7 U.S.C. 136j(a)(2)(G)). In the FQPA, Congress integrated action under the two statutes by requiring that the safety standard under the FFDCA be used as a criterion in FIFRA registration actions as to pesticide uses which result in dietary risk from residues in or on food, (7 U.S.C. 136(bb)), and directing that EPA coordinate, to the extent practicable, revocations of tolerances with pesticide cancellations under FIFRA. (21 U.S.C. 346a(l)(1)).

2. *Safety standard for pesticide tolerances*. A pesticide tolerance may only be promulgated or left in effect by EPA if the tolerance is "safe." (21 U.S.C. 346a(b)(2)(A)(i)). This standard applies both to petitions to establish and petitions to revoke tolerances. "Safe" is defined by the statute to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." (21 U.S.C. 346a(b)(2)(A)(ii)). Section 408(b)(2)(D) directs EPA, in making a safety determination, to:

> consider, among other relevant factors— ...
>
> (v) available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity; and
>
> (vi) available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources;

(21 U.S.C. 346a(b)(2)(D)(v), (vi) and (viii)).

EPA must also consider, in evaluating the safety of tolerances, "safety factors which . . . are generally recognized as appropriate for the use of animal experimentation data." (21 U.S.C. 346a(b)(2)(D)(ix).

Risks to infants and children are given special consideration. Specifically, section 408(b)(2)(C) states that EPA:

> shall assess the risk of the pesticide chemical based on—
>
> (II) available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults, and effects of *in utero* exposure to pesticide chemicals; and
>
> (III) available information concerning the cumulative effects on infants and children of such residues and other substances that have a common mechanism of toxicity....

(21 U.S.C. 346a(b)(2)(C)(i)(II) and (III)).

This provision also creates a presumptive additional safety factor for the protection of infants and children. Specifically, it directs that "in the case of threshold effects, ... an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children." (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to "use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children." (Id.). The additional safety margin for infants and children is referred to

throughout this Order as the "FQPA Safety Factor."

3. *Procedures for establishing, amending, or revoking tolerances.* Tolerances are established, amended, or revoked by rulemaking under the unique procedural framework set forth in the FFDCA. Generally, a tolerance rulemaking is initiated by the party seeking to establish, amend, or revoke a tolerance by means of filing a petition with EPA. (See 21 U.S.C. 346a(d)(1)). EPA publishes in the **Federal Register** a notice of the petition filing and requests public comment. (21 U.S.C. 346a(d)(3)). After reviewing the petition, and any comments received on it, EPA may issue a final rule establishing, amending, or revoking the tolerance, issue a proposed rule to do the same, or deny the petition. (21 U.S.C. 346a(d)(4)).

Once EPA takes final action on the petition by establishing, amending, or revoking the tolerance or denying the petition, any party may file objections with EPA and seek an evidentiary hearing on those objections. (21 U.S.C. 346a(g)(2)). Objections and hearing requests must be filed within 60 days. (Id.). The statute provides that EPA shall "hold a public evidentiary hearing if and to the extent the Administrator determines that such a public hearing is necessary to receive factual evidence relevant to material issues of fact raised by the objections." (21 U.S.C. 346a(g)(2)(B)). EPA regulations make clear that hearings will only be granted where it is shown that there is "a genuine and substantial issue of fact," the requestor has identified evidence "which, if established, resolve one or more of such issues in favor of the requestor," and the issue is "determinative" with regard to the relief requested. (40 CFR 178.32(b)). EPA's final order on the objections is subject to judicial review. (21 U.S.C. 346a(h)(1)).

4. *Tolerance reassessment and FIFRA reregistration.* The FQPA required that EPA reassess the safety of all pesticide tolerances existing at the time of its enactment. (21 U.S.C. 346a(q)). EPA was given 10 years to reassess the approximately 10,000 tolerances in existence in 1996. In this reassessment, EPA was required to review existing pesticide tolerances under the new "reasonable certainty that no harm will result" standard set forth in section 408(b)(2)(A)(i). (21 U.S.C. 346a(b)(2)(A)(i)). This reassessment was substantially completed by the August 3, 2006 deadline. Tolerance reassessment was generally handled in conjunction with a similar program involving reregistration of pesticides under FIFRA. (7 U.S.C. 136a-1). Tolerance reassessment and reregistration decisions were generally combined in a Reregistration Eligibility Decision ("RED") document.

B. EPA's Approach to Dietary Risk Assessment and Science Policy Considerations

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. In addition, EPA applies a number of policy considerations with respect to determining the appropriate children's safety factor, cholinesterase inhibition as a regulatory endpoint, and the use of a bench mark dose approach. EPA has discussed these in great detail in its response to an earlier and virtually identical petition file by NRDC. EPA hereby incorporates and relies upon that discussion. See Carbaryl: Order Denying NRDC's Petition to Revoke Tolerances, dated September 30, 2008 (October 29, 2008, 73 FR 64229).

IV. Carbaryl Tolerances

A. Regulatory Background

Carbaryl is a carbamate insecticide and molluscide that was first registered in 1959 for use on cotton. Carbaryl has many trade names, but is most commonly known as Sevin®. In 1980, the Agency published a position document summarizing its conclusions from a Special Review of carbaryl, and concluded that risk concerns, particularly those related to teratogenicity, did not warrant cancellation of the registration for carbaryl. A Registration Standard, issued for carbaryl in 1984 and revised in 1988, described the terms and conditions for continued registration of carbaryl. At the time carbaryl was assessed for purposes of reregistration, carbaryl was registered for use on over 400 agricultural and non-agricultural use sites, and there were more than 140 tolerances for carbaryl in the Code of Federal Regulations (40 CFR 180.169). For example, carbaryl was registered for domestic outdoor uses on lawns and gardens, and indoors in kennels and on pet sleeping quarters. It was also registered for direct application to cats and dogs (collar, powder, and dip) to control fleas and ticks.

EPA completed an Interim Reregistration Eligibility Decision (IRED) for carbaryl on June 30, 2003 (2003 IRED, Ref. 3). The Agency amended the IRED on October 22, 2004 (2004 Amended IRED. Ref. 4), and published a formal Notice of Availability for the document which provided for a 60–day public comment period (69 FR 62663; docket EPA–HQ–OPP–2003–0376). EPA received numerous comments on the carbaryl IRED, including two nearly identical petitions from the WTC and the NRDC requesting that EPA cancel all carbaryl registrations and revoke all tolerances (Refs. 1 and 2). The Agency published a Notice of Availability for the WTC Petition in the **Federal Register**, which provided a public comment period. See "Petition to Revoke or Modify Tolerances Established for Carbaryl; Notice of Availability," October 13, 2006 (71 FR 60511).

The 2004 Amended IRED for carbaryl specified mitigation of risks from residential uses including the following: Canceling liquid broadcast applications to home lawns pending EPA review of pharmacokinetic data to refine post–application risk estimates; home garden/ornamental dust products must be packaged in ready-to-use shaker can containers, with no more than 0.05 lbs. active ingredient per container; cancellation of the following uses and application methods: all pet uses (dusts and liquids) except collars, aerosol products for various uses, belly grinder applications of granular and bait products for lawns, hand applications of granular and bait products for ornamentals and gardens.

On March 9, 2005, EPA issued a cancellation order for the liquid broadcast use of carbaryl on residential turf to address post-application risk to toddlers (Ref. 5). In March 2005, EPA also issued generic and product-specific data call-ins (DCIs) for carbaryl. The carbaryl generic DCI required several confirmatory studies of the active ingredient carbaryl, including additional toxicology, worker exposure monitoring, data to support the use of carbaryl in pet collars, and environmental fate data. The product-specific DCI required acute toxicity and product chemistry data for all pesticide products containing carbaryl; these data are being used for product labeling. EPA has received numerous studies in response to these DCIs, and, where appropriate, these studies were considered in the tolerance reassessment.

In response to the DCIs, many carbaryl registrants chose to voluntarily cancel their carbaryl products, rather than revise their labels or conduct studies to support these products. EPA published a notice of receipt of these requests in the **Federal Register** on October 28, 2005 (70 FR 62112), followed by a cancellation order issued on July 3, 2006. One technical registrant, Burlington Scientific, chose to cancel its technical product, leaving Bayer CropScience (Bayer) as the sole

technical registrant for carbaryl. Approximately two-thirds of all of the carbaryl products registered at the time of the 2003 IRED were canceled through this process.

In addition, Bayer, the sole remaining technical registrant responsible for developing data, requested waivers of required exposure monitoring or residue studies because the following use scenarios were not on any Bayer technical or product labels or were to be deleted from Bayer labels: Carbaryl use in or on pea and bean, succulent shelled (subgroup 6B); millet; wheat; pre-plant root dip for sweet potato; pre-plant root dip/drench for nursery stocks, vegetable transplants, bedding plants, and foliage plants; use of granular formulations on leafy vegetables (except Brassica); ultra low volume (ULV) application for adult mosquito control; and dust applications in agriculture.

Bayer subsequently requested that all of its carbaryl registrations bearing any of the uses just mentioned be amended to delete these uses. EPA notified all affected registrants that these uses and application methods must be deleted from their carbaryl product labels. EPA identified 34 product labels from 14 registrants (other than Bayer) bearing these end uses. All of these registrants requested that their affected carbaryl product registrations be amended to delete these uses. EPA published Notices of receipt of these requests from Bayer and the other 14 registrants in the **Federal Register** on August 20, 2008 and October 15, 2008. On March 18, 2009, the Agency published an order granting the requests to delete uses (74 FR 11553).

Further, in November 2009, Bayer submitted a waiver request for the dermal and inhalation exposure studies required for aerial application of carbaryl bait used in the USDA Rangeland Grasshopper and Mormon Cricket Suppression Program due to a recent reduction in the maximum application rate, which eliminated remaining uncertainties associated with this use scenario. The Agency accepted the waiver request in January 2010.

Carbaryl is a member of the N-methyl carbamate (NMC) class of pesticides, which share a common mechanism of toxicity by affecting the nervous system via cholinesterase inhibition. Specifically, carbaryl is a reversible inhibitor of Acetylcholinesterase (AChE). A cumulative risk assessment, which evaluates exposures based on a common mechanism of toxicity, was conducted to evaluate risk from food, drinking water, residential use, and other non-occupational exposures resulting from registered uses of NMC pesticides, including carbaryl.

In June 2006, EPA determined that the uses associated with 120 of the existing carbaryl tolerances were not significant contributors to the overall NMC cumulative risk and, as a result, these tolerances would have no effect on the retention or revocation of other NMC tolerances. Therefore, EPA considered these 120 tolerances for carbaryl as reassessed on June 29, 2006, and posted this decision on the Agency's internet site. (See *http://www.epa.gov/pesticides/cumulative/carbamates_commodity.pdf*).

In late November 2006, EPA received data from a carbaryl comparative cholinesterase study conducted to determine the comparative sensitivity of adults and offspring to cholinesterase inhibition by carbaryl. These data were used to revise the FQPA Safety Factor for carbaryl for the NMC cumulative risk assessment and to select new toxicology endpoints or points of departure (PODs) for the risk assessment. The Agency determined that it was appropriate to use the new FQPA Safety Factor and revised PODs in both the NMC cumulative risk assessment and the carbaryl-specific human health risk assessment. Because this necessitated a revision of the carbaryl human health aggregate risk assessment, EPA also considered additional new data generated in response to the DCI, new methodologies, and other new information in performing its most recent assessment of carbaryl and in responding to this Petition. EPA has thus, in effect, revised the carbaryl single chemical assessment in response to the issues raised during the public comment process as well as based upon more recent data and analytical methods.

On September 26, 2007, EPA issued the NMC cumulative risk assessment (Ref. 6). EPA concluded that the cumulative risks associated with the NMC pesticides meet the safety standard set forth in section 408(b)(2) of the FFDCA, provided that the mitigation specified in the NMC cumulative risk assessment is implemented. EPA has therefore terminated the tolerance reassessment process under 408(q) of the FFDCA. (See 72 FR 54656). In conjunction with the NMC cumulative risk assessment, EPA completed a Reregistration Eligibility Decision (RED) for carbaryl on September 24, 2007 (Ref. 7) and issued this RED on October 17, 2007 with a formal Notice of Availability in the **Federal Register** (72 FR 58844). In addition to relying on the NMC cumulative risk assessment to determine that the cumulative effects from exposure to all NMC residues, including carbaryl, was safe, the carbaryl RED relied upon the revised assessments and the mitigation that had already been implemented (e.g., cancellation of pet uses except for collars). In addition, the RED included additional mitigation with respect to granular turf products for residential use; namely, that product labels direct users to water the product immediately after application. Subsequently, on August 25, 2008, EPA completed an addendum to the Carbaryl RED, incorporating the results of a revised occupational risk assessment and modified mitigation measures for the protection of workers (Ref. 8).

Subsequent to the completion of the carbaryl RED addendum, EPA completed a revised master label table for carbaryl and a list of carbaryl uses eligible for reregistration. These materials, which summarized the changes necessary to implement the carbaryl RED and addendum, were sent to all carbaryl end-use registrants on March 25, 2009. (See docket entry: EPA–HQ–OPP–2007–0941–0088.) All carbaryl end-use registrants were required to submit revised labels to EPA by April 30, 2009. EPA has completed its review of these amended labels, and all acceptable carbaryl products are now reregistered. Once again, some registrants chose to cancel their carbaryl product registrations rather than submit revised labels that incorporate the final RED mitigation. EPA has received voluntary cancellation requests for 19 additional carbaryl product registrations, and 7 Special Local Need registrations, from 8 registrants, including the last remaining carbaryl products registered for use on pets – carbaryl-treated dog and cat collars. The Agency has published Notice of Receipt of Requests for Cancellation and/or Cancellation Notice for all 26 carbaryl product registrations as per sec. 6(f) of FIFRA. The two carbaryl pet collar product registrations, specifically, will be canceled effective September 30, 2010, with a reduced existing stock provision of 3 months (74 FR 66642).

Finally, EPA completed a response to NRDC's January 10, 2005 petition to cancel all uses of carbaryl in a letter dated September 30, 2008 (Ref. 9). The Agency's response to NRDC's petition to revoke carbaryl tolerances is in an Order also dated September 30, 2008 (Ref. 10). This Order Denying NRDC's Petition to Revoke Tolerances was published in the **Federal Register** on October 29, 2008 (73 FR 64229).

B. FFDCA Tolerance Reassessment and FIFRA Pesticide Reregistration

As required by the Food Quality Protection Act of 1996, EPA reassessed the safety of the carbaryl tolerances under the safety standard established in the FQPA. In the September 2007 RED for carbaryl, EPA evaluated the human health risks associated with all currently registered uses of carbaryl and determined that there is a reasonable certainty that no harm will result from aggregate, non-occupational exposure to the pesticide chemical residue. In making this determination, EPA considered dietary exposure from food and drinking water and all other non-occupational sources of pesticide exposure for which there is reliable information. (Ref. 7). The Agency has concluded that with the adoption of the risk mitigation measures identified in the NMC cumulative risk assessment, all of the tolerances for carbaryl meet the safety standard as set forth in section 408(b)(2)(D) of the FFDCA. Therefore, the tolerances established for residues of carbaryl in or on raw agricultural commodities were considered reassessed as safe under section 408(q) of FFDCA, as amended by FQPA, in September 2007. These findings satisfied EPA's obligation to review the carbaryl tolerances under the FQPA safety standard.

To implement the carbaryl tolerance reassessment, EPA commenced with rulemaking in 2008. The Agency published a Notice of proposed tolerance actions in the May 21, 2008 **Federal Register** (73 FR 29456). This proposed rule provided for a 60–day public comment period. No comments relevant to carbaryl tolerances were received and EPA published a Notice of final tolerance actions in the September 10, 2008 **Federal Register** (73 FR 52607). This carbaryl tolerance rule is codified in 40 CFR 180.169.

V. The Petition to Revoke Tolerances

WTC filed a petition on January 10, 2005, requesting, among other things, that EPA cancel all carbaryl registrations and revoke all carbaryl tolerances. This January 10, 2005 submission is in the form of comments on and requests for changes to the Carbaryl IRED published in the **Federal Register** on October 27, 2004. (70 FR 62663) (Ref. 1). Nevertheless, in the introduction to the comments, WTC included a statement that it is also petitioning the Agency to revoke all carbaryl tolerances. It should be noted that the WTC petition primarily raises a subset of identical issues raised by a petition submitted by NRDC, which is also dated January 10, 2005. Indeed, to the extent they address the same issues, most of the WTC's petition is virtually a word-for-word copy of the NRDC petition. The primary difference is that the WTC petition does not address any of the tolerance-related issues raised in the NRDC petition. Nonetheless, to the extent that anything in the WTC Petition could be construed as raising a tolerance-related issue, EPA is relying on its response to the NRDC petition to revoke all carbaryl tolerances in denying the WTC Petition to revoke all carbaryl tolerances.

The issues raised by the WTC Petition center around the ecological risk assessment that supported the 2004 IRED decision. Again, most of these issues are identical to those raised by NRDC and have been addressed in a response denying the NRDC petition to cancel all carbaryl registrations, dated September 30, 2008. The ecological risk assessment issues that are unique to the WTC Petition are addressed in a separate response, dated June 18, 2010. EPA hereby announces the availability of this response in the public docket EPA–HQ–OPP–2006–0801.

VI. Public Comment

In response to the statement that the WTC Petition sought the revocation of the carbaryl tolerances, EPA published notice of the WTC Petition for comment on October 13, 2006 (71 FR 60511). EPA received 28 comments in response to the notice of availability for the WTC Petition. These comments may be found in their entirety in docket EPA–HQ–OPP–2006–0801. A number of commenters from land grant universities mentioned the importance of carbaryl in agriculture, especially in the production of grapes, small fruit, and pecans. Several commenters from the U.S. Forest Service and state departments of forestry commented on the importance of carbaryl in controlling bark beetle. In addition, the carbaryl registrant, Bayer CropScience, submitted comments opposing the claim by the WTC that carbaryl poses unreasonable risks to non–target organisms. In general, these comments focus on the importance and benefits of carbaryl, and are not specific to carbaryl tolerances and, therefore, are not relevant to the requested revocation of pesticide tolerances. EPA is responding to the WTC Petition insofar as it seeks cancellation of all carbaryl products separately, and, therefore, these comments are not directly relevant here.

In addition, one comment from a private citizen supported WTC's petition, asserting that all carbaryl tolerances should be revoked (but without, however, providing sufficient details to substantiate this position). Another commenter, Northwest Horticultural Council, submitted comments stating that WTC's claims are often based on outdated information, such as carbaryl residue levels on apples and pears reported in a 1967 monograph of the Food and Agricultural Organization (FAO) of the United Nations World Health Organization. The Northwest Horticultural Council states that the FAO Monograph is superseded by 2004 residue monitoring data from USDA's Pesticide Data Program (PDP), which shows less than 10% of samples with detection, where carbaryl residues ranged from 0.0005 to 0.49 ppm. In any event, the comments as a whole (including these particular comments) did not add any new information pertaining to whether the tolerances were in compliance with the FFDCA.

VII. Ruling on Petition

This Order responds to the WTC Petition to revoke carbaryl tolerances. As noted above, this request was included as part of WTC's comments on the carbaryl IRED. The WTC Petition contains a number of comments that do not provide a basis upon which to either cancel all carbaryl registrations or revoke all carbaryl tolerances. Moreover, the WTC Petition focuses solely on ecological issues. EPA is responding to WTC's comments regarding the ecological assessment supporting the carbaryl RED in a separate response, which is available in docket EPA–HQ–2006–0801. However, EPA has not attempted to respond to every comment or suggestion for improvement made in the comments provided by the WTC.

EPA hereby denies the WTC Petition to revoke all carbaryl tolerances. The WTC Petition has not demonstrated that carbaryl tolerances are unsafe. Again, the WTC Petition primarily raises a subset of identical issues that were raised in the NRDC petition, and does not provide any factual support for the proposition that the carbaryl tolerances do not meet the FFDCA safety standard. To the extent that the WTC Petition can be construed as raising any tolerance-related issues, in denying the WTC Petition, EPA is relying on and hereby incorporates its response to the NRDC petition. (See 73 FR 64229).

VIII. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's order denying a petition filed, in part, under section 408(d) of FFDCA. As such, this action is an adjudication and not a rule. The regulatory assessment requirements

imposed on rulemaking do not, therefore, apply to this action.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

X. References

1. Washington Toxics Coalition Comments to Carbaryl IRED and petition to cancel registrations. January 10, 2005.
2. National Resources Defense Council (NRDC) Comments to Carbaryl IRED and petition to cancel registrations. January 10, 2005.
3. U.S. EPA. Office of Pesticide Programs. 2003. Interim Reregistration Eligibility Decision for Carbaryl. June 30, 2003.
4. U.S. EPA. Office of Pesticide Programs. 2004. Amended Interim Reregistration Eligibility Decision for Carbaryl. October 22, 2004.
5. U.S. EPA. Office of Pesticide Programs. 2005. Letter to Peg Cherney, Bayer CropScience, Final Cancellation Order for Carbaryl Liquid Broadcast Application to Lawns/Turf; EPA Registration Numbers 264–324, 264–325, and 264–328. March 9, 2005.
6. U.S. EPA Office of Pesticide Programs. 2007. Revised N-methyl Carbamate Cumulative Risk Assessment. September 24, 2007. Docket EPA–HQ–OPP–2007–0935–0003.
7. U.S. EPA. Office of Pesticide Programs. Reregistration Eligibility Decision (RED) for Carbaryl. September 24, 2007.
8. U.S. EPA. Office of Pesticide Programs. 2008. Amended Reregistration Eligibility Decision (RED) for Carbaryl. Revised August 24, 2008.
9. U.S. EPA. Office of Pesticide Programs. 2008. Letter to Jennifer Sass, Natural Resources Defense Council, Re: NRDC's comments on the Carbaryl IRED and petition to cancel registrations dated January 10, 2005 as well as petition to cancel carbaryl registrations dated November 26, 2007 and submitted as part of NRDC's comments to N-methyl carbamate cumulative. September 30, 2008.
10. U.S. EPA. Office of Pesticide Programs. Carbaryl: Order Denying NRDC's Petition to Revoke Tolerances. September 20, 2008. Docket EPA–HQ–OPP–2007–0941–0031.

List of Subjects in 40 CFR Part 180

Environmental protection, Carbaryl, Pesticides and pests.

Dated: June 18, 2010.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2010–15751 Filed 7–1–2010; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2008–0088]

RIN OST 2105–AD84

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation published a final rule authorizing the use of an updated Alcohol Testing Form with a mandatory start date of August 1, 2010. The Department subsequently learned the industry might not use all the forms by that mandatory use date. To avoid wasting the forms, the Department is extending the mandatory use date to January 1, 2011.

DATES: This rule is effective July 2, 2010.

FOR FURTHER INFORMATION CONTACT: For program issues, Bohdan Baczara, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE., Washington, DC 20590; (202) 366–3784 (voice), (202) 366–3897 (fax), or *bohdan.baczara@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

On February 25, 2010, the Department published a final rule [75 FR 8528] updating the Alcohol Testing Form (ATF). The Department anticipated that employers and alcohol testing technicians could have a supply of old ATFs and, to avoid unnecessarily wasting these forms, the Department permitted the use of the old ATF until August 1, 2010. Employers were authorized to begin using the updated ATF immediately.

Since the final rule was published, the Department became aware that some vendors of the ATF might not be able to deplete their current supply of the ATFs before the August 1, 2010 implementation date. In light of this new information and to avoid wasting already printed forms, on May 11, 2010, the Department published a notice of proposed rulemaking [75 FR 26183] to propose to extend the implementation date to January 1, 2011.

Discussion of Comments to the Docket

There were fifteen commenters, including alcohol testing device manufacturers and suppliers, third party administrators, a medical facility, individuals and a trade association. The commenters unanimously agreed to extend the mandatory use date to January 1, 2011, citing that the extra time to use the old form will enable them to reduce their inventory of alcohol testing forms and give them the necessary time to design, print and distribute the new form. The commenters also appreciated the Department's sensitivity to minimizing the unnecessary waste of paper and expense that would have been caused by throwing away forms that could no longer be used. One commenter suggested for the Department to permit the use of the old ATF past the proposed mandatory use date of January 1, 2011. Two commenters asked for guidance on what would happen if an old ATF was used past the January 1, 2011 mandatory use date.

The Department agrees with the commenters that extending the mandatory use date from August 1, 2010 to January 1, 2011 will enable regulated employers and their service agents to reduce their inventory of old alcohol testing forms and give them sufficient time to design, print, and distribute the new ATF. As such, the final rule will reflect this new date. Regarding the use of the old ATF past the January 1, 2011 date, the Department expects that the ten month transition period from using the old ATF to the new ATF will be sufficient time for employers and TPAs to ensure the breath alcohol technicians (BATs) that service them are aware of the new form and have the new form for use by the January 1, 2011 date. The Department does not see the need to make a provision for use of the old ATF past the January 1, 2011.

Regulatory Analyses and Notices

The statutory authority for this proposed rule derives from the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*) and the Department of Transportation Act (49 U.S.C. 322).

This proposed rule is a non-significant rule both for purposes of Executive Order 12886 and the Department of Transportation's Regulatory Policies and Procedures. The Department certifies that it will not have a significant economic effect on a substantial number of small entities, for

purposes of the Regulatory Flexibility Act. The Department makes these statements on the basis that by extending the implementation date of the new form, this rule will not impose any significant costs on anyone. The costs of the underlying Part 40 final rule were analyzed in connection with its issuance in December 2000. Therefore, it has not been necessary for the Department to conduct a regulatory evaluation or Regulatory Flexibility Analysis for this proposed rule. The alcohol testing form complies with the Paperwork Reduction Act. It has no Federalism impacts that would warrant a Federalism assessment.

List of Subjects in 49 CFR Part 40

Administrative practice and procedures, Alcohol abuse, Alcohol testing, Drug abuse, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued June 25, 2010, at Washington DC.

Jim L. Swart,

Director.

■ For reasons discussed in the preamble, the Department of Transportation is amending 49 CFR part 40, Code of Federal Regulations, as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ 1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

■ 2. In Appendix G to Part 40—Alcohol Testing Form, the paragraph is amended by removing the text "August 1, 2010" and adding in its place "January 1, 2011."

[FR Doc. 2010–16159 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 387

[Docket No. FMCSA–2006–26262]

RIN 2126–AB05

Minimum Levels of Financial Responsibility for Motor Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA amends its regulations concerning minimum levels of financial responsibility for motor carriers to allow Canada-domiciled motor carriers and freight forwarders to maintain, as acceptable evidence of financial responsibility, insurance policies issued by Canadian insurance companies legally authorized to issue such policies in the Canadian Province or Territory where the motor carrier or freight forwarder has its principal place of business. This final rule does not change the required minimum levels of financial liability coverage that all motor carriers and freight forwarders must maintain under the existing regulations. This final rule responds to a petition for rulemaking filed by the Government of Canada.

DATES: *Effective Date:* The effective date of the amendments made by this final rule is August 2, 2010.

ADDRESSES: Internet users may download and print this final rule from today's edition of the Federal Register's online system at: *http://www.gpoaccess.gov/fr/index.html.* You may access this final rule and all related documents and material from the Federal eRulemaking Portal through the Federal Docket Management System (FDMS) at *http://www.regulations.gov,* by searching Docket ID number FMCSA–2006–26262. The FDMS is available 24 hours each day, 365 days each year. For persons who do not have access to the Internet, all documents in the docket may be examined, and/or copied for a fee, at the U.S. Department of Transportation's Dockets Room, 1200 New Jersey Avenue, SE., on the ground floor in Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, Commercial Enforcement Division (MC–ECC), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, or telephone (202) 385–2400.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviated References

ANPRM—Advance Notice of Proposed Rulemaking
ATA—American Trucking Associations, Inc
AIA—American Insurance Association
Canada—Government of Canada
CCIR—Canadian Council of Insurance Regulators
CFR—Code of Federal Regulations
CMV—Commercial Motor Vehicle
FMCSA—Federal Motor Carrier Safety Administration
FMCSRs—Federal Motor Carrier Safety Regulations
IBC—Insurance Bureau of Canada
Leaders—President of the United States, Prime Minister of Canada, and the President of Mexico
L&I—Licensing and Insurance Database
MCMIS—Motor Carrier Management Information System
NAFTA—North American Free Trade Agreement
NAIC—National Association of Insurance Commissioners
NIIC—National Interstate Insurance Company
NPRM—Notice of Proposed Rulemaking
OSFI—Office of the Superintendent of Financial Institutions
PAU—Power of Attorney and Undertaking
PACICC—Property and Casualty Insurance Compensation Corporation
PCI—Property Casualty Insurers Association of America
RIA—Regulatory Impact Analysis
SPP—The Security and Prosperity Partnership of North America

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I. Background

Legal Basis for the Rulemaking

Section 30 of the Motor Carrier Act of 1980 (1980 Act) (Pub. L. 96–296, 94 Stat. 793, 820, July 1, 1980) authorized the Secretary of Transportation (Secretary) to prescribe regulations establishing minimum levels of financial responsibility covering public liability, property damage, and environmental restoration for the transportation of property for compensation by motor vehicles in interstate or foreign commerce. Section 30(c) of the 1980 Act provided that motor carrier financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary: (1) Insurance; (2) a guarantee; (3) a surety bond issued by a bonding company authorized to do business in the United States; and (4) qualification as a self-

insurer (49 U.S.C. 31139(f)(1)). Section 30(c) required the Secretary to establish, by regulation, methods and procedures to ensure compliance with these requirements.

In June 1981, the Secretary issued regulations implementing Section 30, which are codified at 49 CFR part 387, subpart A. The implementing regulations provide that for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce or transporting hazardous materials in intrastate, interstate, or foreign commerce, must obtain and have in effect minimum levels of financial responsibility through, as applicable here, an insurance policy or a surety bond. The regulations further provide the specific forms for an endorsement to the insurance policy and for the surety bond. These forms, entitled Form MCS–90 "Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980," and Form MCS–82, "Motor Carrier Surety Bond for Public Liability under Section 30 of the Motor Carrier Act of 1980," were required to be maintained at the motor carrier's principal place of business as proof that it satisfied the financial responsibility requirement. (*See* 49 CFR 387.7 and 387.15.)

Section 18 of the Bus Regulatory Reform Act of 1982 (Bus Act) (Pub. L. 97–261, 96 Stat. 1102, 1120, September 20, 1982), codified at 49 U.S.C. 31138, directed the Secretary to prescribe regulations establishing the minimum levels of financial responsibility covering public liability and property damage for the transportation of passengers for compensation by motor vehicle in interstate or foreign commerce. Section 18(d) of the Bus Act provided that such motor carrier financial responsibility may be established by evidence of one or a combination of the following if acceptable to the Secretary: (1) Insurance, including high self-retention; (2) a guarantee; and (3) a surety bond issued by a bonding company authorized to do business in the United States (49 U.S.C. 31138(c)(1)). Section 18(d) required the Secretary to establish, by regulation, methods and procedures to ensure compliance with these requirements.

In November 1983, the Secretary issued regulations implementing section 18 of the Bus Act. The regulations implementing that law are found at 49 CFR part 387, subpart B, and contain the same requirements found in Subpart A for an insurance policy, as applicable here, with Form MCS–90B endorsement or a surety bond per MCS–82B. (*See* 49 CFR 387.39.)

This final rule is based on the Secretary's authority to establish methods and procedures to ensure that certain motor carriers of property and passengers maintain the minimum financial responsibility liability coverage mandated by 49 U.S.C. 31138(c)(1) and 31139(f)(1). This authority was delegated to FMCSA by the Secretary pursuant to 49 CFR 1.73(f).

The Government of Canada (Canada) Petition for Rulemaking

On September 29, 2005, Canada submitted a petition for rulemaking to amend 49 CFR part 387. Canada specifically requested that FMCSA amend § 387.11, which provides that a policy of insurance or surety bond does not satisfy FMCSA's financial responsibility requirements unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

Canada asked FMCSA to consider amending this provision to permit insurance companies, licensed either provincially or territorially in Canada, to write motor vehicle liability insurance policies for Canada-domiciled motor carriers of property operating in the United States and to issue the Form MCS–90 endorsement for public liability to meet FMCSA's financial responsibility requirements. Form MCS–90 is the endorsement for motor carrier policies of insurance for public liability, which for-hire motor carriers of property must maintain at their principal place of business. Under 49 CFR 387.7(f), motor carriers domiciled in Canada and Mexico must also carry a copy of the Form MCS–90 on board each vehicle operated in the United States.

The combined effects of §§ 387.7 and 387.11 required Canada-domiciled motor carriers operating in the United States to either: (1) Obtain insurance through a Canada-licensed insurer, which enters into a "fronting agreement" with a U.S.-licensed insurer, whereby the U.S. insurer permits the Canadian insurer to sign the Form MCS–90 as its agent, and the entire risk is contractually "reinsured" back to the Canadian insurer by the U.S. insurer; or (2) obtain two separate insurance policies, one valid in Canada written by a Canadian insurer and one valid in the United States written by a U.S. insurer. Canada indicated that the first option is by far the most common. Canada contended that the results of these requirements posed an additional administrative burden, inconvenience, and cost not faced by U.S.-domiciled motor carriers operating in Canada. As Canada stated, U.S. motor carriers and their insurers do not face these additional costs in transporting goods into Canada. FMCSA estimated that there are approximately 9,000 Canada-domiciled, for-hire motor carriers of property and passengers, and freight forwarders actively operating commercial motor vehicles (CMVs) in the United States that are subject to FMCSA's current Federal motor carrier financial responsibility rules.

Canada requested that FMCSA amend 49 CFR part 387 so that an insurance policy issued by a Canadian insurance company satisfies the Agency's financial responsibility requirements. Canada asserted that the insurance company will be legally authorized to issue such a policy in the Province or Territory of Canada in which the Canadian motor carrier has its principal place of business or domicile. Furthermore, the insurance company should also be required to designate a person upon whom process, issued by or under the authority of any court having jurisdiction over the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

This change would eliminate the need for Canadian insurance companies to link with a U.S. insurance company to legally insure Canada-domiciled motor carriers operating in the United States. It should be noted that although Canada's petition only requested to amend 49 CFR 387.11, its proposal would require changes in other sections of part 387 for the sake of consistency. Section 387.35 applies § 387.11 requirements to motor passenger carriers, who must obtain a Form MCS–90B endorsement. Furthermore, § 387.315 imposes the same

requirements on motor carriers who must file evidence of insurance with FMCSA, and § 387.409 applies similar financial responsibility requirements on freight forwarders. Therefore, FMCSA has amended those sections for consistency as well.

Canada pointed out that, for many years, it has recognized and accepted non-commercial motor vehicle liability policies issued in either country as acceptable proof of financial responsibility. Furthermore, all jurisdictions in Canada accept the signing and filing of a Power of Attorney and Undertaking (PAU) by U.S.-licensed insurers as valid proof of financial responsibility for U.S.-domiciled motor vehicles of all categories. The PAU provides that the U.S. insurer will comply with and meet the minimum coverage and policy limits required in any Canadian jurisdiction in which a crash involving its insured occurs. Canada stated that the PAU is similar to the MCS–90 endorsement required under part 387. Canada also noted that the PAU is filed with the Canadian Council of Insurance Regulators (CCIR), which is the Canadian equivalent to the U.S. National Association of Insurance Commissioners (NAIC).

The Security and Prosperity Partnership of North America

The Security and Prosperity Partnership of North America (SPP) was dedicated to increasing security and enhancing prosperity among the United States, Canada, and Mexico through greater cooperation and information sharing. The President of the United States, the Prime Minister of Canada, and the President of Mexico (the Leaders) announced this initiative on March 23, 2005. Among other things, the initiative reflects the goal of improving the availability and affordability of insurance coverage for motor carriers engaged in cross-border commerce in North America.

On June 27, 2005, a Report to the Leaders was signed on behalf of the United States by the Secretaries of Homeland Security, Commerce, and State. (See *http://www.spp.gov,* and click on link to "2005 Report to Leaders.") One of the Prosperity Priorities of the SPP is to "[s]eek ways to improve the availability and affordability of insurance coverage for carriers engaged in cross-border commerce in North America." At *http://www.spp.gov/report_to_leaders/prosperity_annex.pdf?dName=report_to_leaders,* the following key milestone is stated for this initiative:

"U.S. and Canada to work towards possible amendment of the U.S. Federal Motor Carrier Safety Administration Regulation to allow Canadian insurers to directly sign the MCS–90 form concerning endorsement for motor carrier policies of insurance for public liability: by June 2006."

Canada advocated a change to part 387 to assist in meeting the stated goals of the SPP. Canada stated, "Achieving a seamless motor vehicle liability insurance policy between Canada and the United States for motor carriers" will contribute to enhancing the competitive and efficient position of North American businesses. FMCSA recognized the importance of considering these requests and granted the petition by initiating a rulemaking proceeding to solicit public comment on Canada's proposal.

Advance Notice of Proposed Rulemaking (ANPRM)

On December 15, 2006, FMCSA published an ANPRM (71 FR 75433) in response to Canada's petition for rulemaking. The ANPRM also requested public comment on a petition for rulemaking from the Property Casualty Insurers of America (PCI), which requested that FMCSA make revisions to the Forms MCS–90 and MCS–90B endorsements to clarify that language in the endorsements imposing liability for negligence "on any route or in any territory authorized to be served by the insured or elsewhere" does not include liability connected with transportation within Mexico.

The PCI petition was the result of a Federal District Court decision holding that the Form MCS–90B endorsement applied to a crash that occurred in Mexico. As a result, PCI requested that the endorsement be amended by inserting the phrase: "within the United States of America, its territories, possessions, Puerto Rico, and Canada" following the words "or elsewhere."

However, in September 2007, the U.S. Court of Appeals for the Fifth Circuit issued a decision, *Lincoln General Insurance Co.* v. *De La Luz Garcia,* 501 F.3d 436 (5th Cir., 2007), effectively overturning the District Court decision that had prompted PCI to file its petition. Because the Court of Appeals decision provided PCI with the relief requested in its petition and because the issues raised in the PCI petition are different from the issues raised in Canada's petition, FMCSA decided that a regulatory change need not be considered, and the issue would not be addressed further in this rulemaking.

FMCSA received comments on the ANPRM from six commenters. FMCSA addressed the issues raised by the six commenters in its June 10, 2009, notice of proposed rulemaking (74 FR 27485).

Notice of Proposed Rulemaking (NPRM)

FMCSA published an NPRM on June 10, 2009, concerning Canada's proposal to amend 49 CFR 387.11 to allow Canadian insurance companies, licensed in the province or territory where the motor carrier has its principal place of business, to issue proof of financial responsibility for Canada-domiciled motor carriers by executing the Forms MCS–90 and MCS–90B directly rather than as the agent of a U.S. insurer. FMCSA also proposed to amend other sections of part 387 (§§ 387.35, 387.315, and 387.409) for consistency.

II. Discussion of Comments Received on NPRM

FMCSA provided a 60-day comment period for the NPRM that ended on August 10, 2009. In response, nine organizations and one individual filed comments as follows: the Insurance Bureau of Canada (IBC); the Insurance Corporation of British Columbia; the Canadian Trucking Alliance; Canada; NAIC; the American Insurance Association(AIA); the American Trucking Associations, Inc. (ATA); the National Interstate Insurance Company (NIIC); PCI; and Mr. Michael Stanley. Canada and the NAIC filed additional comments in the docket on September 23, 2009, and on November 23, 2009, respectively. The Agency reviewed and considered all comments submitted to this docket.

General Comments

Seven commenters supported the NPRM; two commenters were also supportive of the NPRM if certain concerns were addressed.

Specific Comments From PCI and IBC

PCI and IBC stated that a "U.S.-only" coverage territory definition should be added to the MCS–90 and MCS–90B forms.

FMCSA Response:

FMCSA disagrees with this comment. As noted previously and described more fully in the NPRM (74 FR 27487), the September 2007 Fifth Circuit decision addressed this issue and essentially provided PCI with the legal resolution requested in its petition for rulemaking. Therefore, FMCSA concluded that it was unnecessary to add the territorial definition to the MCS–90 and MCS–90B forms. As PCI and IBC did not provide any new arguments to support adding the territorial definition, FMCSA will not address it further in this final rule.

Specific Comments From the ATA

ATA was generally supportive of the NPRM but requested that the Agency

respond to its concerns. ATA believed that several issues still needed to be resolved and addressed, as follows:

ATA Comment 1:

ATA argued that Canadian insurance companies should be required to comply with all FMCSA's requirements for U.S.-based insurers (*i.e.,* as required by FMCSA under 49 CFR 387.11(b)). ATA also contended that Canadian insurance companies should comply with any other applicable U.S. insurance regulations on a State-by-State basis. ATA suggested that this could prove to be difficult for Canadian insurers because they would need to register in each State and be subject to a variety of additional requirements in each jurisdiction. ATA also suggested that these aspects of the U.S. financial responsibility requirements would tend to discourage Canadian carriers and insurance companies from participating in the U.S. market.

FMCSA Response:

Under part 387 of the FMCSRs, the Agency has authority to prescribe the minimum levels of financial responsibility required to be maintained by motor carriers, freight forwarders and property brokers. In terms of making determinations about what laws and regulations will apply to U.S.-based insurers, that is a State process. FMCSA does not intend to enter into that process as part of this rule. However, FMCSA *indirectly* imposes requirements on U.S. insurers by not accepting the Forms MCS–90 and MCS–90B unless the insurer meets certain requirements. The Agency could impose a requirement for Canada-based insurance companies as a condition of accepting their policies. Such a requirement would be contrary to the purpose of this rulemaking, however, given that if the companies were licensed by a State, they would already satisfy the existing rule. Furthermore, based on the information reviewed by the Agency, such a requirement is unnecessary, considering that the Canada-based insurers must be licensed in the Canadian Province or Territory where the motor carrier or freight forwarder has its principle place of business. Currently, the Agency has an internal process to verify that U.S-based insurers are solvent and duly licensed in the State(s) where they write and issue insurance policies for the motor carrier entities that must comply with part 387. FMCSA verifies the name of the insurance company, its home office address and telephone number, and its solvency by checking the Best Insurance Reports [1] or by going online to *http://www.ambest.com*. FMCSA leaves it up to the States to monitor U.S.-based insurance companies and, if this rule is implemented, would leave it up to the Canadian government and its Provinces and Territories to monitor Canada-based insurance companies in the same manner (*see* RIA, pages 14 and 15).[2] Thus, the Agency disagrees with ATA about the need for requiring licensing in the U.S. FMCSA can readily verify if the companies are solvent and duly licensed in the jurisdictions where the insurance is issued.

Likewise, FMCSA does not agree with ATA that it is necessary to require, indirectly, that Canada-based insurance companies comply with U.S.-based insurance regulations. As noted above, the Canadian federal government and its Provinces and Territories share jurisdiction over the insurance regulation of Canada-based motor carriers. Indeed, FMCSA is engaged in an on-going process with its Canadian counterparts to identify opportunities for establishing reciprocity arrangements to achieve a seamless motor vehicle liability insurance policy for adequate protection of the public between the two nations, but it does not regulate the insurance industry in this country or any other.

This final rule amends §§ 387.11, 387.35, 387.315, and 387.409 to allow a Canadian insurer to submit an insurance policy on behalf of a Canada-based motor carrier that will satisfy the financial responsibility requirements if the insurer is: legally authorized to issue a policy of insurance in the Province or Territory of Canada in which a motor carrier has its principal place of business or domicile; and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity in any State in which the motor carrier operates. Thus, any Canadian insurance policy submitted on behalf of a Canada-based motor carrier must designate an agent in each State upon whom service of process may be served as required by FMCSA regulations under part 387.

ATA Comment 2:

ATA also argued that the oversight of Canada-based insurance companies must be at least as stringent as that over U.S.-based companies.

FMCSA Response:

Prior to this rule, Canadian insurers providing coverage to Canadian motor carriers operating in the U.S. were already responsible for the insurance coverage limits in the U.S. when they were arranging insurance through a U.S.-based insurance company. The Agency believes Canada has a very strong, prudential Federal regulator of its financial institutions, as evident from the comments submitted by IBC and NAIC. NAIC stated that the financial responsibility levels required in Canada for commercial vehicles are comparable to those requirements in the U.S. The Office of the Superintendent of Financial Institutions (OSFI) is responsible for monitoring the solvency of Canadian federal financial institutions, including banks and insurance companies (*i.e.,* those which are licensed at the federal level and in each Province and Territory in which they undertake insurance activities), and ensuring that these companies are in sound financial condition. NAIC noted that, similar to the NAIC insurer's quarterly financial filing requirements, OSFI posts extensive financial information (*e.g.,* balance sheet, income statement, some operating information, and solvency calculation) for each federally regulated Canadian insurer on its Web site each quarter at *http://www.osfi-bsif.gc.ca/osfi/index_easpx?ArticleID=3.*

NAIC also stated there are significant similarities between the States' insurance regulations and Canadian Federal, Provincial, and Territorial

[1] For most insurance companies domiciled in the U.S., the data in the Best Insurance Reports is based on each insurance company's sworn annual and quarterly financial statement as prescribed by the National Association of Insurance Commissioners (NAIC) and as filed with the Insurance Commissioners of the States in which the companies are licensed to do business. This source also provides data related to companies operating outside of the U.S., but it is presented in accordance with customs or regulatory requirements of the country of domicile.

[2] The Canadian federal government and the Provinces/Territories share jurisdiction over insurance regulation in Canada. Property and casualty (P&C) insurers can be incorporated under either level of government. The Canadian federal and provincial governments share jurisdiction over insurance matters in Canada; therefore both levels of government are involved in the regulation and supervision of participants in Canada's P&C insurance industry. Canadian federal authorities look after the solvency of companies incorporated federally, as well as Canadian branch operations of firms incorporated outside Canada. Provincial authorities are responsible for the solvency of provincially incorporated insurers, for reviewing and interpreting insurance contracts and for licensing and supervising agents and adjusters.

Approximately three-quarters of the P&C insurers active in Canada are supervised by the federal government through the Office of the Superintendent of Financial Institutions (OSFI), as they operate in more than one province or are branches of foreign companies. These federally regulated insurers make up more than 80 per cent of the total business of the P&C insurance industry in Canada. Federally regulated companies must, however, also be licensed in each Province and Territory in which they undertake insurance activities.

insurance regulations. In Canada, there is a guarantee fund mechanism in case an insurer becomes insolvent. This mechanism is the Property and Casualty Insurance Compensation Corporation (PACICC), which is an industry-financed policyholder protection scheme for most insurance policies that are issued by property and casualty insurance companies in Canada. PACICC, which is approved by government regulators, is the national guarantee fund that protects insurance customers from undue financial loss in the event that a member insurer fails. It guarantees payments up to $250,000 per claim, less deductibles, should an insurer become insolvent. More information about PACICC is available at *http://www.pacicc.com/english/sub_contents.htm.*

The Canadian government and the insurance companies it regulates have demonstrated that they have the ability and willingness to honor their financial obligations without the need for any additional oversight. Therefore, FMCSA believes that Canada has a satisfactory oversight system in place to ensure the solvency of Canada-based insurance companies.

In addition, FMCSA believes that Canadian insurers are seeking the same level of fair and equal treatment that is afforded to U.S insurers that insure U.S.-domiciled carriers operating in Canada. The objective of this rulemaking initiative is to provide reciprocity between the U.S. and Canada. As noted previously in this final rule, FMCSA would leave it up to the Canadian government and its Provinces and Territories to monitor Canada-based insurance companies in the same manner as the States monitor U.S.-based insurance companies (*See* FMCSA response to ATA comment 1.)

ATA Comment 3:

ATA contended that every Canadian insurance policy must contain an endorsement stating that the insurance company complies with U.S. laws and 49 CFR part 387.

FMCSA Response:

In an effort to garner the transportation and insurance industries' compliance with the 1980 Act's mandated levels of financial responsibility, FMCSA established the MCS–90 endorsement to make the insurer a surety to the public. The Act requires the MCS–90 endorsement be attached to any liability policy issued to motor carriers operating commercial motor vehicles in interstate or foreign commerce. It ensures that members of the public are protected when injured by members of the transportation industry. The motor carrier must specify that coverage will remain in effect continuously until terminated as required by the law (*see* 49 CFR 387.15).

With regard to ATA's argument that every Canadian insurance policy must contain an endorsement stating that the insurance company complies with U.S. laws and 49 CFR part 387, FMCSA believes this type of endorsement is unnecessary because the MCS–90 forms already fulfill this purpose.

ATA Comment 4:

FMCSA must require Canadian insurance companies to acknowledge and give "full faith and credit" to any final and non-appealable judgment rendered against their insured Canadian carriers who operate in the U.S.

FMCSA Response:

Pursuant to the terms of the MCS–90 endorsement, Canadian insurance companies would have to pay, within the limits of the stated liability in the MCS–90 forms, any final judgment rendered by a U.S. court with competent jurisdiction against their insured Canadian carriers. Additionally, U.S. consumers have access to the mandatory third-party dispute resolution mechanism required of Canadian insurers and therefore could raise their disputes directly with Canadian insurers. If the U.S. consumer is not satisfied with this alternative, the consumer could seek a judicial resolution through the Canadian court system. The traditional common law rule is clear. In order to be recognizable and enforceable, a foreign judgment must be: (a) For a debt, or definite sum of money (not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty); and (b) final and conclusive, but not otherwise. *Pro Swing Inc.* v. *Elta Golf Inc.,* 2006 Can. Sup. Ct. LEXIS 52; 2006 SCC 52; [2006] S.C.J. No. 52. Thus, a Canadian-insurance company would be legally bound to make payments to U.S. claimants based on a final judgment issued by a U.S. court.[3]

We realize that pursuing these matters through the Canadian court system could be an inconvenience for most U.S. claimants, but FMCSA does not regulate the insurance industry. FMCSA will, however, continue to monitor Canadian insurers that submit insurance policies on behalf of Canada-based motor carriers to ensure that these companies are in sound financial condition (*see* RIA, pages 14–15). The Agency will also continue to invite comments from members of the public and encourage them to keep FMCSA informed of any problems they incur with Canadian insurers that fail to honor their financial obligations to U.S. claimants against Canada-domiciled carriers.

Specific Comments From the National Association of Insurance Commissioners (NAIC)

In its initial comment letter dated August 7, 2009, NAIC expressed concern that FMCSA would defer to the OSFI to monitor the solvency of the Canadian insurers executing the MCS–90 forms without ensuring the comparability of the Canadian insurer solvency system to our U.S. insurer solvency standards. NAIC submitted another letter to the docket, dated November 23, 2009, which states: "As a result of ongoing dialogue with OSFI, NAIC now has greater confidence that there are significant similarities between the U.S. State insurance regulatory system and Canadian federal insurance regulation. NAIC has also learned that, similar to the NAIC's insurer quarterly financial filing requirements, OSFI posts extensive financial information (*e.g.,* balance sheet, income statement, some operating information, and solvency calculation) for each federally regulated Canadian insurer on its Web site each quarter[.]" at *http://www.osfi-bsif.gc.ca/osfi/index_easpx?ArticleID=3.* Based on this additional information, NAIC indicates that it and State Insurance Regulators now support the rulemaking, but made two recommendations to FMCSA as follows:

(1) NAIC contends that FMCSA should develop an early warning system to notify the NAIC of any financial difficulty arising with any Canadian insurer operating on a cross-border basis. Furthermore, FMCSA should have the authority to require the affected motor carriers to find an alternate insurance provider. Once the Canadian regulators certify that the Canadian insurer is no longer in financial difficulty, then that insurer could again become eligible to execute the MCS–90 and MCS–90B forms; and (2) In the interest of true reciprocity, NAIC contends that FMCSA should require Canadian insurers executing the Form MCS–90 to file a duly executed Power of Attorney and Undertaking (PAU) with the NAIC, since existing regulations require U.S.-based insurers to file a PAU with the Canadian Council of Insurance Regulators (CCIR) for their cross-border activities. The PAU would give U.S. State insurance regulators—and U.S. claimants—equivalent

[3] In furtherance of this principle, IBC also notes that legislation pertaining to automobile insurance in each of Canada's Provinces and Territories mandates the coverage that is required under automobile insurance policies that are provided when the vehicles are being operated in Canada or in the U.S. while being transported between these countries.

reassurance that there would be a Canadian insurer agent/representative within that State to accept notice and service of process on behalf of the Canadian insurer and, more importantly, preserve necessary protections to U.S. consumers.

FMCSA Response:

First, developing a notification system for NAIC is unnecessary because FMCSA informally monitors the financial solvency of U.S-based insurers and will work with OSFI in the future to perform the same level of monitoring of Canada-based insurers. Thus, FMCSA will not develop a system to notify the NAIC of any solvency problems arising from Canadian insurers operating on a cross-border basis.

Second, FMCSA does not have the authority to require Canadian insurers executing the Form MCS–90 to file a duly executed PAU with NAIC. However, we are exploring non-regulatory alternative processes, such as facilitating reciprocity agreements between the parties so that Canada-based insurers could agree in the future to file a PAU with U.S. insurance regulators for their cross-border activities. While these reciprocity arrangements have not yet been established, FMCSA will keep the public informed of any new developments in this area.

Other comment(s):

Mr. Stanley generally opposed the NPRM because, he stated, FMCSA should keep the current requirements in place, and because it is impossible to receive compensation from a Canadian insurer. He did not, however, provide any substantiated data or evidence to support his opposition.

FMCSA Response:

Based on the existing practice of the two nations to enter into insurance fronting arrangements, the additional data submitted to the docket showing the willingness of Canadian insurance companies to honor their financial obligations and the Canadian government's mandate to ensure their solvency, including Agency research that shows Canadian courts give full faith and credit to U.S. judgments, FMCSA has no reason to believe that Canadian insurance companies will not be responsive to claims filed by U.S. citizens or businesses against Canada-domiciled carriers.

In view of the preceding consideration of comments and responsive analysis, FMCSA amends its regulations regarding the minimum levels of financial responsibility for motor carriers and freight forwarders, as proposed.

III. Regulatory Analyses

Comments on FMCSA's Regulatory Impact Analysis (RIA)

The National Interstate Insurance Company (NIIC) requested information on how the Agency derived the annual effect of the rule on the U.S. economy. Also, NIIC asked what portion of the current revenue was attributed to NIIC.

FMCSA Response:

As stated in the RIA, the potential costs and benefits of this rule largely apply to Canada-based entities. The analysis addressed trade benefits (*i.e.,* elimination of trade barriers) pursuant to the NAFTA and increased cooperation among the U.S. and Canada pursuant to the SPP.

As to NIIC's question, FMCSA could not obtain revenue information on the impact of Canada's petition for rulemaking on U.S.-domiciled insurance companies, but the Agency estimates that the effects of forgone revenues, per company, will likely be insignificant. This is due to the following reasons: (1) Canadian motor carriers are only a small proportion of total clients; (2) only certain U.S. insurance companies do, and wish to, contract with foreign entities; and (3) transportation insurance is only one of many types of insurance.

Summary of Regulatory Impact Analysis

In examining the economic impact of this rulemaking, FMCSA considered two options: (1) The Agency's proposed amendments to 49 CFR part 387 that would permit Canadian insurance companies to issue insurance policies for Canada-domiciled carriers and freight forwarders operating CMVs in the U.S., and (2) maintaining the status quo.

Under the first option, FMCSA included active, Canada-domiciled, for-hire motor carriers of property and passengers and freight forwarders. It is assumed that a small proportion of Canada-domiciled motor carriers and freight forwarders will elect to continue with the status quo, at least in the short term, and will not seek direct insurance representation by a Canadian insurance company for their U.S. operations. Those carriers and freight forwarders are assumed to be a negligible percentage of the total affected entities and are thus not considered in the analysis.

The RIA examined the direct costs of implementing the final rule in terms of administrative costs incurred by the FMCSA in processing insurance filings and in forgone revenue by U.S.-based insurance companies currently representing Canadian motor carriers and freight forwarders (of which there are approximately five). In addition, the RIA examined the functional impact of rule compliance under this option from the perspectives of the FMCSA's enforcement program and the Canadian motor carriers.[4]

The RIA also examined the benefits of this rulemaking, which are largely the relief from a disproportional cost and administrative burden and inconvenience currently borne by Canada-domiciled motor carriers in comparison to their U.S. counterparts. Other benefits include the elimination of trade barriers (*i.e.,* disproportionate cost burden) in accordance with the goals of NAFTA, and increased cooperation between the U.S. and Canada pursuant to the SPP.

This analysis was conducted under the assumption that there are approximately 9,000[5] active Canada-domiciled motor carriers and freight forwarders conducting CMV operations in the U.S.[6]

The RIA finds that the final rule yields a discounted net benefit of $273 million estimated over a 10-year period. These quantified net benefits accrue to the Canada-domiciled for-hire motor carriers and freight forwarders which are impacted by this rulemaking . This amounts to approximately $30,000 per carrier over that period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The DOT and the Office of Management and Budget (OMB) do not consider this action to be a significant regulatory action under Executive Order 12866 (Regulatory Planning and Review) and the DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). No changes have been made to this rule subsequent to its review by DOT and OMB, and therefore

[4] The FMCSA notes that cost information used in its analyses was obtained from the Agency's data base, Canada Finance, the American Insurance Association, the Property Casualty Insurers Association of America and publicly available information.

[5] Licensing and Insurance database, at *http://li-public.fmcsa.dot.gov,* and the Motor Carrier Management Information System (MCMIS) database, at *http://MCMIS.fmcsa.dot.gov,* as of February 20, 2009.

[6] The FMCSA Licensing and Insurance (L&I) system provides up-to-date information about authorized for-hire motor carriers who must register with FMCSA under 49 U.S.C. 13901 and 13902. FMCSA utilized the L&I database as its primary source for its RIA because it does not include overlapping carrier data. Under MCMIS, a motor carrier may have multiple carrier classifications and thus may be counted more than once. The Agency did, however, use MCMIS as a source to obtain the number of Canada-domiciled, for-hire carriers exempt from registration under 49 U.S.C. 13901 and 13902 since they are not found in the L&I database.

it is not subject to OMB review. A final regulatory evaluation is available in the docket.

While the Agency expects a positive discounted net benefit of approximately $273 million over a 10-year period, the net benefits are for Canada-domiciled motor carriers. Because the benefits pertain to foreign entities, they are not considered for the purposes of determining whether the rulemaking is significant under Executive Order 12866, as amended. Therefore, the Agency determined this action is not an economically significant regulatory action under section 3(f), Regulatory Planning and Review, because it will not have an annual effect on the United States' economy of $100 million.

Regulatory Flexibility Act

The FMCSA determined that this final rule will not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (RFA) (Pub. L. 104–121). Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule provides relief primarily to foreign entities, which are not considered for the purposes of determining whether the rule is significant under Executive Order 12866, as amended. In addition, no significant adverse comments were received from small entities during the NPRM comment period.

Federalism (Executive Order 13132)

The FMCSA analyzed this final action in accordance with the principles and criteria contained in Executive Order 13132 (64 FR 43255, August 10, 1999), and determined that this final rule will not affect the States' ability to discharge traditional State government functions.

International Trade and Investment

The Trade Agreement Act of 1979 (19 U.S.C. 2531–2533) prohibits Federal agencies from establishing standards that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives such as safety are not considered unnecessary obstacles. In developing rules, the Trade Act requires agencies to consider international standards and, where appropriate, requires that those standards be the basis of U.S. standards. FMCSA assessed the potential effect of this final rule and determined that the expected economic impact of this rule is minimal and should not affect trade opportunities for U.S. firms doing business in Canada or for Canadian firms doing business in the United States because, in accordance with the goals of NAFTA, the rule merely relieves the Canada-domiciled carriers from a disproportional cost and administrative burden that was not borne by their U.S. counterparts.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1532) requires that each agency assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose unfunded mandates under UMRA. It does not result in costs of $140.8 million (as adjusted by DOT Guidance, April 28, 2010, to reflect inflation) to either State, local, or tribal governments, or to the private sector in any one year. Therefore, FMCSA has determined that this rule will not have an impact of $140.8 million in any one year.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. This final rule contains no new information collection requirements or additional paperwork burdens on existing OMB Control Number 2126–0008, "Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property," an information collection burden which is currently approved at 4,529 annual burden hours per year through March 31, 2013.

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations Implementing NEPA (40 CFR parts 1500 to 1508), and FMCSA's NEPA Implementation Order 5610.1 (issued on March 1, 2004, 69 FR 9680). This action is categorically excluded from further environmental documentation under Appendix 2.6.v. of Order 5610.1, which contains categorical exclusions (CEs) for regulations prescribing the minimum levels of financial responsibility required to be maintained by motor carriers operating in interstate, foreign, or intrastate commerce. In addition, FMCSA believes this final action does not involve circumstances that would affect the quality of the environment. Thus, this final action does not require an environmental assessment or an environmental impact statement.

The FMCSA also analyzed the final rule under the Clean Air Act (CAA), as amended, section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this final action is exempt from the CAA's general conformity requirement since it involves policy development and civil enforcement activities, such as investigations, inspections, examinations, and the training of law enforcement personnel. See 40 CFR 93.153(c)(2). It will not result in any emissions increase or result in emissions that are above the general conformity rule's *de minimis* emission threshold levels, because the action merely relates to insurance coverage across international borders between the U.S. and Canada.

Environmental Justice

The FMCSA considered the environmental effects of this final rule in accordance with Executive Order 12898 and DOT Order 5610.2 on addressing Environmental Justice for Minority Populations and Low-Income Populations, published April 15, 1997 (62 FR 18377). The Agency has determined that there are no environmental justice issues associated with this final rule, nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on minority or low-income populations. Neither of the regulatory alternatives considered in this final rule will result in high and adverse environmental impacts.

Executive Order 12630 (Taking of Private Property)

The FMCSA analyzed this final rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and we do not believe that this final action will effect a taking of private property or otherwise have implications under the Executive Order.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this final rule.

Executive Order 13211 (Energy Supply, Distribution, or Use)

The FMCSA analyzed this final action under Executive Order 13211, Actions

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency determined that it is not a significant energy action within the meaning of section 4(b) of the Executive Order and will not likely have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the Agency has determined that a Statement of Energy Effects is not required.

Executive Order 12988 (Civil Justice Reform)

The FMCSA has determined that this final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Privacy Impact Assessment

The FMCSA conducted a privacy impact assessment of this final rule as required by section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, Public Law 108–447, div. H, 118 Stat. 2809, 3268, (December 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considered any impacts of the final rule on the privacy of information in an identifiable form and related matters. FMCSA determined this final rule contains no privacy impacts.

Executive Order 13045 (Protection of Children)

The FMCSA analyzed this final rule under Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks." The Agency determined that this final rule will not cause any environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FMCSA analyzed this action under Executive Order 13175, dated November 6, 2000, and determined that this final rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement will not be required.

List of Subjects in 49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

IV. The Final Rule

■ For the reasons stated in the preamble, FMCSA amends 49 CFR part 387 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 1. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.73.

■ 2. Amend § 387.11 to add paragraph (d) to read as follows:

§ 387.11 State authority and designation of agent.

* * * * *

(d) A Canadian insurance company legally authorized to issue a policy of insurance in the Province or Territory of Canada in which the Canadian motor carrier has its principal place of business or domicile, and that is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction over the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

■ 3. Amend § 387.35 to add paragraph (d) to read as follows:

§ 387.35 State authority and designation of agent.

* * * * *

(d) A Canadian insurance company legally authorized to issue a policy of insurance in the Province or Territory of Canada in which a Canadian motor carrier has its principal place of business or domicile, and that is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction over the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

■ 4.Amend § 387.315 to add paragraph (d) to read as follows:

§ 387.315 Insurance and surety companies.

* * * * *

(d) In the Province or Territory of Canada in which a Canadian motor carrier has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the carrier operates.

■ 5. Amend § 387.409 to add paragraph (d) to read as follows:

§ 387.409 Insurance and surety companies.

* * * * *

(d) In the Province or Territory of Canada in which a Canadian freight forwarder has its principal place of business or domicile, and will designate in writing upon request by FMCSA, a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the freight forwarder operates.

Issued on: June 18, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–16009 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XX19

Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of Greenland turbot in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow fishing operations to continue. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective July 1, 2010 through 2400 hrs, Alaska local time, December 31, 2010. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, July 16, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional

Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648-XX19, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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 (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

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

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

The 2010 initial total allowable catch (ITAC) of Greenland turbot in the Aleutian Islands subarea was established as 1,615 metric tons (mt) by the final 2010 and 2011 harvest specifications for groundfish of the BSAI (75 FR 11788, March 12, 2010). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for Greenland turbot in the Aleutian Islands subarea needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 285 mt to the Greenland turbot ITAC in the Aleutian Islands subarea. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11788, March 12, 2010).

The harvest specification for the 2010 Greenland turbot ITAC included in the harvest specifications for groundfish in the BSAI is revised as follows: 1,900 mt for Greenland turbot in the Aleutian Islands subarea.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the Greenland turbot fishery in the Aleutian Islands subarea. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 28, 2010.

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

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until July 16, 2010.

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

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

Dated: June 29, 2010.

Carrie Selberg,

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

[FR Doc. 2010–16196 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 127
Friday, July 2, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 231

[Docket No. FRA–2008–0116]

RIN 2130–AB97

Railroad Safety Appliance Standards, Miscellaneous Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend the regulations related to safety appliance arrangements on rail equipment in a manner that is expected to promote the safe placement and securement of safety appliances on modern rail equipment by establishing a process for the review and approval of existing industry standards. This process will permit railroad industry representatives to submit requests for the approval of existing industry standards relating to the safety appliance arrangements on newly constructed railroad cars, locomotives, tenders, or similar vehicles in lieu of the specific provisions currently contained in part 231. It is anticipated that the proposed special approval process will further railroad safety. It will allow FRA to consider technological advancements and ergonomic design standards for new car construction and ensure that modern rail equipment complies with the applicable statutory and safety-critical regulatory requirements related to safety appliances while providing the flexibility to efficiently address safety appliance requirements on new designs in the future for railroad cars, locomotives, tenders, or similar vehicles.

DATES: (1) Written comments must be received by August 31, 2010. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to August 31, 2010 one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: You may submit comments identified by the docket number FRA–2008–0116 by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Electronically through the Federal eRulemaking Portal.* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Stephen J. Carullo, Railroad Safety Specialist, Office of Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6480), *stephen.carullo@dot.gov* or Stephen N. Gordon, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6001), *stephen.n.gordon@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. General

The Association of American Railroads (AAR) submitted a petition to amend 49 CFR part 231 on March 28, 2006. The AAR petition requested that FRA adopt new Railroad Safety Appliance Standards to incorporate changes in railcar design that have occurred since the safety appliance regulations were promulgated in their current form. FRA proposes to act on AAR's request by amending 49 CFR part 231 to add sections 231.33 and 231.35 to the existing regulatory language. These new sections will create a special approval process similar to what is found in parts 232 and 238. The proposed special approval process will enable the railroad industry to submit new rail equipment designs to FRA for approval with respect to the placement and securement of safety appliances on the designs. FRA anticipates that the proposed sections will have multiple benefits, including allowing for greater flexibility within the railroad industry and increasing rail safety by incorporating modern ergonomic design standards and technological advancements in construction.

II. Statutory and Regulatory History

The Railroad Safety Appliance Standards set forth in 49 CFR part 231 arose out of an extended legislative and regulatory effort, beginning in the 19th century, to improve the safety of railroad employees and the public. As railroads rapidly began to grow and develop following the Civil War, it became increasingly apparent that new measures were needed to protect train service employees who were directly involved in the movement of trains. Most vehicles did not have adequate safety mechanisms and many of the practices and procedures used by train service employees were not safe. Employees regularly controlled the speed of (and sometimes stopped) trains by using the handbrakes. In many cases, this required train service employees to perch themselves on top of freight cars while the cars were moving at high rates of speed over rough track. Additionally, use of the "link and pin" coupler, which was the standard method for coupling

railcars, required employees to go between the ends of railcars to operate or adjust the coupler. These practices and others of like type led to excessive numbers of deaths and injuries among train service employees during the expansion of the railroad system following the Civil War. Indeed, during the eight (8) years prior to the passage of the first Safety Appliance Act in 1893, the number of employees killed or injured was equal to the total number of people employed by the railroad in a single year.

The rate at which railroad employees were killed or injured during this time frame spurred efforts to increase workplace safety in at least two areas related to appliances on railroad cars, locomotives, tenders, and other vehicles. New technologies such as power brakes and automatic couplers were pursued, but also there were increased calls for regulation. Between 1890 and 1892, Congress responded with the introduction of seventeen (17) bills designed to promote the safety of employees and travelers on the railroad. Ultimately, the first Safety Appliance Act was passed by Congress and signed into law on March 2, 1893. Among other things, the first Safety Appliance Act required the use of power brakes on all trains engaged in interstate commerce as well as requiring all railcars engaged in interstate commerce to be equipped with automatic couplers, drawbars, and handholds. In 1903, Congress passed the second Safety Appliance Act, which extended the requirements of the first Act to any rail equipment operated by a railroad engaged in interstate commerce. Finally, in 1910 the third Safety Appliance Act was passed requiring that all vehicles be equipped with hand brakes, sill steps, and, where appropriate, running boards, ladders, and roof handholds. The third Safety Appliance Act also directed the Interstate Commerce Commission (ICC) to designate the number, dimensions, locations, and manner of application of the various safety appliances identified in the Act.

The ICC complied with this mandate by issuing its order of March 13, 1911. The March 13, 1911 order established the initial Railroad Safety Appliance Standards. This order, as amended, designated the number, dimensions, location, and manner of application for safety appliances on box cars, hopper cars, gondola cars, tank cars, flat cars, cabooses, and locomotives. It also contained a catch-all section for "cars of special construction" that were not specifically covered in the order. In many ways, the March 13, 1911 order continues to serve as the basis for the present day regulations found in part 231. Indeed, although FRA supplanted the ICC as the agency responsible for promulgating and enforcing railroad safety programs in 1966, *see* Department of Transportation Act of 1966, 49 U.S.C. 103, the general framework established by the order of March 13, 1911 is still in existence today.

III. FRA's Approach to the Railroad Safety Appliance Standards in This NPRM

The Railroad Safety Appliance Standards encompassed in part 231 serve the purpose of increasing railroad safety by identifying the applicable safety appliance requirements for various individual car types. *See, e.g.*, 49 CFR 231.1, box and other house cars built or placed into service before October 1, 1966. While these regulations continue to serve their purpose, FRA recognizes the railroad industry has evolved over time. The industry has created and continues to create new railcar types to satisfy the demands for transporting freight as well as passengers on the present-day railroad. Many of the modern railcar types that are presently being built to handle railroad traffic do not fit neatly within any of the specific car body types identified in the existing regulations and ambiguities sometimes arise regarding the placement of safety appliances on these car types.

Because modern designs often cannot be considered a car type that is explicitly listed in part 231, they are typically treated as cars of special construction. *See* 49 CFR 231.18. The "cars of special construction" provision does not identify specific guidelines that can be used by the railroad industry to assist it in the construction and maintenance of the safety appliances on modern railcar designs. Instead, § 231.18 directs the industry to use the requirements, as nearly as possible, of the nearest approximate car type. Problems arise because modern designs are often combinations of multiple car types, and the design of any particular car may appear to be one type or another depending on the position of the individual viewing the car. As an example, a bulkhead flat car appears to be a box car when viewed from the A-end or B-end of the car, but appears to be a flat car when viewed from either side. As a result, the industry is forced to use bits and pieces from multiple sections of part 231 in an effort to ensure compliance with the Railroad Safety Appliance Standards on bulkhead flatcars and other modern rail equipment.

Another problem for modern railcar designs is that part 231 defines the location of many safety appliances by reference to the side or end of the car. While this worked well for the car types that were in existence when the ICC issued its March 13, 1911 order, it often is difficult to define exactly what parts on modern railcars constitute the side or end. This results in ambiguity regarding what is the appropriate location for certain safety appliances, such as handholds and sill steps.

Together these factors can make compliance with the Railroad Safety Appliance Standards difficult and inefficient when dealing with modern railcar designs. In addition the current regulations do not contemplate advancements in the design of such vehicles. This means the current regulations can operate to preclude the application of technological innovations and modern ergonomic design principles that would increase the safety of persons who work on and around rail equipment and use safety appliances on a regular basis.

The AAR Safety Appliance Task Force (Task Force) consists of representatives from the Class I railroads, labor unions, car builders, and government (FRA and Transport Canada participate as non-voting members), as well as ergonomics experts. The Task Force is developing new industry standards for safety appliance arrangements on new car construction. At this time, the Task Force has developed a base safety appliance standard as well as industry safety appliance standards for modern boxcars, covered hopper cars, and bulkhead flat cars, which FRA expects to serve as the core safety appliance criteria that can be used to guide the safety appliance arrangements on railcars that are more specialized in design. The Task Force's new standards incorporate ergonomic design principles that increase the safety and comfort for persons working on and around safety appliance apparatuses. For example, the Task Force standards establish minimum foot clearance guidelines for end platforms that allow for wider and stiffer sill steps to support a person's weight.

The AAR petition to amend part 231 requested that FRA adopt these new industry standards and amend its regulations to recognize changes in railcar design since the safety appliance regulations were promulgated in their current form. Because the standards submitted by AAR in connection with its petition require some modification before they can be approved and adopted by FRA, FRA is not proposing to incorporate the standards into part

231 at this time. FRA prefers to utilize the process being proposed in this NPRM to fully evaluate and assess the industry standards developed by the Task Force to ensure that they are complete and enforceable. Thus, FRA proposes to act on AAR's petition for rulemaking by establishing a special approval process similar to that currently contained in 49 CFR parts 232 and 238.

Existing § 232.17 allows railroads to adopt an alternative standard for single car air brake tests and use new brake system technology where the alternative standard or new technology is shown to provide at least the equivalent level of safety. Similarly, § 238.21 allows railroads to adopt alternative standards related to passenger equipment safety in a wide range of areas such as performance criteria for flammability and smoke emission characteristics, fuel tank design and positioning, single car air brake testing, and suspension system design, where the alternative standards or new technologies are demonstrated to provide at least the equivalent level of safety. Section 238.230 borrows the process set out in § 238.21. It allows a recognized representative of the railroads to request special approval of industry-wide alternative standards relating to the safety appliance arrangements on any passenger car type considered to be a car of special construction.

The special approval process being proposed for part 231 establishes a process for submitting, reviewing, and approving the use of new standards as they are developed by the industry. It would also allow for an industry representative to submit modifications of industry-approved safety appliance standards for FRA's review and approval. The proposed regulation closely follows the processes set forth in §§ 232.17, 238.21, and 238.230. FRA anticipates that the proposed amendment to part 231 will benefit railroad safety by: (1) Allowing FRA to take into account technological advancements and ergonomic design standards for new car construction, (2) ensuring that modern railcar designs comply with applicable statutory and safety-critical regulatory requirements related to safety appliances, and (3) providing flexibility to efficiently address safety appliance requirements on new railcar and locomotive designs in the future.

IV. Section-by-Section Analysis

Section 231.33 Procedure for Special Approval of Existing Industry Safety Appliance Standards

This proposed section establishes a process through which a representative of the railroad industry may petition FRA for special approval of an existing industry safety appliance standard. FRA anticipates that this special approval process will minimize uncertainty in vehicle design and maintenance by allowing the industry, through its AAR Task Force, to create clear industry standards that identify the appropriate safety appliance arrangements on railroad cars, locomotives, tenders, or similar vehicles. This should lessen the extensive reliance on § 231.18, cars of special construction, under which much of the modern rail equipment presently is built. While AAR's petition for rulemaking requests that FRA adopt new Railroad Safety Appliance Standards incorporating changes based on modern railcar design, FRA expects that the proposed special approval process will better serve the goal of adapting to changes in modern railcar design while also facilitating compliance with statutory and safety-critical regulatory requirements.

FRA recognizes that a necessary adjunct to developing industry standards for new car types that would otherwise fall under § 231.18 is to update the standards for cars that are already covered under part 231. The core criteria in these standard car types can then be used as guidelines for other types of cars with more specialized designs. It is FRA's understanding that the industry standards developed by the AAR Task Force include a new base industry safety appliance standard as well as standards for modern boxcars and covered hopper cars, each of which is specifically covered in part 231. It is anticipated that AAR will petition through the proposed special approval process to have the industry standards for these car types approved by FRA since such standards must be approved by FRA prior to going into effect. The use of industry standards for new car construction related to these car types will ensure consistency in the application of FRA-approved industry standards when applied to other types of rail equipment while also serving as the building blocks towards recognizing safer, more efficient designs.

The regulatory relief contemplated by this proposed section will allow FRA to review existing industry safety appliance standards created by the railroad industry to ensure that the standards will provide at least an equivalent level of safety as the existing FRA standards. The public will be given notice of and opportunity to comment on any changes to existing regulations that are contained in a special approval petition before FRA acts on the petition in accordance with the Administrative Procedure Act. *See* 5 U.S.C. 553(b). Where FRA determines that a petition complies with the requirements of this section and the existing industry safety appliance standard provides an equivalent level of safety to existing FRA standards, FRA may grant approval to the industry standard for use in new car construction. FRA expects that the special approval process will allow the rail industry to incorporate new railcar designs as well as technological and ergonomic advancements with greater speed and efficiency.

Proposed paragraph (b) establishes the process for submission of a petition for special approval of an existing industry standard for new car construction. Petitions will only be accepted from an industry representative and must contain standard(s) that will be enforced industry-wide. Each petition for special approval must include the name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition.

Proposed paragraph (b)(2) sets forth the minimum requirements of the petition for special approval of an existing industry safety appliance standard. The petition must identify the type(s) of car to which the standard would be applicable as well as the section or sections within the safety appliance regulations that the existing industry standard would act as an alternative to for new car construction. The standard contained in the petition must, as nearly as possible, based upon the design of the equipment, provide for the same complement of handholds, sill steps, ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type(s) already identified in part 231.

Because the Railroad Safety Appliance Standards encompassed in part 231 were promulgated to enforce specific statutory provisions, proposed paragraph (b)(2) requires that the industry standard comply with the requirements contained at 49 U.S.C. 20301 and 20302. The specific number, dimension, location, and manner of application of each safety appliance also must be contained in the industry standard in the petition. Any such industry standard must provide at least the equivalent level of safety as would otherwise be provided under FRA's current regulations.

Under proposed paragraph (b)(2), the industry representative submitting the petition also must include sufficient information through data or analysis, or both, for FRA to consider in making its determination of whether the existing industry standard will provide the requisite level of safety. This would include identifying where the industry standard deviates from the existing FRA regulation and providing an explanation for any such deviation. Additionally, drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances must be included in the petition to assist FRA in its decision making process.

Finally, proposed paragraph (b)(2) requires a demonstration of the ergonomic suitability of the proposed arrangements in normal use. Given that the AAR Task Force regularly includes at least one ergonomic expert, FRA expects that such factors will be considered during the development process of the industry standards that are being submitted for approval.

FRA requests comments concerning the information required in proposed paragraph (b)(2). Specifically, FRA requests comments about whether the information required in this paragraph is necessary and sufficient to allow FRA to make an informed decision regarding a petition for approval.

Proposed paragraph (b)(3) requires that the petitioner include a statement affirming that a copy of the petition has been served on the designated labor representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under part 231. The statement must include a list of the names and addresses of each person served.

Proposed paragraph (c) sets up the service requirements for the petition for special approval of an existing industry standard for new car construction. The petitioner is required to submit the petition to FRA's Docket Clerk. The petitioner is also required to serve a copy of the petition on the appropriate labor representatives and the organizations or bodies to which the special approval pertains or that issued the industry standard that is proposed in the petition. The petitioner also must serve any other person who at least 30 days, but not more than 5 years prior to the filing of the petition, has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of part 231. Any such statement of interest shall reference the specific section(s) of part 231 in which the person has an interest. FRA will post any such statement of interest that complies with the regulation in the docket to ensure that each statement is accessible to the public.

Proposed paragraph (d) provides that FRA will publish a notice in the **Federal Register** announcing the receipt of each petition for special approval an existing industry standard for new car construction.

Proposed paragraph (e) establishes a 60-day comment period from the date of publication of the notice in the **Federal Register** concerning a petition. Due to the nature of the special approval process and the fact that the industry standards, if approved, will have an industry-wide effect, FRA seeks to provide sufficient time for all interested parties to comment prior to making its decision disposing of a petition. All comments must set forth the specific basis upon which the comments are made and contain a concise statement of the interest of the commenter in the proceeding.

Proposed paragraph (f) sets up the process for disposing of petitions for special approval. Under this paragraph, FRA may grant the petition, deny the petition, or return it for additional consideration. Normally, FRA will act on a petition within 90 days of the close of the comment period related to the petition; however, if the petition is neither granted nor denied within the 90-day period, then it will remain pending unless withdrawn by the petitioner.

Proposed paragraph (f)(3) sets forth that a petition may be granted where FRA determines that the petition complies with the requirements of § 231.33 and that the existing industry safety appliance standard provides at least an equivalent level of safety to existing FRA standards. Alternatively, a petition will be denied where FRA determines that it does not comply with the requirements of § 231.33 or that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the existing FRA standard.

In instances where FRA determines that further information is required or that the petition may be amended in a reasonable manner to comply with the requirements of § 231.33 or to ensure that the existing industry standard provides an equivalent level of safety to existing FRA standards; the petition may be returned to the petitioner. In such circumstances, FRA will provide written notice to the petitioner of the item(s) requiring additional consideration. The petitioner is provided with 60 days from the date of FRA's written notice of return for additional consideration to reply. The petitioner's reply must address the item(s) identified by FRA in the written notice of the return of the petition for additional consideration as well as complying with the submission requirements of § 231.33(b) and the service requirements in § 231.33(c). If petitioner fails to submit a response within the prescribed time period, the petition will be deemed withdrawn, unless good cause is shown.

Proposed paragraph (f)(5) provides that when a petition is granted, it will go into effect on January 1st, not less than one (1) year and not more than two (2) years from the date of FRA's written notice granting the petition. For example, if FRA were to approve a petition on July 1, 2010, the industry standard would become effective on January 1, 2012, for regulatory enforcement purposes. This will allow the industry appropriate time to incorporate the standard, train employees, and fit facilities to meet the new requirements. Also, a copy of the approved industry safety appliance standard will be placed in the related public docket by FRA where it can be accessed by all interested parties.

Proposed paragraph (f)(6) establishes the standard for reopening a granted petition for special approval. A granted petition may be re-opened only where there is a showing of good cause. Good cause requires the submission of subsequent evidence that was not previously considered. The subsequent evidence must demonstrate that a granted petition fails to comply with the requirements of § 231.33; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type; or that further information is required to make such a determination.

Proposed paragraph (g) provides that any industry standard approved pursuant to § 231.33 will be enforced against any person, as defined in 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties associated with the failure to follow an approved industry safety appliance standard will be assessed under part 231 by using the applicable defect code contained in Appendix A.

Section 231.35 Procedure for Modification of an Approved Industry Safety Appliance Standard

This proposed section contains the proposed procedural requirements for

modifying industry safety appliance standards that previously have been approved by FRA. As in proposed § 231.33, FRA believes that notice to the public and an opportunity to comment is necessary under the Administrative Procedure Act. If the petition for modification is minor and there is no objection to the petition for modification by FRA or any other interested party, the modified industry safety appliance standard will automatically become effective fifteen (15) days after the close of the comment period. In those circumstances where FRA or any other interested party objects to the modification petition FRA proposes disposing of the petition through the process laid out in proposed § 231.33(f). FRA expects that using the framework in proposed § 231.33(f) will allow for a more thorough review by the agency to ensure that the proposed modification provides at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type(s) prior to disposing of the petition for modification.

Proposed paragraph (a) provides that an industry representative may seek modification of an existing industry safety appliance standard for new car construction after it has been approved under § 231.33. Any such petition for modification must include each of the elements identified in § 231.33(b).

Proposed paragraph (b) covers service of petitions for modification. The procedures for service of petitions for modification is the same as proposed in § 231.33(c).

Proposed paragraph (c) provides that FRA will publish a notice in the **Federal Register** announcing the receipt of each petition for modification received under § 231.35(a).

Proposed paragraph (d) provides for the same 60-day comment period as proposed in § 231.33(e).

Proposed paragraph (e) establishes the process for FRA review of petitions for modification. It is expected that FRA will review the petition for modification during the 60-day comment period. In instances where FRA has an objection to the requested modification, it will provide written notification to the party requesting the modification detailing FRA's objection.

Proposed paragraph (f) sets up the procedure for FRA's disposition of petitions for modification. A modification proposed in a petition for modification will become effective fifteen (15) days after the close of the 60-day comment period if FRA does not receive any comments objecting to the requested modification or if FRA does not issue a written objection to the requested modification. If an objection to the requested modification is raised by either an interested party or FRA, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and disposition of the petition will fall under the procedures provided in § 231.33(f). Similarly, a petition for modification that has been granted may be re-opened where good cause is shown, as discussed above.

Proposed paragraph (g) provides that any modification of an industry standard approved by FRA under § 231.35 will be enforced against any person, as defined in 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. As with § 231.33, civil penalties will be assessed using the applicable defect code contained in appendix A to part 231.

V. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under section 3(f) of Executive Order 12866, 58 FR 51735 (September 30, 1993), and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation. 44 FR 11034 (February 26, 1979). It merely seeks to add an alternative method of compliance into the existing regulatory requirements contained in 49 CFR part 231. The alternative method of compliance is expected to be in the form of a special approval process that will allow FRA to accept new railcar designs incorporating ergonomic design standards and technological advancements. FRA anticipates that the implementation of the special approval process in the railroad industry will generate a beneficial effect on the National economy and will not have an economically adverse impact of over $100 million per annum, as adjusted for inflation.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* and Executive Order 13272, 67 FR 53461 (August 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), FRA has prepared and placed in the docket a Certification Statement that assesses the small entity impact of this proposed rule, and certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities.

Document inspection and copying facilities are available at the DOT Central Docket Management Facility located in Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590. Docket material is also available for inspection electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2008–0116.

The U.S. Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity," is 1,500 employees for "Line-Haul Operating Railroads," and 500 employees for "Switching and Terminal Establishments." "Small entity" is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. SBA's "Size Standards" may be altered by Federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes "small entities" as railroads which meet the line haulage revenue requirements of a Class III railroad. The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity.

There are approximately 700 small railroads that could be affected by the proposed regulation. Consequently, this regulation could affect a substantial number of small entities. However, FRA does not anticipate that this regulation would impose a significant economic impact on such entities.

The proposed rule would also apply to governmental jurisdictions or transit authorities that provide commuter rail service—none of which is small for purposes of the SBA (i.e., no entity serves a locality with a population less

than 50,000). These entities also receive Federal transportation funds. Intercity rail service providers Amtrak and the Alaska Railroad Corporation would also be subject to this rule, but they are not small entities and likewise receive Federal transportation funds.

The proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, as there are no direct costs to small entities. Small entities will not be responsible for preparing the petitions for special approval. Furthermore, FRA does not believe there will not be any significant costs to implementing any approved industry standard as any such standard will likely be a repositioning of existing safety appliances and will only be applicable to newly manufactured units. FRA believes that these construction costs, if any, will be negligible. Moreover, few small entities purchase newly manufactured equipment; generally, these operators acquire used equipment from larger railroads. Accordingly, FRA does not consider this impact of this proposal to be significant for small entities.

FRA invites comments from all interested parties on this Certification. FRA particularly encourages small entities that could potentially be impacted by the proposed amendment to participate in the public comment process by submitting comments on this assessment or this rulemaking to the official U.S. Department of Transportation (DOT) docket. A draft of the proposed rule has not been submitted to the Small Business Administration (SBA) for formal review. However, FRA will consider any comments submitted by the SBA in developing the final rule.

C. Federalism

Executive Order 13132, 64 FR 43255 (August 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, 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.

However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (former FRSA), repealed and recodified at 49 U.S.C. 20106, and the former Safety Appliance Acts (former SAA), repealed and recodified at 49 U.S.C. 20301–20304, 20306. *See* Public Law 103–272 (July 5, 1994). The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "local safety or security hazard" exception to section 20106. Moreover, the former SAA has been interpreted by the Supreme Court as totally preempting the field "of equipping cars with appliances intended for the protection of employees." *See Southern Ry. Co.* v. *R.R. Commission of Indiana,* 236 U.S. 439, 446, 35 S.Ct. 304, 305 (1915).

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under the former FRSA and the former SAA. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979, Public Law 96–39 (July 26, 1979), prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements, and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
231.33—Special Approval Petitions of an Existing Industry Safety Appliance Standard for New Car Construction.	AAR	5 petitions	160 hours	800
—Statement Affirming Copy of Special Approval Petition Has Been Served on RR Employee Representatives.	AAR	5 statements	30 minutes	3

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Special Approval Petition Copies to RR Employee Representative/Other Parties.	AAR	565 copies	2 hours	1,130
—Statements of Interest to FRA	5 Labor Groups/Public	15 statements	7 hours	105
—Comments on Special Approval Petitions	728 Railroads/5 Labor Groups/Public.	25 comments	6 hours	150
—Disposition of Petitions: Hearings	AAR/5 Labor Groups/Public.	1 hearing	8 hours	8
—Disposition of Petitions: Further Information Needed.	AAR	1 document	3 hours	3
231.35—Petitions for Modification of an Approved Existing Industry Safety Appliance Standard for New Car Construction.	AAR	5 petitions	160 hours	800
—Statement Affirming Copy of Modification Petition Has Been Served on RR Employee Representatives.	AAR	5 statements	30 minutes	3
—Modification Petition Copies to RR Employee Representative/Other Parties.	AAR	565 copies	2 hours	1,130
—Statements of Interest to FRA	5 Labor Groups/Public	15 statements	7 hours	105
—Comments on Modification Approval Petitions	728 Railroads/5 Labor Groups/Public.	25 comments	6 hours	150
—Disposition of Petitions: Further Information Needed.	AAR	1 document	3 hours	3

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information.

Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, FRA Office of Safety, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone, FRA Office of Administration, Information Clearance Officer, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following addresses: *robert.brogan@dot.gov; kimberly.toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (March 22, 1995), 2 U.S.C. 1531, each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) (currently $140.8 million) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals. The proposed amendment does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

G. Environmental Assessment

FRA has evaluated this proposed rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures), 64 FR 28545 (May 26, 1999), as required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.,* other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact

statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999). Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment.

* * * * *

The following classes of FRA actions are categorically excluded:

* * * * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of Executive Order 13211.

I. Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, 65 FR 19477–78, or you may visit *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

List of Subjects in 49 CFR Part 231

Penalties, Railroad safety, Railroad safety appliances, Special approval process.

Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 231 of subtitle B, chapter II of title 49 of the Code of Federal Regulations as follows:

PART 231—[AMENDED]

1. The authority citation for part 231 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20131, 20301–20303, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Add §§ 231.33 and 231.35 to read as follows:

§ 231.33 Procedure for special approval of existing industry safety appliance standards.

(a) *General.* The following procedures govern the submission, consideration and handling of any petition for special approval of an existing industry safety appliance standard for new construction of railroad cars, locomotives, tenders, or similar vehicles.

(b) *Submission.* An industry representative may submit a petition for special approval of an existing industry safety appliance standard for new construction. A petition for special approval of an industry standard for safety appliances shall include the following:

(1) The name, title, address, and telephone number of the primary individual to be contacted with regard to review of the petition.

(2) An existing industry-wide standard that, at a minimum:

(i) Identifies the type(s) of equipment to which the standard would be applicable and the section or sections within the safety appliance regulations that the existing industry standard would operate as an alternative to for new car construction;

(ii) Ensures, as nearly as possible, based upon the design of the equipment, that the standard provides for the same complement of handholds, sill steps, ladders, hand or parking brakes, running boards, and other safety appliances as are required for a piece of equipment of the nearest approximate type(s) already identified in this part;

(iii) Complies with all statutory requirements relating to safety appliances contained at 49 U.S.C. 20301 and 20302;

(iv) Addresses the specific number, dimension, location, and manner of application of each safety appliance contained in the industry standard;

(v) Provides appropriate data or analysis, or both, for FRA to consider in determining whether the existing industry standard will provide at least an equivalent level of safety;

(vi) Includes drawings, sketches, or other visual aids that provide detailed information relating to the design, location, placement, and attachment of the safety appliances; and

(vii) Demonstrates the ergonomic suitability of the proposed arrangements in normal use.

(3) A statement affirming that the petitioner has served a copy of the petition on designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part, together with a list of the names and addresses of the persons served.

(c) *Service.*

(1) Each petition for special approval under paragraph (b) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) Service of each petition for special approval of an existing industry safety appliance standard under paragraph (b) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard to which the special approval pertains or issued the industry standard that is proposed in the petition; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590, and shall reference the specific section(s) of this part in which the person has an interest.

A statement of interest that properly references the specific section(s) in which the person has an interest will be posted in the docket to ensure that each statement is accessible to the public.

(d) **Federal Register notice.** FRA will publish a notice in the **Federal Register** announcing the receipt of each petition received under paragraph (b) of this section. The notice will identify the public docket number in the Federal eRulemaking Portal (FeP) where the contents of each petition can be accessed and reviewed. The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at *http://www.regulations.gov.* All documents in the FeP are available for inspection and copying on the website or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, during regular business hours (9 a.m.-5 p.m.).

(e) *Comment.* Not later than 60 days from the date of publication of the notice in the **Federal Register** concerning a petition received pursuant to paragraph (b) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made and contain a concise statement of the interest of the commenter in the proceeding; and

(2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or electronically via the Internet at *http://www.regulations.gov.* Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

(f) *Disposition of petitions.*

(1) FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter, if necessary.

(2) FRA will normally act on a petition within 90 days of the close of the comment period related to the petition. If the petition is neither granted nor denied within that timeframe, the petition will remain pending unless withdrawn by the petitioner.

(3) A petition may be:

(i) Granted where it is determined that the petition complies with the requirements of this section and that the existing industry safety appliance standard provides at least an equivalent level of safety as the existing FRA standards;

(ii) Denied where it is determined that the petition does not comply with the requirements of this section or that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the existing FRA standards; or

(iii) Returned to the petitioner for additional consideration where it is determined that further information is required or that the petition may be amended in a reasonable manner to comply with the requirements of this section or to ensure that the existing industry standard provides at least an equivalent level of safety as the existing FRA standards. Where the petition is returned to the petitioner, FRA will provide written notice to the petitioner of the item(s) identified by FRA as requiring additional consideration. Petitioner shall reply within 60 days from the date of FRA's written notice of return for additional consideration or the petition will be deemed withdrawn, unless good cause is shown. Petitioner's reply shall:

(A) Address the item(s) raised by FRA in the written notice of the return of the petition for additional consideration;

(B) Comply with the submission requirements of paragraph (b) of this section; and

(C) Comply with the service requirements in paragraph (c) of this section.

(4) When FRA grants or denies a petition, or returns a petition for additional consideration, written notice will be sent to the petitioner and other interested parties.

(5) If a petition is granted, it shall go into effect on January 1st, not less than one (1) year and not more than two (2) years from the date of FRA's written notice granting the petition. FRA will place a copy of the approved industry safety appliance standard in the related public docket where it can be accessed by all interested parties.

(6) A petition, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

(g) *Enforcement.* Any industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

§ 231.35 Procedure for modification of an approved industry safety appliance standard for new car construction.

(a) *Petitions for modification of an approved industry safety appliance standard.* An industry representative may seek modification of an existing industry safety appliance standard for new construction of railroad cars, locomotives, tenders, or similar vehicles after the petition for special approval has been approved pursuant to § 231.33. The petition for modification shall include each of the elements identified in § 231.33(b).

(b) *Service.*

(1) Each petition for modification of an approved industry standard under paragraph (a) of this section shall be submitted to the FRA Docket Clerk, West Building Third Floor, Office of Chief Counsel, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(2) Service of each petition for modification of an existing industry safety appliance standard under paragraph (a) of this section shall be made on the following:

(i) Designated representatives of the employees responsible for the equipment's operation, inspection, testing, and maintenance under this part;

(ii) Any organizations or bodies that either issued the standard incorporated in the section(s) of the rule to which the modification pertains or issued the industry standard that is proposed in the petition for modification; and

(iii) Any other person who has filed with FRA a current statement of interest in reviewing special approvals under the particular requirement of this part at least 30 days but not more than 5 years prior to the filing of the petition. If filed, a statement of interest shall be filed with FRA's Associate Administrator for Safety and shall reference the specific section(s) of this part in which the person has an interest.

(c) **Federal Register** document. Upon receipt of a petition for modification, FRA will publish a notice in the **Federal Register** announcing the receipt of each petition received under paragraph (a) of this section. The notice will identify the public docket number in the Federal eRulemaking Portal (FeP) where the

contents of each petition can be accessed and reviewed. The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at *http://www.regulations.gov.* All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, during regular business hours (9 a.m.–5 p.m.).

(d) *Comment.* Not later than 60 days from the date of publication of the notice in the **Federal Register** concerning a petition for modification under paragraph (a) of this section, any person may comment on the petition. Any such comment shall:

(1) Set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding; and

(2) Be submitted by mail or hand-delivery to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or electronically via the Internet at *http://www.regulations.gov.* Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the public docket related to the petition. All comments should identify the appropriate docket number for the petition to which they are commenting.

(e) *FRA Review.* During the 60 days provided for public comment, FRA will review the petition. If FRA objects to the requested modification, written notification will be provided within this 60-day period to the party requesting the modification detailing FRA's objection.

(f) *Disposition of petitions for modification.*

(1) If no comment objecting to the requested modification is received during the 60-day comment period, provided by paragraph (d) of this section, or if FRA does not issue a written objection to the requested modification, the modification will become effective fifteen (15) days after the close of the 60-day comment period.

(2) If an objection is raised by an interested party, during the 60-day comment period, or if FRA issues a written objection to the requested modification, the requested modification will be treated as a petition for special approval of an existing industry safety appliance standard and handled in accordance with the procedures provided in § 231.33(f).

(3) A petition for modification, once approved, may be re-opened upon good cause shown. Good cause exists where subsequent evidence demonstrates that an approved petition does not comply with the requirements of this section; that the existing industry safety appliance standard does not provide at least an equivalent level of safety as the corresponding FRA regulation for the nearest car type(s); or that further information is required to make such a determination. When a petition is re-opened for good cause shown, it shall return to pending status and shall not be considered approved or denied.

(g) *Enforcement.* Any modification of an industry standard approved pursuant to this section will be enforced against any person, as defined at 49 CFR 209.3, who violates any provision of the approved standard or causes the violation of any such provision. Civil penalties will be assessed under this part by using the applicable defect code contained in appendix A to this part.

Issued in Washington, DC, on June 29, 2010.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. 2010–16153 Filed 7–1–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0072] [92210–1117–0000–B4]

RIN 1018–AW23

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, are reopening the comment period on our December 9, 2009, proposed revised designation of critical habitat for Santa Ana sucker (*Catostomus santaanae*) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed revised critical habitat designation, the draft economic analysis (DEA) associated with the proposed critical habitat designation, proposed revisions to one subunit, and the amended Required Determinations section of the preamble. We are also announcing the location and time of a public hearing to receive public comments on the proposal. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: *Written comments*: You may submit comments by one of the following methods: We will consider comments that we receive on or before August 2, 2010.

Public hearing: We will hold a public hearing on this proposed rule on July 21, 2010, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m.

ADDRESSES: *Written comments*: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments to Docket No. FWS-R8-ES-2009-0072.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R8-ES-2009-0072; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

Public hearing: We will hold a public hearing at Ayres Suites Corona West, 1900 W Frontage Road, Corona, CA 92882.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone (760) 431–9440; facsimile (760) 431–5901. If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule will be based on the best scientific data available and will be as accurate and effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, and other interested parties during this reopened comment period on the proposed rule to revise critical habitat

for Santa Ana sucker that was published in the **Federal Register** on December 9, 2009 (74 FR 65056), including the DEA of the proposed revised critical habitat designation, the changes to proposed critical habitat in Subunit 1A, the considered exclusion of critical habitat in Subunits 1B and 1C, and the amended required determinations section provided in this document. We are particularly interested in comments concerning:

(1) The reasons we should or should not revise the designation of habitat as "critical habitat" for Santa Ana sucker under section 4 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh any threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- Areas that provide habitat for Santa Ana sucker that we did not discuss in the proposed revised critical habitat rule;
- Areas within the geographical area occupied by the species at the time of listing that contain the physical and biological features essential to the conservation of the species which may require special management considerations or protection, that we should include in the revised designation and reason(s) why (see the **Physical and Biological Features** section of the revised proposed rule published December 9, 2009 (74 FR 65056), for further discussion);
- Areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species and why; and
- Special management considerations or protections that may be required for the features essential to the conservation of the Santa Ana Sucker identified in the proposed revised rule, including managing for the potential effects of climate change.

(3) Information on the projected and reasonably likely impacts of climate change on this species and the critical habitat areas we are proposing.

(4) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the areas identified as containing the features essential to the species' conservation.

(5) Specific information on our proposed designation of City Creek, Plunge Creek, and the Santa Ana River above Seven Oaks Dam to provide habitat for future reintroduction of Santa Ana sucker to augment the Santa Ana sucker population in the Santa Ana River. See **Critical Habitat Units** section of the revised proposed rule (74 FR 65056), for further discussion.

(6) Specific information on Santa Ana sucker, habitat conditions, and the presence of physical and biological features essential to the conservation of the species in Subunit 1B below Prado Dam.

(7) Specific information on the sediment contribution from tributaries to the Santa Ana River below Prado Dam (Subunit 1B).

(8) Specific information on the Santa Ana sucker, habitat conditions, and the presence of potential permanent barriers to movement in Big Tujunga Wash (Subunit 3A), particularly between the Big Tujunga Canyon Road Bridge and the Big Tujunga Dam. See **Critical Habitat Units** section of the December 9, 2009, revised proposed rule ((74 FR 65056), for further discussion.

(9) Land-use designations and current or planned activities in the areas proposed as critical habitat, as well as their possible effects on the proposed critical habitat.

(10) Information that may assist us in identifying or clarifying the PCEs. See the **Primary Constituent Elements (PCEs)** section of the revised proposed rule (74 FR 65056), for further discussion.

(11) Specific information on instream gradient (slope) limitations of the species. In the proposed rule, we assume that Santa Ana suckers are unable to occupy stream sections where the instream slope exceeds 7 degrees. See the **PCEs** section of the December 9, 2009, proposed rule (74 FR 65056), for further discussion.

(12) Any probable economic, national security, or other impacts of designating particular areas as critical habitat, and, in particular, any impacts on small entities (e.g., small businesses or small governments), and the benefits of including or excluding areas that exhibit these impacts.

(13) Whether any specific areas being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act. See the **Exclusions** section of the December 9, 2009, the revised proposed rule (74 FR 65056), and the *Additional Areas Currently Considered for Exclusion Under Section 4(b)(2) of the Act* section of this document for further discussion.

(14) The potential exclusion of Subunits 1B and 1C under section 4(b)(2) of the Act based on the benefits to the species provided by implementation of the Western Riverside County Multiple Species Habitat Conservation Plan and Santa Ana Sucker Conservation Program and, whether the benefits of exclusion of these areas outweigh the benefits of including this area as critical habitat, and why. See *Additional Areas Currently Considered for Exclusion Under Section 4(b)(2) of the Act* section below and **Exclusions** section of the December 9, 2009, revised proposed rule (74 FR 65056) for further discussion.

(15) Specific conservation that has been achieved for Santa Ana sucker or its habitat as a result of the Santa Ana Sucker Conservation Program, Western Riverside County Multiple Species Habitat Conservation Plan, or other conservation or management programs within proposed revised critical habitat.

(16) Information on any quantifiable economic costs or benefits of the proposed revised designation of critical habitat.

(17) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

(18) Whether our approach to designating critical habitat could be improved or modified in any way to provide an opportunity for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (74 FR 65056) during the initial comment period from December 9, 2009, to February 8, 2010, please do not resubmit them. These comments are included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. Our final determination concerning the revised critical habitat for Santa Ana sucker will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas within the proposed revised critical habitat designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning our proposed revised rule, the associated DEA, and our amended required determinations

by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy comments on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used to prepare this notice, will be available for public inspection at *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Carlsbad Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT** section). You may obtain copies of the proposed revised critical habitat (74 FR 65056) and the DEA on the Internet at *http://www.regulations.gov* at Docket No. FWS-R8-ES-2009-0072, or by mail from the Carlsbad Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Public Hearings

The public hearings will take place on July 21, 2010, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. at Ayres Suites Corona West, 1900 W. Frontage Road, Corona, CA 92882. The public hearing location is wheelchair-accessible. If you plan to attend the public hearing and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the US FWS (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Background

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat for Santa Ana sucker in this document. For more detailed information on the taxonomy, biology, and ecology of Santa Ana sucker, please refer to the final listing rule published in the **Federal Register** on April 12, 2000 (65 FR 19686); the designation and revision of critical habitat for Santa Ana sucker published in the **Federal Register** on February 26, 2004 (69 FR 8839); and on January 4, 2005 (70 FR 426); respectively; and the second proposed revision of critical habitat for Santa Ana sucker published in the **Federal Register** on December 9, 2009 (74 FR 65056), or the Carlsbad Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT** section).

California Trout, Inc., *et al.* filed suit against the Service on November 15, 2007, alleging that the January 4, 2005, final designation of critical habitat violated provisions of the Act and Administrative Procedure Act [(California Trout, Inc., *et al.*, v. United States Fish and Wildlife, *et al.*, Case No. 07–CV–05798 (N.D. Cal.) *transferred* Case No. CV 08-4811 (C.D. Cal.)]. The plaintiffs alleged that our January 4, 2005, revised critical habitat designation for Santa Ana sucker was insufficient for various reasons and should include the Santa Clara River population. We entered into a stipulated settlement agreement with plaintiffs that was approved by the District Court on January 21, 2009. Pursuant to the District Court Order, we committed to submit a proposed revised critical habitat designation for Santa Ana sucker to the **Federal Register** by December 1, 2009, and submit a revised critical habitat designation to the **Federal Register** by December 1, 2010. We published the proposed revised critical habitat designation in the **Federal Register** on December 9, 2009 (74 FR 65056).

Section 3 of the Act defines critical habitat as "(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with [the Act], on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with [the Act], upon a determination by the Secretary that such areas are essential for the conservation of the species" (16 U.S.C. 1532(5)(A)(i) and (ii)). If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that may affect critical habitat must consult with us on the effects of their proposed actions under section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat.

We prepared a DEA (Industrial Economics, Inc. (IEC) 2010) that identifies and analyzes the potential impacts associated with the proposed revised critical habitat designation for Santa Ana sucker published in the **Federal Register** on December 9, 2009 (74 FR 65056). The DEA looks retrospectively at costs incurred since the April 12, 2000 (65 FR 19686), listing of Santa Ana sucker as a threatened species. The DEA quantifies the economic impacts of all potential conservation efforts for Santa Ana sucker. However, some of these costs will likely be incurred regardless of whether or not we finalize the revised critical habitat. The economic impact of the proposed revised critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections that are already in place for the species (such as protections under the Act and other Federal, State, and local regulations). The baseline, therefore, represents costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. Incremental conservation efforts and associated impacts are those not expected to occur absent the critical habitat designation for Santa Ana sucker. In other words, incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs. The DEA also qualitatively discusses the potential incremental economic benefits associated with the designation of critical habitat. The incremental impacts are the impacts we may consider in the revised designation of critical habitat relative to areas that may be excluded under section 4(b)(2) of the Act. The analysis forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised critical habitat designation.

The revised DEA (made available with the publication of this notice and referred to throughout this document unless otherwise noted) estimates the foreseeable economic impacts of the proposed revised critical habitat designation for Santa Ana sucker. The DEA describes economic impacts of Santa Ana sucker conservation efforts associated with the following categories

of activities: (1) Water management; (2) residential and commercial development; (3) transportation-related projects; (4) point sources of pollution including the Santa Ana Regional Interceptor line; (5) recreational activities; and (6) commercial and recreational mining.

Baseline economic impacts are those impacts that result from listing and other conservation efforts for Santa Ana sucker. Conservation efforts related to water management, transportation, and development activities constitute the majority of total baseline costs (approximately 90 percent of post-designation upper-bound baseline impacts when a 7 percent discount rate is used) in areas of proposed revised critical habitat. Conservation efforts related to point source pollution and off-highway vehicle recreation comprise the remaining approximate 10 percent of post-designation upper-bound baseline impacts when a 7 percent discount rate is used. Total future baseline impacts are estimated to be $22.6 to $29.8 million ($1.99 to $2.62 million annualized) in present value terms using a 7 percent discount rate over the next 20 years (2011 to 2030) in areas proposed as revised critical habitat (IEC 2010, p. ES-3).

Conservation efforts related to water management activities, transportation projects, and residential and commercial development projects comprise most (90 percent) of the quantified incremental impacts for the proposed revised critical habitat rule. Impacts associated with transportation projects make up the largest portion of post-designation upper-bound incremental impacts, accounting for 38 to 53 percent of the forecast incremental impacts when a 7 percent discount rate is used. The DEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years (2011 to 2030) to be $6.87 million to $9.45 million ($606,000 to $834,000 annualized) in present value terms applying a 7 percent discount rate (IEC 2010, p. ES-2).

The DEA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The DEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision makers can use this information to assess whether the effects of the revised critical habitat designation might unduly burden a particular group or economic sector.

Changes to Proposed Revised Critical Habitat

In this document, we are proposing revisions to Subunit 1A as identified and described in the proposed revised critical habitat designation that published in the **Federal Register** on December 9, 2009 (74 FR 65056). We received a public comment that identified specific areas outside the geographical area occupied by the species at the time it was listed that may be essential for the conservation of Santa Ana sucker. The purpose of the revision described below is to ensure that all areas are evaluated uniformly and equally to determine the areas that meet the definition of critical habitat for Santa Ana sucker. The area we are proposing to add to Subunit 1A contains the physical and biological features essential for the conservation of the species. The change we propose to Subunit 1A does not alter the description of this subunit (see "Critical Habitat Units" section in the proposed revised rule (74 FR 65070)); however, a revised map including this new area is included in this document. We briefly describe the change made for Subunit 1A below. As a result of this revision, the overall area proposed for critical habitat, including all units and subunits, is approximately 9,643 acres (ac) (3,902 hectares (ha)), an increase of approximately 38 ac (15 ha) from the 9,605 ac (3,887 ha) that we proposed as critical habitat in the December 9, 2009, proposed revised critical habitat designation (74 FR 65056). A summary of the total area of each proposed subunit is presented in Table 1. Additionally, we are considering for exclusion lands covered by the Western Riverside County Multiple Species Habitat Conservation Plan (Western Riverside County MSHCP), described below in detail.

TABLE 1. *Summary of subunits proposed as critical habitat. Area estimates and land ownership for Santa Ana sucker proposed revised critical habitat.*

Unit	Counties	Ownership			Total Area[2]
		Federal	State or Local Government	Private	
Unit 1: Santa Ana River					
Subunit 1A: Upper Santa Ana River	San Bernardino	284 ac (115 ha)	95 ac (38 ha)	1559 ac (631 ha)	1,938 ac (784 ha)
Subunit 1B: Santa Ana River	San Bernardino and Riverside	13 ac (5 ha)	2,390 ac (967 ha)	2,301 ac (931 ha)	4,704 ac[1] (1,903 ha)
Subunit 1C: Lower Santa Ana River	Riverside and Orange	0 ac (0 ha)	56 ac (23 ha)	711 ac (288 ac)	767 ac[1] (311 ha)
	Unit 1 Total	287 ac (116 ha)	2,541 ac (1,028 ha)	4,570 ac (1,849 ha)	7,409 ac (2,998 ha)
Unit 2: San Gabriel River					

TABLE 1. *Summary of subunits proposed as critical habitat. Area estimates and land ownership for Santa Ana sucker proposed revised critical habitat.*—Continued

Unit	Counties	Ownership			Total Area[2]
		Federal	State or Local Government	Private	
Unit 2: San Gabriel River	Los Angeles	917 ac (371 ha)	0 ac (0 ha)	83 ac (34 ha)	1,000 ac (405 ha)
Unit 3: Big Tujunga Creek					
Subunit 3A: Big Tujunga and Haines Creeks	Los Angeles	242 ac (98 ha)	0 ac (0 ha)	947 ac (383 ha)	1,189 ac (481 ha)
Subunit 3B: Gold, Delta, and Stone Creeks	Los Angeles	44 ac (18 ha)	0 ac (0 ha)	0 ac (0 ha)	44 ac (18 ha)
	Unit 3 Total	286 ac (116 ha)	0 ac (0 ha)	947 ac (383 ha)	1,233 ac (499 ha)
	Total	**1,490 ac (603 ha)**	**2,541 ac (1,028 ha)**	**5,600 ac (2,266 ha)**	**9,643 ac (3,902 ha)**

[1] Contains areas being considered for exclusion in the final critical habitat rule under section 4(b)(2) of the Act.
[2] Values in this table may not sum due to rounding.

Subunit 1A: Upper Santa Ana River

We received a comment indicating that we did not include in the proposed revised critical habitat designation a portion of the upper Santa Ana River watershed that meets the definition of critical habitat, is essential for the conservation of the species, and is a site for possible reintroduction or refugia (i.e., area that provides for establishment of populations with minimal to no threats) for Santa Ana sucker. We reviewed aerial imagery, topographic maps, and information in our files for this area and verified that a portion of Plunge Creek meets the definition of critical habitat for Santa Ana sucker. Plunge Creek, a tributary of the Santa Ana River, is located in San Bernardino County upstream of the Santa Ana River's confluence with City Creek. Plunge Creek above Greenspot Road and north into the foothills of the San Bernardino Mountains is relatively unmodified, as are the other areas proposed for critical habitat designation in Subunit 1A. The approximate 3-mi (4.83-km) section of Plunge Creek that we are now proposing as critical habitat encompasses 11.1 ac (4.5 ha) of land owned by the U.S. Forest Service and 26.6 ac (10.7 ha) of privately owned land.

We determined that this area contains PCEs 1–7 and is essential for the conservation of the species. While we do not have information indicating this creek is currently occupied, we believe it is reasonable to assume that Santa Ana sucker could have inhabited these waters before the existing barriers to dispersal were present. The area that we are proposing for critical habitat designation maintains a perennial flow of cool and clear (not turbid) water, has a diverse composition of substrates, and a complex system of riffles, runs, pools, and shallow marginal areas covered with native riparian vegetation that would provide highly suitable habitat for reintroduction or establishment of a refugia population of Santa Ana sucker (OCWD 2009, pp. 5-66–69, 6-2, 6-6).

In addition to including the Plunge Creek area as proposed revised critical habitat, we are clarifying the description of Subunit 1A, (Upper Santa Ana River). The area proposed for critical habitat designation (74 FR 65056) in the upper Santa Ana River includes approximately 0.2 mi (0.32 km) of Bear Creek (identified as the Santa Ana River in the December 9, 2009, proposed rule) above its confluence with the Santa Ana River.

As stated in the December 9, 2009, proposed revised critical habitat designation (74 FR 65056), it is essential to maintain areas of suitable habitat in the Santa Ana River watershed where Santa Ana suckers could be reintroduced or areas that provide refugia necessary to decrease the risk of extirpation in the Santa Ana River or extinction due to stochastic events and provide for species' recovery. Like other areas proposed for designation as critical habitat for the purpose of reintroduction or establishment of a refugia population of Santa Ana sucker, Plunge Creek is also likely to require active management to transport individuals back to the upstream areas if they were flushed downstream during a flood event (74 FR 65071). We encourage public comment regarding the addition of the Plunge Creek area as proposed critical habitat in Subunit 1A (see **Public Comments** section above).

Additional Areas Currently Considered For Exclusion Under Section 4(b)(2) of the Act

Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

The Western Riverside County MSHCP is a regional, multi-jurisdictional HCP encompassing about 1.26 million ac (510,000 ha) in western Riverside County. The Western Riverside County MSHCP addresses 146 listed and unlisted "covered species," including the Santa Ana sucker. Participants in the Western Riverside County MSHCP include 16 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency (County Flood Control), Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside County MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the effects of expected habitat loss and associated incidental take of covered species. The Service issued a single incidental take permit on June 22, 2004 (Service 2004), under section 10(a)(1)(B) of the Act, to 22 permittees under the Western Riverside County MSHCP for a period of 75 years.

Specifically, the Secretary is considering whether to exercise his discretion to exclude 3,048 ac (1,234 ha) in Unit 1 (portions of Subunits 1B and 1C) within the Western Riverside County MSHCP plan area (see table 2 for the acreage of land being considered for exclusion in each subunit). We are considering the exclusion of non-Federal lands that are either owned by or under the jurisdiction of permittees under the Western Riverside County MSHCP. There are approximately 1,036 ac (420 ha) in Subunit 1B and 23 ac (10 ha) in Subunit 1C that are within the plan boundary of Western Riverside County MSHCP but are not being considered for exclusion because they are owned by non-permittees of the Western Riverside County MSHCP or are federally owned.

TABLE 2. *Santa Ana sucker proposed critical habitat areas considered for exclusion under section 4(b)(2) of the Act under the Western Riverside County MSHCP, presented per land ownership.*

Permittees under the Western Riverside County MSHCP	Subunit 1B	Subunit 1C
County of Riverside	428 ac (173 ha)	19 ac (8 ha)
City of Norco	234 ac (95 ha)	
City of Riverside	52 ac (21 ha)	
Riverside County Flood Control and Water Conservation Agency (County Flood Control)	324 ac (131 ha)	13 ac (5 ha)
Riverside County Parks and Open Space District	215 ac (87 ha)	
California Department of Parks and Recreation		54 ac (22 ha)
California Department of Transportation	3 ac (1 ha)	
State of California (Wildlife Conservation Board in collaboration with California Department of Fish and Game and Riverside County Parks and Open Space District)	1,125 ac (455 ha)	
Private	577 ac (234 ha)	6 ac (2 ha)
Total land considered for exclusion*	**2,957 ac (1,197 ha)**	**91 ac (37 ha)**

*Values in this table may not sum due to rounding.

The Western Riverside County MSHCP will establish approximately 153,000 ac (61,917 ha) of new conservation lands (Additional Reserve Lands) to complement the approximately 347,000 ac (140,426 ha) of pre-existing natural and open space areas (Public/Quasi-Public (PQP) lands). These PQP lands include those under ownership of public or quasi-public agencies, and also permittee-owned or controlled open-space areas. Collectively, the Additional Reserve Lands and PQP lands form the overall Western Riverside County MSHCP Conservation Area. The configuration of the 153,000 acres (61,916 ha) of Additional Reserve Lands is based on textual descriptions of habitat conservation necessary to meet the conservation goals for all covered species within the bounds of the approximately 310,000-ac (125,453-ha) Criteria Area and is determined as implementation of the Western Riverside County MSHCP takes place.

The Western Riverside County MSHCP identifies five conservation objectives that will be implemented to provide long-term conservation of the Santa Ana sucker:

(1) Include within the Western Riverside County MSHCP Conservation Area 3,480 ac (1,408 ha) of habitat for the Santa Ana sucker, including the Santa Ana River within the natural river bottom and banks;

(2) Include within the MSHCP Conservation Area the following areas (known as core areas for this species in the Western Riverside County MSHCP): Upstream of River Road, between River Road and Prado Dam, and downstream of Prado Dam; the known spawning areas at Sunnyslope Creek and within the area just below Mission Boulevard upstream to the Rialto Drain; and refugia and dispersal areas including the Market Street Seep, Mount Rubidoux Creek, Anza Park Drain, Arroyo Tequesquite, Hidden Valley Drain, and Evans Lake Drain;

(3) Include within the MSHCP Conservation Area the natural river bottom and banks of the Santa Ana River from the Orange County and Riverside County line to the upstream boundary of the Western Riverside County MSHCP plan area, including the adjacent upland habitat, where available, to provide shade and suitable microclimate conditions (such as alluvial terraces and riparian vegetation);

(4) Within the MSHCP Conservation Area, the Reserve Managers responsible for the areas identified in Objectives 2 and 3 will assess barriers to sucker movement and the need for connectivity and identify measures to restore connectivity to be implemented as feasible; and

(5) Within the MSCHP Conservation Area, the Reserve Managers responsible for the areas identified in Objectives 2 and 3 will assess threats to the sucker from degraded habitat (such as reduced water quality, loss of habitat, presence of nonnative predators and vegetation), identify areas of the watershed that are necessary for successful sucker spawning, identify areas for creation of stream meanders, and pool riffle complexes and reestablishment of native riparian vegetation as appropriate and feasible, and identify and implement management measures to address threats and protect critical areas (Dudek and Associates, Inc. 2003, pp. F-19–20; Service 2004, p. 258).

Additionally, riparian and riverine areas located within and outside of the Western Riverside County MSHCP Conservation Area are subject to the "Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools" policy presented in Section 6.1.2 of the Western Riverside County MSHCP, Volume I. This policy provides for the avoidance and minimization of impacts to riparian and riverine habitats, if feasible. According to the plan, unavoidable impacts will be mitigated such that the lost habitat functions and values related to covered

species will be replaced (Dudek and Associates, Inc. 2003, pp. 6-24).

The goal of conserving 3,480 ac (1,408 ha) of habitat for the Santa Ana sucker in the Western Riverside County MSHCP Conservation Area relies primarily on coordinated management of existing PQP lands and to a lesser extent on acquisition or other dedications of land assembled from within the Criteria Area (i.e., the Additional Reserve Lands). We internally mapped a "Conceptual Reserve Design," which illustrates existing PQP lands and predicts the geographic distribution of the Additional Reserve Lands based on our interpretation of the textual descriptions of habitat conservation necessary to meet conservation goals. Our Conceptual Reserve Design is intended to predict one possible future configuration of the eventual approximately 153,000 ac (61,916 ha) of Additional Reserve Lands in conjunction with the existing PQP lands, including the approximate 3,480 ac (1,408 ha) of Santa Ana sucker habitat, intended to be conserved to meet the goals and objectives of the plan (Service 2004, pp. 257–258). In our analysis of conservation for the Santa Ana sucker under the Western Riverside County MSHCP, we anticipate that, over the term of the permit, up to 443 ac (179 ha) of Santa Ana sucker habitat will be impacted within the plan area (Service 2004, p. 260).

The preservation and management of approximately 3,480 ac (1,408 ha) of Santa Ana sucker habitat under the Western Riverside County MSHCP is intended to contribute to the conservation and ultimate recovery of this species. The Santa Ana sucker is at risk due to its small population sizes and specifically threatened by habitat destruction, degradation, and fragmentation; dewatering; reductions in water quality; fire; recreational activities; and competition and predation from nonnative species within the plan area (Service 2004, pp. 254–255). The Western Riverside County MSHCP is intended to reduce threats to this species and the physical and biological features essential to its conservation as the plan is implemented by placing large blocks of habitat into preservation throughout the Conservation Area. The plan also generates funding for long-term management of conserved lands for the benefit of the species it protects. Core Areas identified for preservation and conservation include upstream of River Road, between River Road and Prado Dam, and downstream of Prado Dam; the known spawning areas at Sunnyslope Creek and within the area just below Mission Boulevard upstream to the Rialto Drain; and refugia and dispersal areas including the Market Street Seep, Mount Rubidoux Creek, Anza Park Drain, Arroyo Tequesquite, Hidden Valley Drain, and Evans Lake Drain (Dudek and Associates, Inc. 2003, p. F-20; Service 2004, p. 258).

The Western Riverside County MSHCP has several measures in place intended to ensure the plan is implemented in a way that conserves Santa Ana sucker in accordance with the species-specific criteria and objectives for this species. Permittee-owned PQP lands are to be managed in a manner that contributes to the conservation of the covered species. In the event that a permittee elects to alter their PQP lands such that they would not contribute to the conservation of covered species, lands would need to be replaced at a minimum 1:1 ratio. The proposed critical habitat designation includes lands owned by non-permittees of the Western Riverside County MSHCP in Subunit 1B and portions of Subunit 1C. The Western Riverside County MSHCP states that non-permitteeowned lands will be managed through Memorandums of Understanding or other appropriate agreements (MSHCP Implementation Agreement 2003, p. 60). Additional Reserve Lands would be acquired consistent with the plan criteria and conserved. The collective management of PQP and Additional Reserve Lands in accordance with the plan is intended to contribute to conservation of Santa Ana sucker.

The Western Riverside County MSHCP permittees are required to implement management and monitoring activities within the Additional Reserve Lands and PQP-owned lands. They must conduct baseline surveys at known occupied locations within the first 5 years of the plan and conduct additional surveys every 8 years to verify occupancy at a minimum of 75 percent of the MSHCP Conservation Area the Core Areas (listed above). Additionally, permittees and Reserve Managers must work cooperatively with Federal, State, and local agencies on conservation measures addressing connectivity and movement, nonnative predator removals, and riparian and instream vegetation maintenance or enhancement (Dudek and Associates, Inc. 2003, pp. F-23–25; Service 2004, p. 259).

The Western Riverside County MSHCP incorporates several processes that allow for Service oversight and participation in program implementation. These processes include: (1) Consultation with the Service on development of a long-term management and monitoring plan that addresses covered species; (2) submission of annual monitoring reports; (3) annual status meetings with the Service; and (4) submission of annual implementation reports to the Service (Service 2004, pp. 9–10).

The majority of the lands that are being considered for exclusion within the Western Riverside County MSHCP are PQP lands that could be conserved through the implementation of the plan. Lands within Subunit 1B that are being considered for exclusion (2,957 ac (1,197 ha)) are owned by the County of Riverside, the cities of Norco and Riverside, the Riverside County Open Space and Parks, the Riverside County Flood Control District, the California Department of Parks and Recreation, the California Department of Transportation, the State of California Wildlife Conservation Board (which manages the area known as the Hidden Valley Wildlife Area and is comprised of the California Department of Fish and Game and Riverside County Open Space and Parks) and private land owners (see Table 2). Lands (91 ac (37 ha)) within Subunit 1C that are being considered for exclusion are owned by the County of Riverside, the Riverside County Flood Control District, the California Department of Parks and Recreation, and private land owners (see Table 2). Within the proposed revised critical habitat designation, no Additional Reserve Lands have been secured since the time of the approval of the Western Riverside County MSHCP. Under the incidental take permit for the Western Riverside County MSHCP (Service 2004, pp. 253-261), impacts to Santa Ana sucker habitat within the plan area are limited to a total of 443 acres (179 ha). In summary, the Secretary is considering exercising his discretion under section 4(b)(2) of the Act to exclude 3,048 ac (1,234 ha) of proposed critical habitat for the Santa Ana sucker within Western Riverside County MSHCP permittee-owned or controlled lands in Subunits 1B and 1C.

The 2000 final listing rule for the Santa Ana sucker identified the following primary threats to the Santa Ana sucker: Habitat destruction, natural and human-induced changes in streamflows, urban development and related land-use practices, intensive recreation, introduction of nonnative competitors and predators, and demographics associated with small populations (65 FR 19686; April 12, 2000). Implementation of the Western Riverside County MSHCP is intended to help alleviate these threats through a regional planning effort rather than

through a project-by-project approach, and outlines species-specific objectives and criteria for the conservation of the Santa Ana sucker. In the final revised critical habitat rule for the Santa Ana sucker, we will analyze the benefits of inclusion and exclusion of this area from critical habitat under section 4(b)(2) of the Act. We encourage public comment regarding our consideration of areas in Subunits 1B and 1C for exclusion (see **Public Comments** section above).

Required Determinations—Amended

In our proposed revised rule published in the **Federal Register** on December 9, 2009 (74 FR 65056), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (*Regulatory Planning and Review*), EO 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 12630 (Takings), the Paperwork Reduction Act, the National Environmental Policy Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Our analysis for determining whether the proposed designation would result in a significant economic impact on a substantial number of small entities follows. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed revised designation of critical habitat for Santa Ana sucker would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. If we finalize this proposed revised critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Incremental impacts to small entities may occur as a result of a required consultation under section 7 of the Act. Additionally, even in the absence of a Federal nexus, incremental impacts may still result because, for example, a city may request project modifications due to the designation of critical habitat via its review under the California Environmental Quality Act (CEQA). Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process due to the current status of Santa Ana sucker under the Act as a threatened species.

In the DEA, we evaluate the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revision to critical habitat for Santa Ana sucker. The DEA is based on the estimated incremental impacts associated with the proposed rulemaking as described in Chapters 3 through 7 of the DEA. The SBREFA analysis evaluates the potential for economic impacts related to several categories, including: (1) Water management, (2) residential and commercial development, and (3) transportation activities (IEC 2010, p. A-7). On the basis of our draft analysis, we have determined that no incremental impacts attributed to water management or transportation activities are expected to be borne by entities that meet the definition of small entities (IEC 2010, p. A-7–8). Potential impact in these sectors are expected to be borne by water management agencies, States, Federal agencies and other governmental non-governmental agencies that are not considered to be small business entities. However, the DEA concludes that the proposed rulemaking potentially may affect small entities in the residential and commercial development sector (IEC 2010, p. A-8). There are 25,300 businesses involved in development activities within San Bernardino, Riverside, Orange, and Los Angeles Counties and, of these, 24,800 are considered small. The DEA estimates that 67 small entities may be affected, with estimated revenues of $2.8 million per entity. Assuming impacts are shared equally among entities, the analysis concludes that the annualized impacts may represent approximately 0.16 percent of annual revenues. However, this assumption is likely to overstate the actual impacts to small development firms because some or all of the costs of Santa Ana sucker conservation efforts to development activities may ultimately be borne by current landowners in the form of reduced land values. Many of these landowners may be individuals or families that are not legally considered to be businesses. No NAICS code exists for landowners, and the SBA does not provide a definition of a small landowner.

To evaluate whether this proposed rule will result in a significant effect on a substantial number of small business entities, we first determined whether the proposed regulation will likely affect a substantial number of entities. Guidance from the Small Business

Administration (SBA) indicates that if "more than just a few" small business entities in a given sector are affected by a proposed regulation, then a substantial number of entities may be affected. "More than just a few" is not defined, and SBA suggests that a case-by-case evaluation be done. The DEA prepared for the proposed designation of critical habitat for the Santa Ana sucker predicts that 67 out of 24,800 small business entities in the residential and commercial development sector may be affected by the rule. Adopting a conservative approach in our analysis, we conclude that 67 entities equate to "more than just a few" small entities and, therefore, a substantial number of small business entities may be affected by the rule.

Next, we determined if the proposed revised designation of critical habitat would result in a significant economic effect on those 67 small business entities. There is no specific guidance under the RFA as to what constitutes a significant effect or at what scale the effect is measured – nationally or regionally. In implementing the RFA, the Service evaluates potential effects on a regional or local scale which, in most instances, results in a more conservative analysis. For the proposed revised critical habitat rule the Service relied on a threshold of three percent of annual revenues to evaluate whether the potential economic impacts of the designation on small business entities in the residential and commercial development sector may be significant. The DEA estimates that the annualized impacts of the proposed revised rule on the 67 potentially affected entities would be of 0.16 percent of their annual sales revenue. We have determined that a potential economic impact of a fraction of one percent of annual revenues is not significant.

In summary, we considered whether the proposed revised critical habitat designation would result in a significant economic impact on a substantial number of small entities. On the basis of our draft economic analysis, we determined that there would be a substantial number of small business entities potential affected by the proposed designation (67 entities), but that the estimated economic effect of less than one percent of annual revenues is not significant. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat for Santa Ana sucker would not have a significant economic impact on a substantial number of small entities.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. Based on an analysis conducted for this designation, we determined that the final designation of critical habitat for Santa Ana Sucker is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. First, it excludes "a condition of federal assistance." Second, it also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed revised designation of critical habitat for Santa Ana sucker, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for development, transportation, and flood control projects activities; however, these are not expected to affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, California Department of Transportation, California Department of Fish and Game, Riverside County, Riverside County Flood Control and Water Conservation District, and City of Perris, which are not considered small governments. Consequently, we do not believe that the revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this notice are the staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 74 FR 65056, December 9, 2009, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the Santa Ana sucker *(Catostomus santaanae)* in § 17.95(e), which was proposed to be revised on December 9, 2009, at 74 FR 65056, is proposed to be further amended by revising paragraph (e)(6)(i)(B) as follows:

a. By revising the introductory text of paragraph (e)(6)(i)(B);

b. By removing the map of subunit 1A; and

c. By adding a new map of subunit 1A in its place, as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Santa Ana sucker *(Catostomus santaanae)*

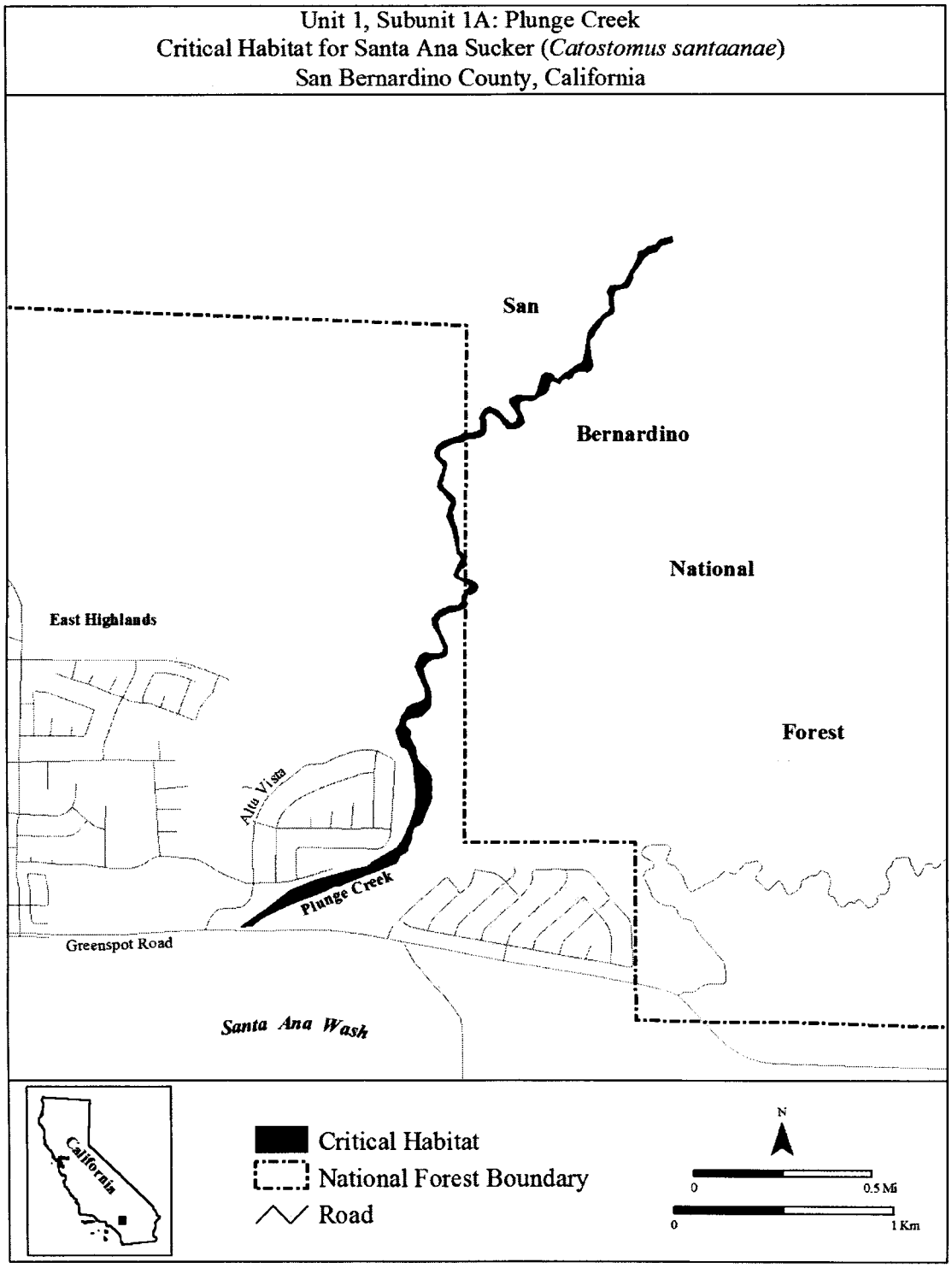
* * * * *

(6) * * *

(i) * * *

(B) Map of Subunit 1A (Plunge Creek) follows:

BILLING CODE 4310–55–S



* * * * *

Dated: June 18, 2010

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–15953 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–AY42

Fisheries of the Exclusive Economic Zone Off Alaska; Central Gulf of Alaska License Limitation Program; Amendment 86

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

ACTION: Notification of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 86 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) to NMFS for review. If approved, Amendment 86 would add a Pacific cod endorsement on licenses issued under the license limitation program (LLP) if those licenses have been used on vessels that meet minimum recent landing requirements using non-trawl gear, commonly known as fixed gear. This proposed action would exempt vessels that use jig gear from the requirement to hold an LLP license, modify the maximum length designation on a specific set of fixed gear LLP licenses, and allow entities representing specific communities to receive a limited number of fixed gear licenses with Pacific cod endorsements for use on vessels designated by entities representing the communities. This proposed action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Comments on the amendment must be received on or before August 31, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648–AY42," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at *http://www.regulations.gov*.
- Mail: P. O. Box 21668, Juneau, AK 99802.
- Fax: 907–586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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 (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 86 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, and the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) prepared for Amendment 86 are available from the NMFS Alaska website at *http://www.alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 86 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) is available for public review and comment.

The groundfish fisheries in the exclusive economic zone of the Gulf of Alaska are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act.

The license limitation program (LLP) for Gulf of Alaska (GOA) groundfish fisheries was recommended by the North Pacific Fishery Management Council (Council) in June 1995 as Amendment 41 to the FMP. NMFS published a final rule to implement the LLP on October 1, 1998 (63 FR 52642), and the LLP was implemented on January 1, 2000.

The LLP for groundfish established specific criteria that must be met to allow a person to fish in federally managed groundfish fisheries. Under the LLP, NMFS issued LLP licenses to vessel owners based on the catch history of their vessels in federal groundfish fisheries during the mid 1990s. LLP licenses: (1) endorse fishing activities in specific regulatory areas in the GOA; (2) restrict the length of the vessel, the maximum length overall (MLOA), on which the LLP license may be used; (3) designate the fishing gear (trawl or non-trawl gear) that may be used on a vessel; (4) designate the type of vessel operation permitted (catcher vessel or catcher/processor); and (5) are issued so that the endorsements for specific regulatory areas, gear designations, or vessel operational types are non-severable from the LLP license (i.e., once issued, the components of the LLP license cannot be transferred independently). By creating LLP licenses with these characteristics, the Council and NMFS limited the ability of a person to transfer an LLP license that was derived from the historic fishing activity of a vessel and use it on another vessel in a manner that could expand fishing capacity.

In 2000, NMFS issued LLP licenses endorsed for trawl gear, and over 800 licenses for non-trawl gear for use in the GOA. Non-trawl gear is commonly known as "fixed gear" which includes hook-and-line, pot, and jig gear. A vessel owner received an LLP license endorsed for the Southeast Outside District (SEO), Central Gulf of Alaska which includes the West Yakutat District (CG), or Western Gulf of Alaska (WG) regulatory area if that vessel met specific landing requirements in that specific regulatory area. The minimum landing requirements differed depending on the regulatory area, size of the vessel, and the operational type of the vessel.

In late 2007, the Council began a process of reviewing the use of LLP licenses endorsed for fixed gear in the GOA. This review was initiated primarily at the request of active GOA fixed gear fishery participants who were concerned that vessel owners holding fixed gear-endorsed LLP licenses that had not been assigned to vessels actively fishing could resume fishing under the licenses in the future and adversely affect their fishing operations. Specifically, fixed gear participants were concerned about the potential effects of additional effort in the GOA Pacific cod fishery that could increase competition and overcapacity in the

fishery. This overcapacity could have adverse affects on management of the fisheries if additional effort in the fishery made it more difficult for NMFS to close fisheries in a timely manner, thereby exceeding the total allowable catch for a fishery. Pacific cod is the primary species targeted by vessels using fixed gear in the GOA. During the process of developing this proposed action, the Council also received input from the public requesting modification to the LLP to establish minimum landing requirements that must be met to allow a vessel to continue to participate in the Pacific cod fixed gear fisheries in the GOA. In April 2009, after more than a year of review and extensive public comment, the Council recommended modifications to the LLP to revise eligibility criteria for fixed gear endorsements on LLP licenses.

Proposed Amendment 86 would implement four distinct actions. First, a Pacific cod fishery endorsement would be added to LLP licenses based on landings in the directed Pacific cod fishery in the GOA from 2002 through December 8, 2008. NMFS would assign Pacific cod endorsements that are designated for (1) pot, hook-and-line, and jig gear; (2) specific GOA regulatory areas (i.e., CG and WG); (3) specific operational types (i.e., catcher vessels or catcher/processors); and (4) specific landing requirements based on the MLOA designated on the LLP license (e.g., different landing requirements would need to be met for LLP licenses with an MLOA of under 60 feet than those equal to or greater than 60 feet). This proposed action does not include modifications to SEO endorsed licenses because fishing in this regulatory area is currently limited and the risk of additional effort in the fishery from latent fixed gear LLP license holders was deemed to be unlikely by the Council. The landing criteria selected would represent a minimal, but sufficient, amount of participation in the Pacific cod fishery to indicate some level of dependence on the fishery. An exemption from catcher/processor landing requirements would be provided only for LLP licenses that met the following criteria: (1) they have a catcher/processor endorsement; (2) they were assigned to vessels that did not meet minimum landing requirements to qualify for a Pacific cod endorsement for catcher/processors using hook-and-line gear in either regulatory area where those LLP licenses are endorsed; and (3) they were assigned to vessels that participated in industry efforts to reduce halibut prohibited species catch (PSC) in the directed Pacific cod fishery in the GOA during 2006, 2007, or 2008. This exemption would allow LLP license holders to receive a Pacific cod endorsement if they chose not to use their vessels in the GOA during 2006, 2007, or 2008 to minimize halibut PSC through voluntary private contractual arrangements.

Second, Amendment 86 would exempt vessels using jig gear from the requirement to be assigned an LLP license provided those vessels did not use more than five jigging machines, more than one line per machine, and more than 30 hooks on any one line. This exemption from the requirements of the LLP is intended to provide a limited opportunity for entry level vessel operators to participate in the federal fisheries without incurring the obligations and costs of the LLP. Pacific cod is the species most frequently caught by jig gear vessels, and it represents a small portion of the overall TAC, and few of the vessels using jig gear fish in federal waters.

Third, Amendment 86 would modify the MLOA of an LLP license if it is assigned a Pacific cod endorsement. The first modification would reduce the MLOA of LLP licenses that are greater than 60 feet in length, but that have been consistently assigned to a vessel under 60 feet in length overall from 2002 through December 8, 2008; and (2) the vessel to which that LLP license was assigned did not meet the landing thresholds applicable for an LLP license with an MLOA greater than or equal to 60 feet, but did meet the landing thresholds applicable to LLP licenses with an MLOA under 60 feet. The second modification would allow a small increase in MLOA up to 50 feet for a limited number of LLP licenses that had been assigned to smaller sized vessels during the qualifying period for the proposed action. These modifications would allow owners of smaller vessels to continue to use LLP licenses historically associated with their vessels and would not substantially increase fishing capacity in the fishery.

Fourth, Amendment 86 would allow entities representing specific communities in the WG and CG to request a limited number of non-transferrable Pacific cod endorsed LLP licenses to be endorsed for hook-and-line or pot gear with an MLOA of less than 60 feet. Once the community entity receives an LLP license, the community entity may assign that LLP license for use on a vessel designated by the entity. The number of LLP licenses and the specific gear type of those licenses would be limited for each community to ensure that approximately the same number of LLP licenses known to be held by community residents would be eligible for a Pacific cod endorsement. LLP licenses issued to a community would have an MLOA of 60 feet to limit the potential that communities could assign those LLP licenses to large vessels with potentially greater harvest capacity than the vessels traditionally used by residents of these communities.

The RIR/IRFA prepared for this action describes the costs and benefits of the proposed amendment (see ADDRESSES for availability). All of the directly regulated entities would be expected to benefit from this action relative to the status quo because the proposed amendment would limit the potential for participants without historic or recent participation to enter the Central and Western GOA Pacific cod fisheries.

Public comments are being solicited on proposed Amendment 86 to the GOA FMP through the end of the comment period (see DATES). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 86, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 86 to be considered in the approval/disapproval decision on Amendment 86. All comments received by the end of the comment period on Amendment 86, whether specifically directed to the GOA FMP amendment or the proposed rule, will be considered in the FMP approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: June 29, 2010.

Carrie Selberg,

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

[FR Doc. 2010–16195 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–AY48

Fisheries of the Exclusive Economic Zone Off Alaska; Skates Management in the Bering Sea and Aleutian Islands Management Area; Groundfish Annual Catch Limits for the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska

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

ACTION: Notification of availability of fishery management plan amendments; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendments 95 and 96 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI)-as well as Amendment 87 to the FMP for Groundfish of the Gulf of Alaska (GOA)-to NMFS for review. If approved, Amendment 95 would move skates from the other species category to the target species category in the FMP for Groundfish of the BSAI. Amendments 96 and 87 would revise the FMPs to meet the National Standard 1 guidelines for annual catch limits and accountability measures. These amendments would move all remaining species groups from the "other species" category to the "target species" category, remove the "other species" category from the FMPs, establish an ecosystem component category, and describe the current practices for groundfish fisheries management in the FMPs, as required by the guidelines. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs and other applicable laws.

DATES: Comments on Amendments 95, 96, and 87 must be received by August 31, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–AY48, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov*.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendments 95, 96, and 87 to the FMPs, the Environmental Assessments (EAs), and the Regulatory Impact Review (RIR) prepared for this action are available from the Alaska Region NMFS website at *http://www.alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendments 95, 96, and 87 to the FMPs are available for public review and comment.

Amendment 95 was unanimously adopted by the Council in October 2009. If approved by the Secretary, this amendment would move the skates group from the "other species" category to the "target species" list in the BSAI, allowing the management of skates as a target species complex or as individual skates species. The FMP currently provides for setting harvest specifications either for a complex of several species or for each individual species within the "target species" group through the stock assessment and Council process, allowing for fishery management of individual species. The FMP currently provides for setting harvest specifications that apply to all species identified in the "other species" category in the aggregate. NMFS trawl survey and catch information show that 15 skate species occur in the BSAI. In the Bering Sea, the most abundant species is the Alaska skate, while in the Aleutian Islands the most abundant species is the whiteblotched skate.

Amendments 96 and 87 wereunanimously adopted by the Council in April 2010. If approved by the Secretary, these amendments would revise the FMPs to meet the Magnuson-Stevens Act requirements to establish annual catch limits (ACLs) and accountability measures (AMs) and conform to the National Standard 1 (NS1) guidelines (74 FR 3178, January 16, 2009). The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), which was signed into law on January 12, 2007, included new requirements regarding ACLs and AMs, which reinforce existing requirements to prevent overfishing and rebuild fisheries. NMFS revised the NS1 guidelines at 50 CFR 600.310 to integrate these new requirements with existing provisions related to overfishing, rebuilding overfished stocks, and achieving optimum yield. Section 104(a)(10) of the MSRA, codified as section 303(a)(15) of the Magnuson-Stevens Act, requires FMPs to establish mechanisms for specifying ACLs, including AMs. The provision states that FMPs shall "establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability." ACLs and AMs are required by fishing year 2011 in fisheries where overfishing is not occurring. None of the Alaska groundfish fisheries have overfishing occurring, and therefore the groundfish ACLs and AMs must be implemented by January 1, 2011.

Skate, shark, sculpin, and octopus groups are currently managed as a complex in the "other species" category in the BSAI. In the GOA, shark, sculpin, octopus, and squid groups are currently managed as a complex in the "other species" category. Each year, the overfishing limit (OFL), acceptable biological catch (ABC), and total allowable catch (TAC) are specified for the "other species" category as a whole

in each management area. National Standard 1 guidelines require species managed in a stock complex to have similar life histories, but the current "other species" category combines the management of short-lived invertebrates (squids and octopuses) with long-lived fish (sharks and skates).

If approved, Amendment 95 would move BSAI skates from the "other species" category to the "target species" category and require annual specification of OFL, ABC, and TAC for the skate group as a whole or for individual skate species. Amendments 96 and 87 would remove the remaining species groups from the "other species" categories in each FMP and place these groups in the "target species" category. The "other species" category would be removed from the FMPs. Managing skates, sculpins, sharks, octopuses, and squids as separate groups or as individual species, each with its own OFL, ABC, ACL, and TAC, would enhance NMFS' ability to control the harvest of these species groups based on the best available scientific information, and would reduce the potential for overfishing these groups. The susceptibility of skates to fishing pressure has been well documented in the EA for Amendment 95 (see ADDRESSES). While no target fishery has been developed yet for groups currently in the "other species" category, without the proposed amendments, the potential exists for the entire "other species" TAC to be taken as the harvest of a single group. Such a harvest could represent an unsustainable level of fishing mortality for that group, even though the harvest may not exceed the aggregate OFL for all groups in the "other species" category. Amendment 63 to the FMP for Groundfish of the GOA was a similar precautionary measure that removed skates from the "other species" category in response to a rapidly developing directed fishery (69 FR 26313, May 12, 2004).

A retrospective analysis in the EA for Amendments 96 and 87 of past shark and octopus harvest compared to the 2010 ABCs and OFLs showed that potential harvests of these species may exceed ABCs and OFLs without NMFS inseason management to control incidental catch (see ADDRESSES). If the TACs for these groups are insufficient to support a directed fishery, a vessel's harvest of sharks and octopuses would be limited to a maximum retainable amount, representing a percentage of the amount of "target species" harvested by that vessel. If closing directed fishing for sharks and octopuses is not sufficient to prevent reaching the ABCs and OFLs for these groups, NMFS inseason management would use observed catch, fish ticket, and vessel monitoring system data to determine the most effective actions to prevent overfishing and minimize adverse economic impacts to fishing communities, to the extent practicable. Controlling incidental harvests of BSAI and GOA octopuses may require temporary closure of areas of high octopus retention to Pacific cod pot gear vessels. If necessary, BSAI and GOA shark incidental harvest would likely be constrained by temporarily restricting harvesting locations for hook-and-line sablefish and Pacific cod fisheries and the trawl pollock fishery. Because BSAI and GOA octopus may be sold, estimated decreased revenue is $110,000 to $155,000 based on the retrospective harvest and inseason management methods. Increased costs may occur if harvest locations are restricted and fishing operations have to travel further to reach alternative fishing grounds, or if they must fish in areas with lower catch-per-unit of effort (and thus incur increased costs of fishing effort to catch the same amount of fish). Decreased revenues may occur if increased travel or fishing time requirements makes it impossible to catch the same amount of fish in the time available. Decreased revenues also may occur if shifts in fishing activity also make it harder to deliver a quality product.

Specific changes to the FMPs under Amendments 96 and 87 include:

- Identifying "target species" as stocks in the fishery and establishing an "ecosystem component" category that is comprised of stocks that are not in the fishery and would contain "prohibited species" and "forage fish" species;
- Moving the species groups managed in the "other species" category to the "target species" category and eliminating the "other species" category;
- Removing the "nonspecified species" category; and
- Providing housekeeping changes that add text to the FMPs to describe:
- Specification of minimum stock size thresholds (MSSTs) or a reasonable proxy;
- Measures that are taken if and when a stock drops below MSST;
- AMs that are employed to prevent ACLs from being exceeded and those that will be triggered if an ACL is exceeded;
- Ecological factors that are considered by the Council in reducing optimum yield from maximum sustainable yield;
- How the tier levels for ABC and OFL are based on the scientific knowledge about the stock/complex, the scientific uncertainty in the estimate of OFL, and any other scientific uncertainty; and
- How the stock assessments account for all catch.

Details on each of these proposed revisions to the FMPs are contained in the EA and its appendix for Amendments 96 and 87 (see ADDRESSES).

Public comments are being solicited on proposed Amendments 95, 96, and 87 to the FMPs through the end of the comment period stated (see DATES). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that partially implements Amendments 95, 96, and 87 following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendments 95, 96, and 87 in order to be considered in the approval/disapproval decision on these amendments. All comments received by the end of the comment period on Amendments 95, 96, and 87, whether specifically directed to the FMPs or to the proposed rule, will be considered in the approval/disapproval decision on the amendments. To be considered, comments must be received, not just postmarked or otherwise transmitted, by 5 p.m., Alaska time, on the last day of the comment period.

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

Dated: June 29, 2010.

Carrie Selberg,

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

[FR Doc. 2010–16197 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 127
Friday, July 2, 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

Commodity Credit Corporation

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporations (CCC) intention to request an extension for a currently approved information collection in support of the CCC Facility Guarantee Program (FGP) based on re-estimates.

DATES: Comments on this notice must be received by August 31, 2010.

ADDITIONAL INFORMATION OR COMMENTS: Contact P. Mark Rowse, Director, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1035, Washington, DC 20250–1025; or by telephone (202) 720–0624; or by e-mail: *mark.rowse@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: CCC Facility Guarantee Program.

OMB Number: 0551–0032.

Expiration Date of Approval: November 30, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The primary objective of the FGP is to expand U.S. agricultural exports by improving agricultural infrastructure in importing countries. The FGP makes available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. goods and services on credit terms. The CCC has not yet made announcements for the FGP this year. The FGP information collection is similar to those for the Export Credit Guarantee Program (GSM–102) (OMB control number 0551–0004). The information collection for the FGP differs primarily from GSM–102 as follows:

(1) The applicant, in order to receive a payment guarantee, provides information evidencing that the exported goods and services used to develop improved infrastructure will primarily benefit exports of U.S. agricultural commodities and products; and

(2) The applicant is required to certify that the value of non-U.S. components of goods and services is less than 50 percent of the contract value covered under the payment guarantee.

In addition, each exporter and exporter's assignee (U.S. financial institution) must maintain records on all information submitted to CCC and in connection with sales made under the FGP. The information collected is used by CCC to manage, plan, evaluate and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 12 hours per response.

Respondents: Exporters of U.S. agricultural commodities, banks or other financial institutions, producer associations, export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 5 per annum.

Estimated Number of Responses per Respondent: 6 per annum.

Estimated Total Annual Burden of Respondents: 360 hours.

Requests for Comments: Send comments regarding: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to P. Mark Rowse, Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1025, Washington, DC 20250; or by e-mail to: *mark.rowse@usda.gov,* or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

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: June 25, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–16109 Filed 7–1–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Collaborative Forest Landscape Restoration Program Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Collaborative Forest Landscape Restoration Program (CFLRP) Advisory Committee will meet in Washington, DC. The purpose of the meeting is to review proposed CFLRP projects and make recommendations for project selection to the Secretary of Agriculture.

DATES: The meeting will be held July 20–22, 2010.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024. Written comments should be sent to USDA Forest Service, Forest Management, Mailstop-1103, 1400 Independence Avenue, SW., Washington, DC 20250–1103. Comments may also be sent via e-mail to *btimko@fs.fed.us* or via facsimile to 202–205–1045.

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 USDA

Forest Service, Forest Management, 201 14th Street, SW., Yates Building, Washington, DC 20024–1103. Visitors are encouraged to call ahead to 202–205–1688 to facilitate entry into the Forest Service building.

FOR FURTHER INFORMATION CONTACT: Bill Timko, Deputy Director, Forest Management, 202–205–1688.

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. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring Collaborative Forest Landscape Restoration Program matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 19, 2010, will have the opportunity to address the Council at those sessions.

Dated: June 28, 2010.

Thomas A. Peterson,

Acting Associate Deputy Chief, NFS.

[FR Doc. 2010–16110 Filed 7–1–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee will meet in Winona, Missouri. 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 initiate review of proposed forest management projects so that recommendations may be made to the Forest Service on which should be funded through Title II of the Secure Rural Schools and Community Self Determination Act of 2000, as amended in 2008.

DATES: The meeting will be held Thursday, July 15, 2010, 6:30 p.m.

ADDRESSES: The meeting will be held at the Twin Pines Conservation Education Center located on U.S. Highway 60, Rt 1, Box 1998, Winona, MO. Written comments should be sent to David Whittekiend, Designated Federal Official, Mark Twain National Forest, 401 Fairgrounds Road, Rolla, MO. Comments may also be sent via e-mail to *dwhittekiend@fs.fed.us* or via facsimile to 573–364–6844.

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 Mark Twain National Forest Supervisors Office, 401 Fairgrounds Road, Rolla, MO. Visitors are encouraged to call ahead to 573–341–7404 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Hall, Eleven Point Resource Advisory Committee Coordinator, Mark Twain National Forest, 573–341–7404.

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: The meeting will begin to focus on the potential projects that the RAC will be reviewing. Persons who wish to bring related matters to the attention of the Committee may file written statements with David Whittekiend (address above) before or after the meeting.

Dated: June 28, 2010.

David Whittekiend,

Forest Supervisor.

[FR Doc. 2010–16130 Filed 7–1–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX14

Marine Mammals; File No. 15511

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that SeaWorld, LLC., 9205 South Center Loop, Suite 400 Orlando, FL 32819, has applied in due form for a permit to import one short-finned pilot whale (*Globicephala macrorhynchus*) for public display.

DATES: Written, telefaxed, or e-mail comments must be received on or before August 2, 2010.

ADDRESSES: The application 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

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments or requests for a public hearing on these applications should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include File No. 15511 in the subject line of the email comment. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

SeaWorld, LLC. requests authorization to import one male short-finned pilot whale to SeaWorld California for the purpose of public display. This animal was rescued by the Southern Caribbean Cetacean Network in Curacao, Netherlands Antilles, and was imported to SeaWorld California on January 4, 2010, under Cooperative Agreement No. 2009–02. The animal has been determined to be non-releaseable to the wild and will be maintained at SeaWorld California for public display. SeaWorld California: (1) is open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the Alliance of Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 93–C–0069, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. §§ 2131 - 59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated

that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the applications.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 28, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–16193 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX07

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFP)

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an EFP application contains all of the required information and warrants further consideration. This EFP would allow one commercial fishing vessel to harvest, retain, and bring to port, six egg-bearing, legal-sized, female American lobster (lobster) taken from conventional lobster traps in between Block and Hudson Canyons in Lobster Management Area 3 during the summer of 2010.

The participating vessel will be exempted from the prohibitions relative to the possession, transportation and shipping of egg-bearing lobsters until the six egg-bearing lobsters are obtained for use by the researchers. The lobsters are needed for the purpose of studying lobster larval settlement by comparing settlement behavior of inshore and offshore lobster populations being conducted by Boston University in conjunction with the Woods Hole Oceanographic Institution.

Further review and consultation may be necessary before a final determination is made to issue an EFP. NMFS announces that the Assistant Regional Administrator proposes to issue an EFP and, therefore, invites comments on the issuance of this EFP.

DATES: Comments must be received on or before July 19, 2010.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: *NERO.EFP@noaa.gov*. Include in the subject line "Comments on BU Lobster Larval Settlement EFP."
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on BU Lobster Larval Settlement EFP."
- Fax: (978) 281–9117.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Management Specialist, 978–281–9144, *peter.burns@noaa.gov*.

SUPPLEMENTARY INFORMATION: Boston University, in conjunction with the Woods Hole Oceanographic Institute, submitted a complete application for an EFP on May 28, 2010, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would authorize one vessel to harvest, retain, and bring to port, six egg-bearing, legal-sized, female lobsters.

The researchers are studying settlement behavior of larval lobsters. Recent genetic work indicates that lobster populations which are relatively close in proximity (for example, only 30 miles apart), are morphologically and genetically distinct from one another. The researchers believe settlement of the larvae may play a role in maintaining this population structure and have planned experiments to compare settlement behavior of different larval stages between inshore and offshore populations.

The researchers request to obtain six egg-bearing, legal-sized female lobsters from an offshore commercial lobster trap vessel during the summer of 2010. The lobsters will be harvested using standard lobster traps which meet the Atlantic Large Whale Take Reduction Plan gear specifications, and will be harvested from conventional traps set between Block and Hudson Canyons (NMFS Statistical Areas 537, 616, and 613) in Lobster Management Area 3. All six egg-bearing lobsters will likely be obtained over the course of a single lobster trawl comprised of about 20–40 traps set for approximately one week. It is expected that the vessel will be able to obtain all the lobsters needed under this exemption during one multi-day fishing trip during July 2010. The researchers will take possession of the egg-bearing lobsters when the vessel reaches port at the end of the fishing trip during which the lobsters were harvested.

Obtaining the egg-bearing lobster is most effectively done through coordinating with a commercial lobster vessel since lobsters representative of the offshore population are needed to conduct the study. The participating vessel will be exempted from the prohibitions in §§ 697.20(d)(3) and (4) relative to the possession, transportation and shipping of egg-bearing lobsters until the six egg-bearing lobsters are obtained for use by the researchers.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would not be covered by the exemption and would have to otherwise comply with all applicable laws.

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

Dated: June 29, 2010.

James P. Burgess

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

[FR Doc. 2010–16194 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–951]

Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 2, 2010.

SUMMARY: The Department of Commerce ("the Department") has determined that certain woven electric blankets ("woven electric blankets") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV") as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The final dumping margins for this investigation are listed in the "Final Determination Margins" section below. The period covered by the investigation is October 1, 2008 through March 31, 2009 (the "POI").

FOR FURTHER INFORMATION CONTACT: Howard Smith or Drew Jackson, 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) 482–5193 and 482–4406, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published its preliminary determination of sales at LTFV on February 3, 2010.[1] Between February 1, 2010 and February 12, 2010, the Department conducted a verification of the sole respondent in this investigation, Hung Kuo Electronics (Shenzhen) Company Limited ("Hung Kuo") and its U.S. affiliate, Biddeford Blankets LLC ("Biddeford Blankets"). *See* the "Verification" section below for additional information.

On March 5, 2010, Hung Kuo submitted a written request that the Department issue revised cash deposit instructions to U.S. Customs and Border Protection ("CBP") indicating that Hung Kuo Electronics (Shenzhen) Company Limited can also be translated as Ongain Electronics (Shenzhen) Company Limited. On March 30, 2010, the Department granted Hung Kuo's request and subsequently issued revised cash deposit instructions to CBP.[2]

In response to the Department's invitation to comment on the *Preliminary Determination,* on April 1, 2010, Jarden Consumer Solutions (hereinafter, "Petitioner") and Hung Kuo filed case briefs. Petitioner and Hung Kuo filed rebuttal briefs on April 6, 2010. On April 20, 2010, the Department rejected rebuttal surrogate value information, case briefs, and rebuttal briefs filed by Hung Kuo because they contained untimely filed new factual information, including the 2008–2009 financial statement of Bawa Woollen and Spinning Mills Limited ("Bawa"), an Indian producer of non-electric blankets, which Hung Kuo proposed as a surrogate value source for manufacturing overhead, selling, general, and administrative expenses, and profit. Hung Kuo refiled versions of these submissions without the new factual information on April 22, 2010. On May 7, 2010, Hung Kuo submitted a written request that the Department reconsider its decision to reject the 2008–2009 Bawa financial statement. On May 26, 2010, the Department notified Hung Kuo that it would not accept the untimely filed 2008–2009 Bawa statement.

On June 9, 2010, the Department notified interested parties that it would be reconsidering its valuation of the labor wage rate in this investigation, as a result of the recent decision in *Dorbest Limited et al.* v. *United States,* 2009–1257, –1266, issued by the United States Court of Appeals for the Federal Circuit ("CAFC") on May 14, 2010. On June 9, 2010,[3] and June 11, 2010,[4] the Department placed export data, which the Department was considering in connection with the valuation of the labor wage rate, on the record of this investigation and invited interested parties to comment on the narrow issue of the labor wage value in light of the CAFC's decision. On June 16, 2010, Hung Kuo and Petitioner submitted comments on the export data. On June 21, 2010, the Department released additional information to interested parties.[5]

Analysis of Comments Received

All of the issues raised in the case and rebuttal briefs submitted in this investigation are addressed in the "Issues and Decision Memorandum for the Final Determination" dated June 25, 2010, which is hereby adopted by this notice ("Issues and Decision Memorandum"). Appendix I to this notice contains a list of the issues addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum, which is a public document, is on file in the Central Records Unit ("CRU") at the Main Commerce Building, Room 1117, and is accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received, we have made the following changes to our preliminary determination:

1. We have based Hung Kuo's final margin on partial adverse facts available ("AFA").
2. Pursuant to a recent decision by the CAFC, we have calculated a revised hourly wage rate to use in valuing Hung Kuo's reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.[6]
3. In our final margin calculation we have revised the unit of measure conversion for certain inputs reported by Hung Kuo and limited the deduction of ocean freight expenses to the appropriate sales.

Scope of Investigation

The scope of this investigation covers finished, semi-finished, and unassembled woven electric blankets, including woven electric blankets commonly referred to as throws, of all sizes and fabric types, whether made of man-made fiber, natural fiber or a blend of both. Semi-finished woven electric blankets and throws consist of shells of woven fabric containing wire. Unassembled woven electric blankets and throws consist of a shell of woven fabric and one or more of the following components when packaged together or

[1] *See Certain Woven Electric Blankets From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 5567 (February 3, 2010) ("*Preliminary Determination*").

[2] *See* Memorandum to John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, concerning "Request to Modify Customs Instructions, dated March 30, 2010.

[3] *See* Memorandum to the File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Export Data," dated June 9, 2010.

[4] *See* Memorandum to the File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Export Data," dated June 11, 2010.

[5] *See* Memorandum to the File, through Howard Smith, Program Manager, AD/CVD Operations, Office 4, concerning, "Wage Data," dated June 11, 2010.

[6] *See* Issues and Decision Memorandum at Comment 13.

in a kit: (1) wire; (2) controller(s). The shell of woven fabric consists of two sheets of fabric joined together forming a "shell." The shell of woven fabric is manufactured to accommodate either the electric blanket's wiring or a subassembly containing the electric blanket's wiring (*e.g.,* wiring mounted on a substrate).

A shell of woven fabric that is not packaged together, or in a kit, with either wire, controller(s), or both, is not covered by this investigation even though the shell of woven fabric may be dedicated solely for use as a material in the production of woven electric blankets.

The finished, semi-finished and unassembled woven electric blankets and throws subject to this investigation are currently classifiable under subheading 6301.10.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, only the written description of the scope is dispositive.

Scope Comments

On August 3, 2009, Perfect Fit Industries ("Perfect Fit"), a U.S. importer of knitted electric blankets, submitted comments on the scope of this investigation. Perfect Fit requested that the Department amend the scope of this investigation to include the following two statements: (1) "knitted electric blankets in any form, whether finished, semi-finished, or assembled, are not within the scope of this investigation;" and (2) electric mattress pads in any form, whether finished, semi-finished, or assembled, are not within the scope of this investigation." Perfect Fit argued that this exclusionary language was warranted because Petitioner's counsel acknowledged that knitted electric blankets and electric mattress pads are not within the scope of the U.S. International Trade Commission's ("ITC") investigation of woven electric blankets from the PRC.[7] No other parties commented on this issue.

The Department finds that Perfect Fit's suggested scope amendment is unnecessary and has made no revision to the scope of this investigation for the final determination. We note that the scope of this investigation explicitly covers woven electric blankets, and find that the addition of Perfect Fit's proposed exclusionary language to be superfluous and unwarranted.

Verification

As provided in section 782(i) of the Act, we conducted verifications of Hung Kuo's information.[8] In conducting the verifications, we used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by Hung Kuo and Biddeford Blankets.

Adverse Facts Available

Section 776(a) of the Act provides that subject to section 782(d) of the Act, the Department may base its determinations on facts otherwise available if: (1) necessary information is not available on the record of a proceeding; or (2) an interested party (A) Withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided in section 782(i) of the Act. Section 782(d) of the Act allows the Department, subject to section 782(e) of the Act, to disregard all or part of a deficient or untimely response from a respondent.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used by the Department without undue difficulties.

Section 776(b) of the Act authorizes the Department to apply an adverse inference to the facts otherwise available with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information.

We find that Hung Kuo: (1) withheld actual consumption quantities for all electronic controller parts which had been requested by the Department; and (2) reported factors of production ("FOP") data for all electronic controller parts, certain market economy expenses relating to ocean freight, and certain market economy purchase quantity data that could not be verified. Therefore, pursuant to sections 776(a)(2)(A) and (D) of the Act, we find that the use of facts otherwise available for these items is warranted.

Furthermore, in selecting from among the facts otherwise available, we have determined, pursuant to section 776(b)(2) of the Act, that it is appropriate to apply an adverse inference because Hung Kuo failed to cooperate by not acting to the best of its ability to comply with a request for information. Specifically, Hung Kuo made misstatements to the Department regarding its methodology for reporting FOP data for electronic controller parts and Hung Kuo failed to provide verifiable information concerning certain ocean freight expenses, and the quantity of heating wire and integrated circuits purchased from its market economy suppliers. The information sought by the Department regarding Hung Kuo's ocean freight expenses and market economy purchases was within Hung Kuo's control and could have been reported to the Department. Accordingly, we have determined that Hung Kuo failed to cooperate by putting forth its maximum effort to obtain the data and, hence, has not acted to the best of its ability to comply with a request for information. Therefore, we have determined that it is appropriate to use adverse inferences in selecting the facts otherwise available on which to base Hung Kuo's dumping margin. Accordingly, we applied adverse facts available to the aforementioned data. Specifically, as adverse facts available we selected: (1) Electronic controller part consumption data obtained at verification;[9] (2) the highest appropriate per-unit value on the record of this proceeding to value Hung Kuo's inputs which were sourced, in part, from market economy suppliers,[10] and (3) record evidence of ocean-freight expenses incurred by Hung Kuo.[11] For further discussion concerning the Department's analysis, see Comment 1 of the Issues and Decision Memorandum accompanying this notice.

Surrogate Country

In the *Preliminary Determination,* pursuant to section 773(c) of the Act, we selected India as the appropriate surrogate country noting that it was on

[7] *See* Perfect Fit's August 3, 2010 submission (citing the ITC's preliminary conference transcript at 16 and 111.)

[8] *See* the Department's verification reports for the Hung Kuo, including the verification of its U.S. sales affiliate, Biddeford Blankets, on file in the CRU.

[9] The Department has used these data to adjust Hung Kuo's reported per-unit consumption for all controller parts.

[10] In valuing Hung Kuo's heating wire and integrated circuit inputs, the Department has selected the highest value on the record (*i.e,* an Indian surrogate value, or the reported market economy purchase price).

[11] The Department has adjusted Hung Kuo's ocean freight using information contained in ocean freight invoices submitted by Hung Kuo.

the Department's list of countries that are at a level of economic development comparable to the PRC and that India is a significant producer of merchandise comparable to subject merchandise; additionally, we determined that reliable Indian data for valuing FOPs are readily available.[12] No party has commented on our selection of India as the appropriate surrogate country. Thus, we continue to find India to be the appropriate surrogate country in this investigation.

Separate Rates

In proceedings involving non-market-economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an 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.[13]

In the *Preliminary Determination,* we found that Hung Kuo, and separate rate applicants, Ningbo V.K. Industry & Trading Co., Ltd., and Ningbo Jifa Electrical Appliances Co., Ltd./Ningbo Jinchun Electric Appliances Co., Ltd. demonstrated their eligibility for, and were hence assigned, separate rate status. No party has commented on the eligibility of these companies for separate rate status. Therefore, for the final determination, we continue to find that the evidence placed on the record of this investigation by these companies demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation and that these companies are thus eligible for separate rate status.[14]

The PRC-Wide Rate

In the *Preliminary Determination,* the Department considered certain non-responsive PRC producers/exporters to be part of the PRC-wide entity because they did not respond to our requests for information and did not demonstrate that they operated free of government control over their export activities.[15] No additional information regarding these entities has been placed on the record since the publication of the *Preliminary Determination.* Since the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, we continue to find it appropriate to base the PRC-wide rate on facts otherwise available. Moreover, given that the PRC-wide entity did not respond to our request for information, we continue to find that it failed to cooperate to the best of its ability to comply with a request for information. Thus, pursuant to section 776(b) of the Act, and consistent with the Department's practice, we have continued to use an adverse inference in selecting from among the facts otherwise available.[16]

Pursuant to section 776(b) of the Act, the Department may select, as AFA, information derived from: (1) The petition; (2) the final determination from the LTFV investigation; (3) a previous administrative review; or (4) any other information placed on the record. To induce respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the petition; or (b) the highest calculated rate for any respondent in the investigation.[17]

Since we begin with the presumption that all companies within an NME country are subject to government control and only the exporters listed under the "Final Determination Margins" section below have overcome that presumption, consistent with the Department's practice, we are applying a single antidumping rate (*i.e.,* the PRC-wide rate) to all exporters of subject merchandise from the PRC, other than the exporters listed in the "Final Determination Margins" section of this notice.[18]

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information, rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the Statement of Administrative Action ("SAA") as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise."[19] The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value.[20] The SAA also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[21] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[22]

As total AFA the Department preliminarily selected the rate of 174.85 percent from the Petition. In the *Preliminary Determination,* we preliminarily found the rate of 174.85 percent to be the highest Petition margin that could be corroborated within the meaning of section 776(c) of the Act. For the final determination, we find that the rate is within the range of the margins calculated on individual sales by Hung Kuo, the cooperative respondent. Therefore, we continue to find that the margin of 174.85 percent has probative value. Accordingly, we find that the rate of 174.85 percent is corroborated within the meaning of section 776(c) of the Act.

[12] *See Preliminary Determination,* 75 FR at 5569.

[13] *See, e.g., Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *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); *see also* 19 C.F.R. § 351.107(d).

[14] *See Preliminary Determination,* 75 FR at 5569–71.

[15] *See id.,* 75 FR at 5571.

[16] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation,* 65 FR 5510, 5518 (February 4, 2000) (where the Department applied an adverse inference in determining the Russia-wide rate); *Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China,* 71 FR 16116, 16118–19 (March 30, 2006) (where the Department applied an adverse inference in determining the PRC-wide rate).

[17] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From the People's Republic of China,* 65 FR 34660 (May 31, 2000), and accompanying Issues and Decisions Memorandum at "Facts Available."

[18] *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value,* 65 FR 25706 (May 3, 2000) (applying the PRC-wide rate to all exporters of subject merchandise in the PRC based on the presumption that the export activities of the companies that failed to respond to the Department's questionnaire were controlled by the PRC government).

[19] *See* SAA, accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, Vol. 1 at 870.

[20] *See id.*

[21] *See id.*

[22] *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997).

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation.[23] This practice is described in Department Policy Bulletin 05.1, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," which states:

[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its [non-market economy] 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 applies 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.[24]

Final Determination Margins

We determine that the following weighted-average dumping margins exist for the period October 1, 2008, through March 31, 2009:

Exporter and producer	Weighted-average margin
Hung Kuo Electronics (Shenzhen) Company Limited	77.75%
Produced by: Hung Kuo Electronics (Shenzhen) Company Limited.	
Ningbo V.K. Industry & Trading Co., Ltd.	77.75%
Produced by: Ningbo V.K. Industry & Trading Co., Ltd..	
Ningbo Jifa Electrical Appliances Co., Ltd. or Ningbo Jinchun Electric Appliances Co., Ltd..	77.75%
Produced by: Ningbo Jifa Electrical Appliances Co., Ltd. or Ningbo Jinchun Electric Appliances Co., Ltd..	
PRC–Wide Rate	174.85%

Disclosure

We will disclose to parties the calculations performed within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct CBP to continue to suspend liquidation of all entries of woven electric blankets from the PRC, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after, February 3, 2010, the date of publication of the *Preliminary Determination* in the *Federal Register.* The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the normal value exceeds U.S. price, as follows: (1) The rate for the exporter/producer combinations listed in the chart above will be the rate the Department has determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide entity rate; and (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 exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or 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. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 25, 2010.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix I

Comment 1: Application of Partial Adverse Facts Available—Hung Kuo
Comment 2: Financial Statements Used to Derive Manufacturing Overhead, Selling, General and Administrative Expenses, and Profit
Comment 3: The Classification of Certain Expenses Contained in the Bawa Financial Statement Used to Derive Manufacturing Overhead, Selling, General and Administrative Expenses, and Profit
Comment 4: The Treatment of Certain Movement Expenses Contained in the Prakash Surrogate Financial Statement
Comment 5: Surrogate Value for Alphanumeric LEDs
Comment 6: International Movement Expenses
Comment 7: Calculation of Normal Value Using FOP Data That Reflect both Semi-Finished and Finished Goods

[23] *See Certain Woven Electric Blankets From the People's Republic of China: Initiation of Antidumping Duty Investigation,* 74 FR 37001 (July 27, 2009) ("*Initiation Notice*").

[24] Policy Bulletin 05.1 can be found on the Import Administration website at the following address: *http://ia.ita.doc.gov/policy/bull05–1.pdf.*

Comment 8: Unit of Measure Conversion for Certain Inputs
Comment 9: Surrogate Value for Acrylic/Polyester Blend Woven Textile
Comment 10: Calculation of Indirect Selling Expenses Applied to Hung Kuo's CEP Sales
Comment 11: Surrogate Value for Power Cords
Comment 12: Hung Kuo's Reported FOP for Woven Textile Used to Produce King Size Electric Blankets
Comment 13: Valuation of Labor

[FR Doc. 2010–16198 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–101]

Greige Polyester Cotton Printcloth From the People's Republic of China: Final Results of Sunset Review and Revocation of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 3, 2010, the Department of Commerce ("the Department") initiated the sunset review of the antidumping duty order on greige polyester cotton printcloth from the People's Republic of China ("PRC"). Because the domestic interested parties did not participate in this sunset review, the Department is revoking this antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5047.

SUPPLEMENTARY INFORMATION: On September 16, 1983, the Department issued an antidumping duty order on greige polyester cotton printcloth from the PRC. *See Greige Polyester Printcloth From the People's Republic of China—Antidumping Duty Order,* 48 FR 41614 (September 16, 1983). On June 27, 2005, the Department published its most recent continuation of the order. *See Continuation of the Antidumping Duty Order; Greige Polyester Cotton Printcloth from the People's Republic of China,* 70 FR 36927 (June 27, 2005). On May 3, 2010, the Department initiated a sunset review of this order. *See Initiation of Five-Year ("Sunset") Review,* 75 FR 23240 (May 3, 2010).

We did not receive a notice of intent to participate from domestic interested parties in this sunset review by the deadline date. As a result, in accordance with 19 CFR 351.218(d)(1)(iii)(A), the Department determined that no domestic interested party intends to participate in the sunset review, and on May 24, 2010, we notified the International Trade Commission, in writing, that we intended to issue a final determination revoking this antidumping duty order. *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

Scope of the Order: The merchandise subject to this antidumping order is greige polyester cotton printcloth, other than 80 x 80 type. Greige polyester cotton printcloth is of chief weight cotton,[1] unbleached and uncolored printcloth. The term "printcloth" refers to plain woven fabric, not napped, not fancy or figured, of singles yarn, not combed, of average yarn number 43 to 68,[2] weighing not more than 6 ounces per square yard, of a total count of more than 85 yarns per square inch, of which the total count of the warp yarns per inch and the total count of the filling yarns per inch are each less than 62 percent of the total count of the warp and filling yarns per square inch. This merchandise is currently classifiable under Harmonized Tariff Schedule ("HTSUS") item 5210.11.6060. The HTSUS item number is provided for convenience and customs purposes; however, the written description remains dispositive.

Determination to Revoke: Pursuant to section 751(c)(3)(A) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall, within 90 days after the initiation of the review, issue a final determination revoking the order. Because the domestic interested parties did not file a notice of intent to participate in this sunset review, the Department finds that no domestic interested party is participating in this sunset review. Therefore, consistent with 19 CFR 351.222(i)(1)(i) and section 751(c)(3)(A) of the Act, we are revoking this antidumping duty order. The effective date of revocation is June 27, 2010, the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of this antidumping duty order.

Effective Date of Revocation: Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to issue instructions to U.S. Customs and Border Protection, 15 days after publication of this notice, to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after June 27, 2010. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests of review.

This five-year (sunset) review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: June 25, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–16205 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] In the scope from the original investigation, the Department defined the subject merchandise by chief value (*i.e.,* the subject merchandise was of chief value cotton). In later reviews of this Order, the Department has incorporated the U.S Customs Service's conversion to chief weight (*i.e.,* the subject merchandise is of chief weight cotton). *See Continuation of the Antidumping Duty Order; Greige Polyester Cotton Printcloth from the People's Republic of China,* 70 FR 36927 (June 27, 2005).

[2] Under the English system, this average yarn number count translates to 26 to 40. The average yarn number counts reported in previous scope descriptions by the Department are based on the English system of yarn number counts. Per phone conversations with U.S. Customs and Border Protection ("CBP") officials, CBP now relies on the metric system to establish average yarn number counts. Thus, the 26 to 40 average yarn number count under the English system translates to a 43 to 68 average yarn number count under the metric system. *See Continuation of the Antidumping Duty Order; Greige Polyester Cotton Printcloth from the People's Republic of China,* 70 FR 36927 (June 27, 2005).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX21

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Oversight Committee, on July 27–28, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, July 27 at 9:30 a.m. and Wednesday, July 28, 2010 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; fax: (207) 761–8224.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, July 27, 2010

The Herring Committee will continue development of catch monitoring alternatives for inclusion in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP). Alternatives may include management measures to: improve quota monitoring and reporting; standardize/certify volumetric measures of catch; address vessel-to-vessel transfers of Atlantic herring; address requirements for catch monitoring and control plans (CMCPs); address maximized retention; maximize sampling and address net slippage; address at-sea monitoring; address portside sampling; require electronic monitoring, and address other elements of catch monitoring in the Atlantic herring fishery. The Committee will also discuss the potential applicability of flow scales, hopper scales and truck scales in the herring fishery and develop Committee recommendations.

Wednesday, July 28, 2010

The agenda will continue from the previous day with additional discussion related to developing catch monitoring alternatives for inclusion in Amendment 5 to the Atlantic Herring FMP; develop management measures and alternatives to address river herring bycatch for consideration in Amendment 5 to the Herring FMP; discuss elements of Amendment 5 catch monitoring alternatives that relate to documenting and monitoring river herring bycatch; and address other elements of Amendment 5 as time permits.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: June 29, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–16157 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX24

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a meeting of the Ecosystem Plan Development Team (EPDT) which is open to the public.

DATES: The EPDT will meet Wednesday, July 21, 2010 beginning at 10 a.m. and concluding at 5 p.m. or when business for the day is completed. The EPDT meeting will include a working lunch session.

ADDRESSES: The EPDT meeting will be held at the Pacific Council Office, Large Conference Room, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mike Burner, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: Please note, this is not a public hearing; it is a work session for the primary purpose of reviewing comments of the Ecosystem Advisory Subpanel (EAS) and drafting a report to the Pacific Council on initial stages of developing an Ecosystem Fishery Management Plan (EFMP). The EPDT has taken the lead in preparing a Pacific Council-requested report on developing an EFMP that includes a draft statement of purpose and need, a draft list of possible initial goals and objectives, and a draft range of options on the geographic range, managed species, and regulatory scope of the EFMP. The EAS met on May 4, 2010 to review a draft of the report and to provide comments to the EPDT. The final report is scheduled to be presented to the Council at its September 2010 meeting in Boise, ID.

Although non-emergency issues not contained in the meeting agenda may come before the EPDT for discussion, those issues may not be the subject of formal EPDT action during this meeting. EPDT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: June 29, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–16160 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX22

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) and the Summer Flounder, Scup, Black Sea Bass and Bluefish Monitoring Committees will hold public meetings.

DATES: The SSC meeting will be held Wednesday and Thursday, July 28–29, 2010 and will begin at 9 a.m. on July 28 and at 8:30 a.m. on July 29. These meetings will conclude by 5 p.m. each day. The Summer Flounder, Scup, Black Sea Bass and Bluefish Monitoring

Committees will be held on Friday July 30, 2010 from 8:30 a.m. to 5 p.m.

ADDRESSES: All meetings will be held at the Hilton Baltimore, 401 West Pratt Street, Baltimore, MD 21201; telephone: (410) 573–8700.

Council address: Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331, extension 255.

SUPPLEMENTARY INFORMATION: The agenda items for SSC meeting include: (1) review stock assessment information and specify overfishing level and acceptable biological (ABC) for summer flounder, scup, black sea bass and bluefish for 2011; (2) review and comment on proposed 2011 quota specifications and management measures for summer flounder, scup, black sea bass and bluefish for 2011; (3) review Management Strategy Evaluation study; (4) discuss potential role of Industry Advisors in determining of OFL and ABC, especially in data poor situations.

The topics to be discussed at the Summer Flounder, Scup, Black Sea Bass and Bluefish Monitoring Committees include 2011 annual quota recommendations and associated management measures for summer flounder, scup, black sea bass and bluefish.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: June 29, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–16158 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XQ80

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port of Anchorage Marine Terminal Redevelopment Project

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended and implementing regulations, notification is hereby given that the National Marine Fisheries Service (NMFS) has issued a Letter of Authorization (LOA) to the Port of Anchorage (POA) and the U.S. Department of Transportation Maritime Administration (MARAD), to take four species of marine mammals incidental to the POA's Marine Terminal Redevelopment Project (MTRP).

DATES: Effective July 15, 2010, through July 14, 2011.

ADDRESSES: The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephoning one of the contacts listed below. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Alaska Regional Office, 222 West 7th Avenue, Anchorage, AK 99513.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly or Brian D. Hopper, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the National Marine Fisheries Service (NMFS) 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 regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species for subsistence uses. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of Cook Inlet beluga whales (*Delphinapterus leucas*), harbor porpoises (*Phocoena phocoena*), killer whales (*Orcinus orca*), and harbor seals (*Phoca vitulina*), by Level B harassment, incidental to in-water pile driving were issued on July 15, 2009 (74 FR 35136), and remain in effect until July 14, 2014. These regulations may be found in 50 CFR 217 subpart U. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during the specified activity.

Summary of Request

On April 23, 2010, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by Level B harassment only, incidental to the POA MTRP. In compliance with the 2009 LOA, POA and MARAD submitted an annual report on POA construction activites, covering the period of July 15 through December 31, 2009. The report also covers the period of January 1 through July 15, 2009, pursuant to the U.S. Army Corps of Engineers' reporting requirement under their permit issued under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The report can be found on the NMFS website at

http://www.nmfs.noaa.gov/pr/permits/incidental.htm.

Summary of Activity and Monitoring Under the 2009 LOA

During the reporting period covered by the 2009 LOA, in-water construction activities were conducted in the North Extension and Barge Berth areas. In-water construction and construction monitoring for the 2009 season ended on December 14, 2009, when ice formation and poor visibility impeded further activity. These activities were within the scope of those analyzed in the final rule and included in the 2009 LOA.

On-site POA Monitoring

As required by the 2009 LOA, the POA and MARAD established safety and harassment zones at the project site, which were monitored for the presence of marine mammals before, during, and after in-water pile driving. If the applicable safety and harassment zones were not visible because of fog, poor light, darkness, sea state, or any other reason, in-water construction activities were shut down until the area was once again visible. From July 15 to December 14, 2009, 45 pile driving shutdowns were documented due to marine mammal sightings. The peak month for shutdowns and delays during the 2009 construction season was August, when 25 shutdown/delays were recorded. Most of these occurred when marine mammals were sighted approaching or surfacing just inside the harassment zone.

According to the POA's annual report, within the LOA reporting period (July 15- December 14, 2009), MMOs stationed at the POA recorded 122 marine mammal sightings for a total of 1,127 total animals sighted (Table 2). There were 1,094 beluga whales (516 white, 481 gray, and 97 dark gray); 17 harbor seals (15 adults and 2 juveniles); 15 harbor porpoises (10 adults and 5 unknown age); and one unidentified pinniped. The highest number of sightings (51) and number of marine mammals sighted (576) occurred in August (572 of this number were beluga whales: 234 white; 277 gray; and 61 dark gray). The fewest number of sightings for a 30–day period were recorded in April, when only 8 marine mammals were sighted. In general, beluga whales showed no observable reaction to pile driving. The only observable reaction which has been documented is beluga whale groups splitting momentarily on three occasions as they maneuver around barges or vessels. In-water pile driving has yet to begin this year, to date; therefore, no MMOs have been required at the POA in 2010.

Independent Scientific Monitoring

POA regulations (50 CFR 217 subpart U) stipulate that the POA and MARAD employ a scientific marine mammal monitoring team separate from the on-site MMOs to characterize beluga whale frequency, abundance, group composition, movements, behavior, and habitat use around the POA and observe, analyze, and document potential changes in behavior in response to in-water construction work. The POA and MARAD complied with this requirement by assembling a monitoring team from the Alaska Pacific University (APU) to implement a NMFS-approved scientific monitoring plan. The scientific marine mammal monitoring 2009 annual report was attached as an appendix to the annual report submitted by POA and MARAD. This report covers the period of May through November, 2009 (ICRC, 2010). A summary of that report follows.

The APU observers conducted scientific monitoring from the Cairn Point Station on Elmendorf Air Force Base, which directly overlooks the POA. For 86 days, from May 4 through November 18, 2009, trained graduate and undergraduate marine biology students conducted approximately 783 hours of scientific monitoring and documented approximately 166 beluga whales, comprising 54 groups, and one harbor seal traveling through the study area. Spatial distribution analysis indicates that approximately 52 percent of all groups sighted occurred within (n=25) or adjacent to (n=3) the MRTP footprint. There were significant differences in the number of whales observed across tidal stages ($F_{8,45} = 2.94$, $p = .02$). There were significant peaks in sightings during low ($p = .01$) and high ($p = .03$) flood tides and during high ebb tides ($p = .03$).

Mean beluga whale group size was 3.0 plus or minus .36 individuals. Only four groups contained individuals identified as calves, and groups with calves were larger on average (5.4 plus or minus 1.9 individuals) than those without. All four groups containing calves were sighted within or adjacent to the MTRP footprint. The number of beluga whales sighted, group size, and size of groups with calves in 2009 decreased from those sighted in 2008; however, this difference was not considered significant. The APU team will continue to monitor and report on beluga whale abundance and the various parameters discussed here within lower Knik Arm for the duration of POA construction.

In summary, the scientific monitoring team found that beluga whale habitat use, distribution and movements, and behavior during 2009 were consistent with previous years (2007–2008) with whales primarily traveling through the study area on the incoming and outgoing tides to and from likely foraging areas further up Knik Arm. Similar to accounts from the MMOs stationed at the POA, no observed behavioral changes (e.g., abrupt behavioral changes, rapid descents) or other indicators of response to in-water pile driving or other MTRP in-water construction activities were noted by the APU observers.

Take Summary for 2009 Construction Season

During the 2009 LOA reporting period, the following numbers of marine mammals were identified as taken from in-water pile driving: 20 beluga whales; five harbor seals; four harbor porpoises; and zero killer whales. Of the 20 beluga whale takes recorded, three were in August, one in September, one in October, and 15 in November (during one sighting). The 15 beluga whales sighted in November were initially seen south of Cairn Point, approximately 950 m from in-water pile driving. As a result, pile driving was shut down for 40 minutes while the animals were in view and no behavioral changes were recorded. The animals were resighted north of Cairn Point heading north along the shoreline and away from the action area. The number of animals, by species, taken under the 2009 LOA was within the amount authorized.

The POA has implemented a robust monitoring program so that pile driving is shut down before marine mammals enter into the designated Level A and B isopleths; thereby minimizing harassment, as demonstrated by the number of sightings vs. the number of takes. The POA has also developed a successful communication system between MMOs and engineers' to shut down pile driving before whales enter into designated harassment zones, avoiding take.

Planned Activities and Mitigation for 2010

As stated in the regulations and LOA, take of marine mammals will be minimized through implementation of the following mitigation measures: (1) if a marine mammal is detected within or approaching the Level A or impact and vibratory pile driving Level B harassment isopleths (200 m, 350 m and 1,300 m, respectively) prior to in-water pile driving, operations shall be immediately delayed or suspended until

the marine mammal moves outside these designated zones or the animal is not detected within 15 minutes of the last sighting; (2) if a marine mammal is detected within or approaching 200 m prior to chipping, this activity shall be immediately delayed or suspended until the marine mammal moves outside these designated zones or the animal is not detected within 15 minutes of the last sighting; (3) in-water impact pile driving shall not occur during the period from two hours before low tide until two hours after low tide; (4) in-water piles will be driven with a vibratory hammer to the maximum extent possible (i.e., until a desired depth is achieved or to refusal) prior to using an impact hammer; (5) in-water pile driving or chipping shall not occur when conditions restrict clear, visible detection of all waters within harassment zones; (6) A ''soft start'' technique shall be used at the beginning of each day's in-water pile driving activities or if pile driving has ceased for more than one hour to allow any marine mammal that may be in the immediate area to leave before pile driving reaches full energy; (7) if a group of more than 5 beluga whales or group with a calf is sighted within the Level B harassment isopleths, in-water pile driving shall be suspended; and (8) for operated in-water heavy machinery work other than pile driving or chipping (i.e., dredging, dump scowles, linetug boats used to move barges, barge mounted hydraulic excavators, or clamshell equipment used to place or remove material), if a marine mammal comes within 50 m, those operations will cease and vessels will reduce to the slowest speed practicable while still maintaining control of the vessel and safe working conditions.

NMFS-approved marine mammal observers (MMOs) will be stationed at the port during all in-water pile driving and chipping and blasting associated with dock demolition, if it occurs. These observers will be responsible for documenting take, marine mammal behavior, and, if necessary, notifying the resident engineer when shut down is necessary. In addition, the POA and MARAD shall employ a scientific marine mammal monitoring team separate from the on-site MMOs to characterize beluga whale abundance, frequency, movements, behavior, group dynamics, and habitat use around the POA and observe, analyze, and document potential changes in behavior in response to in-water construction work. This monitoring team is not required to be present during all in-water pile driving operations but will be on-site 4 days per week, weather permitting. The on-site MMOs and this marine mammal monitoring team shall remain in contact to alert each other to marine mammal presence when both teams are working.

The POA and MARAD shall submit monthly reports summarizing all in-water construction activities and marine mammal sightings. In addition, an annual report shall be due sixty days before expiration of the LOA. This report shall summarize monthly reports and any apparent long or short term impacts the MTRP may be having on marine mammals. This LOA will be renewed annually based on review of the annual monitoring report.

Authorization

The POA and MARAD have complied with the requirements of the 2009 LOA, and NMFS has determined that marine mammal take during the 2009 construction season is within the amount authorized. Accordingly, NMFS has issued a LOA to POA and MARAD authorizing take by harassment of marine mammals incidental to the marine terminal redevelopment project at the POA. Issuance of the 2010–2011 LOA is based on NMFS' review of the annual report submitted by the POA and MARAD, and determination that the observed impacts were within the scope of the analysis and authorization contained in the final rule and previously issued LOA. Specifically, NMFS found that the total taking of marine mammals, in consideration of the required mitigation, monitoring, and reporting measures, will have no more than a negligible impact on the affected species or stocks and will not have an unmitigable adverse impact on their availability for taking for subsistence uses.

Dated: June 25, 2010.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–16189 Filed 7–1–10; 8:45 am]

BILLING CODE 3510–22–S

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 products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: August 2, 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: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products 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 furnish the products to the Government.

2. If approved, the action will 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 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 products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7220–00–NIB–0367—Disposable Urinal Floor Mat.

NSN: 7220–00–NIB–0368—Disposable Toilet Floor Mat.

NPA: NewView Oklahoma, Inc., Oklahoma City, OK.
Contracting Activity: Federal Acquisition Service, GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.
Coverage: B—List for the Broad Government Requirement as aggregated by the General Services Administration.

NSN: 7520–01–377–9534—Cord Connector/Rotator, Telephone, Twisstop, Black.
NSN: 7520–00–NIB–2084—Shoulder Rest, Telephone, Black, Softak II.
NSN: 7520–00–NIB–2085—Shoulder Rest, Telephone, Black.
Coverage: A—List for the Total Government Requirement as aggregated by the General Services Administration.

NSN: 7520–01–253–1283—Shoulder Rest, Telephone, Beige, 2¼ W × 7″ L.
NSN: 7520–01–377–9533—Cord Connector/Rotator, Telephone, Twisstop, Clear.
Coverage: B—List for the Broad Government Requirement as aggregated by the General Services Administration.

NPA: Bestwork Industries for the Blind, Inc., Runnemede, NJ
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2010–16104 Filed 7–1–10; 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 products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities and deletes services from the Procurement List previously furnished by such agencies.

DATES: *Effective Date:* 8/2/2010.

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: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 4/30/2010 (75 FR 22744–22745) and 5/7/2010 (75 FR 25210–25211), 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 the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products 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 furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

NSN: 8415–00–NIB–0810—Glove, Vinyl, Industrial/Non-Medical Grade, 100 Gloves/Box, Small.
NSN: 8415–00–NIB–0811—Glove, Vinyl, Industrial/Non-Medical Grade, 100 Gloves/Box, Medium.
NSN: 8415–00–NIB–0812—Glove, Vinyl, Industrial/Non-Medical Grade, 100 Gloves/Box, Large.
NSN: 8415–00–NIB–0813—Glove, Vinyl, Industrial/Non-Medical Grade, 100 Gloves/Box, XLarge.
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.
Contracting Activity: Veterans Affairs, Department of, NAC, Hines, IL.
Coverage: C—list for 100% of the requirements for the Department of Veterans Affairs, NAC, Hines, Il.

NSN: 8105–01–284–2923—Bag, Waste Receptacle.
NPA: Portland Habilitation Center, Inc., Portland, OR.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: B—List for the Broad Government Requirement as aggregated by the General Services Administration.

NSN: 7510–01–504–8940—Tape, Correction—4 Pk.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A—List for the Total Government Requirement as aggregated by the General Services Administration.

NSN: 8415–01–579–9276—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9272—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9267—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9260—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9219—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9210—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9197—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9189—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9182—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9175—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9172—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9163—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9152—ACU Sun Hat—Multi Cam.
NSN: 8415–01–579–9147—ACU Sun Hat—Multi Cam.
NSN: 8415–01–519–8682—ACU Sun Hat—Universal.
NSN: 8415–01–519–8681—ACU Sun Hat—Universal.
NSN: 8415–01–519–8680—ACU Sun Hat—Universal.
NSN: 8415–01–519–8678—ACU Sun Hat-Universal.
NSN: 8415–01–519–8684—ACU Sun Hat—Universal.
NSN: 8415–01–519–8687—ACU Sun Hat—Universal.
NSN: 8415–01–519–8696—ACU Sun Hat—Universal.
NSN: 8415–01–519–8698—ACU Sun Hat—Universal.
NSN: 8415–01–519–8699—ACU Sun Hat—Universal.
NSN: 8415–01–519–8702—ACU Sun Hat—Universal.
NSN: 8415–01–519–8704—ACU Sun Hat—Universal.
NSN: 8415–01–519–8705—ACU Sun Hat—Universal.
NSN: 8415–01–519–8708—ACU Sun Hat—Universal.
NSN: 8415–01–519–8706—ACU Sun Hat—Universal.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY
Contracting Activity: Dept of the Army, XR W2DF RDECOM ACQ CTR NATICK, Natick, MA.
Coverage: C—list for 100% of the requirements for initial fielding for the U.S. Army, as aggregated by the

Department of the Army Research, Development, and Engineering Command.
NSN: 7510–00–272–9804—Envelope, Transparent.
NPA: Bestwork Industries for the Blind, Inc., Runnemede, NJ.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: B—List for the Broad Government Requirement as aggregated by the General Services Administration.

Service

Service Type/Location: Janitorial, Customs and Border Protection, B.P. Sector Maintenance, 398 E. Aurora Drive, El Centro, CA.
NPA: ARC–Imperial Valley, El Centro, CA.
Contracting Activity: Bureau of Customs and Border Protection, Office of Procurement, Washington, DC.

Deletions

On 5/7/2010 (75 FR 25210–25211), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the 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 deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service/Location: Medical Transcription, Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, FL.
NPA: Gulfstream Goodwill Industries, Inc., West Palm Beach, FL.
Contracting Activity: Department of Veterans Affairs, Nac, Hines, IL.
Service Type/Location: Janitorial/Custodial, Fort McPherson: U.S. Army Health Clinic, Buildings 100, 101, 105, 162, 163, 165, 170, 170A and 170B, Fort McPherson, GA.
NPA: WORKTEC, Jonesboro, GA.
Contracting Activity: Dept of the Army, XR W40M NATL REGION CONTRACT OFC, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2010–16103 Filed 7–1–10; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Orders Finding That the Mid-C Financial Peak Contract and Mid-C Financial Off-Peak Contract, Offered for Trading on the IntercontinentalExchange, Inc., Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 6, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [1] a notice of its intent to undertake a determination whether the Mid-C [2] Financial Peak ("MDC") contract and Mid-C Financial Off-Peak ("OMC") contract,[3] which are listed for trading on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the MDC and OMC contracts perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective date:* June 25, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [4] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[5] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[6] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

[1] 74 FR 51261 (October 6, 2009).

[2] The acronym "Mid-C" stands for Mid-Columbia.

[3] The **Federal Register** notice also requested comment on the Mid-C Financial Peak Daily ("MPD") contract and Mid-C Financial Off-Peak Daily ("MXO") contract. Those contracts will be reviewed in a separate **Federal Register** release.

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

[5] 7 U.S.C. 1a(29).

[6] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[7] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[8]

II. Notice of Intent To Undertake SPDC Determination

On October 6, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the MDC and OMC contracts[9] perform a significant price discovery function and requested comment from interested parties.[10] Comments were received from the Federal Energy Regulatory Commission ("FERC"), Financial Institutions Energy Group ("FIEG"), Working Group of Commercial Energy Firms ("WGCEF"), Edison Electric Institute ("EEI"), ICE, Western Power Trading Forum ("WPTF") and Public Utility Commission of Texas ("PUCT").[11] The comment letters from FERC[12] and PUCT did not directly address the issue of whether or not the subject contracts are SPDCs. The remaining comment letters raised substantive issues with respect to the applicability of section 2(h)(7) to the MDC and OMC contracts and generally expressed the opinion that the contracts are not SPDCs because they do not meet the material price reference or material liquidity criteria for SPDC determination. These comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[13] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the

[7] Pub. L. 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference,* H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). See also 73 FR 75888, 75894 (Dec. 12, 2008).

[8] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

[9] As noted above, the **Federal Register** notice also requested comment on the Mid-C Financial Peak Daily ("MPD") contract and Mid-C Financial Off-Peak Daily ("MXO") contract. The MPD and MXO contracts will be addressed in a separate **Federal Register** release.

[10] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[11] FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." EEI is the "association of shareholder-owned electric companies, international affiliates and industry associates worldwide." ICE is an ECM, as noted above. WPTF describes itself as a "broad-based membership organization dedicated to encouraging competition in the Western power markets * * * WTPF strives to reduce the long-run cost of electricity to consumers throughout the region while maintaining the current high level of system reliability." PUCT is the independent organization that oversees the Electric Reliability Council of Texas ("ERCOT") to "ensure nondiscriminatory access to the transmission and distribution systems, to ensure the reliability and adequacy of the regional electrical network, and to perform other essential market functions." The comment letters are available on the Commission's website: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-011.html*

[12] FERC expressed the opinion that a determination by the Commission that either of the subject contracts performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Federal Power Act (FPA) over the transmission or sale for resale of electric energy in interstate commerce or with its other regulatory responsibilities under the FPA" and further that "FERC staff will monitor proposed SPDC determinations and advise the CFTC of any potential conflicts with FERC's exclusive jurisdiction over RTOs, [(regional transmission organizations)], ISOs [(independent system operators)] or other jurisdictional entities."

[13] In its October 6, 2009, **Federal Register** release, the Commission identified material price reference and material liquidity as the possible criteria for SPDC determination of the MDC and OMC contracts. Arbitrage and price linkage were not identified as possible criteria. As a result, arbitrage and price linkage will not be discussed further in this document and the associated Orders.

Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[14] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the MDC and OMC contracts are discussed separately below:

a. The Mid-C Financial Peak (MDC) Contract and the SPDC Indicia

The MDC contract is cash settled based on the arithmetic average of the peak, day-ahead power price indicies that are reported each day in the specified contract month. The daily price indicies are published by ICE in its "ICE Day Ahead Power Price Report," which is available on the ECM's website. The peak-hour electricity price index on a particular day is calculated as the volume-weighted average of qualifying, day-ahead, peak-hour power transactions at the Mid-Columbia hub that are traded on the ICE platform from 6 a.m. to 11 a.m. CST on the publication date. The ICE transactions on which the daily price index is based specify the physical delivery of power. The size of the MDC contract is 400 megawatt hours ("MWh"), and the MDC contract is listed for 86 months.

As the Columbia River flows through Washington State, it encounters two federal and nine privately-owned hydroelectric dams that generate close to 20,000 MW of power in the Northwest.[15] With another three dams in British Columbia, Canada, and many more on its various tributaries, the Columbia River is the largest power-producing river in North America. A major goal of the participants in the Mid-C electricity market is to maximize the Columbia River's potential, along with protecting and enhancing the non-power uses of the river. The reliability of the electricity grid in the Northwest is coordinated by the Northwest PowerPool ("NWPP"), which is a voluntary organization comprised of major generating utilities serving the Northwestern United States as well as British Columbia and Alberta, Canada.

One stretch of the Columbia River between the Grand Coulee Dam and Priests Rapids Dam is governed by the Mid-Columbia Hourly Coordination Agreement ("MCHCA"). The MCHCA includes seven dams [16] and nearly 13,000 MW of generation. Specifically, the agreement defines how the Chelan, Douglas and Grant PUDs coordinate their operations with the Bonneville Power Administration so as to maximize power generation while reducing fluctuations in the river's flow. A number of other utilities that buy power from the PUDs have also signed onto the agreement. The MCHCA was signed into effect in 1972 and renewed in 1997 for another 20 years.[17]

In general, electricity is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. The price of electricity at a particular point on the grid is called the locational marginal price ("LMP"), which includes the cost of producing the electricity, as well as congestion and line losses. Thus, an LMP reflects generation costs as well as the actual cost of supplying and delivering electricity to a specific point along the grid.

Electricity is traded in a day-ahead market as well as in a real-time market. Typically, the bulk of the energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because the quotes are based on supply and demand estimates, electricity needs usually are not perfectly satisfied in the day-ahead market. On the day the electricity is transmitted and used, auction participants typically realize that they bought or sold either too much or too little power. A real-time auction is operated in the Mid-C market to alleviate this problem by servicing as a balancing mechanism. In this regard, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market compared with the day-ahead market.

1. Material Price Reference Criterion

The Commission's October 6, 2009, **Federal Register** notice identified material price reference and material liquidity as the potential basis for a SPDC determination with respect to the MDC contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "West Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.,* 12, 24, 36 or 48 months) of historical data. This package includes price data for the MDC contract.

The Commission also noted that its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study") found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the MDC contract, while not mentioned by name in the ECM Study, might warrant further review.

The Commission explains in its Guidance to the Part 36 rules that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[18] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices

[14] 17 CFR Part 36, Appendix A.

[15] *http://www.wpuda.org/publications/connections/hydro/River%20Riders.pdf.*

[16] The federal dams are Grand Coulee and Chief Joseph. The remaining dams are Wells (operated by the Douglas PUD), Rocky Reach and Rock Island (operated by the Chelan PUD), and Wanapum and Priest Rapids (operated by the Grant PUD). The term "PUD" stands for a publically-owned utility which provides essential services within a specified area.

[17] *http://www.wpuda.org/publications/connections/hydro/River%20Riders.pdf.*

[18] 17 CFR Part 36, Appendix A.

generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Mid-C power market is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the Mid-C power market when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of power at the Mid-C hub when entering into cash market transaction for electricity, especially those trades providing for physical delivery in the future. Traders use the ICE MDC contract, as well as other ICE power contracts, to hedge cash market positions and transactions—activities which enhance the MDC contract's price discovery utility. The substantial volume of trading and open interest in the MDC contract appears to attest to its use for this purpose. While the MDC contract's settlement prices may not be the only factor influencing spot and forward transactions, electricity traders consider the ICE price to be a critical factor in conducting OTC transactions.[19] Accordingly, the MDC contract satisfies the direct price reference test.

The direct price reference finding also is supported by the uniqueness of the ICE electricity prices for the Mid-C market. Day-ahead and real-time electricity prices are reported by a number of sources, including third-party price providers (*e.g.,* Dow Jones & Company). ICE's Mid-C price indices are unique in that they are derived from transactions completed on ICE's electronic system. Moreover, ICE is the only entity that has access to such transaction data. Thus, it is not possible for any other firm to replicate ICE's indices.[20]

The fact that ICE's MDC monthly contract is used more widely as a source of pricing information rather than the daily contract (*i.e.,* the MPD contract)[21] bolsters the finding of direct price reference. In this regard, the MDC contract prices power at the Mid-C up to 86 calendar months in the future. Thus, market participants can use the MDC contract to lock-in electricity prices far into the future. Traders use monthly power contracts like the MDC contract to price future power electricity commitments, where such commitments are based on long range forecasts of power supply and demand. In contrast, the MPD contract is listed for a much shorter length of time—up to 38 days in the future. As generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, they can modify previously-established hedges with daily contracts, like the MPD contract.

The Commission notes that the Mid-C is a major trading point for electricity, and the MDC contract's prices are well regarded in the industry as indicative of the value of power at the Mid-C hub. Accordingly, Commission staff believes that it is reasonable to conclude that market participants purchase the data packages that include the MDC contract's prices in substantial part because the MDC contract prices have particular value to them. Moreover, such prices are consulted on a frequent and recurring basis by industry participants in pricing cash market transactions. In light of the above, the MDC contract meets the indirect price reference test.

i. **Federal Register** Comments

WGCEF, WPTF, EEI and ICE stated that no other contract directly references or settles to the MDC contract's price. Moreover, the commenters argued that the underlying cash price series against which the MDC contract is settled (in this case, the average of peak-hour Mid-C electricity prices over the contract month, which are derived from physical transactions) is the authentic reference price and not the ICE contract itself. Commission staff believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

As noted above, the Mid-C hub is a major trading center for electricity in the western United States. Traders, including producers, keep abreast of the prices of the MDC contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of electricity at the Mid-C hub when entering into cash market transaction for power, especially those trades that provide for physical delivery in the future. Traders use the ICE MDC contract to hedge cash market positions and transactions, which enhances the MDC contract's price discovery utility. While the MDC contract's settlement prices may not be the only factor influencing spot and forward transactions, natural gas traders consider the ICE price to be a crucial factor in conducting OTC transactions.

In addition, WGCEF stated that the publication of price data for the MDC contract price is weak justification for material price reference. This commenter argued that market participants generally do not purchase ICE data sets for one contract's prices, such as those for the MDC contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the MDC prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the MDC prices have substantial value to them. As noted above, the Commission notes that publication of the MDC contract's prices is indirect evidence of routine dissemination. The MDC contract's prices, while sold as a package, are of particular interest to market participants. Thus, the Commission has

[19] In addition to referencing ICE prices, firms participating in the Mid-C power market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms in entering into power transactions.

[20] In contrast, third-party price reporting firms typically compute their power index prices from transaction information that is voluntarily submitted by traders. It is possible that one trader could submit the same transaction data to multiple price reporting firms, whereby increasing the likelihood that price indices from different firms are similar in value. However, it is more plausible that the third-party price reporters' price indices would be similar but not exactly the same because different traders are polled.

[21] The MPD contract is cash settled based on the peak, day-ahead price index for the specified day, as published by ICE in its "ICE Day Ahead Power Price Report," which is available on the ECM's website. The daily peak-hour electricity price index is a volume-weighted average of qualifying, day-ahead, peak-hour power contracts at the Mid-Columbia hub that are traded on the ICE platform from 6 a.m. to 11 a.m. CST on the publication date.

concluded that traders likely purchase the ICE data packages specifically for the MDC contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI observed that the ECM Study did not specifically identify the MDC contract as a contract that is referred to by market participants on a frequent and recurring basis. The Commission cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve, and did not serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE MDC contract meets the material price reference criterion because cash market transactions are priced either explicitly or implicitly on a frequent and recurring basis at a differential to the MDC contract's price (direct evidence). Moreover, the MDC contract's price data are sold to market participants, and those individuals likely purchase the ICE data packages specifically for the MDC contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified material price reference and material liquidity as potential criteria for SPDC determination of the MDC contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.[22]

The total number of transactions executed on ICE's electronic platform in the MDC contract was 2,022 in the second quarter of 2009, resulting in a daily average of 31.6 trades. During the same period, the MDC contract had a total trading volume of 67,400 contracts and an average daily trading volume of 1,053.1 contracts. Moreover, open interest as of June 30, 2009, was 169,851 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[23]

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 142,700 contracts (or 2,195 contracts on a daily basis). In terms of number of transactions, 2,975 trades occurred in the fourth quarter of 2009 (46 trades per day). As of December 31, 2009, open interest in the MDC contract was 221,608 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

Trading activity in the MDC contract, as characterized by total quarterly volume, indicates that the MDC contract experiences trading activity that is significantly greater than that of minor futures markets.[24] Thus, it is reasonable to infer that the MDC contract could have a material effect on other ECM contracts or on DCM contracts.

To measure the potential effect of the MDC contract on another ECM contract staff performed a statistical analysis[25] using daily settlement prices between July 1, 2008, and December 31, 2009, for the ICE MDC and OMC contracts. The simulation suggests that, on average over the sample period, a one percent rise in the MDC contract's price elicited a 1.09 percent increase in ICE OMC contract's price.

i. **Federal Register** Comments

ICE and WGCEF stated that the MDC contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, FEIG and EEI argued that the MDC contract cannot have a material effect on other contracts, such as those listed for trading by the New York Mercantile Exchange ("NYMEX"), a DCM. The commenters pointed out that it is not possible for the MDC contract to affect a DCM contract because price linkage and the potential for arbitrage do not exist. The DCM contracts do not cash settle based on the MDC contract's price. Instead, the DCM contracts and the MDC contract are both cash settled based on physical transactions, which the ECM and DCM contracts cannot influence. The Commission's statistical analysis shows that changes in the ICE MDC contract's price significantly influences the prices of other ECM contracts (namely, the OMC contract).

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day, and noted that the relatively low number of trades per day in the MDC contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."[26]

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting

[22] As noted above, the material liquidity criterion speaks to the effect that transactions in the potential SPDC may have on trading in "agreements, contracts and transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act."

[23] 74 FR 51261 (October 6, 2009).

[24] Staff has advised the Commission that in its experience, a thinly-traded contract is generally one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

[25] Specifically, Commission staff econometrically estimated a cointegrated vector autoregression (CVAR) model using daily settlement prices. CVAR methods permit a dichotomization of the data relationships into long-run equilibrium components (called the cointegration space or cointegrating relationships) and a short-run component. A CVAR model was chosen over the more traditional vector autoregression model in levels because the statistical properties of the data (lack of stationarity and ergodicity) precluded the more traditional modeling treatment. Moreover, the statistical properties of the data necessitated the modeling of the contracts' prices as a CVAR model containing both first differences (to handle stationarity) and an error-correction term to capture long run equilibrium relationships. The prices were treated as a single reduced-form model in order to test hypothesis that power prices in the same market affect each other. The prices of ICE's MDC and OMC contracts are positively related to each other in a cointegrating relationship and display a high level of statistical strength. On average during the sample period, each percentage rise in MDC contract's price elicited a 1.09 percent rise in OMC contract's price.

[26] Guidance, *supra.*

requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[27] rather than solely relying upon an ECM to identify potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE asserted that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract."[28] It is the Commission's opinion that liquidity, as it pertains to the MDC contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE MDC contract itself would be considered liquid.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the MDC meets the material liquidity criterion. Specifically, there is sufficient trading activity in the MDC contract to have a material effect on "other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market * * * or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act."

3. Overall Conclusion Regarding the MDC Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the MDC contract performs a significant price discovery function under two of the four criteria established in section 2(h)(7) of the CEA. The Commission has concluded that the MDC contract meets both the material price reference and material liquidity criteria. Accordingly, the Commission is issuing the attached Order declaring that the MDC contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its MDC contract,[29] and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

b. The Mid-C Financial Off-Peak (OMC) Contract and the SPDC Indicia

The OMC contract is cash settled based on the arithmetic average of the off-peak, day-ahead power price indices that are reported each day in the specified contract month. The daily price indices are published by ICE in its "ICE Day Ahead Power Price Report," which is available on the ECM's website. The off-peak hour electricity price index on a particular day is calculated as the volume-weighted average of qualifying, day-ahead, off-peak hour power transactions at the Mid-Columbia hub that are traded on the ICE platform from 6 a.m. to 11 a.m. CST on the publication date. The ICE transactions on which the price index is based specify the physical delivery of power. The size of the OMC contract is 25 MWh, and the OMC contract is listed for 86 months.

As the Columbia River flows through Washington State, it encounters two federal and nine privately-owned hydroelectric dams that generate close to 20,000 MW of power in the Northwest.[30] With another three dams in British Columbia, Canada, and many more on its various tributaries, the Columbia River is the largest power-producing river in North America. A major goal of the participants in the Mid-C electricity market is to maximize the Columbia River's potential, along with protecting and enhancing the non-power uses of the river. The reliability of the electricity grid in the Northwest is coordinated by the NWPP.

One stretch of the Columbia River between the Grand Coulee Dam and Priests Rapids Dam is governed by the MCHCA. The MCHCA includes seven dams[31] and nearly 13,000 MW of generation. Specifically, the agreement defines how the Chelan, Douglas and Grant PUDs coordinate their operations with the Bonneville Power Administration to maximize power generation while reducing fluctuations in the river's flow. A number of other utilities that buy power from the PUDs have also signed onto the agreement. The MCHCA agreement was signed into effect in 1972 and renewed in 1997 for 20 years.[32]

In general, electricity is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. The price of electricity at a particular point on the grid is called the LMP, which includes the cost of producing the electricity, as well as congestion and line losses. Thus, an LMP reflects generation costs as well as the actual cost of supplying and delivering electricity to a specific point along the grid.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of the energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because the quotes are based on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. On the day the electricity is transmitted and used, auction participants usually realize that they bought or sold either too much power or too little power. A real-time auction is operated in the Mid-C market to alleviate this problem by servicing as a balancing mechanism. In this regard, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market compared with the day-ahead market.

[27] 73 FR 75892 (December 12, 2008).

[28] In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice included 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 54 percent of all transactions in the MDC contract. The Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

[29] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[30] *http://www.wpuda.org/publications/connections/hydro/River%20Riders.pdf.*

[31] The federal dams are Grand Coulee and Chief Joseph. The remaining dams are Wells (operated by the Douglas PUD), Rocky Reach and Rock Island (operated by the Chelan PUD), and Wanapum and Priest Rapids (operated by the Grant PUD).

[32] *http://www.wpuda.org/publications/connections/hydro/River%20Riders.pdf.*

1. Material Price Reference Criterion

The Commission's October 6, 2009, **Federal Register** notice identified material price reference and material liquidity as the potential basis for a SPDC determination with respect to the OMC contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "West Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.,* 12, 24, 36 or 48 months) of historical data. This package includes price data for the OMC contract.

The Commission also noted that its October 2007 ECM Study found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the OMC contract, while not mentioned by name in the ECM Study, might warrant further review.

The Commission explains in its Guidance to the Part 36 rules that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[33] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Mid-C power market is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the Mid-C power market when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of power at the Mid-C hub when entering into cash market transaction for electricity, especially those trades providing for physical delivery in the future. Traders use the ICE OMC contract, as well as other ICE power contracts, to hedge cash market positions and transactions—activities which enhance the OMC contract's price discovery utility. The substantial volume of trading and open interest in the OMC contract appears to attest to its use for this purpose. While the OMC contract's settlement prices may not be the only factor influencing spot and forward transactions, power traders consider the ICE price to be a critical factor in conducting OTC transactions.[34] As a result, the OMC contract satisfies the direct price reference test.

Another reason that bolsters the direct price reference claim is related to the uniqueness of the ICE electricity prices for the Mid-C market. Day-ahead and real-time electricity prices are reported by a number of sources, including third-party price providers (*e.g.,* Dow Jones & Company). ICE's Mid-C price indices are unique in that they are derived from transactions completed on ICE's electronic system. Moreover, ICE is the only entity that has access to such transaction data. Thus, it is not possible for any other firm to replicate ICE's indices.[35]

The fact that ICE's OMC contract is used more widely as a source of pricing information rather than the daily contract (*i.e.,* the MXO contract)[36] reinforces the argument for direct price reference. In this regard, the OMC contract is a monthly contact that prices power at the Mid-C up to 86 calendar months in the future. Thus, market participants can use the OMC contract to lock-in electricity prices far into the future. In contrast, the MXO contract is listed for a much shorter length of time—up to 70 days in the future. Traders use monthly power contracts like the OMC contract to price future power electricity commitments, where such commitments are based on long range forecasts of power supply and demand. As generation and usage nears, market participants have a better understanding of generation capacity actual power needs. As a result, they can modify previously-established hedges with daily contracts, like the MXO contract.

The Commission notes that the Mid-C is a major trading point for electricity, and the OMC contract's prices are well regarded in the industry as indicative of the value of power at the Mid-C hub. Accordingly, Commission staff believes that it is reasonable to conclude that market participants purchase the data packages that include the OMC contract's prices in substantial part because the OMC contract prices have particular value to them. Moreover, such prices are consulted on a frequent and recurring basis by industry participants in pricing cash market transactions. In light of the above, the OMC contract meets the indirect price reference test.

i. **Federal Register** Comments

WGCEF, WPTF, EEI and ICE stated that no other contract directly references or settles to the OMC contract's price. Moreover, the commenters argued that the underlying cash price series against which the OMC contract is settled (in this case, the average of peak Mid-C electricity prices over the contract month, which are derived from cash market transactions) is the authentic reference price and not the ICE contract itself. Commission staff believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and

[33] 17 CFR Part 36, Appendix A.

[34] In addition to referencing ICE prices, firms participating in the Mid-C power market may rely on other cash market quotes as well as industry publications and price indices that are published by third-party price reporting firms in entering into power transactions.

[35] In contrast, third-party price reporting firms typically compute their power index prices from transaction information that is voluntarily submitted by traders. It is possible that one trader could submit the same transaction data to multiple price reporting firms, whereby increasing the likelihood that price indices from different firms are similar in value. However, it is more plausible that the third-party price reporters' price indices would be similar but not exactly the same because different traders are polled.

[36] The MXO contract is cash settled based on the off-peak, day-ahead price index for the specified day, as published by ICE in its "ICE Day Ahead Power Price Report," which is available on the ECM's website. The daily, off-peak hour electricity price index is a volume-weighted average of qualifying, day-ahead, off-peak hour power contracts at the Mid-Columbia hub that are traded on the ICE platform from 6 a.m. to 11 a.m. CST on the publication date.

recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements.

As noted above, the Mid-C hub is a major trading center for electricity in the western United States. Traders, including producers, keep abreast of the prices of the OMC contract when conducting cash deals. These traders look to a competitively determined price as an indication of expected values of electricity at the Mid-C hub when entering into cash market transaction for power, especially those trades that provide for physical delivery in the future. Traders use the ICE OMC contract to hedge cash market positions and transactions, which enhances the OMC contract's price discovery utility. While the OMC contract's settlement prices may not be the only factor influencing spot and forward transactions, power traders consider the ICE price to be a crucial factor in conducting OTC transactions.

In addition, WGCEF stated that the publication of price data for the OMC contract price is weak justification for material price reference. This commenter argued that market participants generally do not purchase ICE data sets for one contract's prices, such as those for the OMC contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the OMC prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the OMC prices have substantial value to them. As noted above, the Commission notes that publication of the OMC contract's prices is indirect evidence of routine dissemination. The OMC contract's prices, while sold as a package, are of particular interest to market participants. Thus, the Commission has concluded that traders likely specifically purchase the ICE data packages for the OMC contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI criticized that the ECM Study did not specifically identify the OMC contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE OMC contract meets the material price reference criterion because cash market transactions are priced either explicitly or implicitly on a frequent and recurring basis at a differential to the OMC contract's price (direct evidence). Moreover, the OMC contract's price data are sold to market participants, and those individuals likely purchase the ICE data packages specifically for the OMC contract's prices and consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

In its October 6, 2009, **Federal Register** notice, the Commission identified material price reference and material liquidity as potential criteria for SPDC determination of the OMC contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject-contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.[37]

The total number of transactions executed on ICE's electronic platform in the OMC contract was 443 in the second quarter of 2009, resulting in a daily average of 6.9 trades. During the same period, the OMC contract had a total trading volume of 185,950 contracts and an average daily trading volume of 2,905.5 contracts. Moreover, open interest as of June 30, 2009, was 1,105,361 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[38]

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 213,862 contracts (or 3,290 contracts on a daily basis). In terms of number of transactions, 327 trades occurred in the fourth quarter of 2009 (5 trades per day). As of December 31, 2009, open interest in the OMC contract was 1,249,165 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day was relatively low between the second and fourth quarters of 2009. However, trading activity in the OMC contract, as characterized by total quarterly volume, indicates that the MDC contract experiences trading activity that is greater than that of minor futures markets.[39] Thus, it is reasonable to infer that the OMC contract could have a material effect on other ECM contracts or on DCM contracts.

To measure the effect that the OMC contract potentially could have on another ECM contract, staff performed a statistical analysis[40] using daily settlement prices between July 1, 2008, and December 31, 2009, for the ICE OMC and MDC contracts. The simulation suggests that, on average over the sample period, a one percent

[37] As noted above, the material liquidity criterion speaks to the effect that transactions in the potential SPDC may have on trading in "agreements, contracts and transactions listed for trading on or subject to the rules of a designated contract market, a derivatives transaction execution facility, or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act."

[38] 74 FR 51261 (October 6, 2009).

[39] Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

[40] Specifically, Commission staff econometrically estimated a cointegrated vector autoregression (CVAR) model using daily settlement prices. CVAR methods permit a dichotomization of the data relationships into long-run equilibrium components (called the cointegration space or cointegrating relationships) and a short-run component. A CVAR model was chosen over the more traditional vector autoregression model in levels because the statistical properties of the data (lack of stationarity and ergodicity) precluded the more traditional modeling treatment. Moreover, the statistical properties of the data necessitated the modeling of contracts' prices as a CVAR model containing both first differences (to handle stationarity) and an error correction term to capture long run equilibrium relationships. The prices were treated as a single reduced-form model in order to test hypothesis that power prices in the same market affect each other. The prices of ICE's OMC and MDC contracts are positively related to each other in a cointegrating relationship and display a high level of statistical strength. On average during the sample period, each percentage rise in OMC contract's price elicited a 0.915 percent rise in MDC contract's price.

rise in the OMC contract's price elicited a 0.915 percent increase in ICE MDC contract's price.

i. **Federal Register** Comments

ICE and WGCEF stated that the OMC contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, FEIG and EEI argued that the OMC contract cannot have a material effect on other contracts, such as those listed for trading by NYMEX. The commenters pointed out that it is not possible for the OMC contract to affect a DCM contract because price linkage and the potential for arbitrage do not exist. The DCM contracts do not cash settle to the OMC contract's price. Instead, the DCM contracts and the OMC contract are both cash settled based on physical transactions, which the ECM and DCM contracts cannot influence. The Commission's statistical analysis shows that changes in the ICE OMC contract's price significantly influence the prices of other ECM contracts (namely, the MDC contract).

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day, and noted that the relatively low number of trades per day in the OMC contract did not meet this standard of liquidity. While a continuous stream of prices would indeed be an indication of liquidity for certain markets, the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another." [41]

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs" [42] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE also asserted that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.[43] It is the Commission's opinion that liquidity, as it pertains to the OMC contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE OMC contract itself would be considered liquid.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the OMC meets the material liquidity criterion. Specifically, there is sufficient trading activity in the OMC contract to have a material effect on "other agreements, contracts or transactions listed for trading on or subject to the rules of a designated contract market * * * or an electronic trading facility operating in reliance on the exemption in section 2(h)(3) of the Act" (that is, an ECM).

3. Overall Conclusion Regarding the OMC Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the OMC contract performs a significant price discovery function under two of the four criteria established in section 2(h)(7) of the CEA. The Commission has concluded that the OMC contract meets both the material price reference and material liquidity criteria. Accordingly, the Commission is issuing the attached Order declaring that the OMC contract is a SPDC.

Issuance of this Order signals the immediate effectiveness of the Commission's authorities with respect to ICE as a registered entity in connection with its OMC contract,[44] and triggers the obligations, requirements—both procedural and substantive—and timetables prescribed in Commission rule 36.3(c)(4) for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [45] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA [46] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to

[41] Guidance, *supra*.

[42] 73 FR 75892 (December 12, 2008).

[43] In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 82 percent of all transactions in the OMC contract. Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

[44] See 73 FR 75888, 75893 (Dec. 12, 2008).

[45] 44 U.S.C. 3507(d).

[46] 7 U.S.C. 19(a).

market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [47] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.[48] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the Mid-C Financial Peak Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Mid-C Financial Peak contract, traded on the IntercontinentalExchange, Inc., satisfies the statutory material price reference and material liquidity criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the IntercontinentalExchange, Inc., must comply with, with respect to the Mid-C Financial Peak contract, the nine core principles established by new section 2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., shall be and is considered a registered entity [49] with respect to the Mid-C Financial Peak contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities.

Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., commence with the issuance of this Order.[50]

b. Order Relating to the Mid-C Financial Off-Peak Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Mid-C Financial Off-Peak contract, traded on the IntercontinentalExchange, Inc., satisfies the statutory material price reference and material liquidity criteria for significant price discovery contracts. Consistent with this determination, and effective immediately, the IntercontinentalExchange, Inc., must comply with, with respect to the Mid-C Financial Off-Peak contract, the nine core principles established by new section 2(h)(7)(C). Additionally, the IntercontinentalExchange, Inc., shall be and is considered a registered entity [51] with respect to the Mid-C Financial Off-Peak contract and is subject to all the provisions of the Commodity Exchange Act applicable to registered entities.

Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., commence with the issuance of this Order.[52]

Issued in Washington, DC, on June 25, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–16212 Filed 7–1–10; 8:45 am]

BILLING CODE 6351–01–P

[47] 5 U.S.C. 601 *et seq.*

[48] 66 FR 42256, 42268 (Aug. 10, 2001).

[49] 7 U.S.C. 1a(29).

[50] Because ICE already lists for trading a contract (*i.e.,* the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

[51] 7 U.S.C. 1a(29).

[52] Because ICE already lists for trading a contract (*i.e.,* the Henry Financial LD1 Fixed Price contract) that was previously declared by the Commission to be a SPDC, ICE must submit a written demonstration of compliance with the Core Principles within 30 calendar days of the date of this Order. 17 CFR 36.3(c)(4).

COMMODITY FUTURES TRADING COMMISSION

Orders Finding That the Mid-C Financial Peak Daily Contract and Mid-C Financial Off-Peak Daily Contract, Offered for Trading on the IntercontinentalExchange, Inc., Do Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final orders.

SUMMARY: On October 6, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [1] a notice of its intent to undertake a determination whether the Mid-C [2] Financial Peak Daily ("MPD") contract and Mid-C Financial Off-Peak Daily ("MXO") contract,[3] which are listed for trading on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), perform a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue orders finding that the MPD and MXO contracts do not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective Date:* June 25, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading

[1] 74 FR 51261 (October 6, 2009).

[2] The acronym "Mid-C" stands for Mid-Columbia.

[3] The **Federal Register** notice also requested comment on the Mid-C Financial Peak ("MDC") contract and Mid-C Financial Off-Peak ("OMC") contract; these contracts will be addressed in a separate **Federal Register** release.

Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [4] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[5] The legislation authorizes the CFTC to designate an agreement, contract or transaction as a SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[6] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[7] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[8]

II. Notice of Intent To Undertake SPDC Determination

On October 6, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the MPD and MXO contracts [9] perform a significant price discovery function and requested comment from interested parties.[10] Comments were received from the Federal Energy Regulatory Commission ("FERC"), Financial Institutions Energy Group ("FIEG"), Working Group of Commercial Energy Firms ("WGCEF"), Edison Electric Institute ("EEI"), ICE, Western Power Trading Forum ("WPTF") and Public Utility Commission of Texas ("PUCT").[11] The comment letters from FERC [12] and PUCT did not directly address the issue of whether or not the subject contracts are SPDCs. The remaining comment letters raised substantive issues with respect to the applicability of section 2(h)(7) to the MPD and MXO contracts and generally expressed the opinion that the contracts are not SPDCs because they does not meet the material price reference or material liquidity criteria for SPDC determination. These comments are more extensively discussed below, as applicable.

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

[5] 7 U.S.C. 1a(29).

[6] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[7] Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference,* H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). *See also* 73 FR 75888, 75894 (Dec. 12, 2008).

[8] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

[9] As noted above, the **Federal Register** notice also requested comment on the Mid-C Financial Peak ("MDC") contract and Mid-C Financial Off-Peak ("OMC") contract. The MDC and OMC contracts will be addressed in a separate **Federal Register** release.

[10] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[11] FERC is an independent federal regulatory agency that, among other things, regulates the interstate transmission of natural gas, oil and electricity. FIEG describes itself as an association of investment and commercial banks who are active participants in various sectors of the natural gas markets, "including acting as marketers, lenders, underwriters of debt and equity securities, and proprietary investors." WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." EEI is the "association of shareholder-owned electric companies, international affiliates and industry associates worldwide." ICE is an ECM, as noted above. WPTF describes itself as a "broad-based membership organization dedicated to encouraging competition in the Western power markets * * * WTPF strives to reduce the long-run cost of electricity to consumers throughout the region while maintaining the current high level of system reliability." PUCT is the independent organization that oversees the Electric Reliability Council of Texas ("ERCOT") to "ensure nondiscriminatory access to the transmission and distribution systems, to ensure the reliability and adequacy of the regional electrical network, and to perform other essential market functions." The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09–011.html.*

[12] FERC expressed the opinion that a determination by the Commission that either of the subject contracts performs a significant price discovery function "would not appear to conflict with FERC's exclusive jurisdiction under the Federal Power Act (FPA) over the transmission or sale for resale of electric energy in interstate commerce or with its other regulatory responsibilities under the FPA" and further that "FERC staff will monitor proposed SPDC determinations and advise the CFTC of any potential conflicts with FERC's exclusive jurisdiction over RTOs, [(regional transmission organizations)], ISOs [(independent system operators)] or other jurisdictional entities."

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[13] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[14] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission the extent to which, on a frequent and recurring basis, bids, offers or transactions are directly based on, or are determined by referencing, the prices established for the contract.

IV. Findings and Conclusions

The Commission's findings and conclusions with respect to the MPD and MXO contracts are discussed separately below:

a. The Mid-C Financial Peak Daily (MPD) Contract and the SPDC Indicia

The MPD contract is cash settled based on the peak, day-ahead price index for the specified day, as published by ICE in its "ICE Day Ahead Power Price Report," which is available on the ECM's Web site. The daily peak-hour electricity price index is a volume-weighted average of qualifying, day-ahead, peak-hour power transactions at the Mid-Columbia hub that are traded on the ICE platform from 6 a.m. to 11 a.m. CST on the publication date. The ICE transactions on which the price index is based specify the physical delivery of power. The size of the MPD contract is 400 megawatt hours ("MWh"), and the MPD contract is listed for 38 consecutive days.

As the Columbia River flows through Washington State, it encounters two federal and nine privately-owned hydroelectric dams generating a total of close to 20,000 MW of power in the Northwest.[15] With another three dams in British Columbia, Canada, and many more on its various tributaries, the Columbia River is the largest power-producing river in North America. A major goal of the participants in the Mid-C electricity market is to maximize the Columbia River's potential, along with protecting and enhancing the non-power uses of the river. The reliability of the electricity grid in the Northwest is coordinated by the Northwest PowerPool ("NWPP"), which is a voluntary organization comprised of major generating utilities serving the Northwestern United States, as well as British Columbia and Alberta, Canada.

One stretch of the Columbia River between the Grand Coulee Dam and Priests Rapids Dam is governed by the Mid-Columbia Hourly Coordination Agreement ("MCHCA"). The MCHCA covers seven dams[16] and nearly 13,000 MW of generation. Specifically, the agreement defines how the Chelan, Douglas and Grant PUDs coordinate operations with the Bonneville Power Administration to maximize power generation while reducing fluctuations in the river's flow. A number of other utilities that buy power from the PUDs have also signed onto the agreement. This agreement was signed into effect in 1972 and renewed for 20 years in 1997.[17]

In general, electricity is bought and sold in an auction setting on an hourly basis at various points along the electrical grid. The price of electricity at a particular point on the grid is called the locational marginal price ("LMP"), which includes the costs of producing the electricity, as well as congestion and line losses. Thus, an LMP reflects generation costs as well as the actual cost of supplying and delivering electricity to a specific point on the grid.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because day-

[13] In its October 6, 2009, **Federal Register** release, the Commission identified material price reference and material liquidity as the possible criteria for SPDC determination of the MPD and MXO contracts. Arbitrage and price linkage were not identified as possible criteria. As a result, arbitrage and price linkage will not be discussed further in this document and the associated Orders.

[14] 17 CFR 36, Appendix A.

[15] *http://www.wpuda.org/publications/connections/hydro/River%20Riders.pdf.*

[16] The federal dams are Grand Coulee and Chief Joseph. The remaining dams are Wells (operated by the Douglas PUD), Rocky Reach and Rock Island (operated by the Chelan PUD), and Wanapum and Priest Rapids (operated by the Grant PUD). The term "PUD" stands for publically-owned utility, which provides essential services within a specified area.

[17] *http://www.wpuda.org/publications/connections/hydro/River%20Riders.pdf.*

ahead quotes for power are based on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. In this regard, on the day the electricity is transmitted and used, auction participants typically realize that they bought or sold too much power or too little power. A real-time auction is operated to alleviate this problem by servicing as a balancing mechanism. Specifically, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market compared with the day-ahead market.

1. Material Price Reference Criterion

The Commission's October 6, 2009, **Federal Register** notice identified material price reference and material liquidity as the potential basis for a SPDC determination with respect to the MPD contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, ICE offers the "West Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.,* 12, 24, 36 or 48 months) of historical data. This package includes price data for the MPD contract.

The Commission also noted that its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study") found that in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the MPD contract, while not mentioned by name in the ECM Study, might warrant further review.

The Commission explains in its Guidance to the Part 36 rules that in evaluating a contract under the material price reference criterion, it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[18] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Mid-C power market is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the Mid-C power market when conducting cash deals. However, ICE's Mid-C Financial Peak ("MDC") contract, which is a monthly contract, is used more widely as a source of pricing information for electricity than the daily, peak-hour contract (*i.e.,* the MPD contract). Specifically, the MDC contract prices power at the Mid-C trading point based on the simple average of the daily peak-hour prices over the entire month, as reported by ICE. Moreover, the MDC contract is listed for up to 86 calendar months. Thus, market participants can use the MDC contract to lock-in electricity prices far into the future. In contrast, the MPD contract is listed for a much shorter length of time—up to 38 days in the future. With such a limited timeframe, the forward pricing capability of the MPD contract is much more constrained than that of the MDC contract. Traders use monthly power contracts like the MDC contract to price electricity commitments in the future, where such commitments are based on long range forecasts of power supply and demand. As actual generation and usage nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the MPD contract.

The Commission explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry participants in pricing cash market transactions. Although the Mid-C is a major trading center for electricity and, as noted, ICE sells price information for the MPD contract, the MPD contract is not consulted in this manner and does not satisfy the material price reference criterion. Thus, the MPD contract does not satisfy the direct price reference test for existence of material price reference. Furthermore, the Commission notes that publication of the MPD contract's prices is not indirect evidence of material price reference. The MPD contract's prices are published with those of numerous other contracts, including ICE's monthly electricity contracts, which are of more interest to market participants. In these circumstances, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the MPD contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. **Federal Register** Comments:

WGCEF, WPTF, EEI and ICE stated that no other contract directly references or settles to the MPD contract's price. Moreover, the commenters argued that the underlying cash price series against which the MPD contract is settled (in this case, the peak Mid-C electricity price on a particular day, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. Commission staff believes that this interpretation of price reference is too narrow and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while the Mid-C is a major power market, traders do not consider the daily peak-hour Mid-C price to be as important as the electricity price associated with the monthly contract.

In addition, WGCEF stated that the publication of price data for the MPD contract price is weak justification for material price reference. This commenter argued that market participants generally do not purchase ICE data sets for one contract's prices, such as those for the MPD contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the MPD prices as part of a broad package is not conclusive evidence that market participants are buying the ICE

[18] 17 CFR 36, Appendix A.

data sets because they find the MPD prices have substantial value to them. As noted above, the Commission notes that publication of the MPD contract's prices is not indirect evidence of routine dissemination. The MPD contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Due to the lack of importance of daily power contracts relative to monthly contracts, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the MPD contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI criticized that the ECM Study did not specifically identify the MPD contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the ICE MPD contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the MPD contract's price (direct evidence). Moreover, while the MPD contract's price data is sold to market participants, those individuals likely do not purchase the ICE data packages specifically for the MPD contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified material price reference and material liquidity as potential criteria for SPDC determination of the MPD contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the MPD contract was 1,294 in the second quarter of 2009, resulting in a daily average of 20.2 trades. During the same period, the MPD contract had a total trading volume of 18,862 contracts and an average daily trading volume of 294.7 contracts. Moreover, open interest as of June 30, 2009, was 826 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[19]

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 19,574 contracts (or 301 contracts on a daily basis). In terms of number of transactions, 1,108 trades occurred in the fourth quarter of 2009 (17 trades per day). As of December 31, 2009, open interest in the MPD contract was 550 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day remained relatively low between the second and fourth quarters of 2009 and averaged only slightly more than the reporting level of five trades per day. Moreover, trading activity in the MPD contract, as characterized by total quarterly volume, indicates that the MPD contract experiences trading activity that is similar to that of minor futures markets.[20] Thus, the MPD contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[21]

i. **Federal Register** Comments

ICE and WGCEF stated that the MPD contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, FEIG and EEI argued that the MPD contract cannot have a material effect on other contracts, such as those listed for trading by the New York Mercantile Exchange ("NYMEX"), a DCM. The commenters pointed out that it is not possible for the MPD contract to affect a DCM contract because price linkage and the potential for arbitrage do not exist. The DCM contracts do not cash settle to the MPD contract's price. Instead, the DCM contracts and the MPD contract are both cash settled based on physical transactions, which neither the ECM or the DCM contracts can influence.

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the MPD contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."[22]

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[23] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a

[19] 74 FR 51261 (October 6, 2009).

[20] Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

[21] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC],* * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." [17 CFR 36, Appendix A]. For the reasons discussed above, the Commission has found that the MPD contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

[22] Guidance, *supra*.

[23] 73 FR 75892 (December 12, 2008).

SPDC merely because it met the reporting threshold.

ICE proposed that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract."[24] It is the Commission's opinion that liquidity, as it pertains to the MPD contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity in such days, the ICE MPD contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the MPD contract does not meet the material price reference criterion, according to the Commission's Guidance, it would be unnecessary to evaluate whether the MPD contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the MPD contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the MPD Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE MPD contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the MPD contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the MPD contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its MPD contract.[25] Accordingly, with respect to its MPD contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

b. The Mid-C Financial Off-Peak Daily (MXO) Contract and the SPDC Indicia

The MXO contract is cash settled based on the off-peak, day-ahead price index for the specified day, as published by ICE in its "ICE Day Ahead Power Price Report," which is available on the ECM's website. The daily, off-peak hour electricity price index is a volume-weighted average of qualifying, day-ahead, off-peak hour power transactions at the Mid-Columbia hub that are traded on the ICE platform from 6 a.m. to 11a.m. CST on the publication date. The ICE transactions on which the price index is based specify the physical delivery of power. The size of the MXO contract is 25 MWh, and the MXO contract is listed for 70 consecutive days.

As the Columbia River flows through Washington State, it encounters two federal and nine privately-owned hydroelectric dams generating close to 20,000 MW of power for the Northwest.[26] With another three dams in British Columbia, Canada, and many more on its various tributaries, the Columbia River is the largest power-producing river in North America. A major goal of the participants in the Mid-C electricity market is to maximize the Columbia River's potential, along with protecting and enhancing the non-power uses of the river. The reliability of the electricity grid in the Northwest is coordinated by the NWPP.

One stretch of the Columbia River between the Grand Coulee Dam and Priests Rapids Dam is governed by the MCHCA. The MCHCA covers seven dams[27] and nearly 13,000 MW of generation. Specifically, the agreement defines how the Chelan, Douglas and Grant PUDs coordinate operations with the Bonneville Power Administration to maximize power generation while reducing fluctuations in the river's flow. A number of other utilities that buy power from the PUDs have also signed onto the agreement. This agreement was signed into effect on 1972 and renewed for 20 years in 1997.[28]

In general, electricity is bought and sold in an auction setting on an hourly basis at various point along the electrical grid. The price of electricity at a particular point on the grid is called the LMP, which includes the cost of producing the electricity, as well as congestion and line losses. Thus, and LMP reflects generation costs as well as the actual cost of supplying and delivering electricity to a specific point on the grid.

Electricity is traded in a day-ahead market as well as a real-time market. Typically, the bulk of the energy transactions occur in the day-ahead market. The day-ahead market establishes prices for electricity that is to be delivered during the specified hour on the following day. Day-ahead prices are determined based on generation and energy transaction quotes offered in advance. Because day-ahead price quotes are based on estimates of supply and demand, electricity needs usually are not perfectly satisfied in the day-ahead market. On the day electricity is generated and used, auction participants usually realize that they bought or sold either too much or too little power. A real-time auction is operated in the Mid-C market to alleviate this problem. In this regard, electricity traders use the real-time market to sell excess electricity and buy additional power to meet demand. Only a relatively small amount of electricity is traded in the real-time market compared with the day-ahead market.

1. Material Price Reference Criterion

The Commission's October 6, 2009, **Federal Register** notice identified material price reference and material liquidity as the potential basis for a SPDC determination with respect to the MXO contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily

[24] In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 28 percent (fourth quarter of 2009) of all transactions in the MPD contract. Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

[25] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[26] *http://www.wpuda.org/publications/connections/hydro/River%20Riders.pdf.*

[27] The federal dams are Grand Coulee and Chief Joseph. The remaining dams are Wells (operated by the Douglas PUD), Rocky Reach and Rock Island (operated by the Chelan PUD), and Wanapum and Priest Rapids (operated the Grant PUD).

[28] *http://www.wpuda.org/publications/connections/hydro/River%20Riders.pdf.*

only or historical. For example, ICE offers the "West Power of Day" package with access to all price data or just current prices plus a selected number of months (*i.e.,* 12, 24, 36 or 48 months) of historical data. This package includes price data for the MXO contract.

The Commission also noted that its October 2007 ECM Study found that, in general, market participants view ICE as a price discovery market for certain electricity contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the MXO contract, while not mentioned by name in the ECM Study, might warrant further analysis.

The Commission has explained in Guidance that it will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract is being used as a material price reference and therefore, serving a significant price discovery function.[29] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

The Mid-C power market is a major pricing center for electricity on the West Coast. Traders, including producers, keep abreast of the electricity prices in the Mid-C power market when conducting cash deals. However, ICE's Mid-C Financial Off-Peak ("OMC") contract, which is a monthly contract, is used more widely as a source of pricing information for electricity in that market than the daily off-peak hour contract (*i.e.,* the MXO contract). In this regard, OMC contract prices power at the Mid-C trading point based on the simple average of the daily off-peak hour prices over the entire month, as reported by ICE. Moreover, the OMC contract is listed for up to 86 calendar months. Market participants can use the OMC contract to lock-in off-peak electricity prices far into the future. In contrast, the MXO contract is listed for a much shorter length of time—up to 70 days in the future. With such a limited timeframe, the forward pricing capability of the MXO contract is constrained relative to that of the OMC contract. Traders likely use monthly power contracts like the OMC contract to price electricity commitments in the future. Such commitments are based on long range forecasts of power supply and demand. As the time of generation and consumption nears, market participants have a better understanding of actual power supply and needs. As a result, traders can modify previously-established hedges with the daily power contracts, like the MXO contract.

The Commission explained in its Guidance that a contract meeting the material price reference criterion would routinely be consulted by industry participants in pricing cash market transactions. Although the Mid-C is a major trading center for electricity and, as noted, ICE sells price information for the MXO contract, the Commission found upon further evaluation that the MXO contract is not routinely consulted by industry participants in pricing cash market transactions. Furthermore, the Commission notes that publication of the MXO contract's prices is not indirect evidence of material price reference. The MXO contract's prices are published with those of numerous other contracts, including ICE's OMC contract, which are of more interest to market participants. Thus, the Commission has concluded that traders likely do not specifically purchase ICE data packages for the MXO contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

i. **Federal Register** Comments

WGCEF, WPTF, EEI and ICE stated that no other contract directly references or settles to the MXO contract's price. Moreover, the commenters argued that the underlying cash price series against which the MXO contract is settled (in this case, the off-peak Mid-C electricity price on a particular day, which is derived from cash market transactions) is the authentic reference price and not the ICE contract itself. Commission staff believes that this interpretation of price reference is too limiting and believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, while the Mid-C is a major power market, traders do not consider the daily off-peak hour Mid-C price to be as important as the electricity price associated with the average monthly off-peak price.

In addition, WGCEF stated that the publication of price data for the MXO contract price reference is weak justification for material price reference. This commenter argued that market participants generally do not purchase ICE data sets for one contract's prices, such as those for the MXO contract. Instead, traders are interested in the settlement prices, so the fact that ICE sells the MXO prices as part of a broad package is not conclusive evidence that market participants are buying the ICE data sets because they find the MXO prices have substantial value to them. As mentioned above, the Commission notes that publication of the MXO contract's prices is not indirect evidence of routine dissemination. The MXO contract's prices are published with those of numerous other contracts, which are of more interest to market participants. Due to the lack of importance of daily power contracts relative to monthly power contracts, the Commission has concluded that traders likely do not specifically purchase the ICE data packages for the MXO contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions.

Lastly, EEI observed that the ECM Study did not specifically identify the MXO contract as a contract that is referred to by market participants on a frequent and recurring basis. In response, the Commission notes that it cited the ECM Study's general finding that some ICE electricity contracts appear to be regarded as price discovery markets merely as indication that an investigation of certain ICE contracts may be warranted. The ECM Study was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

[29] 17 CFR 36, Appendix A.

ii. Conclusion Regarding Material Price Reference:

Based on the above, the Commission finds that the ICE MXO contract does not meet the material price reference criterion because cash market transactions are not priced either explicitly or implicitly on a frequent and recurring basis at a differential to the MXO contract's price (direct evidence). Moreover, while the MXO contract's price data is sold to market participants, those individuals likely do not specifically purchase the ICE data packages for the MXO contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 6, 2009, **Federal Register** notice, the Commission identified material price reference and material liquidity as potential criteria for SPDC determination of the MXO contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that changes to the subject contract's prices potentially may have on prices for other contracts listed on an ECM or a DCM.

The total number of transactions executed on ICE's electronic platform in the MXO contract was 437 in the second quarter of 2009, resulting in a daily average of 6.8 trades. During the same period, the MXO contract had a total trading volume of 61,688 contracts and an average daily trading volume of 963.9 contracts. Moreover, open interest as of June 30, 2009, was 826 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[30]

In a subsequent filing dated March 24, 2010, ICE reported that total trading volume in the fourth quarter of 2009 was 19,216 contracts (or 296 contracts on a daily basis). In terms of number of transactions, 123 trades occurred in the fourth quarter of 2009 (1.9 trades per day). As of December 31, 2009, open interest in the MXO contract was 2,528 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.

The number of trades per day fell below minimum reporting level of five trades per day in the fourth quarters of 2009. Moreover, trading activity in the MXO contract, as characterized by total quarterly volume, indicates that the MXO contract experiences trading activity that is similar to that of minor futures markets.[31] Thus, the MXO contract does not meet a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[32]

i. **Federal Register** Comments

ICE and WGCEF stated that the MXO contract lacks a sufficient number of trades to meet the material liquidity criterion. These two commenters, along with WPTF, FEIG and EEI argued that the MXO contract cannot have a material effect on other contracts, such as those listed for trading by NYMEX. The commenters pointed out that it is not possible for the MXO contract to affect a DCM contract because price linkage and the potential for arbitrage do not exist. The DCM contracts do not cash settle to the MXO contract's price. Moreover, the DCM contracts and the MXO contract are both cash settled based on physical transactions, which the contracts cannot influence.

WGCEF and ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day and noted that the relatively low number of trades per day in the MXO contract did not meet this standard of liquidity. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."[33]

ICE opined that the Commission "seems to have adopted a five trade per day test for material liquidity." To the contrary, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[34] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC; however, the contract will not be found to be a SPDC merely because it met the reporting threshold.

ICE proposed that the statistics provided by ICE were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) "include trades made in all months" as well as in strips of contract months. ICE suggested that a more appropriate method of determining liquidity is to examine the activity in a single traded month of a given contract.[35] It is the Commission's opinion that liquidity, as it pertains to the MXO contract, is typically a function of trading activity in particular lead days and, given sufficient liquidity

[30] 74 FR 51261 (October 6, 2009).

[31] Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

[32] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission observed that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the MXO contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination.

[33] Guidance, *supra.*

[34] 73 FR 75892 (December 12, 2008).

[35] In addition, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 6, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. The Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 61 percent of all transactions in the MXO contract (fourth quarter of 2009). Commission acknowledges that the open interest information it provided in its October 6, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

in such days, the ICE MXO contract itself would be considered liquid. In any event, in light of the fact that the Commission has found that the MXO contract does not meet the material price reference criterion, according to the Commission's Guidance, it would be unnecessary to evaluate whether the MXO contract meets the material liquidity criterion since it cannot be used alone for SPDC determination.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission finds that the MXO contract does not meet the material liquidity criterion.

3. Overall Conclusion Regarding the MXO Contract

After considering the entire record in this matter, including the comments received, the Commission has determined that the ICE MXO contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the MXO contract does not meet the material price reference or material liquidity criteria at this time. Accordingly, the Commission is issuing the attached Order declaring that the MXO contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its MXO contract.[36] Accordingly, with respect to its MXO contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA") [37] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA[38] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Section 4(i) of the CEA authorizes the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that the MPD and MXO contracts, which are the subject of the attached Orders, are not SPDCs; accordingly, the Commission's Orders impose no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [39] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect ECMs. The Commission previously has determined that ECMs are not small entities for purposes of the RFA.[40] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these Orders, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Orders

a. Order Relating to the Mid-C Financial Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Mid-C Financial Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price preference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity [41] with respect to the Mid-C Financial Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the Mid-C Financial Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the

[36] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[37] 44 U.S.C. 3507(d).

[38] 7 U.S.C. 19(a).

[39] 5 U.S.C. 601 *et seq.*

[40] 66 FR 42256, 42268 (Aug. 10, 2001).

[41] 7 U.S.C. 1a(29).

Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and March 24, 2010, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Mid-C Financial Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

b. Order Relating to the Mid-C Financial Off-Peak Daily Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Mid-C Financial Off-Peak Daily contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price reference or material liquidity criteria for significant price discovery contracts. Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity [42] with respect to the Mid-C Financial Off-Peak Daily contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the Mid-C Financial Off-Peak Daily contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., July 27, 2009, and March 24, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Mid-C Financial Off-Peak Daily contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC on June 25, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–16206 Filed 7–1–10; 8:45 am]

BILLING CODE 6351–01–P

[42] 7 U.S.C. 1a(29).

COMMODITY FUTURES TRADING COMMISSION

Order Finding That the Fuel Oil-180 Singapore Swap Contract Traded on the IntercontinentalExchange, Inc., Does Not Perform a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Order.

SUMMARY: On October 20, 2009, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment in the **Federal Register** [1] a notice of its intent to undertake a determination whether the Fuel Oil-180 Singapore Swap ("SZS") contract traded on the IntercontinentalExchange, Inc. ("ICE"), an exempt commercial market ("ECM") under sections 2(h)(3)–(5) of the Commodity Exchange Act ("CEA" or the "Act"), performs a significant price discovery function pursuant to section 2(h)(7) of the CEA. The Commission undertook this review based upon an initial evaluation of information and data provided by ICE as well as other available information. The Commission has reviewed the entire record in this matter, including all comments received, and has determined to issue an order finding that the SZS contract does not perform a significant price discovery function. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder.

DATES: *Effective Date:* June 25, 2010.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov;* or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CFTC Reauthorization Act of 2008 ("Reauthorization Act") [2] significantly broadened the CFTC's regulatory authority with respect to ECMs by creating, in section 2(h)(7) of the CEA, a new regulatory category—ECMs on which significant price discovery contracts ("SPDCs") are traded—and treating ECMs in that category as registered entities under the CEA.[3] The legislation authorizes the CFTC to designate an agreement, contract or transaction as an SPDC if the Commission determines, under criteria established in section 2(h)(7), that it performs a significant price discovery function. When the Commission makes such a determination, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the Act and Commission regulations, and must comply with nine core principles established by new section 2(h)(7)(C).

On March 16, 2009, the CFTC promulgated final rules implementing the provisions of the Reauthorization Act.[4] As relevant here, rule 36.3 imposes increased information reporting requirements on ECMs to assist the Commission in making prompt assessments whether particular ECM contracts may be SPDCs. In addition to filing quarterly reports of its contracts, an ECM must notify the Commission promptly concerning any contract traded in reliance on the exemption in section 2(h)(3) of the CEA that averaged five trades per day or more over the most recent calendar quarter, and for which the exchange sells its price information regarding the contract to market participants or industry publications, or whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another contract.

Commission rule 36.3(c)(3) established the procedures by which the Commission makes and announces its determination whether a particular ECM contract serves a significant price discovery function. Under those

[1] 74 FR 53728 (October 20, 2009).

[2] Incorporated as Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. No. 110–246, 122 Stat. 1624 (June 18, 2008).

[3] 7 U.S.C. 1a(29).

[4] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

procedures, the Commission will publish notice in the **Federal Register** that it intends to undertake an evaluation whether the specified agreement, contract or transaction performs a significant price discovery function and to receive written views, data and arguments relevant to its determination from the ECM and other interested persons. Upon the close of the comment period, the Commission will consider, among other things, all relevant information regarding the subject contract and issue an order announcing and explaining its determination whether or not the contract is a SPDC. The issuance of an affirmative order signals the effectiveness of the Commission's regulatory authorities over an ECM with respect to a SPDC; at that time such an ECM becomes subject to all provisions of the CEA applicable to registered entities.[5] The issuance of such an order also triggers the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4).[6]

II. Notice of Intent To Undertake SPDC Determination

On October 20, 2009, the Commission published in the **Federal Register** notice of its intent to undertake a determination whether the SZS contract performs a significant price discovery function and requested comment from interested parties.[7] Comments were received from Working Group of Commercial Energy Firms ("WGCEF"), Platts, ICE and Shell International Eastern Trading Company ("SIETCO).[8] The comment letter from Platts did not directly address the issue of whether or not the SZS contract is a SPDC. The remaining comment letters raised substantive issues with respect to the applicability of section 2(h)(7) to the SZS contract and generally expressed the opinion that the SZS contract is not a SPDC because it does not meet the material price reference and material liquidity criteria for SPDC determination. These comments are more extensively discussed below, as applicable.

III. Section 2(h)(7) of the CEA

The Commission is directed by section 2(h)(7) of the CEA to consider the following criteria in determining a contract's significant price discovery function:

- *Price Linkage*—the extent to which the agreement, contract or transaction uses or otherwise relies on a daily or final settlement price, or other major price parameter, of a contract or contracts listed for trading on or subject to the rules of a designated contract market ("DCM") or derivatives transaction execution facility ("DTEF"), or a SPDC traded on an electronic trading facility, to value a position, transfer or convert a position, cash or financially settle a position, or close out a position.
- *Arbitrage*—the extent to which the price for the agreement, contract or transaction is sufficiently related to the price of a contract or contracts listed for trading on or subject to the rules of a designated DCM or DTEF, or a SPDC traded on or subject to the rules of an electronic trading facility, so as to permit market participants to effectively arbitrage between the markets by simultaneously maintaining positions or executing trades in the contracts on a frequent and recurring basis.
- *Material price reference*—the extent to which, on a frequent and recurring basis, bids, offers or transactions in a commodity are directly based on, or are determined by referencing or consulting, the prices generated by agreements, contracts or transactions being traded or executed on the electronic trading facility.
- *Material liquidity*—the extent to which the volume of agreements, contracts or transactions in a commodity being traded on the electronic trading facility is sufficient to have a material effect on other agreements, contracts or transactions listed for trading on or subject to the rules of a DCM, DTEF or electronic trading facility operating in reliance on the exemption in section 2(h)(3).

Not all criteria must be present to support a determination that a particular contract performs a significant price discovery function, and one or more criteria may be inapplicable to a particular contract.[9] Moreover, the statutory language neither prioritizes the criteria nor specifies the degree to which a SPDC must conform to the various criteria. In Guidance issued in connection with the Part 36 rules governing ECMs with SPDCs, the Commission observed that these criteria do not lend themselves to a mechanical checklist or formulaic analysis. Accordingly, the Commission has indicated that in making its determinations it will consider the circumstances under which the presence of a particular criterion, or combination of criteria, would be sufficient to support a SPDC determination.[10] For example, for contracts that are linked to other contracts or that may be arbitraged with other contracts, the Commission will consider whether the price of the potential SPDC moves in such harmony with the other contract that the two markets essentially become interchangeable. This co-movement of prices would be an indication that activity in the contract had reached a level sufficient for the contract to perform a significant price discovery function. In evaluating a contract's price discovery role as a price reference, the Commission will consider whether cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract.

IV. Findings and Conclusions

The Fuel Oil-180 Singapore Swap (SZS) Contract and the SPDC Indicia

The SZS contract specifies 1,000 metric tons of 180 CentiStokes (cst) Singapore high-sulfur fuel oil. The contract is cash-settled based on the

[5] Public Law 110–246 at 13203; *Joint Explanatory Statement of the Committee of Conference,* H.R. Rep. No. 110–627, 110 Cong., 2d Sess. 978, 986 (Conference Committee Report). *See also* 73 FR 75888, 75894 (Dec. 12, 2008).

[6] For an initial SPDC, ECMs have a grace period of 90 calendar days from the issuance of a SPDC determination order to submit a written demonstration of compliance with the applicable core principles. For subsequent SPDCs, ECMs have a grace period of 30 calendar days to demonstrate core principle compliance.

[7] The Commission's Part 36 rules establish, among other things, procedures by which the Commission makes and announces its determination whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission publishes a notice in the **Federal Register** that it intends to undertake a determination whether a specified agreement, contract or transaction performs a significant price discovery function and to receive written data, views and arguments relevant to its determination from the ECM and other interested persons.

[8] WGCEF describes itself as "a diverse group of commercial firms in the domestic energy industry whose primary business activity is the physical delivery of one or more energy commodities to customers, including industrial, commercial and residential consumers" and whose membership consists of "energy producers, marketers and utilities." McGraw-Hill, through its division Platts, compiles and calculates monthly energy price indices from energy trade data submitted to Platts by energy marketers. ICE is an exempt commercial market, as noted above. SIETCO, a subsidiary of Royal Dutch Shell Oil Company (Shell Oil) located in Singapore, handles exports and trading of Shell Oil petroleum products in the Asia-Pacific region. The comment letters are available on the Commission's Web site: *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09-030.html.*

[9] In its October 20, 2009, **Federal Register** release, the Commission identified material price reference and material liquidity as the possible criteria for SPDC determination of the SZS contract. Price linkage and Arbitrage were not identified as possible criteria. As a result, price linkage and arbitrage will not be discussed further in this document and the associated Order.

[10] 17 CFR 36, Appendix A.

arithmetic average of the means between the daily high and low price quotations for "HSFO 180 CST" delivered in the specified calendar month, published under the "Singapore" heading in Platts' *Asia-Pacific/Arab Gulf Marketscan.* The SZS contract specifies the delivery of high-sulfur fuel oil in Singapore on an FOB basis.[11] The SZS contract is listed for up to 60 consecutive calendar months beginning with the next calendar month.

After crude oil is extracted from the ground and brought to a refinery, it goes through a process called fractional distillation. During fractional distillation, the oil is heated, causing different types of oil within the crude to separate as they have different boiling points. Classically, fractional distillation is accomplished in a distillation column, which siphons off various fractions as they precipitate out. During fractional distillation, oil refineries can also use catalysts to "crack" the hydrocarbon chains in the crude oil to create specific oil fractions.

Fuel oil is a fraction obtained from petroleum distillation, either as a distillate or a residue. Fuel oil is made of long hydrocarbon chains, particularly alkanes, cycloalkanes and aromatics. Technically, different grades of fuel oil exist; fuel oil is classified into six classes, numbered 1 through 6, according to its boiling point, composition and purpose. Broadly speaking, fuel oil is any liquid petroleum product that is burned in a furnace or boiler for the generation of heat or used in an engine for the generation of power, except oils having a flash point of approximately 104 degrees Fahrenheit and oils burned in cotton or wool-wick burners. Thus, fuel oils can include kerosene, diesel, and heating oil. However, the term "fuel oil" typically is used in a stricter sense to refer to the heavy commercial fuel that is obtained from crude oil, which is thicker than gasoline and naphtha.

No. 5 fuel oil and No. 6 fuel oil are called residual fuel oils ("RFO") or heavy fuel oils. More No. 6 oil is produced compared to No. 5 oil, thus the terms heavy fuel oil and residual fuel oil are sometimes used as names for No. 6. No. 5 fuel oil is a mixture of 75–80 percent No. 6 oil and 25–20 diesel fuel (No. 2 oil). No. 6 oil may also contain a small amount of No. 2 to get it to meet specifications.

Heavy fuel oils, also known as bunker fuels,[12] are used for powering marine vessels. The hydrocarbon chains in bunker fuel are very long, and this fuel is highly viscous as a result. The thick fuel is difficult for most engines to burn since it must be heated before it will combust, so it tends to be used in large engines like those on board ships. Ships have enough space to heat bunker fuel before feeding it into their engines, and their extremely sophisticated engines are capable of burning a wide range of fuels, including low quality bunker fuel. The principal market for Singapore high-sulfur fuel oil 180 cst is the Asia-Pacific region.

Fuel oil is transported worldwide by fleets of supertankers making deliveries to suitably sized strategic ports such as Houston, Singapore, and Rotterdam. Where a convenient seaport does not exist, inland transport may be achieved with the use of barges.

Market participants keep abreast of fuel oil prices worldwide in order to take advantage of arbitrage opportunities. In this regard, international fuel oil prices are compared with those in the trader's home port after accounting for transportation costs. Market participants may find it profitable to ship fuel oil from one market to another. For example, it is sometimes profitable to ship fuel oil from the Gulf Coast of the United States to Singapore. Such conditions do not exist all of the time; in fact, a trader may realize this opportunity only a few times per year.

In its October 20, 2009, **Federal Register** notice, the Commission identified material price reference and material liquidity as the SPDC criteria potentially applicable to the SZS contract. Each of these criteria is discussed below.[13]

1. Material Price Reference Criterion

The Commission's October 20, 2009, **Federal Register** notice identified material price reference as a potential basis for a SPDC determination with respect to this contract. The Commission considered the fact that ICE sells its price data to market participants in a number of different packages which vary in terms of the hubs covered, time periods, and whether the data are daily only or historical. For example, the ICE offers the "OTC Oil End of Day" data package with access to all price data or just 12, 24, 36, or 48 months of historical data. This package includes price data for the SZS contract.

The Commission also noted that its October 2007 *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* ("ECM Study")[14] found that in general, market participants view the ICE as a price discovery market for certain energy contracts. The study did not specify which markets performed this function; nevertheless, the Commission determined that the SZS contract, while not mentioned by name in the ECM Study, might warrant further review.

The Commission will rely on one of two sources of evidence—direct or indirect—to determine that the price of a contract was being used as a material price reference and therefore, serving a significant price discovery function.[15] With respect to direct evidence, the Commission will consider the extent to which, on a frequent and recurring basis, cash market bids, offers or transactions are directly based on or quoted at a differential to, the prices generated on the ECM in question. Direct evidence may be established when cash market participants are quoting bid or offer prices or entering into transactions at prices that are set either explicitly or implicitly at a differential to prices established for the contract in question. Cash market prices are set explicitly at a differential to the section 2(h)(3) contract when, for instance, they are quoted in dollars and cents above or below the reference contract's price. Cash market prices are set implicitly at a differential to a section 2(h)(3) contract when, for instance, they are arrived at after adding to, or subtracting from the section 2(h)(3) contract, but then quoted or reported at a flat price. With respect to indirect evidence, the Commission will consider the extent to which the price

[11] The term "FOB" indicates "free on board." In other words, the seller will pay for transportation of the product to the port of Singapore, as well as the cost of loading the fuel oil onto the cargo ship (this includes inland hauling charges, customs clearance, origin documentation charges, demurrage (if any), and origin port handling charges—in this case Singapore).

[12] Bunker fuel gets its name from the containers on ships and in ports that it is stored in; in the days of steam they were coal bunkers but now they are bunker-fuel tanks. The Australian Customs and the Australian Tax Office define a bunker fuel as the fuel that powers the engine of a ship or aircraft. Bunker A is No. 2 fuel oil, bunker B is No. 4 or No. 5 and bunker C is No. 6. Since No. 6 is the most common, the term "bunker fuel" is often used as a synonym for No. 6. No. 5 fuel oil is also called navy special fuel oil or just navy special, No. 6 or 5 are also called furnace fuel oil ("FFO"); the high viscosity requires heating, usually by a re-circulated low pressure steam system, before the oil can be pumped from a bunker tank.

[13] As noted above, the Commission did not find any indication of price linkage or arbitrage in connection with this contract; accordingly, those criteria were not discussed in reference to the SZS contract.

[14] *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*

[15] 17 CFR 36, Appendix A.

of the contract in question is being routinely disseminated in widely distributed industry publications—or offered by the ECM itself for some form of remuneration—and consulted on a frequent and recurring basis by industry participants in pricing cash market transactions.

Although Singapore has one of the most utilized ports in the world and ICE sells price data for its SZS contract, the Commission has found upon further evaluation that cash market transactions are not being directly based or quoted as a differential to the SZS contract nor is that contract routinely consulted by industry participants in pricing cash market transactions. In this regard, traders use the SZS contract's price as an indicator of arbitrage potential between two fuel oil markets (*e.g.,* Singapore and the U.S. Gulf Coast). But because the market conditions are not always such that diverting fuel oil from one market to Singapore is profitable, traders do not regularly keep track of the SZS contract's prices. Instead, traders refer to the SZS contract on an occasional basis and during periods when it is historically profitable to ship fuel oil to Singapore. Cash market transactions are not priced on a frequent and recurring basis at a differential to the SZS contract's price. Moreover, market participants likely do not specifically purchase the ICE data packages for the SZS contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions. Thus, the SZS contract does not meet the Commission's Guidance for the material price reference criterion.

i. **Federal Register** Comments

ICE and SIETCO addressed the question of whether the SZS contract met the material price reference criterion for a SPDC. The commenters argued that the underlying cash price series against which the ICE SZS contract is settled (in this case, the Platts price for 180 cst fuel oil in Singapore) is the authentic reference price and not the ICE contract itself. Consequently, the commenters maintain that the only price which is referenced and relied upon by market participants for this product is the one published by Platts. Commission staff believes that this interpretation of price reference is too limiting in that it only considers the average index value on which the contract is cash settled after trading ceases. Instead, the Commission believes that a cash-settled derivatives contract could meet the price reference criterion if market participants "consult on a frequent and recurring basis" the derivatives contract when pricing forward, fixed-price commitments or other cash-settled derivatives that seek to "lock in" a fixed price for some future point in time to hedge against adverse price movements. As noted above, the port of Singapore is a significant trading center for 180 cst fuel oil in the Asian market. However, traders do not consult the SZS contract's price on a frequent and recurring basis since the potential for arbitrage between fuel oil market centers worldwide is sporadic and infrequent.

ICE argued that the Commission appeared to base the case that the SZS contract is potentially a SPDC on a disputable assertion. In issuing its notice of intent to determine whether the SZS contract is a SPDC, the CFTC cited a general conclusion in its ECM Study "that certain market participants referred to ICE as a price discovery market for certain energy contracts." ICE states that this argument is "nearly impossible to respond to as the ECM report did not mention the SZS [contract] as a potential significant price discovery contract. It is hard to say which market participants made this statement *in 2007 or the contracts that were referenced* * * * Basing a material price reference determination on general statements made in a two year old study does not seem to meet Congress' intent that the CFTC use its considerable expertise to study the OTC markets." In response to the above comment, the Commission notes that it cited the ECM Study's general finding that some ICE energy contracts appear to be regarded as price discovery markets merely as an indication that a further review of certain ICE contracts may be warranted, and was not intended to serve as the sole basis for determining whether or not a particular contract meets the material price reference criterion.

WGCEF argued that the SZS contract does not meet the direct evidence or the indirect evidence with respect to the material price reference criterion. With regard to direct evidence, WGCEF stated that "[t]here are no other related contracts traded in any market that settle to, or reference, the contract." As noted above, this view of price reference is narrow. Nevertheless, while the Commission believes that price reference can include consultation on a frequent and recurring basis, the Commission has determined that such frequent and recurring consultation does not take place with respect to the SZS contract.

ii. Conclusion Regarding Material Price Reference

Based on the above, the Commission finds that the SZS contract does not meet the material price reference criterion because cash market transactions are not priced on a frequent and recurring basis at a differential to the SZS contract's price (direct evidence). Moreover, while the ECM sells the SZS contract's price data to market participants, market participants likely do not specifically purchase the ICE data packages for the SZS contract's prices and do not consult such prices on a frequent and recurring basis in pricing cash market transactions (indirect evidence).

2. Material Liquidity Criterion

As noted above, in its October 20, 2009, **Federal Register** notice, the Commission identified material liquidity and material price reference as potential criteria for SPDC determination of the SZS contract. To assess whether a contract meets the material liquidity criterion, the Commission first examines trading activity as a general measurement of the contract's size and potential importance. If the Commission finds that the contract in question meets a threshold of trading activity that would render it of potential importance, the Commission will then perform a statistical analysis to measure the effect that the prices of the subject contract potentially may have on prices for other contracts listed on an ECM or a DCM.

The Commission noted that the total number of transactions executed on ICE's electronic platform in the SZS contract was 1,957 in the second quarter of 2009, resulting in a daily average of 30.6 trades. During the same period, the SZS contract had a total trading volume of 13,170 contracts and an average daily trading volume of 205.8 contracts. Moreover, open interest as of June 30, 2009, was 11,356 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing. In this regard, ICE does not differentiate between open interest created by a transaction executed on its trading platform and that created by a transaction executed off its trading platform.[16]

In a subsequent filing dated November 13, 2009, ICE reported that total trading volume in the third quarter of 2009 was 22,255 contracts (or 337 contracts on a daily basis). In terms of

[16] 74 FR 53728 (October 20, 2009).

number of transactions, 4,625 trades occurred in the third quarter of 2009 (70.1 trades per day). As of September 30, 2009, open interest in the SZS contract was 15,681 contracts, which included trades executed on ICE's electronic trading platform, as well as trades executed off of ICE's electronic trading platform and then brought to ICE for clearing.[17]

Trading activity in the SZS contract, as characterized by total quarterly volume, indicates that the SZS contract experiences trading activity similar to that of other thinly-traded contracts.[18] Thus, the SZS contract does not meets a threshold of trading activity that would render it of potential importance and no additional statistical analysis is warranted.[19]

Federal Register Comments

As noted above, WGCEF, ICE, and SIETCO addressed the question of whether the SZS contract met the material liquidity criterion for a SPDC. These commenters stated that the SZS contract does not meet the material liquidity criterion for SPDC determination for a number of reasons.

ICE noted that the Commission's Guidance had posited concepts of liquidity that generally assumed a fairly constant stream of prices throughout the trading day. The Commission observes that a continuous stream of prices would indeed be an indication of liquidity for certain markets but the Guidance also notes that "quantifying the levels of immediacy and price concession that would define material liquidity may differ from one market or commodity to another."

ICE opined that the Commission "seems to have adopted a five trade-per-day test to determine whether a contract is materially liquid. It is worth noting that ICE originally suggested that the CFTC use a five trades-per-day threshold as the basis for an ECM to *report* trade data to the CFTC." In this regard, the Commission adopted a five trades-per-day threshold as a reporting requirement to enable it to "independently be aware of ECM contracts that may develop into SPDCs"[20] rather than solely relying upon an ECM on its own to identify any such potential SPDCs to the Commission. Thus, any contract that meets this threshold may be subject to scrutiny as a potential SPDC but this does not mean that the contract will be found to be a SPDC merely because it met the reporting threshold.

ICE proposed that the statistics it provided were misinterpreted and misapplied by the Commission. In particular, ICE stated that the volume figures used in the Commission's analysis (cited above) include trades made in all months of the contract as well as in strips of contract months, and a "more appropriate method of determining liquidity is to examine the activity in a *single* traded month or strip of a given contract."

It is the Commission's opinion that liquidity, as it pertains to the SZS contract, is typically a function of trading activity in particular lead months and, given sufficient liquidity in such months, the ICE SZS contract itself would be considered liquid. Nevertheless, in light of the fact that the Commission has found that the SZS contract does not meet the material price reference criterion, material liquidity cannot be used alone for SPDC determination.

Additionally, ICE stated that the trades-per-day statistics that it provided to the Commission in its quarterly filing and which were cited in the Commission's October 20, 2009, **Federal Register** notice includes 2(h)(1) transactions, which were not completed on the electronic trading platform and should not be considered in the SPDC determination process. SIETCO expressed a similar concern. In this respect, the Commission staff asked ICE to review the data it sent in its quarterly filings; ICE confirmed that the volume data it provided and which the Commission cited includes only transaction data executed on ICE's electronic trading platform. As noted above, supplemental data supplied by ICE confirmed that block trades are in addition to the trades that were conducted on the electronic platform; block trades comprise about 42.5 percent of all transactions in the SZS contract. The Commission acknowledges that the open interest information it provided in its October 20, 2009, **Federal Register** notice includes transactions made off the ICE platform. However, once open interest is created, there is no way for ICE to differentiate between "on-exchange" versus "off-exchange" created positions, and all such positions are fungible with one another and may be offset in any way agreeable to the position holder regardless of how the position was initially created.

ii. Conclusion Regarding Material Liquidity

For the reasons discussed above, the Commission has found that the SZS contract does not meet the material price reference criterion.

4. Overall Conclusion

After considering the entire record in this matter, including the comments received, the Commission has determined that the SZS contract does not perform a significant price discovery function under the criteria established in section 2(h)(7) of the CEA. Specifically, the Commission has determined that the SZS contract does not meet the material price reference criterion at this time. In light of this fact, according to the Commission's Guidance, it would be unnecessary to evaluate whether the SZS contract meets the material liquidity criterion since the Commission believes it is not useful as the sole basis for a SPDC determination. Accordingly, the Commission is issuing the attached Order declaring that the SZS contract is not a SPDC.

Issuance of this Order indicates that the Commission does not at this time regard ICE as a registered entity in connection with its SZS contract.[21] Accordingly, with respect to its SZS contract, ICE is not required to comply with the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) for ECMs with SPDCs. However, ICE must continue to comply with the applicable reporting requirements for ECMs.

V. Related Matters

a. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[22] imposes certain requirements

[17] In this regard, supplemental data subsequently submitted by the ICE indicated that block trades are included in the on-exchange trades; block trades comprise 42.5 percent of all transactions in the SZS contract.

[18] Staff has advised the Commission that in its experience, a thinly-traded contract is, generally, one that has a quarterly trading volume of 100,000 contracts or less. In this regard, in the third quarter of 2009, physical commodity futures contracts with trading volume of 100,000 contracts or fewer constituted less than one percent of total trading volume of all physical commodity futures contracts.

[19] In establishing guidance to illustrate how it will evaluate the various criteria, or combinations of criteria, when determining whether a contract is a SPDC, the Commission made clear that "material liquidity itself would not be sufficient to make a determination that a contract is a [SPDC], * * * but combined with other factors it can serve as a guidepost indicating which contracts are functioning as [SPDCs]." For the reasons discussed above, the Commission has found that the SZS contract does not meet the material price reference criterion. In light of this finding and the Commission's Guidance cited above, there is no need to evaluate further the material liquidity criteria since the Commission believes it is not useful as the sole basis for a SPDC determination. 17 CFR 36, Appendix A.

[20] 73 FR 75892 (December 12, 2008).

[21] *See* 73 FR 75888, 75893 (Dec. 12, 2008).

[22] 44 U.S.C. 3507(d).

on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. Certain provisions of Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA. OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

b. Cost-Benefit Analysis

Section 15(a) of the CEA [23] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the Act. The Commission has considered the costs and benefits in light of the specific provisions of section 15(a) of the Act and has concluded that the Order, required by Congress to strengthen federal oversight of exempt commercial markets and to prevent market manipulation, is necessary and appropriate to accomplish the purposes of section 2(h)(7) of the Act.

When a futures contract begins to serve a significant price discovery function, that contract, and the ECM on which it is traded, warrants increased oversight to deter and prevent price manipulation or other disruptions to market integrity, both on the ECM itself and in any related futures contracts trading on DCMs. An Order finding that a particular contract is a SPDC triggers this increased oversight and imposes obligations on the ECM calculated to accomplish this goal. The increased oversight engendered by the issue of a SPDC Order increases transparency and helps to ensure fair competition among ECMs and DCMs trading similar products and competing for the same business. Moreover, the ECM on which the SPDC is traded must assume, with respect to that contract, all the responsibilities and obligations of a registered entity under the CEA and Commission regulations. Additionally, the ECM must comply with nine core principles established by section 2(h)(7) of the Act—including the obligation to establish position limits and/or accountability standards for the SPDC. Amendments to section 4(i) of the CEA authorize the Commission to require reports for SPDCs listed on ECMs. These increased responsibilities, along with the CFTC's increased regulatory authority, subject the ECM's risk management practices to the Commission's supervision and oversight and generally enhance the financial integrity of the markets.

The Commission has concluded that ICE's SZS contract, which is the subject of the attached Order, is not a SPDC; accordingly, the Commission's Order imposes no additional costs and no additional statutorily or regulatory mandated responsibilities on the ECM.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") [24] requires that agencies consider the impact of their rules on small businesses. The requirements of CEA section 2(h)(7) and the Part 36 rules affect exempt commercial markets. The Commission previously has determined that exempt commercial markets are not small entities for purposes of the RFA.[25] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Order, taken in connection with section 2(h)(7) of the Act and the Part 36 rules, will not have a significant impact on a substantial number of small entities.

VI. Order

Order Relating to the Fuel Oil-180 Singapore Swap Contract

After considering the complete record in this matter, including the comment letters received in response to its request for comments, the Commission has determined to issue the following Order:

The Commission, pursuant to its authority under section 2(h)(7) of the Act, hereby determines that the Fuel Oil-180 Singapore Swap contract, traded on the IntercontinentalExchange, Inc., does not at this time satisfy the material price reference and material liquidity criteria for significant price discovery contracts. Moreover, under Commission Guidance material liquidity alone cannot support a significant price discovery finding for the Fuel Oil-180 Singapore Swap contract.

Consistent with this determination, the IntercontinentalExchange, Inc., is not considered a registered entity [26] with respect to the Fuel Oil-180 Singapore Swap contract and is not subject to the provisions of the Commodity Exchange Act applicable to registered entities. Further, the obligations, requirements and timetables prescribed in Commission rule 36.3(c)(4) governing core principle compliance by the IntercontinentalExchange, Inc., are not applicable to the Fuel Oil-180 Singapore Swap contract with the issuance of this Order.

This Order is based on the representations made to the Commission by the IntercontinentalExchange, Inc., dated July 27, 2009, and November 13, 2009, and other supporting material. Any material change or omissions in the facts and circumstances pursuant to which this order is granted might require the Commission to reconsider its current determination that the Fuel Oil-180 Singapore Swap contract is not a significant price discovery contract. Additionally, to the extent that it continues to rely upon the exemption in Section 2(h)(3) of the Act, the IntercontinentalExchange, Inc., must continue to comply with all of the applicable requirements of Section 2(h)(3) and Commission Regulation 36.3.

Issued in Washington, DC on June 25, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–16209 Filed 7–1–10; 8:45 am]

BILLING CODE 6351–01–P

[23] 7 U.S.C. 19(a).

[24] 5 U.S.C. 601 *et seq.*

[25] 66 FR 42256, 42268 (Aug. 10, 2001).

[26] 7 U.S.C. 1a(29).

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, June 30, 2010, 2 p.m.–3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED:

1. Accreditation for Third Party Conformity Assessment Bodies for Testing for Children's Products: Carpets and Rugs.

2. Accreditation for Third Party Conformity Assessment Bodies for Testing for Children's Products: Vinyl Plastic Film.

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: June 25, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–16316 Filed 6–30–10; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences (USU), DoD.

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), this notice announces a meeting of the Board of Regents of the Uniformed Services University of the Health Sciences on August 3, 2010, in Bethesda, MD.

DATES: The meeting will be held on Tuesday, August 3, 2010, from 8 a.m. to 12 noon (open session) and from 12 noon to 1:30 p.m. (closed session).

ADDRESSES: The meeting will be held at the Everett Alvarez Jr. Board of Regents Room (D 3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Official, 4301 Jones Bridge Road, Bethesda, MD 20814; telephone 301–295–3066. Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda

The actions that will take place include the approval of minutes from the Board of Regents Meeting held May 14, 2010; acceptance of reports from working committees; approval of faculty appointments and promotions; and the awarding of master's and doctoral degrees in the biomedical sciences and public health. The Acting President, USU will also present a report. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility

Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, the meeting is open to the public from 8 a.m. to 12 noon. Seating is on a first-come basis. The closed portion of this meeting (from 12 noon to 1:30 p.m.) is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements

Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**). If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Official will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the August 2010 meeting or at a future meeting.

Dated: June 28, 2010.

Mitchell S. Bryman, Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–16092 Filed 7–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Defense Health Board (DHB) Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, DoD announces a meeting of the Defense Health Board (DHB) on August 18 and 19, 2010, in West Point, NY.

DATES: The meeting will be held on August 18 (from 8 a.m. to 5 p.m.) and on August 19, 2010 (from 7 a.m. to 2 p.m.).

ADDRESSES: The meeting will be held at the Thayer Hotel, 674 Thayer Road, West Point, NY 10996.

FOR FURTHER INFORMATION CONTACT: Commander Edmond F. Feeks, Executive Secretary, Defense Health Board, Five Skyline Place, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–8448, ext. 1228, Fax: (703) 681–3317, *edmond.feeks@tma.osd.mil.*

SUPPLEMENTARY INFORMATION: Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.*

Purpose of the Meeting

The purpose of the meeting is to address and deliberate pending and new Board issues and provide briefings for Board members on topics related to ongoing Board business.

Agenda

August 18, 2010

8 a.m.–9:15 a.m. (Closed Administrative Working Meeting).

9:30 a.m.–12:45 p.m. (Open Session).

12:45 p.m.–1:45 p.m. (Closed Administrative Working Meeting).

1:45 p.m.–5 p.m. (Open Session).

August 19, 2010

7 a.m.–2 p.m. (Closed Administrative Working Meeting).

Meeting Topics

On August 18, 2010, the DHB will receive briefings on military health needs and priorities. The following Defense Health Board Subcommittees will present updates to the Board: Department of Defense Task Force on

the Prevention of Suicide by Members of the Armed Forces, Infectious Disease Subcommittee, and the Psychological Health External Advisory Subcommittee. Additionally, the Board will receive briefings regarding the history of the United States Military Academy and the Resilience Program. The Board may vote on recommendations regarding in-theater use of fresh whole blood for combat casualties requiring transfusion, and the Joint Theater Trauma System, as well as the review of the Deployment Health Research Center conducted by the Military Occupational/Environmental Health and Medical Surveillance Subcommittee.

Public Accessibility

The public is encouraged to register for the meeting. If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Lisa Jarrett at (703) 681–8448 ext. 1280 by August 4, 2010.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject availability of space, the Defense Health Board meeting from 9:30 a.m. to 12:45 p.m. and from 1:45 p.m. to 5 p.m. on August 18, 2010 is open to the public.

Written Statements

Any member of the public wishing to provide input to the Defense Health Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statements should address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer at any point. Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT**, e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317. If the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Defense Health Board until the next open meeting.

The Designated Federal Officer will review all timely submissions with the Defense Health Board Chairperson, and ensure they are provided to members of the Defense Health Board before the meeting that is subject to this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Designated Federal Officer, in consultation with the Defense Health Board Chairperson, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Defense Health Board.

Dated: June 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–16179 Filed 7–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2010–OS–0091]

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Intelligence proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 2, 2010, unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.
- *Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the DIA Privacy Act Coordinator, DAN 1–C, 200 MacDill Blvd, Washington, DC 20340.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 18, 2010, to the House Committee on of Government Reform, the Senate Committee on Homeland Security and Government Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals" dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: June 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

LDIA: 10–0004

SYSTEM NAME:

Occupational, Safety, Health, and Environmental Management Records.

SYSTEM LOCATION:

Defense Intelligence Agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DIA civilians, military, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number (SSN), and date of birth. Records relating to illness or injury regarding occupational safety, and environmental issues or accidents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR part 1904, Recording and Reportable Injury or Illness; 29 CFR part 1960, Basic Program Elements for Federal Employees Occupational, Safety, and Health Programs and Related Matters; DoDI 6055.7, Accident Investigation, Reporting, and Record Keeping; and E.O. 9397, as amended.

PURPOSE(S):

This system will manage occupational, safety, health, and environmental management case files. Information is used to comply with regulatory reporting requirements and to identify and correct known or potential

hazards in order to facilitate prevention programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the Department of Defense as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Defense Intelligence Agency's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

By last name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screenings, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and User IDs are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Records are kept for 5 years and then destroyed. Paper records are authorized for destruction in accordance with agency destruction methods and include, shredding, pulping or burning. The electronic record is deleted from this system from which it is housed.

SYSTEM MANAGER(S) AND ADDRESS:

Occupational, Safety, Health, and Environmental Office, Defense Intelligence Agency, 200 MacDill Boulevard, Washington, DC 20340–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Act Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

Request should contain the individual's full name, current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves, contained in this system of records, should address written inquiries to the DIA Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd, Washington, DC 20340–5100.

Request should contain the individual's full name, current address and telephone number.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents, and appealing initial agency determinations are published in DIA Instruction 5400.001 "Defense Intelligence Agency Privacy Program"; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, agency and other government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–16132 Filed 7–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee; DoD.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 268. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 268 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: Effective July 1, 2010.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 267. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows: The changes in Civilian Bulletin 268 are updated rates for Guam and Northern Mariana Islands.

Dated: June 29, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

COUNTRY	LOCATION	SEASON DATES	LODGING RATE	M&IE RATE	MAX PER DIEM RATE	EFFECTIVE DATE
ALASKA	ADAK	01/01 - 12/31	120	79	199	07/01/2003
	ANCHORAGE [INCL NAV RES]	05/01 - 09/15	181	97	278	04/01/2007
		09/16 - 04/30	99	89	188	04/01/2007
	BARROW	01/01 - 12/31	159	95	254	10/01/2002
	BETHEL	01/01 - 12/31	139	87	226	01/01/2009
	BETTLES	01/01 - 12/31	135	62	197	10/01/2004
	CLEAR AB	01/01 - 12/31	90	82	172	10/01/2006
	COLDFOOT	01/01 - 12/31	165	70	235	10/01/2006
	COPPER CENTER	05/01 - 09/30	125	84	209	01/01/2009
		10/01 - 04/30	95	81	176	01/01/2009
	CORDOVA	01/01 - 12/31	95	77	172	03/01/2010
	CRAIG	04/01 - 09/30	236	84	320	03/01/2010
		10/01 - 03/31	151	76	227	03/01/2010
	DELTA JUNCTION	01/01 - 12/31	135	80	215	07/01/2008
	DENALI NATIONAL PARK	06/01 - 08/31	135	80	215	03/01/2010
		09/01 - 05/31	90	74	164	03/01/2010
	DILLINGHAM	04/15 - 10/15	185	83	268	01/01/2009
		10/16 - 04/14	169	82	251	01/01/2009
	DUTCH HARBOR-UNALASKA	01/01 - 12/31	121	86	207	01/01/2009
	EARECKSON AIR STATION	01/01 - 12/31	90	77	167	06/01/2007
	EIELSON AFB	05/01 - 09/15	175	88	263	02/01/2009
		09/16 - 04/30	75	79	154	02/01/2009
	ELMENDORF AFB	05/01 - 09/15	181	97	278	04/01/2007
		09/16 - 04/30	99	89	188	04/01/2007
	FAIRBANKS	05/01 - 09/15	175	88	263	02/01/2009
		09/16 - 04/30	75	79	154	02/01/2009
	FOOTLOOSE	01/01 - 12/31	175	18	193	10/01/2002
	FT. GREELY	01/01 - 12/31	135	80	215	07/01/2008
	FT. RICHARDSON	05/01 - 09/15	181	97	278	04/01/2007
		09/16 - 04/30	99	89	188	04/01/2007
	FT. WAINWRIGHT	05/01 - 09/15	175	88	263	02/01/2009
		09/16 - 04/30	75	79	154	02/01/2009
	GLENNALLEN	05/01 - 09/30	125	84	209	01/01/2009
		10/01 - 04/30	95	81	176	01/01/2009
	HAINES	01/01 - 12/31	109	75	184	01/01/2009
	HEALY	06/01 - 08/31	135	80	215	03/01/2010
		09/01 - 05/31	90	74	164	03/01/2010
	HOMER	05/15 - 09/15	167	85	252	01/01/2009
		09/16 - 05/14	79	78	157	01/01/2009
	JUNEAU	05/01 - 09/30	149	85	234	01/01/2009
		10/01 - 04/30	109	80	189	01/01/2009

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

COUNTRY	LOCATION	SEASON DATES	LODGING RATE	M&IE RATE	MAX PER DIEM RATE	EFFECTIVE DATE
ALASKA	KAKTOVIK	01/01 - 12/31	165	86	251	10/01/2002
	KAVIK CAMP	01/01 - 12/31	150	69	219	10/01/2002
	KENAI-SOLDOTNA	05/01 - 08/31	159	90	249	03/01/2010
		09/01 - 04/30	79	82	161	03/01/2010
	KENNICOTT	01/01 - 12/31	259	94	353	01/01/2009
	KETCHIKAN	05/01 - 09/30	140	67	207	03/01/2010
		10/01 - 04/30	99	63	162	03/01/2010
	KING SALMON	05/01 - 10/01	225	91	316	10/01/2002
		10/02 - 04/30	125	81	206	10/01/2002
	KLAWOCK	04/01 - 09/30	236	84	320	03/01/2010
		10/01 - 03/31	151	76	227	03/01/2010
	KODIAK	05/01 - 09/30	141	80	221	03/01/2010
		10/01 - 04/30	99	76	175	03/01/2010
	KOTZEBUE	01/01 - 12/31	189	93	282	03/01/2010
	KULIS AGS	05/01 - 09/15	181	97	278	04/01/2007
		09/16 - 04/30	99	89	188	04/01/2007
	MCCARTHY	01/01 - 12/31	259	94	353	01/01/2009
	MCGRATH	01/01 - 12/31	165	69	234	10/01/2006
	MURPHY DOME	05/01 - 09/15	175	88	263	02/01/2009
		09/16 - 04/30	75	79	154	02/01/2009
	NOME	01/01 - 12/31	150	97	247	03/01/2010
	NUIQSUT	01/01 - 12/31	180	53	233	10/01/2002
	PETERSBURG	01/01 - 12/31	100	71	171	07/01/2008
	PORT ALSWORTH	01/01 - 12/31	135	88	223	10/01/2002
	SELDOVIA	05/15 - 09/15	167	85	252	01/01/2009
		09/16 - 05/14	79	78	157	01/01/2009
	SEWARD	05/01 - 09/30	174	89	263	03/01/2010
		10/01 - 04/30	99	81	180	03/01/2010
	SITKA-MT. EDGECUMBE	05/01 - 09/30	119	75	194	03/01/2010
		10/01 - 04/30	99	73	172	03/01/2010
	SKAGWAY	05/01 - 09/30	140	67	207	03/01/2010
		10/01 - 04/30	99	63	162	03/01/2010
	SLANA	05/01 - 09/30	139	55	194	02/01/2005
		10/01 - 04/30	99	55	154	02/01/2005
	SPRUCE CAPE	05/01 - 09/30	141	80	221	03/01/2010
		10/01 - 04/30	99	76	175	03/01/2010
	ST. GEORGE	01/01 - 12/31	129	55	184	06/01/2004
	TALKEETNA	01/01 - 12/31	100	89	189	10/01/2002
	TANANA	01/01 - 12/31	150	97	247	03/01/2010
	TOK	05/01 - 09/30	129	76	205	03/01/2010
		10/01 - 04/30	99	73	172	03/01/2010

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

COUNTRY	LOCATION	SEASON DATES	LODGING RATE	M&IE RATE	MAX PER DIEM RATE	EFFECTIVE DATE
ALASKA	UMIAT	01/01 - 12/31	350	35	385	10/01/2006
	VALDEZ	05/01 - 09/30	179	91	270	03/01/2010
		10/01 - 04/30	119	85	204	03/01/2010
	WASILLA	05/01 - 09/30	151	89	240	01/01/2009
		10/01 - 04/30	96	83	179	01/01/2009
	WRANGELL	05/01 - 09/30	140	67	207	03/01/2010
		10/01 - 04/30	99	63	162	03/01/2010
	YAKUTAT	01/01 - 12/31	105	76	181	01/01/2009
	[OTHER]	01/01 - 12/31	100	71	171	01/01/2009
AMERICAN SAMOA	AMERICAN SAMOA	01/01 - 12/31	139	75	214	08/01/2009
GUAM	GUAM (INCL ALL MIL INSTAL)	01/01 - 12/31	131	94	225	07/01/2010
HAWAII	CAMP H M SMITH	01/01 - 12/31	177	106	283	05/01/2008
	EASTPAC NAVAL COMP TELE AREA	01/01 - 12/31	177	106	283	05/01/2008
	FT. DERUSSEY	01/01 - 12/31	177	106	283	05/01/2008
	FT. SHAFTER	01/01 - 12/31	177	106	283	05/01/2008
	HICKAM AFB	01/01 - 12/31	177	106	283	05/01/2008
	HONOLULU	01/01 - 12/31	177	106	283	05/01/2008
	ISLE OF HAWAII: HILO	01/01 - 12/31	121	104	225	05/01/2010
	ISLE OF HAWAII: OTHER	01/01 - 12/31	180	108	288	05/01/2009
	ISLE OF KAUAI	01/01 - 12/31	198	115	313	05/01/2009
	ISLE OF MAUI	01/01 - 12/31	169	104	273	05/01/2009
	ISLE OF OAHU	01/01 - 12/31	177	106	283	05/01/2008
	KEKAHA PACIFIC MISSILE RANGE FAC	01/01 - 12/31	198	115	313	05/01/2009
	KILAUEA MILITARY CAMP	01/01 - 12/31	121	104	225	05/01/2010
	LANAI	01/01 - 12/31	229	124	353	05/01/2009
	LUALUALEI NAVAL MAGAZINE	01/01 - 12/31	177	106	283	05/01/2008
	MCB HAWAII	01/01 - 12/31	177	106	283	05/01/2008
	MOLOKAI	01/01 - 12/31	135	91	226	05/01/2010
	NAS BARBERS POINT	01/01 - 12/31	177	106	283	05/01/2008
	PEARL HARBOR	01/01 - 12/31	177	106	283	05/01/2008
	SCHOFIELD BARRACKS	01/01 - 12/31	177	106	283	05/01/2008
	WHEELER ARMY AIRFIELD	01/01 - 12/31	177	106	283	05/01/2008
	[OTHER]	01/01 - 12/31	121	104	225	05/01/2010
MIDWAY ISLANDS	MIDWAY ISLANDS	01/01 - 12/31	125	49	174	05/01/2010
NORTHERN MARIANA ISLANDS	ROTA	01/01 - 12/31	129	102	231	07/01/2010
	SAIPAN	01/01 - 12/31	121	98	219	06/01/2007
	TINIAN	01/01 - 12/31	85	71	156	07/01/2010
	[OTHER]	01/01 - 12/31	55	72	127	10/01/2002
PUERTO RICO	AGUADILLA	01/01 - 12/31	75	64	139	11/01/2007
	BAYAMON	01/01 - 12/31	195	82	277	10/01/2007
	CAROLINA	01/01 - 12/31	195	82	277	10/01/2007

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

COUNTRY	LOCATION	SEASON DATES	LODGING RATE	M&IE RATE	MAX PER DIEM RATE	EFFECTIVE DATE
PUERTO RICO	CEIBA	05/01 - 11/30	155	57	212	08/01/2006
		12/01 - 04/30	185	57	242	08/01/2006
	FAJARDO [INCL ROOSEVELT RDS NAVSTAT]	05/01 - 11/30	155	57	212	08/01/2006
		12/01 - 04/30	185	57	242	08/01/2006
	FT. BUCHANAN [INCL GSA SVC CTR, GUAY	01/01 - 12/31	195	82	277	10/01/2007
	HUMACAO	05/01 - 11/30	155	57	212	08/01/2006
		12/01 - 04/30	185	57	242	08/01/2006
	LUIS MUNOZ MARIN IAP AGS	01/01 - 12/31	195	82	277	10/01/2007
	LUQUILLO	05/01 - 11/30	155	57	212	08/01/2006
		12/01 - 04/30	185	57	242	08/01/2006
	MAYAGUEZ	01/01 - 12/31	109	77	186	11/01/2007
	PONCE	01/01 - 12/31	139	83	222	11/01/2007
	SABANA SECA [INCL ALL MILITARY]	01/01 - 12/31	195	82	277	10/01/2007
	SAN JUAN & NAV RES STA	01/01 - 12/31	195	82	277	10/01/2007
	[OTHER]	01/01 - 12/31	62	57	119	10/01/2002
VIRGIN ISLANDS (U.S.)	ST. CROIX	04/15 - 12/14	135	92	227	05/01/2006
		12/15 - 04/14	187	97	284	05/01/2006
	ST. JOHN	04/15 - 12/14	163	98	261	05/01/2006
		12/15 - 04/14	220	104	324	05/01/2006
	ST. THOMAS	04/15 - 12/14	240	105	345	05/01/2006
		12/15 - 04/14	299	111	410	05/01/2006
WAKE ISLAND	WAKE ISLAND	01/01 - 12/31	152	16	168	05/01/2009

[FR Doc. 2010–16133 Filed 7–1–10; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2010–0023]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 the Naval Health Research Center (NHRC), Department of the Navy, announces a proposed extension of a public information collection and seeks public comment on the provisions thereof.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 31, 2010.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Dr. Jerry Larson, Ph.D.; Head, Behavioral Science and Epidemiology Program, Naval Health Research Center; P. O. Box 85122, San Diego, CA 92186–5122; telephone 619–553–8402 (this is not a toll-free number) or fax: 619–553–8459.

Title and OMB Number: Mental Health Issues among Separating Marines; OMB Number 0703–0056.

Needs and Uses: Tens of thousands of Marines transition from the military to civilian life each year, the majority of whom have been exposed to deployment stressors that have put them at high risk for stress-related disorders. This longitudinal study builds on a 2008 pilot study assessing the prevalence of mental health outcomes among Sailors and Marines transitioning from the Service, and identifying predictors of and changes in mental health and resilience over time. For the baseline component of the current study, a paper-and-pencil questionnaire was administered to approximately 2,700 active-duty Marines in the Transition Assistance Program (TAP) during routine mandatory separation counseling via group administration at 6 selected installations worldwide. Based on the estimated number of attendees per TAP class and the number of classes conducted during the 4-month data collection period (January–April 2010), we estimate that approximately 4,900 Marines were eligible for inclusion into the study, giving us an approximate 55 percent response rate. The baseline survey included selected items from the post-deployment health reassessment (PDHRA), along with additional

questions on risk factors for poor civilian readjustment, and other biographical and psychological content. DoD regulations stipulate that all military personnel must receive pre-separation counseling no less than 90 days before leaving active duty.

NHRC proposes tracking over time the mental well-being of eligible baseline respondents for the *longitudinal* portion of the study through a follow-on survey 3 to 6 months after separation from military service, after they have completed the transition from military to civilian life. Data from extant historical personnel and medical files will also be combined with survey data to develop models that demonstrate the influence of combat, and a variety of covariates, on mental health symptoms, resilience, and substance abuse. We estimate that approximately 1,850 of the 2,700 baseline participants will be eligible for and consent to participate in the follow-up survey. In order to facilitate locating these respondents, the baseline questionnaire requested participants provide name, relocation plans, names and contact information for two friends or relatives who always know where the respondent is living, and the respondent's date of birth and social security number. The follow-up survey will be sent to respondents through the mail. Respondents will also have the option of completing this survey via the Web, which will closely simulate the hardcopy version of the instrument.

Affected Public: Marine Corps personnel who have separated from the Military in the six-month period following the baseline survey.

Annual Burden Hours: 1,850.

Number of Respondents: 1,850.

Responses per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This study population is unique because there is a need for longitudinal mental health research in the Military that spans both Active Duty and the period of reintegration into civilian life after combat exposure. Given that disability and poor physical health were significant predictors of mental health problems in the pilot study, that stigma continues to be an issue for military personnel seeking mental health care, and that significant difficulties remain in transitioning mental health care, this type of program would appear especially appropriate and suited for implementation in the U.S. military.

The follow-up survey will consist of a mailed paper-and-pencil questionnaire with the option of completing the questionnaire via the Web. All participants from the baseline survey who have separated from military service since completion of the baseline survey will be eligible for the second phase of study and their participation in the follow-up survey will be requested. Respondents were informed during the Introductory Briefing to the baseline survey that they may be contacted for a follow-up interview.

Approximately 15 percent of Military personnel are women. Therefore, it is estimated that 15 percent will be the proportion of women completing the survey; the remaining 85 percent will be male respondents.

Dated: June 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–16089 Filed 7–1–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Notice of Availability of Draft Environmental Impact Statement for the Proposed Folsom South of U.S. Highway 50 Specific Plan Project, in Sacramento County, CA, Corps Permit Application Number SPK–2007–02159

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Sacramento District has prepared a Draft Environmental Impact Statement (DEIS) that analyzes the potential effects of implementing each of six on-site land-use and eleven off-site water supply/alignment alternative scenarios for a large-scale, mixed-use, mixed-density master planned community on the approximately 3,502-acre Folsom South of U.S. Highway 50 Specific Plan area (SPA), located within the Sphere of Influence of the City of Folsom, Sacramento County, California. The DEIS has been prepared as a joint document with the City of Folsom (City). The City is the local agency responsible for preparing an Environmental Impact Report in compliance with the California Environmental Quality Act (CEQA).

The DEIS documents the existing condition of environmental resources in and around areas considered for development, and potential impacts on those resources as a result of implementing the alternatives. The on-site land use alternatives considered in detail are: (1) No Project Alternative (No development for both land use and water supply/alignment); (2) No USACE Permit Alternative (no discharge of dredged and/or fill material into waters of the U.S.); (3) Proposed Project Alternative, the Applicants' Preferred Alternative; (4) Resource Impact Minimization Alternative; (5) Centralized Development Alternative; and (6) Reduced Hillside Development Alternative. The off-site water supply/alignment alternatives considered in detail are: (1) No USACE Permit Alternative (no discharge of dredged and/or fill material into waters of the U.S.); (2) Proposed Off-site Water Facility Alternative—Raw Water Conveyance—Grant Line Road Alignment and On-site WTP; (3) Off-site Water Facility Alternative 1—Raw Water Conveyance—Grant Line Road Alignment and White Rock WTP; (4) Off-site Water Facility Alternative 1A—Raw Water Conveyance—Grant Line Road Route Variation Alignment and White Rock WTP; (5) Off-site Water Facility Alternative 2—Treated Water Conveyance—Douglas Road Alignment and Vineyard SWTP; (6) Off-site Water Facility Alternative 2A—Treated Water Conveyance—Douglas Road Route Variation Alignment and Vineyard SWTP; (7) Off-site Water Facility Alternative 2B—Treated Water Conveyance—North Douglas Tanks Variation Alignment and Vineyard SWTP; (8) Off-site Water Facility Alternative 3—Raw Water Conveyance—Douglas Road Alignment and White Rock WTP; (9) Off-site Water Facility Alternative 3A—Raw Water Conveyance—Douglas Road Route Variation Alignment and White Rock WTP; (10) Off-site Water Facility Alternative 4—Raw Water Conveyance to Folsom Boulevard Alignment and Folsom Boulevard WTP; and (11) Off-site Water Facility Alternative 4A—Raw Water Conveyance to Folsom Boulevard—Route Variation Alignment and Folsom Boulevard WTP.

DATES: All written comments must be postmarked on or before September 7, 2010. The USACE and the City will jointly conduct a public meeting that will be held on August 2, 2010 from 5 p.m. to 7 p.m. The public meeting will be held at the Folsom Community Center, 52 Natoma Street, Folsom, California 95630.

ADDRESSES: Comments may be submitted in writing to: Lisa M. Gibson, U.S. Army Corps of Engineers,

Sacramento District, Regulatory Division; 1325 J Street, Room 1480, Sacramento, California 95814–2922, or via e-mail to *Lisa.M.Gibson2@usace.army.mil.* Oral and written comments may also be submitted at the public meeting described in the **DATES** section.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gibson, (916) 557–5288, or via e-mail at *Lisa.M.Gibson2@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The South Folsom Property Owners Group, the project applicants, are seeking adoption by the City of the proposed SPA project and associated entitlements. The City and the South Folsom Property Owners Group are also seeking authorization from USACE for the placement of dredged or fill material into waters of the United States pursuant to Section 404 of the Clean Water Act. The Proposed Project includes 10,210 residential units at various densities on a total of 1,477.2 acres; 362.8 acres designated for commercial and industrial use, including a regional shopping center; public/quasi-public uses; elementary, middle, and high schools on 179.3 acres; 121.7 acres of community and neighborhood parks; stormwater detention basins; 1,053.1 acres of open-space areas and open-space preserves; and major roads with landscaping. In addition, the proposed project includes the construction of several off-site infrastructure facilities, including intersection expansions to allow access to and from U.S. 50 and the SPA, an overpass of U.S. 50, two roadway connections and sewer pipelines from the SPA into El Dorado Hills, a sewer force main connection to the existing City system, a detention basin and water pipelines and facilities. The SPA contains approximately 84.94 acres of waters of the U.S. The proposed land-use plan would involve the discharge of fill material into approximately 39.50 acres of waters of the U.S., and indirect impacts to 0.29 acres of waters of the U.S. resulting from fragmentation of existing waters. In addition, the proposed land-use plan involves the preservation of approximately 44.19 acres of waters of the U.S., concentrated primarily on the Alder Creek corridor and adjacent tributaries and wetlands.

For the proposed off-site water supply/alignment for the SPA, the City is proposing off-site water facilities that would involve the permanent assignment to the City of the contractual entitlements to Central Valley Project (CVP) contract entitlement water, totaling not more than 8,000 acre-feet per year (AFY) from the Natomas Central Mutual Water Company (NCMWC), diverting the water supply from the Sacramento River and conveying the water to the SPA. The proposed water supply would also involve the City purchasing dedicated capacity within the Freeport Regional Water Project (Freeport Project) from Sacramento County Water Agency (SCWA), which would serve as the point of diversion (POD) on the Sacramento River and partial conveyance pathway for not more than 6,000 AFY purchased from NCMWC. The City proposes to add the Freeport POD to the assigned CVP water to facilitate the diversion of these supplies at the existing Freeport Project diversion. The City proposes to pump and convey the assigned NCMWC CVP water supply through the Freeport Project diversion facility and conveyance pipeline to the point where SCWA and East Bay Municipal Utility District pipelines split. The City would then construct new water supply conveyance infrastructure from the bifurcation point to the SPA within an approximately 200-foot corridor. The corridor for the proposed construction of the water line and the proposed location for water treatment plants contains approximately 50.7 acres of waters of the U.S. The estimate of waters of the U.S. within the proposed water supply corridor was determined based on aerial photographs and National Wetland Inventory maps, and has not been field delineated or verified by USACE. Because the City has not yet completed project specific engineering details for the proposed off-site water supply/alignment, the exact impacts to waters of the U.S. cannot be determined. However, construction of the water supply infrastructure is expected to occur within an area of less than 100-feet in width, and, depending on which side of the corridor construction would occur, would impact an estimated 5.7 acres or 6.8 acres of waters of the U.S.

USACE invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the SPA are urged to participate in the NEPA process.

An electronic version of the DEIS may be viewed at the USACE, Sacramento District Web site: *http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/EISs/EIS-index.html:* In addition, a hardcopy of the DEIS may also be reviewed at the following locations:

(1) City of Folsom City Hall, Community Development Department, 50 Natoma Street, Folsom, California 95630.

(2) Folsom Public Library, Georgia Murray Building, 411 Stafford Street, Folsom, California 95630.

June 23, 2010.

Thomas C. Chapman,

Colonel, U.S. Army, District Engineer.

[FR Doc. 2010–16135 Filed 7–1–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

The Release of the Final Environmental Impact Statement (FEIS) for the Town of Nags Head Proposed Beach Nourishment Project in Dare County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Regulatory Division, has been reviewing a request for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899, from the Town of Nags Head to dredge up to 4.6 million cubic yards of beach-quality sediment from an offshore borrow source, and deposit the material along approximately 10 miles of ocean shoreline in the Town of Nags Head.

The applicant proposes to utilize a self-contained hopper dredge during a proposed construction window from April through September to undertake the dredging operations and discharge the sand on the beach via submerged pipeline. The applicant's proposed borrow areas include sites identified as having beach quality material in the U.S. Army Corps of Engineers, Wilmington District's EIS, entitled *Final Feasibility Report and Environmental Impact Statement on Hurricane Protection and Beach Erosion Control,* dated September 2000 (USACE 2000).

DATES: Written comments on the Final EIS will be received until July 26, 2010.

ADDRESSES: Copies of comments and questions regarding the Final EIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Washington Regulatory Field Office. ATTN: File Number 200640282, 2407 W. Fifth Street, Washington, NC 27889. Copies of the Draft EIS can be reviewed on the Wilmington District Regulatory homepage at, *http://www.saw.usace.army.mil/wetlands/*

regtour.htm, or contact Ms. Sharon Barnett, at (910) 251–4555, to receive written or CD copies of the Final EIS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and FEIS can be directed to Mr. Raleigh Bland, Project Manager, Regulatory Division, telephone: (910) 251–4564.

SUPPLEMENTARY INFORMATION:

1. *Project Description.* The project site is located off NC Highway 12, adjacent to the Atlantic Ocean, in the Town of Nags Head, Dare County, NC. The proposed project totals approximately 10 miles of ocean shoreline beginning approximately 1 mile from the town's northern limit and extending south to the town line adjacent to the Cape Hatteras National Seashore. The proposed borrow area is located in the Atlantic Ocean approximately 2–3 miles offshore of the project site. The Town of Nags Head encompasses approximately 11 miles of ocean shoreline on a barrier island located at the northern end of North Carolina's Outer Banks. The width of the berm of the island's dune system varies considerably with location along the town's beach and with the season. Along most of the project area, the winter berm is non-existent due to continuing erosion processes. Dune habitat is currently decreasing due to excessive erosion of the base or toe of the dunes by waves that travel unimpeded over eroded wet beach to directly impact dunes. The Town of Nags Head proposes to excavate 4.6 million cubic yards of beach-quality sediment from an offshore borrow source, and deposit the material along approximately 10 miles of ocean shoreline owned by the Town of Nags Head.

2. *Proposed Action.* The purpose of the proposed action is to nourish the Town of Nags Head's ocean shoreline to restore a protective beach, replace sand lost during the period of delay in the implementation of the federal *Dare County Hurricane Protection and Beach Erosion Control Project* (USACE 2000), and to help preserve property values and the tax base of Dare County.

The proposed borrow area includes portions of offshore areas identified by the Corps of Engineers in the 2000 Federal Dare County Project. The anticipated optimal equipment for excavations will include ocean-certified, self-contained hopper dredges. Such equipment typically excavates shallow trenches (approximately 2–3 foot sections) in each pass (leaving narrow undisturbed areas at the margin of each cut), then travels to a buoyed pipeline anchored close to shore. Discharge to the beach is via submerged pipeline across the surf zone, then by way of shore-based pipe positioned along the dry beach. Only a small area of the Corps borrow area will be required to provide up to 4.6 million cubic yards of beach quality material. The applicant is coordinating the specific area for use in the proposed project with the Corps with the following understanding: (1) The final borrow area required for the emergency beach nourishment project can be limited to the equivalent of a 0.9 square-mile (approximately 575 acres) area, (2) the borrow area used will be contiguous rather than a series of small impact areas, (3) once used, the borrow area will no longer be available for use, consistent with the Dare County Project, and (4) the borrow area will be delineated so as to avoid ongoing biological monitoring stations established by the Corps in connection with the Dare County Project. The project will be built in approximate 1–2 mile sections, optimizing the disposition of pipeline. Sections will be pumped into place with the aid of temporary dikes pushed up by bulldozers in the surf zone. Daily operations will impact approximately 500–1,000 linear feet of shoreline as work progresses in either direction from the submerged pipeline. Upon completion of a section, the submerged pipe and beach-building equipment will be shifted to the next section. As construction progresses, sections will be graded to final contours, dressed to eliminate low areas, and opened for use by the public. Support equipment will be shifted out of completed sections as soon as practicable, so that construction activities in a particular reach will not disrupt normal beach use for only a month or so at any locality. The finished sections will be allowed to adjust to natural processes for several months. The final process will include the placement of dune fencing and/or dune plantings as needed or required.

4. *Alternatives.* An extensive alternatives analysis was performed and reviewed for this project. This included the evaluation of a no action alternative; a retreat and relocate alternative; and the preferred alternative. Many alternatives were identified and evaluated through the scoping process, and further detailed descriptions of all alternatives is disclosed in Section 5.0 of the Final EIS.

5. *Scoping Process.* A public scoping meeting was held on April 28, 2009 and public and agency comments were solicited for input in the preparation of the Draft and Final EIS. The scoping meeting was well attended by the public, as well as representatives from local, state, and federal governmental agencies.

The COE coordinated closely with the North Carolina Division of Coastal Management, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service in the development of the Final EIS to ensure the process complies with State Environmental Policy Act (SEPA) requirements, as well as the NEPA requirements. The Final EIS has been designed to consolidate both NEPA and SEPA processes. The State of North Carolina has issued a 401 Water Quality Certification Permit and a Coastal Zone Consistency Determination in the form of a Coastal Area Management Act Permit.

Dated: June 17, 2010.

Jefferson M. Ryscavage,

Colonel, U.S. Army, District Commander.

[FR Doc. 2010–16137 Filed 7–1–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

[ID SPK–2009–00511]

Notice of Availability of Draft Environmental Impact Statement for the Sunridge Properties in the Sunridge Specific Plan Area, in Rancho Cordova, Sacramento County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers, Sacramento District, (Corps) has prepared a Draft Environmental Impact Statement (EIS) to analyze programmatically the direct, indirect and cumulative effects associated with six residential development projects in the Sunridge Specific Plan area in Rancho Cordova, Sacramento County, CA.

The purpose of the Draft EIS is to provide decision-makers and the public with information pertaining to the Proposed Action and alternatives, and to disclose environmental impacts and identify mitigation measures to reduce impacts. The Proposed Action is the construction of the six projects (collectively, the "Sunridge Properties") which would require the filling of approximately 29.7 acres of waters of the United States, including wetlands. The EIS is being prepared as part of ongoing litigation concerning Department of the Army permits issued

by the Corps between 2005 and 2007 for five of the projects and a pending permit decision for the sixth. A stay in the litigation is in place while the Corps reevaluates the impacts of the projects through preparation of the EIS.

The Draft EIS was prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Corps' regulations for NEPA implementation at 33 Code of Federal Regulations parts 230 and 325 Appendix B. The Corps is the lead Federal agency responsible for complying with NEPA and information contained in the EIS serves as the basis for decisions regarding issuance of a Department of the Army permits.

DATES: Comments on the Draft EIS must be submitted to the Corps by August 15, 2010.

ADDRESSES: Please send written comments to Michael Jewell, Chief of the Regulatory Division, U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Room 1480, Sacramento, CA 95814–2922. You may also e-mail your comments to *michael.s.jewell@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Michael Jewell, (916) 557–6605, e-mail: *michael.s.jewell@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Sunridge Specific Plan area is a master-planned area consisting of nine residential and commercial developments located in eastern Rancho Cordova, Sacramento County, CA. The Specific Plan, which was originally approved by the County of Sacramento in 2002, is part of a larger planning effort in the City of Rancho Cordova called the Sunrise-Douglas Community Plan. Three of the nine projects in the Sunridge Specific Plan area have been built. The Proposed Action is the construction of the remaining six projects in the Specific Plan area. Collectively, these six projects are referred to as the Sunridge Properties. The overall purpose of the action is to construct a large residential development, including supporting infrastructure, in southeastern Sacramento County, California.

Between 2005 and 2007, the Corps completed Environmental Assessments, made Findings of No Significant Impact, and issued permits for five of the six Sunridge Specific Plan Projects. The permitted projects are Anatolia IV, Sunridge Village J, Grantline 208, Douglas Road 98, and Douglas Road 103. A permit decision has not been rendered for the sixth of the Sunridge Specific Plan Projects, Arista Del Sol.

1. The Anatolia IV project received a DA permit (ID: SPK–1994–00210) from Corps on October 2, 2006. It is located on a 24-acre site south of Douglas Road and adjacent to the west side of Jaeger Road. The project involves filling approximately 1.4 acres of waters of the U.S., including wetlands, to construct 134 houses, roadways, and other infrastructure. As compensation for the loss of waters, the permittee purchased 1.4 acres of vernal pool creation credits at the Laguna Terrace Mitigation Bank, and purchased 2.7 credits of preservation credits from the Anatolia Preserve to satisfy U.S. Fish and Wildlife Service (USFWS) requirements, and 2.7 credits at Gill Ranch to satisfy Corps requirements. No on-site preserve area is proposed. The permittee for this project is the Sunridge, LLC.

2. The Sunridge Village J project received a DA permit (ID: SPK–2001–00230) from Corps on October 24, 2006. It is located on an 81.3-acre site in the southwest corner of the intersection formed by Douglas Road and Jaeger Road. The project involves filling approximately 3.0 acres of waters of the U.S., including wetlands, to construct 369 houses, roadways, and other infrastructure. No on-site preserve area is proposed. As compensation for the loss of waters, the permittee paid for the creation of 3.4 acres of vernal pools and the preservation of functioning wetland habitat. The Corps' required mitigation action has been completed. The USFWS Biological Opinion concluded that the project would adversely affect approximately 2.49 acres of vernal pool habitat, 1.88 acres directly and 0.36 acres indirectly. As mitigation the USFWS identified preserving 9.96 acres at Bryte Ranch Conservation Bank and creating 2.10 acres of vernal pool and seasonal wetland habitat. The permittee for this project is Cresleigh Homes.

3. The Grantline 208 project received a DA permit (ID: SPK–1994–00365) on October 25, 2006. It is located on a 211-acre site in the southeast corner of the intersection formed by Douglas Road and Grant Line Road. As part of the project, approximately 5.7 acres of waters of the U.S., including wetlands, would be filled to construct 855 houses, roadways, and other infrastructure. The permittee proposes to preserve 68.1 acres of wetlands within its property. Compensatory mitigation identified in the DA permit is the restoration and/or creation of 6.2 acres of vernal pool habitat off-site. This action has not been taken, but it is expected to occur within the Gill Ranch Open Space Preserve, a 10,400-acre preserve in eastern Sacramento County. The USFWS Biological Opinion concluded that the project would adversely affect approximately 5.55 acres directly and 0.45 acres indirectly of vernal pool habitat. To mitigate for this loss, the USFWS instructed the permittee to preserve 11.55 acres of vernal pool habitat at either the Town Center Property or Anatolia Conservation Bank, and to create 6.0 acres of vernal pool crustacean habitat. The permittee for this project is Grantline Investors, LLC.

4. The Douglas Road 98 project received a DA permit (ID: SPK–2002–00568) on May 31, 2006. It is located on a 105-acre site south of Douglas Road and adjacent to the west side of Grant Line Road. As part of the project, approximately 3.9 acres of waters of the U.S., including wetlands, would be filled to construct 693 houses, roadways, and other infrastructure. No on-site preserve area is proposed. To compensate for the loss of waters, 3.9 acres of wetland habitat would be constructed or created off-site. This action has not been taken; but is expected to occur within Gill Ranch Open Space Preserve, a 10,400-acre preserve in eastern Sacramento County. The USFWS Biological Opinion concluded that the project would adversely affect 3.70 acres of vernal pool habitat. To mitigate for this loss, the permittee is required to preserve either 7.8 acres of vernal pool crustacean habitat at the Anatolia preserve or 15.6 acres at Borden Ranch, and create 3.91 acres at the Silva Consolidated Conservation Bank. The permittee for this project is Woodside Homes.

5. The Douglas Road 103 project received a DA permit (ID: SPK–1997–00006) on June 18, 2007. It is located on a 106-acre site adjacent to the south side of Douglas Road and west of Grant Line Road. As part of the project, approximately 2.0 acres of waters of the U.S., including wetlands, would be filled to construct 301 houses, roadways, and other infrastructure. The permittee proposes to preserve 44 acres of wetlands on-site. Compensatory mitigation identified in the DA permit but not yet implemented includes restoring or creating 7.3 acres of vernal pool habitat and preserving 5.9 acres of vernal pool habitat off-site. Mitigation is expected to occur within Gill Ranch Open Space Preserve, a 10,400-acre preserve in eastern Sacramento County. In the Biological Opinion, the USFWS concluded that the project would directly affect 1.97 and indirectly affect 2.91 acres of vernal pool crustacean habitat. To mitigate for this loss, the USFWS directed the permittee to restore 4.88 acres of vernal pool habitat. The permittee for this project is Douglas Grantline 103 Investors, LLC.

6. The Arista del Sol project (ID: SPK–2004–00458) is located on a 215-acre

site south of Douglas Road and adjacent to the west side of Grant Line Road. The applicant proposes to fill approximately 13.9 acres of waters of the U.S., including wetlands, to construct 906 houses, roadways, and other infrastructure. The permittee proposes to preserve 42 acres of wetlands on-site. According to the Biological Opinion issued for the project, approximately 12 acres of wetland habitat would be created and 22.5 acres of wetland habitat preservation would occur off-site. Mitigation is expected to occur within Gill Ranch Open Space Preserve, a 10,400-acre preserve in eastern Sacramento County. The applicant for this project is Pappas Investments.

The Draft EIS includes an evaluation of a reasonable range of alternatives. The Draft EIS considers several on-site and off-site alternatives. Three alternatives were carried through for detailed analysis: (1) The no action alternative, (2) the proposed action (the applicants' preferred projects), and (3) a reduced footprint alternative. The no action alternative is limited to development in uplands, avoiding all waters of the United States. The reduced development footprint alternative involves less development with fewer impacts to waters of the United States.

Comments on the Draft EIS must be submitted to the Corps by August 15, 2010. The public and affected Federal, State, and local agencies, Native American Tribes, and other organizations and parties are invited to comment. Electronic copies of the Draft EIS may be found on the Corps' Web site at *http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/EISs/EIS-index.html*. A hard copy of the Draft EIS will be available for review at the Corps office during normal business hours. To view the hard copy, please contact Michael Jewell to schedule a time to visit the Corps office.

The Corps will also hold two public meetings for the Draft EIS. The meetings will be held on July 27, 2010, with the first from 5 p.m. to 6 p.m. and the second from 7 p.m. to 8 p.m. The location of the meetings is at the Rancho Cordova City Hall, 2729 Prospect Park Drive, American River Room—South, Rancho Cordova, CA 95670. Interested parties can provide oral and written comments at these meetings.

In addition to notices in the **Federal Register**, the Corps will issue public notices advising interested parties of the availability of the Draft EIS and Final EIS. Interested parties may register for the Corps' public notices at: *http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/pnlist.html.*

Dated: June 22, 2010.

Thomas C. Chapman,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 2010–16138 Filed 7–1–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Plenary Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: July 21, 2010.

Time(s) of Meeting: 0800–1330.

Location: Beckman Center, 100 Academy, Irvine, CA 92617.

Purpose: Adopt the findings and recommendations for phase one of the following studies: *Strengthening Sustainability and Resiliency of a Future Force, Tactical Non-cooperative Biometric Systems and Soldier Resilience and Performance Sustainment.*

Purposed Agenda:

Wednesday 21 July:

0800–0930 Study results for *Strengthening Sustainability and Resiliency of a Future Force* are presented to the ASB. The ASB deliberates and votes to adopt the findings and recommendations on the first phase of the study.

0930–0945 Break.

0945–1115 Study results for the *Tactical Non-Cooperative Biometric Systems* are presented to the ASB. The ASB deliberates and votes to adopt the findings and recommendations on the first phase of the study.

1115–1200 Lunch Break for the ASB Members.

1200–1330 Study results for *Soldier Resilience and Performance Sustainment* are presented to the ASB. The ASB deliberates and votes to adopt the findings and recommendations on the first phase of the study.

FURTHER INFORMATION CONTACT: For information please contact Mr. Justin Bringhurst at *justin.bringhurst@us.army.mil* or (703) 604–7468 or Carolyn German at *carolyn.t.german@us.army.mil* or (703) 604–7490.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–16136 Filed 7–1–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meetings of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meetings.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet from July 19–23, 2010, and July 26–30, 2010, to discuss materials presented at the NRAC Summer Study. All sessions on Monday, July 19, 2010, and the Executive Sessions led by Panel Chair and Vice Chair from 8 a.m. to 8:30 a.m. on July 20–23, 2010, will be open to the public. The sessions from 8:30 a.m. to 5 p.m. on July 20–23, 2010, and all of the sessions on July 26–30, 2010, will be closed to the public. The closed sessions will be devoted to discussions and technical examination of classified information, For Official Use Only (FOUO) information, and vendor proprietary briefings related to the study: "Status and Future of Naval Research & Development Enterprise." These closed session discussions will assess the current technical core competencies of the Warfare Centers employed by the Systems Commands (SYSCOMs) and Program Executive Offices (PEOs) (as well as the stewardship provided for those competencies and the technical core competencies that are provided by the Navy University Affiliated Research Centers (UARCs)); will consider the technical quality of the workforce and physical infrastructure; will review proprietary information regarding technology applications and systems under development in the private sector between competing companies; will assess emerging concepts of operations in each of these areas and evaluate appropriate options in such areas as: Personnel, training, R&D funding allocation, technology monitoring, progress assessments, probable time frames for transformation and implementation; and will assess challenges with the utilization and fielding of various technology applications.

DATES: All sessions on Monday, July 19, 2010, and the Executive Sessions led by Panel Chair and Vice Chair from 8 a.m. to 8:30 a.m. on July 20–23, 2010, will be open to the public. The sessions from 8:30 a.m. to 5 p.m. on July 20–23, 2010, and all of the sessions on July 26–30, 2010, will be closed to the public.

Public Access: The NRAC Summer Study will be headquartered in the CLOUD ROOM at 53605 Hull Street, Space and Naval Warfare Systems Center, San Diego, CA 92152–5410. Access instructions for the public:

1. If you are a non-US citizen, you must submit a visit request by letter or fax 619–553–2726 via your embassy to: SPAWARSYSCEN San Diego, CODE 20352 (PL–TS), POC: Jackie Olson, 854, 49275 Electron Dr., San Diego, CA 92152–5435.

Please indicate that you will be attending the open sessions of the Naval Research Advisory Committee (NRAC) Summer Study.

2. If you are a U.S. government employee or an active military service member with a security clearance, please submit a Visit Request via JPAS to SPAWARS; UIC number 660015 or fax it to 619–553–2726. POC is Ms. Jackie Olson, Office 85400, 619–553–2722.

3. If you are a U.S. citizen with no security clearances, you will require an escort at all times while within SPAWAR'S facilities. Please submit a Visit Request via e-mail or fax no later than July 1, 2010, to: Mr. William Ellis, NRAC Program Director, *elliswonr@gmail.com*; fax: 703–696–4837 or Mr. Miguel Becerril, NRAC Program Manager, *mbecerril@jorge.com*; fax: 703–696–4837.

All guests must have at least two forms of government issued identification. Guests planning on attending activities indicated above must have submitted their respective Visit Request per the above instructions. If the guest requires an escort, he or she must be present at the SPAWARS Visitor Center no later than 7 a.m. The Visitor Center is located at the entrance to the Space and Naval Warfare Center, 49275 Electron Drive, San Diego, CA. Guests requiring escort will be greeted by a member of the NRAC staff and escorted to the site of the summer study. Escorted guests will be limited to only those areas related to the summer study activities. Escorted guests will be returned to the Visitor Center upon completion of the NRAC activities open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Ellis, Jr., Program Director, Naval Research Advisory Committee, 875 North Randolph Street, Arlington, VA 22203–1955, 703–696–5775.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), the proprietary information (to include trade secrets and commercial and financial information) and the classified information (to include FOUO and SECRET information) constitute information that is exempt from disclosure to the public. Accordingly, the Secretary of the Navy has determined in writing, in accordance with 5 U.S.C. App. 2, section 10(d), that the public interest requires that the sessions from 8:30 a.m. to 5 p.m. on July 20–23, 2010, and all of the sessions on July 26–30, 2010, be closed to the public because they will deal with the exempted matters listed in 5 U.S.C. section 552b(c)(1) and (4).

Dated: June 25, 2010.

H.E. Higgins,

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

[FR Doc. 2010–16129 Filed 7–1–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy Advisory Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The Secretary of the Navy (SECNAV) Advisory Panel will deliberate the findings and recommendations for the Department of the Navy's Energy program and Asia/Pacific Engagement topic.

DATES: The meeting will be held on July 21, 2010, from 8 a.m. to 4:45 p.m.

This meeting will be open to the public from 8 a.m. until 12 p.m. on July 21, 2010, and the afternoon sessions from 12 p.m. until 4:45 p.m. on July 21, 2010, will be closed to the public.

ADDRESSES: The meeting will be held at the Pentagon N89 Conference Room (5E456).

Access: Public access is limited due to the Pentagon Security requirements. Members of the public wishing to attend will need to contact Commander Cary Knox at 703–693–0463 or Commander Marc Gage at 703–695–3042 no later than July 14, 2010, and provide their Name, Date of Birth and Social Security number. Public transportation is recommended as public parking is not available. Members of the public wishing to attend this event must enter through the Pentagon's Metro Entrance between 7 a.m. to 7:30 a.m. where they will need two forms of identification in order to receive a visitors badge and meet their escort. Members will then be escorted to the N89 Conference Room to attend the open sessions of the Advisory Panel. Members of the public shall remain with designated escorts at all times while on the Pentagon Reservation. They will be escorted back to the Pentagon Metro Entrance at 12 p.m. unless prior coordination is made to leave earlier.

FOR FURTHER INFORMATION CONTACT: Captain Jon Kaufmann, Designated Federal Officer, SECNAV Advisory Panel, Office of Program Appraisal 1000 Navy Pentagon, Washington, DC 20350, 703–695–3032.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the SECNAV has determined in writing that the public interest requires that the sessions of this meeting from 12 p.m. until 4:45 p.m. on July 21, 2010, be closed to the public because they will be concerned with matters listed in section 552b(c)(1), of Title 5, United States Code.

Individuals or interested groups may submit written statements for consideration by the SECNAV Advisory Panel at any time or in response to the agenda of a scheduled meeting. All requests must be submitted to the Designated Federal Officer at the address detailed below.

If the written statement is in response to the agenda mentioned in this meeting notice then the statement, if it is to be considered by the Panel for this meeting, must be received at least five days prior to the meeting in question.

The Designated Federal Officer will review all timely submissions with the SECNAV Advisory Panel Chairperson, and ensure they are provided to members of the SECNAV Advisory Panel before the meeting that is the subject of this notice.

To contact the Designated Federal Officer, write to: Designated Federal Officer, SECNAV Advisory Panel, Office of Program and Process Assessment 1000 Navy Pentagon, Washington, DC 20350, 703–697–9154.

Dated: June 25, 2010.

H.E. Higgins,

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

[FR Doc. 2010–16127 Filed 7–1–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education: Overview Information; Coordinating Center for Transition and Postsecondary Programs for Students With Intellectual Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.407B.

Dates:

Applications Available: July 2, 2010.

Deadline for Transmittal of Applications: August 2, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to establish a coordinating center for institutions of higher education that offer inclusive comprehensive transition and postsecondary programs for students with intellectual disabilities, including institutions that have grants authorized under the Transition Programs for Students with Intellectual Disabilities into Higher Education (TPSID) program (CFDA 84.407A) (*www2.ed.gov/programs/tpsid/index.html*).

Priority: We are establishing this priority for the FY 2010 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet his priority.

This priority is:

A grant recipient must use grant funds to establish a coordinating center for institutions of higher education that offer inclusive comprehensive transition and postsecondary programs for students with intellectual disabilities. The coordinating center must provide these programs with recommendations related to the development of standards, technical assistance, and evaluations. The coordinating center is required to:

(1) Serve as the technical assistance entity for all comprehensive transition and postsecondary programs for students with intellectual disabilities;

(2) Provide technical assistance regarding the development, evaluation, and continuous improvement of such programs;

(3) Develop a Department-approved evaluation protocol for such programs that includes qualitative and quantitative methodologies for measuring student outcomes and program strengths in the areas of academic enrichment, socialization, independent living, and competitive or supported employment, including whether students obtain gainful employment in an integrated setting once they have received a credential;

(4) Assist recipients that have grants authorized under the TPSID program in efforts to award a meaningful credential to students with intellectual disabilities upon the completion of such programs, which credential must take into consideration unique State factors and meet criteria developed by the center and approved by the Department;

(5) Develop recommendations for the necessary components of such programs, such as—

(i) Academic, vocational, social, and independent living skills;

(ii) Evaluation of student progress;

(iii) Program administration and evaluation;

(iv) Student eligibility; and

(v) Issues regarding the equivalency of a student's participation in such programs to semester, trimester, quarter, credit, or clock hours at an institution of higher education;

(6) Analyze possible funding streams for such programs and provide recommendations regarding the funding streams;

(7) Develop model memoranda of agreement for use between or among institutions of higher education and State and local agencies providing funding for such programs;

(8) Develop mechanisms for regular communication, outreach, and dissemination of information about comprehensive transition and postsecondary programs for students with intellectual disabilities to those institutions that have grants authorized under the TPSID program and to families and prospective students;

(9) Host a meeting of all recipients of grants authorized under the TPSID program not less often than once each year;

(10) Convene a workgroup to develop and recommend model criteria, standards, and components of such programs as described in paragraph (5) that are appropriate for the development of accreditation standards, which workgroup must include—

(i) An expert in higher education;

(ii) An expert in special education;

(iii) A disability organization that represents students with intellectual disabilities;

(iv) A representative from the National Advisory Committee on Institutional Quality and Integrity;

(v) A representative of a regional or national accreditation agency or association;

(vi) An expert in inclusive competitive employment for individuals with disabilities; and

(vii) An expert in independent living for individuals with disabilities.

(11) Collaborate with existing centers dedicated to helping individuals with intellectual disabilities access postsecondary education, such as the Center for Postsecondary Education for Individuals with Intellectual Disabilities funded by the U.S. Department of Education, National Institute on Disability and Rehabilitation Research (NIDRR), and the Consortium for Postsecondary Programs for Individuals with Developmental Disabilities, a National Training Initiative of the Administration on Developmental Disabilities (ADD), and any future centers dedicated to this issue.

Applicable Statutory Definition:

Comprehensive transition and postsecondary program for students with intellectual disabilities (section 760(1) of the HEA).

The term "comprehensive transition and postsecondary program for students with intellectual disabilities" means a degree, certificate, or nondegree program that meets each of the following:

(A) Is offered by an institution of higher education.

(B) Is designed to support students with intellectual disabilities who are seeking to continue academic, career and technical, and independent living instruction at an institution of higher education in order to prepare for gainful employment.

(C) Includes an advising and curriculum structure.

(D) Requires students with intellectual disabilities to participate on not less than a half-time basis as determined by the institution, with such participation focusing on academic components, and occurring through one or more of the following activities:

(i) Regular enrollment in credit-bearing courses with nondisabled students offered by the institution.

(ii) Auditing or participating in courses with nondisabled students offered by the institution for which the

student does not receive regular academic credit.

(iii) Enrollment in noncredit-bearing, nondegree courses with nondisabled students.

(iv) Participation in internships or work-based training in settings with nondisabled individuals.

(E) Requires students with intellectual disabilities to be socially and academically integrated with nondisabled students to the maximum extent possible.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 437(d)(1) of the GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 777(b) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1140q(b) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priority and the requirement in paragraph (b) under section III.1. Eligible Applicants. This priority and requirement will apply to the FY 2010 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 1140q(b).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Available Funds: $330,000.

Maximum Award: We will reject any application that proposes a budget exceeding $330,000 for a single budget period of 12 months. The Assistant Secretary for Postsecondary Education 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: 60 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) Under section 777(b)(1) of the HEA, an "eligible entity" means an entity, or a partnership of entities, that has demonstrated expertise in the fields of—

(1) Higher education;

(2) The education of students with intellectual disabilities;

(3) The development of comprehensive transition and postsecondary programs for students with intellectual disabilities; and

(4) Evaluation and technical assistance.

(b) In addition to the provisions in paragraph (a) of section III.1. Eligible Applicants, an applicant must have experience in establishing, sustaining, or providing technical assistance to comprehensive transition and postsecondary programs.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Shedita Alston, Teacher and Student Development Programs Service, U.S. Department of Education, 1990 K Street, NW., Room 6131, Washington, DC 20006–8524. Telephone (202) 502–7808 or by e-mail: *Shedita.alston@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part III) to no more than 70 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. Applications submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.
- Appendices are limited to the following: Curriculum Vitae, letters of support, partnership agreements, memoranda of agreement, a bibliography, and one additional optional appendix relevant to the support of the proposal, not to exceed five pages.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424); the Supplemental Information Form required by the Department of Education; Part IV, the assurances and certifications; or the one-page abstract; or the appendices. The page limit also does not apply to the table of contents, if you include one. However, you must include all of the application narrative in Part III.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: July 2, 2010.

Deadline for Transmittal of Applications: August 2, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.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.

4. *Intergovernmental Review:* This program is subject to Executive Order

12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR part 75. We reference additional 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.

In addition, if you are submitting your application via *www.http://Grants.gov,* you must: (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Coordinating Center CFDA 84.407B must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov,* unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your Grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our

acknowledgment of any system unavailability, you may contact either: (1) The person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or; (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Shedita Alston, U.S. Department of Education, 1990 K Street, NW., room 6131, Washington, DC 20006–8524. Fax: (202) 502–7675.

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 84.407B), 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 84.407B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. *Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will 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 the project period, a grantee must submit a final performance report, including financial 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). In addition, not later than five years after the date of the establishment of the coordinating center, the coordinating center must report to the Secretary, the Congressional authorizing committees, and the National Advisory Committee on Institutional Quality and Integrity on the recommendations of the workgroup described in the absolute priority of this notice. For specific requirements on reporting, please go to *http://www2.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of the Coordinating Center Program is to provide: (A) Recommendations related to the development of standards for inclusive comprehensive transition and postsecondary programs for students with intellectual disabilities; (B) technical assistance for such programs; and (C) evaluations for such programs.

To assess the success of the grantee in meeting these goals, in addition to other information, the grantee's annual performance report must include—

(1) The percentage of recipients that have grants authorized under the TPSID program that meet Department-approved, center-developed standards for necessary program components, reported across each standard; and

(2) The percentage of students with intellectual disabilities who are enrolled in programs funded under TPSID who complete the programs and obtain a meaningful credential, as defined by the center and approved by the Department.

VII. Agency Contact

For Further Information Contact: Shedita Alston, U.S. Department of Education, Teacher and Student Development Programs Service, 1990 K Street, NW., Room 6131, Washington, DC 20006–8524. Telephone: (202) 502–7808 or by e-mail: *Shedita.alston@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: June 29, 2010.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–16186 Filed 7–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Personnel Development to Improve Services and Results for Children with Disabilities

Catalog of Federal Domestic Assistance (CFDA) Number: 84.325D, 84.325K, and 84.325T.

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2010; correction.

SUMMARY: On June 14, 2010, we published in the **Federal Register** (75 FR 33593) a notice inviting applications for new awards for FY 2010 under certain Personnel Development to Improve Services and Results for Children with Disabilities competitions authorized under the Individuals with Disabilities Education Act. We are correcting the use of the word "scholar" in the Special Education Preservice Program Improvement Grants (84.325T) priority in the notice published on June 14, 2010 (75 FR 33599–33601) because scholars, as defined in 34 CFR 304.3(g), receive scholarship assistance while, under this priority, financial support is not available to students during any year of the project.

On page 33600, third column, paragraphs (a)(6)(i) and (a)(6)(ii), we remove the word "scholars" and replace it with the term "program graduates". In addition, on page 33600, third column, we remove footnote number 22 that defines "scholar". And finally, on page 33600, third column, paragraph (b)(2), and page 33601, first column, paragraph (g), we remove the word "scholars" and replace it with the term "students".

FOR FURTHER INFORMATION CONTACT: Tina Diamond, U.S. Department of Education, 400 Maryland Avenue, SW., room 4094, Potomac Center Plaza, Washington, DC 20202–2600. *Telephone:* (202) 245–6674.

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

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 25, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16204 Filed 7–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information Training for Realtime Writers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116K.

Dates: Applications Available: July 2, 2010.

Deadline for Transmittal of Applications: August 2, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The objective of this program is to provide grants to institutions of higher education (IHEs) that meet certain qualifications to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 713 of the Communications Act of 1934 (47 U.S.C. 613) and the rules prescribed thereunder.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 872(a)(3) of the Higher Education Act of 1965, as amended (HEA).

Absolute Priority: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Applicants must: (1) Demonstrate they possess the most substantial capability to increase their capacity to train realtime writers; (2) demonstrate they have undertaken the most promising collaboration with educational institutions, businesses,

labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or (3) propose promising and innovative approaches for initiating or expanding training or job placement assistance efforts with respect to realtime writers.

An eligible entity receiving a grant must use the grant funds for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including: (1) Recruitment; (2) the provision of scholarships (subject to the requirements in section 872(c)(2) of the HEA); (3) distance learning; (4) further developing and implementing both English and Spanish curricula to more effectively train individuals in realtime writing skills, and the knowledge necessary for the delivery of high quality closed captioning services; (5) mentoring students to ensure successful completion of the realtime training and providing assistance in job placement; (6) encouraging individuals with disabilities to pursue a career in realtime writing; and (7) the employment and payment of personnel for the purposes described.

Program Authority: 20 U.S.C. 1161s.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $990,000.

Estimated Range of Awards: $200,000–$300,000.

Estimated Average Size of Awards: $250,000 for the entire performance period.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information and Program Requirements

1. *Eligible Applicants:* An IHE that offers a court reporting program that: (1) Has a curriculum capable of training realtime writers qualified to provide captioning services; (2) is accredited by an accrediting agency or association recognized by the Secretary; and (3) is participating in student aid programs under Title IV of the HEA.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching. However, the program does include a supplement-not-supplant requirement. Under section 872(c)(4) of the HEA, grant amounts awarded under this program must supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

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://e-grants.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.edpubs.gov/* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.116K.

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 **FOR FURTHER INFORMATION CONTACT** in Section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program 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 to the equivalent of no more than 15 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, except 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; the table of contents; the one page abstract, the resumes, the bibliography, or citation list, letters of partners' or other collaborators' commitment, or letters from institutional administrators that document the applicant's existing work study program.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:* Applications Available: July 2, 2010.

Deadline for Transmittal of Applications: August 2, 2010.

Applications for grants under this program 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.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program competition.

5. *Funding Restrictions:* Under section 872(c)(3) of the HEA, a grantee under this program may not use more than five percent of the grant amount to pay administrative costs associated with activities funded by the grant. We reference regulations outlining

additional 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 Training for Realtime Writers Program—CFDA number 84.116K—must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program 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: Erin Marie McDermott, U.S. Department of Education, 1990 K Street, NW., room 6142, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: Department of Education, Application Control Center, Attention: (CFDA Number 84.116K) 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: Department of Education, Application Control Center, Attention: CFDA Number 84.116K, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. Additional information regarding these criteria is in the application package for this competition.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are as follows. In making grant awards for this program, the Department will consider information concerning the applicant's performance and use of funds under a previous award under any Department program, and will consider any information concerning the applicant's failure under any Department program to submit a performance report or its submission of a performance report of unacceptable quality, in accordance with 34 CFR 75.217(d)(3).

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 will 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 and, as required under section 872(d) of the HEA and as directed by the Secretary, (1) an assessment of the effectiveness of activities carried out using such funds in increasing the number of realtime writers, using the performance measures submitted in the application for the grant; and (2) a description of the best practices identified for increasing the number of individuals who are trained, employed, and retained in employment as realtime writers. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to: *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the following measure will be used by the Department in assessing the performance of the Training for Realtime Writers Program: The number of participants who have completed the program who are employed as realtime writers.

If funded, you will be asked to collect and report data on these measures in your project's annual performance report (34 CFR 75.590).

VII. Agency Contact

For Further Information Contact: Erin Marie McDermott, Training for Realtime Writers Program, U.S. Department of Education, 1990 K Street, NW., room 6142, Washington, DC 20006–8544. Telephone: (202) 502–7607 or by e-mail: *erin.mcdermott@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in Section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated the authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. 2010–16203 Filed 7–1–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF TRANSPORTATION

[Docket No. FR–5415–N–12]

Notice of Funding Availability for the Department of Housing and Urban Development's Community Challenge Planning Grants and the Department of Transportation's TIGER II Planning Grants

Correction

In notice document 2010–15353 beginning on page 36246 in the issue of Thursday, June 24, 2010, make the following correction:

On page 36245, on the cover for separate part V, "Department of Health and Human Services" should read "Department of Housing and Urban Development".

[FR Doc. C1 2010–15353 Filed 7–1–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years, an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before August 31, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Anne Broker, GC–12, U.S. Department of Energy, Office of Conflict Prevention and Resolution, 1000 Independence Avenue, SW., Washington, DC 20585 or by fax at 202–586–4116 or by e-mail at *anne.broker@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Anne Broker at 202–586–5060 or *anne.broker@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5115; (2) Information Collection Request Title: Contractor Legal Management Requirements; (3) Type of Review: Renewal; (4) Purpose: The collection of this information continues to be necessary to provide a basis for DOE decisions on requests, from applicable contractors, for reimbursement of litigation and other legal expenses; (5) Annual Estimated Number of Respondents: 36; (6) Annual Estimated Number of Total Responses: 36; (7) Annual Estimated Number of Burden Hours: 515; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: None. The costs incurred by the DOE contractors in providing the information collections in this package are recovered in their contract fees and payments.

Statutory Authority: These requirements are promulgated under authority in section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201; the Department of Energy Organization Act, 42 U.S.C. 7101, *et seq.;* and the National Nuclear Security Administration Act, 50 U.S.C. 2401, *et seq.*

Issued in Washington, DC, on June 28, 2010.

Kathleen M. Binder,

Director, Office of Conflict Prevention and Resolution, Office of General Counsel.

[FR Doc. 2010–16241 Filed 7–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–368]

Application to Export Electric Energy; Brookfield Energy Marketing LP

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Brookfield Energy Marketing LP (BEM LP) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before August 2, 2010.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Christopher Lawrence (Program Office) 202–586–5260 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require

authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On June 18, 2010, DOE received an application from BEM LP for authority to transmit electric energy from the United States to Canada as a power marketer using existing international transmission facilities for five years. BEM LP does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that BEM LP proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies and other entities within the United States. The existing international transmission facilities to be utilized by BEM LP have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the BEM LP application to export electric energy to Canada should be clearly marked with Docket No. EA–368. Additional copies are to be filed directly with Andrea Rocheleau, Brookfield Energy Marketing LP, 480 de la Cite Blvd., Gatineau, Quebec J8T 8R3 *AND* Jack Burkom, Brookfield Energy Marketing LP, 480 de la Cite Blvd., Gatineau, Quebec J8T 8R3. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on June 28, 2010.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2010–16238 Filed 7–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the form EIA–914 "Monthly Natural Gas Production Report" to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by August 2, 2010. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESS: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail to *Christine_J._Kymn@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4638. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jason Worrall. To ensure receipt of the comments by the due date, submission by FAX (202–586–5271) or e-mail (*Jason.worrall@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0670. Mr. Worrall may be contacted by telephone at (202) 586–6075.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.,* the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.,* new, revision, extension, or reinstatement); (5) response obligation (*i.e.,* mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; (8) an estimate of the total annual reporting burden (*i.e.,* the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form EIA–914, "Monthly Natural Gas Production Report".

2. Energy Information Administration.

3. OMB Number 1905–0205.

4. Three-year extension.

5. Mandatory.

6. The purpose of the survey is to collect monthly data on the production of natural gas in seven geographical areas (Texas (including State offshore), Louisiana (including State offshore), Oklahoma, New Mexico, Wyoming, Federal Gulf of Mexico offshore and Other States (defined as all remaining states, except Alaska, in which the operator produced natural gas during the report month). Data will be used to monitor natural gas supplies. Survey respondents would be a sample of well operators.

7. Business or other for-profit.

8. 8,748 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, June 28, 2010.

Richard Reeves,

Acting Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 2010–16239 Filed 7–1–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Order on Intent To Revoke Market-Based Rate Authority

Issued June 25, 2010.

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

In the matter of: ER02–2001–015, ER00–167–000, ER03–752–000, Electric Quarterly Reports, Strategic Energy Management Corp., Solaro Energy Marketing Corporation.

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2006), and 18 CFR part 35 (2009), require, among other things, that all rates, terms, and conditions of jurisdictional services be filed with the Commission. In Order No. 2001, the Commission revised its public utility filing requirements and established a requirement for public utilities, including power marketers, to file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and providing transaction information (including rates) for short-term and long-term power sales during the most recent calendar quarter.[1]

2. Commission staff's review of the Electric Quarterly Report submittals indicates that two utilities with authority to sell electric power at market-based rates have failed to file their Electric Quarterly Reports. This order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the date of issuance of this order.

3. In Order No. 2001, the Commission stated that:

> [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[2]

4. The Commission further stated that:

> [o]nce this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations, and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[3]

5. Pursuant to these requirements, the Commission has revoked the market-based rate tariffs of several market-based rate sellers that failed to submit their Electric Quarterly Reports.[4]

6. As noted above, Commission staff's review of the Electric Quarterly Report submittals identified two public utilities with authority to sell power at market-based rates that failed to file Electric Quarterly Reports through the first quarter of 2010. Commission staff contacted these entities to remind them of their regulatory obligations.[5] None of the public utilities listed in the caption of this order has met those obligations.[6] Accordingly, this order notifies these public utilities that their market-based rate authorizations will be revoked unless they comply with the Commission's requirements within 15 days of the issuance of this order.

7. In the event that any of the above-captioned market-based rate sellers has already filed its Electric Quarterly Report in compliance with the Commission's requirements, its inclusion herein is inadvertent. Such market-based rate seller is directed, within 15 days of the date of issuance of this order, to make a filing with the Commission identifying itself and providing details about its prior filings that establish that it complied with the Commission's Electric Quarterly Report filing requirements.

8. If any of the above-captioned market-based rate sellers do not wish to continue having market-based rate authority, they may file a notice of cancellation with the Commission pursuant to section 205 of the FPA to cancel their market-based rate tariff.

The Commission orders:

(A) Within 15 days of the date of issuance of this order, each public utility listed in the caption of this order shall file with the Commission all delinquent Electric Quarterly Reports. If a public utility fails to make this filing, the Commission will revoke that public utility's authority to sell power at market-based rates and will terminate its electric market-based rate tariff. The Secretary is hereby directed, upon expiration of the filing deadline in this order, to promptly issue a notice, effective on the date of issuance, listing the public utilities whose tariffs have been revoked for failure to comply with the requirements of this order and the Commission's Electric Quarterly Report filing requirements.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16131 Filed 7–1–10; 8:45 am]

BILLING CODE 6717–01–P

[1] *Revised Public Utility Filing Requirements,* Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh'g denied,* Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied,* Order No. 2001–B, 100 FERC ¶ 61,342, *order directing filings,* Order No. 2001–C, 101 FERC ¶ 61,314 (2002), *order directing filings,* Order No. 2001–D, 102 FERC ¶ 61,334 (2003).

[2] Order No. 2001 at P 222.

[3] *Id.* P 223.

[4] *See, e.g., Electric Quarterly Reports,* 75 FR 19,646 (Apr. 15, 2010); *Electric Quarterly Reports,* 74 FR 44,841 (Aug. 31, 2009).

[5] *See Solaro Energy Marketing Corporation,* Docket No. ER03–752–000 (April 22, 2010) (unpublished letter order); *Strategic Energy Management Corp.,* Docket No. ER00–167–000 (April 22, 2010) (unpublished letter order).

[6] According to the Commission's records, both companies subject to this order failed to file their Electric Quarterly Reports for the 4th quarter of 2009 and the 1st quarter of 2010.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OW–2010–0316, FRL–9170–4]

Massachusetts Marine Sanitation Device Standard—Notice of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination.

SUMMARY: The Regional Administrator of the Environmental Protection Agency—New England Region, has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the coastal waters of Pleasant Bay/Chatham Harbor, MA.

ADDRESSES: *Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, Office of Ecosystem Protection, Oceans and Coastal Protection Unit, Five Post Office Square, Suite 100, OEP06–1, Boston, MA 02109–3912. Telephone: (617) 918–1538. Fax number: (617) 918–0538. E-mail address: *rodney.ann@epa.gov.*

SUPPLEMENTARY INFORMATION: On May 7, 2010, EPA published a notice that the Commonwealth of Massachusetts had petitioned the Regional Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Pleasant Bay/Chatham Harbor. Three comments were received on this petition. The response to comments can be obtained utilizing the above contact information.

The petition was filed pursuant to Section 312 (f) (3) of Public Law 92–500, as amended by Public Laws 95–217 and 100–4, for the purpose of declaring these waters a No Discharge Area (NDA).

Section 312 (f) (3) states: After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply.

This Notice of Determination is for the waters of Pleasant Bay/Chatham Harbor. The NDA boundaries are as follows:

Waterbody/General area	From latitude	From longitude	To latitude	To longitude
Bounded on the west by mainland Chatham, Harwich, Brewster and Orleans; bounded on the east by Nauset Beach (North Beach) and North Beach Island. A line drawn cross the mouth of the North inlet across from Minister's Point:.	41°42′19.43″ N.	69°55′44.76″ W.	41°42′13.31″ N.	69°55′45.11″ W.
From West of a line across the mouth of the South Inlet:	41°40′41.51″ N.	69°56′3.47″ W.	41°39′56.52″ N.	69°56′30.48″ W.

The area includes the municipal waters of Chatham, Harwich, Brewster and Orleans.

The information submitted to EPA by the Commonwealth of Massachusetts certifies that there are three pumpout facilities located within this area. A list of the facilities, with locations, phone numbers, and hours of operation is appended at the end of this determination.

Based on the examination of the petition and its supporting documentation, and information from site visits conducted by EPA New England staff, EPA has determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination.

This determination is made pursuant to Section 312 (f) (3) of Public Law 92–500, as amended by Public laws 95–217 and 100–4.

PUMPOUT FACILITIES WITHIN THE NO DISCHARGE AREA

Name	Location	Contact info.	Hours	Mean low water depth
Pleasant Bay/Chatham Harbor				
Harbormaster	Round Cove Harwich	508–430–7532, VHF 60	On demand	N/A.
Harbormaster	Ryder's Cove Chatham	508–945–1067 or 508–945–5185, VHF 66.	M–F 8 a.m.–5 p.m., Sat. 9 a.m.–1 p.m.	3 ft.
Nauset Marine East	37 Barley Neck Road, East Orleans.	508–255–3045, VHF 9	On demand	3 ft.

Dated: June 24, 2010.

H. Curtis Spalding,

Regional Administrator, New England Region.

[FR Doc. 2010–16174 Filed 7–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8991–2]

Environmental Impact 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 06/21/2010 through 06/25/210. 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. 20100236, Draft EIS, FERC, CA, Kilarc-Cow Creek Hydroelectric Project (FERC Project No. 606) Proposes to Surrender the License for Operation Project, Old Crow Creek and South Cow Creek, Shasta County, CA, Comment Period Ends: 08/16/2010, Contact: Mary O'Driscoll, 1–866–208–3372.

EIS No. 20100237, Final Supplement, BLM, NV, Newmont Gold Mining, South Operations Area Project Amendment, Updated Information on the Cumulative Effects Analyses, Operation and Expansion, Plan of Operations, Elko and Eureka Counties, NV, Wait Period Ends: 08/

02/2010, Contact: Deb McFarlance, 775–753–0200.

EIS No. 20100238, Final Supplement, BLM, NV, Leeville Mining Project, Propose to Develop and Operate an Underground Mine and Ancillary Facilities including Dewatering Operation, Updated Information on the Cumulative Effects Analyses, Plan-of-Operations/Right-of-Way Permit and COE Section 404 Permit, Elko and Eureka Counties, NV, Wait Period Ends: 08/02/2010, Contact: Deb McFarlance, 775–753–0200.

EIS No. 20100239, Draft EIS, BPA, WA, Central Ferry-Lower Monumental 500-kilovolt Transmission Line Project, Proposing to Construct, Operate, and Maintain a 38 to 40–Mile-Long 500-kilovolt (kV) Transmission Line, Garfield, Columbia and Walla Walla Counties, WA, Comment Period Ends: 08/16/2010, Contact: Tish Eaton, 503–230–3469.

EIS No. 20100240, Draft EIS, USACE, CA, American River Watershed Common Features Project/Natomas Post-Authorization Change Report/Natomas Levee Improvement Program, Phase 4b Landside Improvements Project, Sacramento and Sutter Counties, CA, Comment Period Ends: 08/16/2010, Contact: Elizabeth G. Holland, 916–557–6763.

EIS No. 20100241, Draft EIS, USACE, CA, Sunridge Properties Project, Implementing Alternatives for Six Residential Development Project, City of Rancho Cordova, Sacramento County, CA, Comment Period Ends: 08/16/2010, Contact: Michael Jewell, 916–557–6605.

EIS No. 20100242, Draft EIS, NSA, MD, Fort George G. Meade, Maryland, to Address Campus Development, Site M as an Operational Complex and to Construct and Operate Consolidated Facilities for Intelligence Community Use, Fort George G. Meade, MD, Comment Period Ends: 08/16/2010, Contact: Jeffery William, 301–688–2970.

EIS No. 20100243, Draft EIS, FHWA, AL, I–85 Extension from I–59/I–20 near the Mississippi State Line to I–65 near Montgomery, Portion of Autauga, Dallas, Hale, Lowndes, Marengo, Montgomery, Perry, and Sumter Counties, AL, Comment Period Ends: 08/16/2010, Contact: Mark D. Bartlett, 334–274–6350.

Amended Notices

EIS No. 20100225, Draft EIS, BLM, NV, Winnemucca District Office Resource Management Plan, Humboldt, Pershing, Washoe, Lyon and Churchill Counties, NV, Comment Period Ends: 09/22/2010, Contact: Robert Edward, 775–623–1597. *Revision to FR Notice Published 06/25/2010:* Correction to Title.

EIS No. 20100234, Final EIS, USAF, 00, Shaw Air Base Airspace Training Initiative (ATI), 20th Fighter Wing, Proposal to Modify the Training Airspace Overlying Parts, South Carolina and Georgia, Wait Period Ends: 07/26/2010, Contact: Linda Devine, 757–764–9434.

Revision to FR Notice Published 06/25/2010: Correction to Contact Person Telephone Number.

Dated: June 29, 2010.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2010–16171 Filed 7–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9170–7]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held July 21 and 22, 2010 at the Ritz-Carlton Hotel, 1150 22nd Street, NW., Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

DATES: The CHPAC will meet July 21 and 22, 2010.

ADDRESSES: Ritz-Carlton Hotel, 1150 22nd Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Martha Berger, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2191, *berger.martha@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. The CHPAC will meet on Wednesday, July 21 from 8:30 a.m. to 5 p.m., and Thursday, July 22 from 9 a.m. to 12:30 p.m. Agenda items include discussions on prenatal environmental exposures and indoor environments for children.

ACCESS AND ACCOMMODATIONS: For information on access or services for individuals with disabilities, please contact Martha Berger at 202–564–2191 or *berger.martha@epa.gov,* preferably at least 10 days prior to the meeting.

Dated: June 28, 2010.

Martha Berger,

Designated Federal Official.

Draft Agenda—U.S. Environmental Protection Agency, Children's Health Protection Advisory Committee: July 21–22, 2010, The Ritz-Carlton Hotel, Salon IIIA, 1150 22nd St, NW., Washington, DC 20037; 202–974–5557.

Plenary Session Desired Outcomes

- Learn about new and ongoing activities at EPA and the Office of Children's Health Protection.
- Review work group efforts on indoor environments and prenatal exposures.
- Discuss potential interagency task force issues: Asthma disparities and chemical management.

Wednesday, July 21

8:00 Coffee.
8:30–8:35 Review Meeting Agenda and Introductions.
8:45–9:15 Highlights of Office of Children's Health Protection Activities, Peter Grevatt, Director OCHP.
9:15–10:15 Indoor Environments Work Group. Tyra Bryant-Stephens and Janice Dhonau, Co-chairs, Matthew Davis, EPA lead.
10:15–10:30 Break.
10:30–11:30 Prenatal Exposures Work Group. Amy Kyle and Nancy Clark, Co-chairs. Michael Firestone, EPA lead.
11:30–12:30 EPA's voluntary lead testing in drinking water initiative. Office of Water.
12:30–2:15 LUNCH (on your own).
2:15–3:15 Asthma Disparities Group Discussion.
3:15–3:30 Break.
3:30–4:30 Asthma Disparities Discussion, continued.
4:30 PUBLIC COMMENT.
5:00 ADJOURN.

Thursday, July 22

8:30 Coffee.
9:00–9:15 Check in and Agenda Review.
9:15–10:15 Chemicals Management Group Discussion.
10:15–10:30 Break.
10:30–11:30 Chemicals Management Discussion, continued.
11:30–12:00 Review and Next Steps.
12:00 ADJOURN.

[FR Doc. 2010–16177 Filed 7–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9170–8]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (CAA), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Comite Civico Del Valle, Inc. in the United States District Court for the Northern District of California: *Comite Civico Del Valle, Inc.* v. *Jackson,* No. 10–cv–00946 PJH (N.D. C.A.). On March 5, 2010, Plaintiff filed a complaint to compel the U. S. Environmental Protection Agency (EPA or Agency) to take final action under section 110(k) of the CAA on the "Imperial County Air Pollution Control District Rule 420" (Imperial Rule 420), a State implementation plan (SIP) revision submitted by the State of California to EPA on or about August 24, 2007, which pertains to measures to control particulate matter emissions from beef feedlot operations within the Imperial Valley. Under the terms of the proposed consent decree, EPA has agreed to take final action no later than November 15, 2010.

DATES: Written comments on the proposed consent decree must be received by *August 2, 2010.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0509, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5601; fax number (202) 564–5603; e-mail address: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree establishes a deadline of November 15, 2010, for the Administrator to sign a notice or notices, pursuant to section 110(k)(2) of the CAA, either approving, disapproving, or approving in part and disapproving in part, Imperial Rule 420. In addition, the proposed consent decree requires that following signature on such notice or notices, EPA shall deliver such notice or notices to the Office of the Federal Register for publication. The proposed consent decree also provides that after EPA's completion of the obligations under the decree, the parties will file a joint request to the Court to dismiss the litigation with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0509) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number, then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD–ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 28, 2010.

Kevin W. McLean,

Acting Associate General Counsel.

[FR Doc. 2010–16173 Filed 7–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9170–9]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (CAA), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree, to address a lawsuit filed by Sandra L. Bahr, Diane E. Brown and David Matusow, *Bahr, et al.* v. *Jackson,* No. CV 09–2511–PHX–MHM (D. Ariz.). Plaintiffs filed a deadline suit to compel the Administrator to take final action under section 110(k)(2) of the CAA on the "MAG 2007 Five Percent Plan for PM–10 for the Maricopa County Nonattainment Area," Maricopa Association of Governments, 2007 (the 5% Plan), a State implementation plan (SIP) revision submitted to the U.S. Environmental Protection Agency (EPA or Agency) in December 2007 by the State of Arizona pursuant to section 189(d) of the CAA. The proposed consent decree establishes deadlines for EPA action on the 5% Plan.

DATES: Written comments on the proposed consent decree must be received by *August 2, 2010*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2010–0428, online at http://*www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5601; fax number (202) 564–5603; e-mail address: *wilcox.geoffrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a lawsuit seeking to compel action by the Administrator to take final action under section 110(k)(2) of the CAA on the 5% Plan submitted by the State of Arizona to EPA as revisions to the SIP for the Maricopa County serious PM–10 nonattainment area as required by section 189(d) of the CAA.

The proposed consent decree requires EPA to sign for publication in the **Federal Register** no later than September 3, 2010, a notice of the Agency's proposed action on the 5% Plan pursuant to section 110(k) of the CAA and sign for publication in the **Federal Register** by January 28, 2011, a notice of the Agency's final action on the 5% Plan pursuant to section 110(k). If EPA fulfills its obligations, Plaintiffs have agreed to dismiss this suit without prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CAA. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this consent decree should be withdrawn, the terms of the decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2010–0428) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use the *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 28, 2010.

Kevin W. McLean,

Acting Associate General Counsel.

[FR Doc. 2010–16172 Filed 7–1–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

EPA–HQ–OPP–2010–0118; FRL–8829–1

Registration Review; Biopesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. of this notice. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before August 31, 2010.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A. of this notice, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility's telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility's telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Regulatory Action Leader (RAL) identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide

Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table.

TABLE–REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Registration Action Leader, Telephone Number, E-mail Address
Gliocladium species, (6020)	EPA–HQ–OPP–2010–0439	Kathleen Martin, (703) 308–2857, martin.kathleen@epa.gov
Pelargonic acid, salts and esters (6077)	EPA–HQ–OPP–2010–0424	Andrew Bryceland, (703) 305–6928, bryceland.andrew@epa.gov

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.

• Bibliographies concerning current registrations.

• Summaries of incident data.

• Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests, *Gliocladium* species, Pelargonic acid, salts and esters

Dated: June 16, 2010.

W. Michael McDavit,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2010–16027 Filed 7–1–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

June 25, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 2, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas_A._Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page http://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 title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Cathy Williams, Office of Managing Director, (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0106.

Title: Reporting Requirements for U.S. Providers of International Telecommunications Services and Affiliates; 47 CFR 43.61.

Form No.: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit entities.

Number of Respondents/Responses: 1,262 respondents; 1,262 responses.

Estimated Time Per Response: 2 – 480 hours.

Frequency of Response: Annual and quarterly reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4(i), 4(j) 11, 201–205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 211, 214, 219, 220, 303(r), 309 and 403.

Total Annual Burden: 23,954 hours.

Annual Cost Burden: $340,800.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality.

Needs and Uses: The purpose of this information collection is to obtain information from applicants and current licensees to further the Commission's goal of protecting U.S. consumers and U.S. carriers from anti–competitive conduct, ensure that consumers enjoy more choice in telecommunications services and decrease prices for international calls without imposing unnecessary paperwork burdens on carriers. If the information collection was not conducted or was conducted less frequently, the Commission would not be able to ensure compliance with its international rules and policies. Furthermore, the Commission would not have sufficient information to take measures to prevent anticompetitive conduct in the provision of international communications services. The Commission would not have adequate information to respond to failures in the U.S.–international market. The Commission would not be able to promote effective competition in the global market for communications services. The lack of effective competition would adversely affect the U.S. revenues in the telecommunications industry. The agency would not be able to comply with the international regulations stated in the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–16098 Filed 7–2–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 20, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Anthony Jennings Roy, III, Marksville, Louisiana; to retain voting shares of Mansura Bancshares, Inc., Mansura, Louisiana, and thereby indirectly retain voting shares of The Cottonport Bank, Cottonport, Louisiana.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The Bannister Bancshares Irrevocable Trust dated May 21, 2010, and Peter J. Fiene, as Trustee, both of Overland Park, Kansas; to acquire control of Bannister Bancshares Inc., and thereby indirectly acquire control of Union Bank, both of Kansas City, Missouri.

Board of Governors of the Federal Reserve System, June 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–16175 Filed 7–1–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 20, 2010.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Sturm Financial Group, Inc., Denver, Colorado; to engage in lending activities through Northern Lights, LLC, Denver, Colorado, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, June 29, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–16176 Filed 7–1–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-Day Notice]

Agency Information Collection Request. 60-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 information collection request 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) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: ONC State HIE State Plans—OMB No. 0990–NEW—Office of the National Coordinator for Health Information Technology.

Abstract: The purpose of the State Health Information Exchange Cooperative Agreement Program, as authorized by Section 3013 of the American Recovery and Reinvestment Act, is to provide grants to States and Qualified State Designated Entities and to facilitate and expand the secure, electronic movement and use of health information among organizations according to nationally recognized standards. Section 3013 requires States and Qualified State Designated Entities to have approved State Plans, consisting of strategic and operational components, before funding can be used for implementation activities. The State Plans must be submitted to the National Coordinator for Health Information Technology during the first year of the project period in order to receive implementation funding through the cooperative agreement. Annual updates to the State plans will be required in the three remaining project periods. The data collection will last four years, which is the duration of the project, and this request is for the data collection for the first three years of that project period.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
State Plans (Strategic and Operational).	State Government or Qualified State Designated Entity.	56	1	10,024	561,244
Subsequent updates to the State Plan.	State government or Qualified State Designated Entity.	56	1	500	28,000
Total	.....				589,244

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–16164 Filed 7–1–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New(60-day notice)]

Agency Information Collection Request: 60-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 information collection request 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) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: ONC State HIE Performance Measures and Progress Report—OMB No. 0990–NEW–Office of the National Coordinator for Health Information Technology.

Abstract: The purpose of the State Health Information Exchange Cooperative Agreement Program, as authorized by Section 3013 of the American Recovery and Reinvestment Act, is to provide grants to States and Qualified State Designated Entities and to facilitate and expand the secure, electronic movement and use of health information among organizations according to nationally recognized standards. As part of that project, States and Qualified State Designated Entities are required to provide biannual program progress reports and report on performance measures during the implementation phase of the cooperative agreement. This request is for those two data gathering requirements. The data collection will last four years, which is the duration of the project, and this request is for the data collection for the first three years of that project period.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Evaluation performance measures	State government or Qualified State Designated Entity.	56	2	175	19,600

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Program progress report	State government or Qualified State Designated Entity.	56	2	8	896
Total					20,496

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–16165 Filed 7–1–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Consumer Information and Insurance Oversight: Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS).

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the U.S. Department of Health and Human Services' (HHS) Office of Consumer Information and Insurance Oversight (OCIIO) is proposing to establish a new system of records (SOR) titled "Pre-Existing Condition Insurance Plan (PCIP)," System No. 09–90–0275. Section 1101 of Title I of the Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) requires that the Secretary of Health and Human Services establish, either directly or through contracts with States and nonprofit private entities, a temporary high risk health insurance pool program to make health insurance coverage available at standard rates to uninsured individuals with pre-existing conditions. This program will continue until January 1, 2014, when American Health Benefit Exchanges established under sections 1311 and 1321 of the Affordable Care Act will be available for individuals to obtain health insurance coverage. HHS provided each State or its designated nonprofit entity the opportunity to contract with HHS to establish this program. However, to the extent that HHS does contract with a State to administer the program, HHS will make available a Pre-Existing Insurance Plan in such State under arrangements with the U.S. Office of Personnel Management, the U.S. Department of Agriculture's National Finance Center (NFC), and one or more nonprofit entities to serve as a third-party administrator (TPA) responsible for maintaining a network of health care providers and adjudicating claims for covered services.

The purpose of this system of records is to collect and maintain information on individuals who apply for enrollment in the program. This information will enable HHS acting through NFC, OPM, and any third-party administrator(s) to determine applicants' eligibility, enroll eligible individuals into the program, adjudicate appeals of eligibility and coverage determinations, bill and collect premium payments, and process and pay claims for covered health care items and services furnished to eligible individuals. Information maintained in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by an HHS contractor, consultant or grantee; (2) assist another Federal or State agency, agency of a State government, an agency established by State law, or its fiscal agent; (3) support litigation involving the Department; (4) combat fraud and abuse in certain health benefits programs; and (5) assist efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records. We have provided background information about the modified system in the "Supplementary Information" section below. Although the Privacy Act requires only that HHS provide an opportunity for interested persons to comment on the proposed routine uses, HHS invites comments on all portions of this notice. *See* **EFFECTIVE DATES** section for comment period.

DATES: *Effective:* HHS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 28, 2010. The system of records, except the routine uses, will become effective upon publication in the **Federal Register**. To ensure that all parties have adequate time in which to comment on the routine uses, the routine uses will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless HHS receives comments that require alterations to the routine uses.

ADDRESSES: The public should address comments to: HHS Privacy Officer, Office of the Secretary, Office of the Assistant Secretary for Public Affairs (ASPA), Freedom of Information/Privacy Acts Division, 330 "C" Street, SW., Washington, DC 20201. Telephone number: (202) 690–7453. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m. e.t.

FOR FURTHER INFORMATION CONTACT: Jill Gotts, Office of Consumer Information and Insurance Oversight (OCIIO), Office of the Secretary, Department of Health and Human Services. She can be reached at (202) 690–5894, or contact via e-mail at *jill.gotts@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Individuals who have a pre-existing condition are often unable to obtain insurance coverage in the individual market and in many cases are denied coverage entirely, are offered coverage with a rider that excludes coverage for the pre-existing condition, or are offered coverage at an unaffordable premium. The Pre-Existing Condition Insurance Plan will enable eligible individuals with pre-existing conditions to purchase coverage without any pre-existing condition coverage exclusions at standard individual insurance market rates. Section 1101 of the Act requires that the Secretary of the Department of Health and Human Services (HHS) establish, either directly or through contracts with States or nonprofit private entities, a temporary high risk pool program to provide access to affordable insurance for uninsured Americans with pre-existing conditions.

This transitional program is intended to remain in place from the time of its establishment until the American Health Benefit Exchanges established under sections 1311 or 1321 of the Act go into effect on January 1, 2014.

Eligible individuals may access coverage through a Pre-Existing Condition Insurance Plan that will be established in each State by HHS, either directly or through a contract with the State or a non-profit entity. Individuals are eligible to enroll in a qualified high risk pool if they are citizens or nationals of the 50 States or District of Columbia, or are otherwise lawfully present; have not been covered under creditable coverage during the 6-month period prior to applying for coverage through this program; and have a pre-existing condition.

Individuals who enroll in qualified high risk pools are entitled under section 1101 of the Act to coverage that has an actuarial value of at least 65 percent of total allowed costs, and has a limit on enrollee out-of-pocket expenses that does not exceed the amount available to individuals with a high deductible health plan linked to a tax-preferred health savings account. The Pre-Existing Condition Insurance Plan will be available to eligible individuals for a premium that is no more than 100 percent of the standard individual market rate for that coverage. Premiums charged in the pool may vary only on the basis of the type of coverage (individual or family), age (by a factor no greater than 4 to 1).

The statute appropriates $5 billion in funding for the program, and specifies that these funds are available for the payment of claims and administrative costs that are in excess of the premiums collected from enrollees in the program. The Secretary is given broad authority to make adjustments needed to comply with this funding limitation, including limiting applications for participation in the program. The Secretary may carry out this program either directly or through contracts with eligible entities, including States and nonprofit private entities. To the extent that States meet the requirements described in the Act, HHS will contract with them to administer the new program. If a State declined to contract with HHS, or does not submit an application demonstrating the capability to meet the requirements of this program, HHS will administer that program in that State through a contract with a nonprofit private entity.

The Affordable Care Act also requires that the Secretary establish criteria to protect against "dumping risk" by insurers; the Act spells out criteria associated with these anti-dumping rules, and sets forth remedies when such situations occur. We are also required to establish oversight procedures, including appeals procedures and protections against fraud, waste, and abuse.

Finally, the statute specifies that coverage of eligible individuals under the high risk pool program will terminate on January 1, 2014. The Secretary is charged with developing procedures to transition qualified high risk pool enrollees to the American Health Benefit Exchanges, established under sections 1311 or 1321 of the Act, to ensure that there are no lapses in health coverage.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for System

Authority for the collection, maintenance, and disclosures from this system is given under provisions of Section 1101 of the Affordable Care Act.

B. Collection and Maintenance of Data in the System

Information in this system is maintained on individuals who apply to enroll in the Pre-Existing Condition Insurance Plan. Information maintained in this system includes, but is not limited to, the applicant's first name, last name, middle initial, address, date of birth, Social Security Number (SSN), gender, state of residence, information about prior coverage, information about the citizenship or lawful presence, and information about prior denials of insurance coverage or exclusions.

II. Agency Policies, Procedures, and Restrictions on Routine Uses

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." The government will only release PCIP information that can be associated with an individual as provided for under "Section III. Proposed Routine Use Disclosures of Data in the System." Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only disclose the minimum personal data necessary to achieve the purpose of PCIP. HHS has the following policies and procedures concerning disclosures of information that will be maintained in the system. In general, disclosure of information from the system will be approved only for the minimum information necessary to accomplish the purpose of the disclosure and only after HHS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.,* to collect, maintain, and process information necessary to effectively and efficiently administer the PCIP;

2. *Determines that:*

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all individually-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which HHS may release information from the PCIP without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish the following routine use disclosures of information maintained in the system:

1. To support HHS contractors, consultants, or HHS grantees who have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes for this SOR and who need to have access to the records in order to assist HHS.

We contemplate disclosing information under this routine use only in situations in which HHS may enter into a contractual or similar agreement with a third party to assist in accomplishing an HHS function relating to purposes for this SOR. HHS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. HHS will give a contractor, consultant, or HHS grantee the information necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant, or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant, or grantee to return or destroy all information at the completion of the contract. Contractors are also required to provide the appropriate management, operational, and technical controls to secure the data.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with HHS to determine applicants' eligibility for the Pre-existing Condition Insurance Plan, enroll eligible individuals into the plan, adjudicate appeals of eligibility and coverage determinations, bill and collect premium payments, and process and pay claims for covered health care items and services furnished to eligible individuals.

Other Federal or state agencies in their administration of the Pre-existing Condition Insurance Plan may require PCIP information in order to carry out their functions pursuant to their agreements with HHS.

3. To support the Department of Justice (DOJ), court, or adjudicatory body when:

a. The Department or any component thereof, or

b. Any employee of HHS in his or her official capacity, or

c. Any employee of HHS in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, HHS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever HHS is involved in litigation, or occasionally when another party is involved in litigation and HHS's policies or operations could be affected by the outcome of the litigation, HHS would be able to disclose information to the DOJ, court, or adjudicatory body involved.

4. To assist an HHS contractor that assists in the administration of an HHS-administered health benefits program, or to a grantee of an HHS-administered grant program, when disclosure is deemed reasonably necessary by HHS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which HHS may enter into a contract or grant with a third party to assist in accomplishing HHS functions relating to the purpose of combating fraud, waste or abuse. HHS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. HHS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

5. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by HHS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such programs.

Other agencies may require PCIP information for the purpose of combating fraud, waste or abuse in such Federally-funded programs.

6. To assist appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and unnecessary for the assistance. Other agencies may require PCIP information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records.

B. Additional Circumstances Affecting Routine Use Disclosures

Our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the individual).

IV. Safeguards

HHS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal and HHS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the E–Government Act of 2002, and the Clinger-Cohen Act of 1996; OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal and HHS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; and the HHS Information Systems Program Handbook.

V. Effects of the New System on the Rights of Individuals

HHS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein.

We will only disclose the minimum personal data necessary to achieve the purpose of PCIP. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure.

HHS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights. HHS will collect only that information necessary to perform the system's functions. In addition, HHS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act.

HHS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: June 25, 2010.

Richard Popper,

Deputy Director.

SYSTEM NUMBER:

09–90–0275.

SYSTEM NAME:

"Pre-Existing Condition Insurance Plan (PCIP)," OCIIO, OS/HHS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Consumer Information and Insurance Oversight, U.S. Department of Health & Human Services, 200 Independence Avenue, SW., Suite 738F, Washington, DC 20201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Information in this system is maintained on individuals who apply to enroll in the Pre-Existing Condition Insurance Plan.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in this system is maintained on individuals who enroll in the Pre-Existing Condition Insurance Plan. Information maintained in this system includes, but is not limited to, the applicant's first name, last name, middle initial, mailing address or permanent residential address (if different than the mailing address), date of birth, Social Security Number (if the applicant has one), gender, email address, telephone number. The system will also maintain information to make a decision about an applicant's eligibility. We collect and maintain information that the applicant submits pertaining to (1) his or her citizenship or immigration status, since only individuals who are citizens or nationals of the U.S. or lawfully present are eligible to enroll; (2) coverage an individual had during the prior twelve months from the date of application in order to establish that such individual has been without creditable coverage for at least six months are eligible to enroll and to assess whether insurers are discouraging an individual from remaining enrolled in prior coverage due to health status; and (3) an insurance company's denial of coverage, offer of coverage with a medical condition exclusion rider, or, for an applicant is guaranteed an offer of coverage, coverage that is medically underwritten. Information will also be maintained with respect to the applicant's premium amount and payment history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for the collection, maintenance, and disclosures from this system is given under provisions of Section 1101 of the Patient Protection and Affordable Care Act (Pub. L. 111–148).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to collect and maintain information on individuals who apply for enrollment in the program. This information will enable HHS acting through NFC, OPM, and any third-party administrator(s) to determine applicants' eligibility, enroll eligible individuals into the program, adjudicate appeals of eligibility and coverage determinations, bill and collect premium payments, and process and pay claims for covered health care items and services furnished to eligible individuals. Information maintained in this system will also be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed by an HHS contractor, consultant or grantee; (2) assist another Federal or State agency, agency of a State government, an agency established by State law, or its fiscal agent; (3) support litigation involving the Department; (4) combat fraud and abuse in certain health benefits programs; and (5) assist efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

B. Entities Who May Receive Disclosures Under Routine Use

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974, under which HHS may release information from the PCIP without the consent of the individual to whom such information pertains. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible, including but not limited to ensuring that the purpose of the disclosure is compatible with the purpose for which the information was collected. We propose to establish the following routine use disclosures of information maintained in the system:

1. To support HHS contractors, consultants, or HHS grantees who have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes for this SOR and who need to have access to the records in order to assist HHS.

2. To assist another Federal or state agency, agency of a state government, an agency established by state law, or its fiscal agent pursuant to agreements with HHS to determine applicants' eligibility for the Pre-existing Condition Insurance Plan, enroll eligible individuals into the plan, adjudicate appeals of eligibility and coverage determinations, bill and collect premium payments, and process and pay claims for covered health care items and services furnished to eligible individuals.

3. To support the Department of Justice (DOJ), court, or adjudicatory body when:

e. The Department or any component thereof, or

f. Any employee of HHS in his or her official capacity, or

g. Any employee of HHS in his or her individual capacity where the DOJ has agreed to represent the employee, or

h. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, HHS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

4. To assist an HHS contractor that assists in the administration of an HHS-administered health benefits program, or to a grantee of an HHS-administered grant program, when disclosure is deemed reasonably necessary by HHS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such program.

5. To assist another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state or local governmental agency), that administers, or that has the authority to investigate potential fraud, waste or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by HHS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud, waste or abuse in such programs.

6. To assist appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and unnecessary for the assistance.

C. Additional Circumstances Affecting Routine Use Disclosures

Our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We will be storing records in hardcopy files and various electronic storage media (including DB2, Oracle, and other relational data structures).

RETRIEVABILITY:

Information is most frequently retrieved by first name, last name, middle initial, date of birth, or Social Security Number (SSN).

SAFEGUARDS:

HHS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal and HHS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: the Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the E–Government Act of 2002, and the Clinger-Cohen Act of 1996; OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal and HHS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; and the HHS Information Systems Program Handbook.

RETENTION AND DISPOSAL:

Records are maintained with identifiers for all transactions after they are entered into the system for a period of 10 years. Records are housed in both active and archival files in accordance with HHS data and document management policies and standards.

SYSTEM MANAGER AND ADDRESS:

Anthony Culotta, High Risk Pool Program Division, Office of Insurance Programs, Office of Consumer Information and Insurance Oversight, U.S. Department of Health & Human Services, 200 Independence Avenue, SW., Suite 738F, Washington, DC 20201.

NOTIFICATION PROCEDURE:

For purpose of notification, the subject individual should write to the system manager who will require the system name, and the retrieval selection criteria (*e.g.,* name, SSN, etc.).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

Record source categories include applicants who voluntarily submit data and personal information for the PCIP program.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2010–16167 Filed 7–1–10; 8:45 am]

BILLING CODE 4150–65–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–297 and CMS–10209]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections 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 function; (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.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Employment Information; *Use:* Section 1837(i) of the Social Security Act provides for a special enrollment period for individuals who delay enrolling in Medicare Part B because they are covered by a group health plan based on their own or a spouse's current employment status. When these individuals apply for Medicare Part B,

they must provide proof that the group health plan coverage is (or was) based on current employment status. This form is used by the Social Security Administration to obtain information from employers regarding whether a Medicare beneficiary's coverage under a group health plan is based on current employment status. *Form Number:* CMS–R–297 (OMB#: 0938–0787); *Frequency:* Once; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 5,000; *Total Annual Responses:* 5,000; *Total Annual Hours:* 1250. (For policy questions regarding this collection contact Kevin Simpson at 410–786–0017. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Chronic Care Improvement Program and Medicare Advantage Quality Improvement Project; *Use:* The Social Security Act, section 1852 e(1), (2) and (3)(a)(i), and CFR 42, 422.152 describe CMS' regulatory authority to require each Medicare Advantage Organization (other than Medicare Advantage (MA) private fee for service and MSA plans) that offers one or more MA plans to have an ongoing quality assessment and performance improvement program. This program must include measuring performance using standard measures required by CMS and report its performance to CMS. *Form Number:* CMS–10209 (OMB#: 0938–1023); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 394; *Total Annual Responses:* 788; *Total Annual Hours:* 18,912. (For policy questions regarding this collection contact Darlene Anderson at 410–786–9824. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on August 16, 2010.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, e-mail: *OIRA_submission@omb.eop.gov.*

Dated: June 28, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–16008 Filed 7–1–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–10–0753]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of the Centers for Disease Control and Prevention's Consumer Response Service Center, CDC INFO. (OMB No. 0920–0753—Revision—Office of the Associate Director of Communication, Centers for Disease Control and Prevention (CDC).)

Background and Brief Description

In September 2005, the Centers for Disease Control and Prevention launched CDC–INFO, a consolidated, comprehensive effort to respond to consumer, provider and partner inquiries on a broad spectrum of public health topics by telephone, e-mail, fax, or postal mail. More than 40 nationwide public health hotlines and warm lines were consolidated into one central phone number using a phased approach from 2005 to 2008. Management of CDC–INFO services is increasingly guided by a comprehensive evaluation that includes point-of-service and follow-up customer satisfaction surveys. These surveys provide the public with ongoing opportunity to express their level of satisfaction and report how they have used this information. All members of the public, health care providers and businesses can contact CDC–INFO by phone, e-mail, or postal mail to request health information or order CDC publications.

CDC–INFO is a proactive, unified, and integrated approach to the delivery of public health information and is designed to contribute to improving the health and safety of the public. Customers are defined as any individual or group seeking health or public health information from CDC. This includes the public, media, medical and healthcare professionals, public health professionals, partner groups, businesses, researchers, and others. Customer interactions occur through multiple channels, *e.g.,* telephone calls, e-mails, and postal mail. There are seven (7) potential evaluation points across three (3) major categories: consumer satisfaction, special event/outreach, and emergency response. All survey tools provide the participant an opportunity to decline and are available in English and Spanish.

These satisfaction surveys track the utility of CDC–INFO to the public at point of service and are integral for directing attention towards programs that are underperforming or receiving high endorsement, to understand the basis for disparity. Industry benchmarks for performance, including consumer satisfaction, were helpful for creating measures, and setting realistic expectations for performance. With the passage of time, the private sector has integrated new performance indicators for contact centers, and the suggested revisions reflect these innovations. These innovations and survey findings form the rationale for new question items and revised burden estimates. Minor changes were made to the research protocol to improve

recruitment, and are discussed throughout the application where there is any implication for information privacy.

These evaluations have provided volumes of data, reports, and presentations on the progression of CDC–INFO, an innovative, multi-million dollar, Federal public health contact center. The outcome of this feedback is tangible, with the average number of incoming calls to CDC–INFO reaching new heights on an annual basis, and consumer satisfaction hovering around the best practice benchmark of 75 percent of callers participating in a satisfaction survey endorsing the highest level of satisfaction—*very satisfied.*

Sample size, respondent burden, and intrusiveness have been minimized to be consistent with national evaluation objectives. There is no cost to the respondent, other than the amount of time required to respond to the survey.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
General Callers	Satisfaction survey	92,000	1	4/60	6,133
Email Inquirers	Satisfaction survey	1,460	1	3/60	73
Callers (follow-up)	Follow-up survey	5,290	1	9/60	794
General Public	Special event/Outreach survey	5,120	1	7/60	597
Professionals	Special event/Outreach survey	2,080	1	5/60	173
General Public	Emergency response survey—Level 1.	8,288	1	5/60	691
Professionals	Emergency response survey—Level 1.	1,658	1	5/60	138
General Public	Emergency response survey—Level 2.	8,637	1	5/60	720
Professionals	Emergency response survey—Level 2.	1,727	1	5/60	144
General Public	Emergency response survey—Level 3.	35,185	1	5/60	2,932
Professional	Emergency response survey—Level 3.	7,037	1	5/60	586
General Public	Emergency response survey—Level 4.	129,126	1	5/60	10,761
Professional	Emergency response survey—Level 4.	29,825	1	5/60	2,485
Total Burden Hours					26,227

Dated: June 24, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–16200 Filed 7–1–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–M–0068, FDA–2010–M–0078, FDA–2010–M–0063, FDA–2010–M–0135, FDA–2010–M–0158]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that

FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2010, through March 31, 2010. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2010, THROUGH MARCH 31, 2010

PMA No. Docket No.	Applicant	Trade Name	Approval Date
P010047 FDA–2010–M–0068	Neomend, Inc.	PROGEL PLEURAL AIR LEAK SEALANT	January 14, 2010
P060040/S005 FDA–2010–M–0078	Thoratec Corp.	THORATEC HEARTMATE II LEFT VENTRICULAR ASSIST SYSTEM (LVAS)	January 20, 2010
H080002 FDA–2010–M–0063	Medtronic, Inc.	MEDTRONIC MELODY TRANSCATHETER PULMONARY VALVE (MODEL PB10) AND MEDTRONIC ENSEMBLE TRANSCATHETER VALVE DELIVERY SYSTEM (NU10)	January 25, 2010
P090003 FDA–2010–M–0135	Boston Scientific Corp.	EXPRESS LD LLIAC PREMOUNTED STENT SYSTEM	March 5, 2010
P090006 FDA–2010–M–0158	Medtronic Vascular	COMPLETE SE VASCULAR STENT SYSTEM	March 17, 2010

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: June 28, 2010.

Nancy Stade,

Acting Associate Director for Regulations and Policy, Center for Devices and Radiological Health.

[FR Doc. 2010–16139 Filed 7–1–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel ZAA1 HH01—AA3 Member Conflicts.

Date: July 30, 2010.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Officer, 5635 Fishers Lane, Room 2121, Bethesda, MD 20892–9304, 301–443–2369.

(Catalogue of Federal Domestic Assistance Program Nos.)

Dated: June 25, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16037 Filed 7–1–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1571–N]

Medicare Program; Second Semi-Annual Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—August 23 & 24, 2010

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the second semi-annual meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2010. The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of the Department of Health and Human Services (DHHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. We will consider the Panel's advice as we prepare the final rule that would update the hospital Outpatient Prospective Payment System (OPPS) for CY 2011.

DATES: *Meeting Dates:* We are scheduling the second semi-annual

meeting in 2010 for the following dates and times:

- Monday, August 23, 2010, 1 p.m. to 5 p.m. eastern standard time (e.d.t.).[1]
- Tuesday, August 24, 2010, 8 a.m. to 5 p.m. (e.d.t.).[1]

Deadlines

Deadline for Hardcopy Comments (including the comment in electronic format)/Suggested Agenda Topics—5 p.m. (e.d.t.), Monday, August 2, 2010.

Deadline for Hardcopy Presentations, including the required electronic documents as discussed below—5 p.m. (e.d.t.), Monday, August 2, 2010.

Deadline for Attendance Registration—5 p.m. (e.d.t.), Wednesday, August 16, 2010.

Deadline for Special Accommodations—5 p.m. (e.d.t.), Wednesday, August 16, 2010.

Submission of Materials to the Designated Federal Officer (DFO)

Because of staffing and resource limitations, we cannot accept written comments and presentations by FAX, nor can we print written comments and presentations received electronically for dissemination at the meeting.

Only hardcopy comments and presentations can be reproduced for public dissemination. All hardcopy presentations *must be accompanied by Form CMS–20017 (revised 01/07).* The form is now available through the CMS Forms Web site. The Uniform Resource Locator (URL) for linking to this form is as follows: *http://www.cms.hhs.gov/cmsforms/downloads/cms20017.pdf.*

Presenters must use the most recent copy of CMS–20017 (updated 01/07) at the above URL. Additionally, presenters must *clearly* explain the action(s) that they are requesting CMS to take in the appropriate section of the form. They must also clarify their relationship to the organization that they represent in the presentation.

Note: Issues that are vague, or that are outside the scope of the APC Panel's purpose, will not be considered for presentations and comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.

We are also requiring electronic versions of the written comments and presentations, in addition to the hardcopies.

In summary, presenters and/or commenters must do the following:

- Send both electronic and hardcopy versions of their presentations and written comments by the prescribed deadlines.
- Send electronic transmissions to the e-mail address below.
- Do not send pictures of patients in any of the documents unless their faces have been blocked out.
- Do not send documents electronically that have been archived.
- Mail (or send by courier) to the Designated Federal Officer (DFO) all hardcopies, accompanied by Form CMS–20017 (revised 01/07), if they are presenting, as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice.
- Commenters are not required to send Form CMS–20017 with their written comments.

ADDRESSES: The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Shirl Ackerman-Ross, Designated Federal Official (DFO), CMS, CMM, HAPG, DOC, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850. *Phone:* (410) 786–4474.

Note: We recommend that you advise couriers of the following information: When delivering hardcopies of presentations to CMS, if no one answers at the above phone number, please call (410) 786–4532 or (410) 786–9316.

The e-mail address for comments, presentations, and registration requests is *CMS APCPanel@cms.hhs.gov.*

Note: There is NO underscore in this e-mail address; there is a SPACE between CMS and APCPanel.

News media representatives must contact our Public Affairs Office at (202) 690–6145.

Advisory Committees' Information Lines: The phone numbers for the CMS Federal Advisory Committee Hotline are 1–877–449–5659 (toll free) and (410) 786–9379 (local).

Web Sites: Please access the CMS Web site at: *http://www.cms.hhs.gov/FACA/05_AdvisoryPanelonAmbulatoryPaymentClassificationGroups.asp#TopOfPage* to obtain the following information:

Note: There is an UNDERSCORE after FACA/05(like this_); there is no space.

- Additional information on the APC meeting agenda topics.
- Updates to the Panel's activities.
- Copies of the current Charter.
- Membership requirements.

You may also search information about the APC Panel and its membership in the FACA database at the following URL: *https://www.fido.gov/facadatabase/public.asp.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary is required by section 1833(t)(9)(A) of the Social Security Act (the Act) to consult with an expert, outside advisory panel on the clinical integrity of the APC groups and weights established under the Medicare hospital OPPS.

The APC Panel meets up to three times annually. The Charter requires that the Panel must be fairly balanced in its membership in terms of the points of view represented and the functions to be performed. The Panel consists of up to 15 members who are representatives of providers and a Chair.

Each Panel member must be employed full-time by a hospital, hospital system, or other Medicare provider subject to payment under the OPPS. The Secretary or Administrator selects the Panel membership based upon either self-nominations or nominations submitted by Medicare providers and other interested organizations.

All members must have technical expertise to enable them to participate fully in the Panel's work. Such expertise encompasses hospital payment systems; hospital medical care delivery systems; provider billing systems; APC groups; Current Procedural Terminology codes; and alpha-numeric Health Care Common Procedure Coding System codes; and the use of, and payment for, drugs, medical devices, and other services in the outpatient setting, as well as other forms of relevant expertise. Details regarding membership requirements for the APC Panel are found on the FACA and CMS Web sites as listed above.

The Panel presently consists of the following members:

- E.L. Hambrick, M.D., J.D., Chair, CMS Medical Officer.
- Ruth L. Bush, M.D., M.P.H.
- Dawn L. Francis, M.D., M.H.S.
- Patrick A. Grusenmeyer, Sc.D., F.A.C.H.E.
- Kathleen Graham, R.N., M.S.H.A., C.P.H.Q., A.C.M.
- David Halsey, M.D.
- Judith T. Kelly, B.S.H.A., R.H.I.T., R.H.I.A., C.C.S.
- Michael D. Mills, Ph.D.
- Agatha L. Nolen, D.Ph., M.S., F.A.S.H.P.
- Randall A. Oyer, M.D.
- Beverly Khnie Philip, M.D.
- Daniel Pothen, M.S., R.H.I.A., C.P.H.I.M.S., C.C.S.-P, C.H.C.
- Gregory Przybylski, M.D.
- Russ Ranallo, M.S., B.S.
- Michael A. Ross, M.D., F.A.C.E.P.
- Patricia Spencer-Cisek, M.S., A.P.R.N.-B.C., A.O.C.N.

[1] The times listed in this notice are approximate times; consequently, the meetings may last longer than listed in this notice, but will not begin before the posted times.

II. Agenda

The agenda for the August 2010 meeting will provide for discussion and comment on the following topics as designated in the Panel's Charter:

- Addressing whether procedures within an APC group are similar both clinically and in terms of resource use.
- Evaluating APC group weights.
- Reviewing the packaging of OPPS services and costs, including the methodology and the impact on APC groups and payment.
- Removing procedures from the inpatient list for payment under the OPPS.
- Using single and multiple procedure claims data for CMS' determination of APC group weights.
- Addressing other technical issues concerning APC group structure.

Note: The subject matter before the Panel will be limited to these and related topics. Issues related to calculation of the OPPS conversion factor, charge compression, pass-through payments, or wage adjustments are not within the scope of the Panel's purpose. Therefore, these issues will not be considered for presentations and/or comments. There will be no exceptions to this rule. We appreciate your cooperation on this matter.

The Panel may use data collected or developed by entities and organizations, other than the Department of Health and Human Services (DHHS) and CMS, in conducting its review. We recommend organizations to submit data for the Panel's and CMS staff's review.

III. Written Comments and Suggested Agenda Topics

Hardcopy and electronic written comments and suggested agenda topics should be sent to the DFO as specified in the **ADDRESSES** section of this notice. The DFO must receive these items by 5 p.m. (e.d.t.), Monday, August 2, 2010. There will be no exceptions. We appreciate your cooperation on this matter.

The written comments and suggested agenda topics submitted for the August 2010 APC Panel meeting must fall within the subject categories outlined in the Panel's Charter and as listed in the Agenda section of this notice.

IV. Oral Presentations

Individuals or organizations wishing to make 5-minute oral presentations must submit hardcopy and electronic versions of their presentations to the DFO by 5 p.m. (e.d.t.), Monday, August 2, 2010, for consideration.

The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes in length for an individual or an organization.

The Chair may further limit time allowed for presentations due to the number of oral presentations, if necessary. Presentation times listed in the public agenda are approximate and presenters should be prepared to present earlier and later than indicated.

V. Presenter and Presentation Information

All presenters must submit Form CMS–20017 (revised 01/07). Hardcopies are required for oral presentations; however, electronic submissions of Form CMS–20017 are optional. The DFO must receive the following information from those wishing to make oral presentations:

- Form CMS–20017 completed with all pertinent information identified on the first page of the presentation.
- One hardcopy of presentation.
- Electronic copy of presentation.
- Personal registration information as described in the "**Meeting Attendance**" section below.
- Those persons wishing to submit comments only must send hardcopy and electronic versions of their comments, but they are not required to submit Form CMS–20017.

VI. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VII. Oral Comments

In addition to formal oral presentations, there will be opportunity during the meeting for public oral comments, which will be limited to 1 minute for each individual and a total of 3 minutes per organization.

VIII. Meeting Attendance

The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis.

Persons wishing to attend this meeting, which is located on Federal property, must e-mail the DFO to register in advance no later than 5 p.m. (e.d.t.), Wednesday, August 16, 2010. A confirmation will be sent to the requester(s) by return e-mail.

The following personal information must be e-mailed to the DFO by the date and time above:

- Name(s) of attendee(s).
- Title(s).
- Organization.
- E-mail address(es).
- Telephone number(s).

IX. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting including presenters must be registered and on the attendance list by the prescribed date.
- Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.
- Attendees must present photographic identification to the Federal Protective Service or Guard Service personnel before entering the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, such as laptops, cell phones, and palm pilots, are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

X. Special Accommodations

Individuals requiring sign-language interpretation or other special accommodations must send a request for these services to the DFO by 5 p.m. (e.d.t.), Monday, August 16, 2010.

XI. Panel Recommendations and Discussions

The Panel's recommendations at any APC Panel meeting generally are not final until they have been reviewed and approved by the Panel on the last day prior to final adjournment.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 18, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–16163 Filed 6–30–10; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0586]

National Maritime Security Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Maritime Security Advisory Committee (NMSAC) will meet in Washington, DC to discuss various issues relating to national maritime security. This meeting will be open to the public.

DATES: The Committee will meet on Tuesday, July 20, 2010 from 9 a.m. to 4 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 July 13, 2010. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before July 13, 2010.

ADDRESSES: The Committee will meet at Coast Guard Headquarters, Room 4202, 2100 2nd Street, SW., Washington, DC 20593. Additionally, this meeting will be broadcast via a web enabled interactive online format. Send written material and requests to make oral presentations to Mr. Ryan Owens, Assistant Designated Federal Officer (ADFO) of the National Maritime Security Advisory Committee, 2100 2nd Street SW., Stop 7581; Washington, DC 20593–7581. You may also e-mail material to *ryan.f.owens@uscg.mil.* This notice may be viewed in our online docket, USCG–2010–0586, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, ADFO of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of Public Meeting

The agenda for the Public part of the May 4 Committee meeting is as follows:

(1) TWIC Update.

(2) Discussion on creation of a National Infrastructure Protection Plan (NIPP) Sub-Committee.

(3) DHS Global Supply Chain Security Strategy initiative.

(4) Maritime Transportation Security Act update.

(5) Update from CDC Strategy Working Group.

(6) Update on the Small Vessel Security Strategy.

Procedural

This meeting is open to the public for the morning session and will also be conducted via an online meeting format. Please note that the public portion of the meeting may close early if all business is finished. Seating is very limited, and members of the public will require additional screening and an escort while in Coast Guard Headquarters. Members of the public wishing to attend should register with Mr. Ryan Owens, ADFO of NMSAC, telephone 202–372–1108 or *ryan.f.owens@uscg.mil* no later than July 13, 2010. Additionally, if you would like to participate in this meeting via the online Web format, please log onto *https://connect.hsin.gov/uscgnmsac/* and follow the online instructions to register for this meeting. At the Chair's discretion, members of the public may make oral presentations during the public portion of the meeting. If you would like to make an oral presentation at the public portion of the meeting, please notify the ADFO no later than Tuesday, July 13, 2010. Written material for distribution at a meeting should reach the Coast Guard no later than Tuesday, July 13, 2010. If you would like a copy of your material distributed to each member of the committee in advance of a meeting, please submit 25 copies to the ADFO no later than Tuesday, July 13, 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 ADFO as soon as possible.

Dated: June 28, 2010.

K.C. Kiefer,

Captain, U.S. Coast Guard Chief, Office of Port and Facility Activities, Designated Federal Official, NMSAC.

[FR Doc. 2010–16112 Filed 7–1–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5375–N–25]

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:* July 2, 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: June 24, 2010.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2010–15716 Filed 7–1–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19148–13, F–19148–14; LLAK964000–L14100000–HY0000–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 approving the conveyance of surface and subsurface estates for certain lands to Arctic Slope Regional Corporation, pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of the Colville River, Alaska and are located:

Umiat Meridian, Alaska

T. 5 S., R. 9 W.,
Secs. 1, 7, 12, and 13;
Secs. 16, 17, and 18;
Secs. 21 to 28, inclusive;

Secs. 35 and 36.

Containing 3,647.71 acres.

T. 4 S., R. 10 W.,
Secs. 16 to 21, inclusive;
Secs. 26 to 29, inclusive;
Secs. 34, 35, and 36.

Containing 3,698.85 acres.

T. 5 S., R. 10 W.,
Secs. 1 and 2;
Secs. 11, 12, and 13.

Containing 2,057.51 acres.

T. 4 S., R. 11 W.,
Sec. 13;
Secs. 15 to 28, inclusive;
Sec. 30.

Containing 5,143.55 acres.

T. 4 S., R. 12 W.,
Sec. 13;
Secs. 19 to 30, inclusive.

Containing 3,883.28 acres.

T. 4 S., R. 13 W.,
Secs. 25 to 29, inclusive;
Secs. 31, 32, and 33.

Containing 2,479.82 acres.

T. 4 S., R. 14 W.,
Secs. 27 to 36, inclusive.

Containing 2,777.72 acres.

T. 5 S., R. 14 W.,
Secs. 3, 4, and 5.

Containing 1,813.65 acres.

T. 4 S., R. 15 W.,
Secs. 35 and 36.

Containing 298.65 acres.
Aggregating 25,800.74 acres.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 2, 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, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through 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 II Branch.

[FR Doc. 2010–16246 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–11960, AA–12011, AA–12010, AA–11963, AA–11974, AA–11999, AA–12019, AA–12000, AA–12001, AA–12002, AA–11975, AA–11998, AA–11997, AA–11976, AA–11966, AA–11965, AA–12009, AA–12007, AA–12008, AA–11955, AA–11953, AA–11954, AA–12006, AA–11945, AA–11970, AA–11969, AA–11958, AA–11978, AA–11979, AA–11977; LLAK–962000–L14100000–HY0000–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 Aleut Corporation. The decision will approve the conveyance of only the surface estate for certain lands pursuant to the Alaska Native Claims Settlement Act. The lands are located on the Rat Islands, west of Adak, Alaska, aggregating 370.81 acres. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 2, 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, Alaska 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 telecommunication 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.

Dina L. Torres,

Land Transfer Resolution Specialist, Branch of Preparation and Resolution.

[FR Doc. 2010–16244 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–22; LLAK965000–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 approving the conveyance of surface and subsurface estates for certain lands to Doyon, Limited, pursuant to the Alaska Native Claims Settlement Act. The lands are in the vicinity of Manley Hot Springs, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 1 N, R. 15 W.,
Secs. 1 and 12.

Containing 1,256.69 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until August 2, 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, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960, by e-mail at *ak.blm.conveyance@blm.gov,* or by telecommunication device (TTD) through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

John Leaf,

Land Law Examiner, Land Transfer Adjudication II Branch.

[FR Doc. 2010–16168 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD01000–2009–LL13100000–NB0000–LXSI016K0000]

Notice of Intent To Solicit Nominations: Pinedale Anticline Working Group, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: Nominations are being solicited for two positions on the Pinedale Anticline Working Group (PAWG) that will become open on May 28, 2010.

DATES: Individuals or groups wishing to submit a nomination must send the required information within 30 days of this Notice. All nominations should be postmarked within 30 days from date of publication in the **Federal Register**. Final appointments will be made by the Secretary of the Interior.

ADDRESSES: Nominations should be sent to Ms. Shelley Gregory, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, Wyoming 82941, or e-mailed to *shelley_gregory@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shelley Gregory, Bureau of Land Management, Pinedale Field Office, 1625 West Pine Street, P.O. Box 768, Pinedale, Wyoming 82941; 307–367–5328, or e-mail: *shelley_gregory@blm.gov.*

SUPPLEMENTARY INFORMATION: The PAWG is chartered under the Federal Advisory Committee Act (FACA) and tasked with providing balanced recommendations through consensus to the BLM on the development and implementation of monitoring plans, mitigation, and adaptive management decisions pertinent to oil and gas activities in the Pinedale Anticline Project Area.

PAWG members are expected to attend the scheduled PAWG meetings. Additional information about the PAWG, its membership and activities, and the nomination process can be found at: *http://www.blm.gov/wy/st/en/field_offices/Pinedale/pawg.html.*

Nominations are being solicited for the following positions:

1. An employee of a state agency responsible for the management of natural resources, land, or water; and
2. An affected member of the public-at-large.

Requisite nomination information is listed below and may be found at: *http://www.blm.gov/wy/st/en/field_offices/Pinedale/pawg.html.*

On June 25, 2008, the Secretary of the Interior renewed the PAWG Charter. The charter established membership selection criteria and operational procedures as follows:

1. The PAWG is comprised of nine members who reside in the State of Wyoming. The PAWG members will be appointed by and serve at the pleasure of the Secretary of the Interior.
2. All members should have a demonstrated ability to analyze and interpret data and information, evaluate proposals, identify problems, and promote the use of collaborative management techniques (Such as: Long-term planning, management across jurisdictional boundaries, data sharing, information exchange, and partnerships), and a knowledge of issues involving oil and gas development activities.
3. The service of the PAWG members shall be as follows:

a. The PAWG members will be appointed to 2-year terms, subject to removal by the Secretary of the Interior. At the Secretary's discretion, members may be reappointed to additional terms.

b. The Chairperson of the PAWG will be selected by the PAWG.

c. The term of the Chairperson will not exceed 2 years.

Nominations should contain the following information:

1. Representative category;
2. Full name;
3. Business address and phone number;
4. Home address and phone number;
5. Email address;
6. Occupation title;
7. Qualifications (education, including colleges, degrees, major fields of study and/or training);
8. Career highlights (significant related experience, civic and professional activities, elected offices, prior advisory committee experience, or career achievements related to the interest to be represented);
9. Experience in collaborative management techniques, such as long-term planning, management across jurisdictional boundaries, data sharing, information exchange, and partnerships;
10. Experience in data analysis and interpretation, problem identification, and evaluation of proposals;
11. Knowledge of issues involving oil and gas development;
12. List any leases, licenses, permits, contracts, or claims held by the Nominee that involve lands or resources administered by the BLM;
13. A minimum of two letters of reference from interest or organization to be represented;
14. Nominator's name, address, and telephone numbers (if not self-nominated); and
15. Date of nomination.

A group nominating more than one person should indicate its preferred order of appointment selection.

Note: The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Donald A. Simpson,

State Director.

[FR Doc. 2010–16251 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- The Westside Irrigation District
- Maine Prairie Water District
- Solano Irrigation District
- Corning Water District
- Proberta Water District
- Lindsay-Strathmore Irrigation District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation developed and published the Criteria for Evaluating Water Management Plans (Criteria). For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entities

have developed a Plan, which Reclamation has evaluated and preliminarily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to review the plans and comment on the preliminary determinations. Public comment on Reclamation's preliminary (*i.e.,* draft) determination is invited at this time.

DATES: All public comments must be received by August 2, 2010.

ADDRESSES: Please mail comments to Ms. Laurie Sharp, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825, or contact at 916–978–5232 (TDD 978–5608), or e-mail at *lsharp@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Laurie Sharp at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.,* draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall " * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria must be developed " * * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District.
2. Inventory of Water Resources.
3. Best Management Practices (BMPs) for Agricultural Contractors.
4. BMPs for Urban Contractors.
5. Plan Implementation.
6. Exemption Process.
7. Regional Criteria.
8. Five-Year Revisions.

Reclamation will evaluate Plans based on these criteria. A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California, and the local area office. Our practice is to make comments, including names and home addresses of respondents, available for public review.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you wish to review a copy of these Plans, please contact Ms. Laurie Sharp to find the office nearest you.

Dated: June 15, 2010.

Richard J. Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2010–16126 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVE00000 L19900000.EX0000 241A; 10–08807; MO#4500012653; TAS: 14X1109]

Notice of Availability of Final Supplemental Environmental Impact Statement Updating Cumulative Effects Analysis for the Newmont Mining Corporation Leeville Project, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM), Elko District Office prepared a Final Supplemental Environmental Impact Statement (EIS) to update the cumulative effects analysis for Newmont Mining Corporation's Leeville Project gold mine in Eureka and Elko counties, Nevada, and by this notice is announcing its availability. The project was authorized in 2002.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its notice in the **Federal Register.**

ADDRESSES: Copies of the Final Supplemental EIS are available for inspection at the BLM, Elko District Office, 3900 Idaho Street, Elko, Nevada 89801. Interested persons may also review the Final Supplemental EIS on the following Elko District Office Web site: *http://www.blm.gov/nv/st/en/fo/elko_field_office.html.*

FOR FURTHER INFORMATION CONTACT: For further information contact Deb McFarlane, (775) 753–0200, or e-mail: *Deb_McFarlene@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM signed a Record of Decision (ROD) for Newmont Mining Corporation's Leeville Project, an underground gold mine located on the Carlin Trend in northeastern Nevada, on September 25, 2002. Four years of legal review resulted in the United States Court of Appeals for the Ninth Circuit partially reversing the ROD. The Final Supplemental EIS updates analysis of some cumulative impacts including potential impacts to air quality, minerals, Native American and cultural resources, water, vegetation, grazing, recreation, noise, visual resources, wilderness resources, threatened and endangered species, and socioeconomics.

The Leeville Project includes three main ore bodies located approximately 2,500 feet below ground's surface. Newmont Mining Corporation is authorized to construct ancillary mine facilities, including construction of five shafts to access the ore bodies, shaft hoists, a waste rock disposal facility, refractory ore stockpiles, facilities to support mine dewatering, and facilities to support backfill operations. Surface disturbance totals 486 acres.

A Notice of Intent to Prepare a Supplemental EIS Updating Cumulative Effects Analysis for the Newmont Mining Corporation Leeville Project, Nevada, was published in the **Federal Register** on March 7, 2007 [72 FR 10241]. The Notice of Availability for the Draft Supplemental EIS for the Leeville Project was published in the **Federal Register** on September 6, 2007 [72 FR 51248].

Authority: 40 CFR 1506.6 and 1506.10.

Kenneth E. Miller,

Elko District Manager.

[FR Doc. 2010–16033 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVE00000 L19900000.EX0000 241A; 10–08807; MO#450012780; TAS: 14X1109]

Notice of Availability of Final Supplemental Environmental Impact Statement Updating Cumulative Effects Analysis for the Newmont Mining Corporation South Operations Area Project Amendment, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended and the Federal Land Policy Management Act of 1976, as amended, the Bureau of Land Management (BLM), Elko District Office prepared a Final Supplemental Environmental Impact Statement (EIS) to update the cumulative effects analysis for Newmont Mining Corporation's South Operations Area Project Amendment gold mine in Eureka and Elko counties, Nevada and by this Notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its notice of availability in the **Federal Register.**

ADDRESSES: Copies of the Final Supplemental EIS are available for public inspection at the BLM Elko District Office, 3900 Idaho Street, Elko, Nevada 89801. Interested persons may also review the Final Supplemental EIS on the following Web site: *http://www.blm.gov/nv/st/en/fo/elko_field_office.html.*

FOR FURTHER INFORMATION CONTACT: For further information contact Deb McFarlane, (775) 753–0200, or e-mail: *Deb_McFarlane@blm.gov.*

SUPPLEMENTARY INFORMATION: The BLM signed a Record of Decision (ROD) for Newmont Mining Corporation's South Operations Area Project Amendment (SOAPA), an open-pit gold mine located on the Carlin Trend in northeastern Nevada, on July 26, 2002. Four years of legal review resulted in the United States Court of Appeals for the Ninth Circuit partially reversing the ROD. The Final Supplemental EIS updates the analysis of some cumulative impacts including potential impacts to air quality, minerals, Native American and cultural resources, water, vegetation, grazing, recreation, noise, visual resources, wilderness resources, threatened and endangered species, and socioeconomics.

The SOAPA authorized Newmont Mining Corporation to mine an additional 350 feet below what had been previously authorized, to expand waste rock disposal facilities and leach facilities by 139 acres, to continue dewatering and ground water discharge to Maggie Creek, and to construct associated ancillary facilities.

A Notice of Intent to Prepare a Supplemental EIS Updating Cumulative Effects Analysis for the Newmont Mining Corporation South Operations Area Project Amendment, Nevada, was published in the **Federal Register** on March 7, 2007 [72 FR 10241]. The Notice of Availability for the Draft Supplemental EIS was published in the **Federal Register** on September 6, 2007 [72 FR 51249].

Authority: 40 CFR 1506.6 and 1506.10.

Kenneth E. Miller,

Elko District Manager.

[FR Doc. 2010–16031 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK920000–L14100000–BJ0000]

Notice of Filing of Plats of Survey, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice of Filing of Plats of Survey, Alaska.

DATES: The Alaska State Office, Bureau of Land Management, Anchorage, Alaska, must receive comments on or before August 2, 2010.

ADDRESS: Bureau of Land Management, Alaska State Office; 222 W. 7th Ave., Stop 13; Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Stephen B. Hamrick, 907–271–5481, fax 907–271–4549, e-mail *shamrick@blm.gov.*

SUPPLEMENTARY INFORMATION: This survey of an Indian Allotment held in trust status and located on the left bank of the Kenai River near Soldotna, Alaska, was executed at the request of the Bureau of Indian Affairs, Alaska Region. The legal description of this trust allotment is:

Lot 4, Section 35, Township 5 North, Range 10 West, Seward Meridian, Alaska.

Copies of the survey plat and field notes are available to the public at the BLM Alaska Public Information Center and you can obtain copies from this office for a minimum recovery fee.

The plat will not be officially filed until the day after BLM has accepted or dismissed all protests and they have become final, including decisions on appeals.

Authority: 43 U.S.C. 3; 53.

Dated: June 24, 2010.

Stephen B. Hamrick,

Chief Cadastral Surveyor.

[FR Doc. 2010–16220 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON04000–L12200000–PA0000]

Notice of Final Supplementary Rules for Public Lands in Colorado: McInnis Canyons National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Final Supplementary Rules.

SUMMARY: The Bureau of Land Management (BLM) Grand Junction Field Office (GJFO) is implementing supplementary rules to regulate conduct on public lands within the McInnis Canyons National Conservation Area (MCNCA). These supplementary rules are needed to implement decisions found in the McInnis Canyons National Conservation Area Resource Management Plan (RMP) to provide for the protection of persons, property, and public lands and resources.

DATES: These rules are effective August 2, 2010.

ADDRESSES: You may send inquiries to the Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506; or e-mail comments to *gjfo_webmail@blm.gov,* Attn: "McInnis Canyons."

FOR FURTHER INFORMATION CONTACT: Katie Stevens, McInnis Canyons National Conservation Area, (970) 244–3049, e-mail: *Katie_A_Stevens@blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

These final supplementary rules apply to the MCNCA, approximately 122,300 acres of public lands which include the 75,550-acre Black Ridge Canyons Wilderness. The MCNCA, originally known as the Colorado Canyons National Conservation Area, was established by Public Law 106–353 on October 24, 2000, and was renamed

in honor of Representative Scott McInnis by Public Law 108–400 on January 1, 2005.

The MCNCA is located 10 miles west of Grand Junction, Colorado, bordered by the Colorado National Monument to the east and the Colorado/Utah State line to the west. A small portion of the Black Ridge Canyons Wilderness (5,200 acres) extends into Grand County, Utah. The final supplementary rules will help the BLM achieve management objectives and implement decisions in the MCNCA RMP approved on October 24, 2004.

II. Discussion of Public Comments

The BLM GJFO proposed these supplementary rules in the **Federal Register** on July 13, 2009 (74 FR 33466). Public comments were accepted for a period of 60 days ending on September 11, 2009. The BLM received one comment from the Colorado Division of Wildlife (CDOW). The CDOW comment asked the BLM to consider revising the supplementary rule (#8) addressing areas designated as "day use." The CDOW encouraged the BLM to modify the rule to allow hunters in these areas during periods of darkness. Pursuant to Colorado State law, hunters in the legitimate pursuit of game are authorized to hunt 30 minutes before sunrise and 30 minutes after sunset.

BLM Response: The BLM agrees with this additional clarification and changed the supplementary rule (#8) addressing "day use areas" to allow legitimate hunters in the pursuit of game to access "day use" areas during the time periods defined as "legal hunting hours" by the CDOW.

III. Discussion of the Supplementary Rules

In preparing the RMP, the BLM sought public review of four alternatives including its preferred alternative. The preferred alternative incorporated an adaptive management approach to allow for flexibility in management actions based on the results of resource and visitor monitoring.

The RMP includes specific management actions that restrict certain activities and define allowable uses. The final supplementary rules implement these management actions within the MCNCA. Many of the final supplementary rules apply to the entire area but some apply to specific areas within the MCNCA. The final supplementary rules are written to allow for the management flexibility that is available under the principles of adaptive management.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not significant regulatory actions and not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an annual effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and they do not raise novel legal or policy issues. These supplementary rules are merely rules of conduct for public use of a limited area of public lands.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the final supplementary rules clearly state?

(2) Do the final supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the final supplementary rules (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful to your understanding of the Final supplementary rules? How could this description be more helpful in making the Final supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

In July 2004, the BLM completed an environmental impact statement (EIS) as part of the development of the Proposed RMP and Final EIS for the Colorado Canyons National Conservation Area (now McInnis Canyons National Conservation Area), which includes the Black Ridge Canyons Wilderness. During the National Environmental Policy Act process, proposed decisions were fully analyzed, including the substance of these supplementary rules. The pertinent analysis can be found in Chapter 2, Alternatives, of the RMP. The Record of Decision for the RMP was signed by the BLM Colorado State Director in October 2004. These final supplementary rules provide for implementation of the decisions in the RMP. The rationale for the decisions made in the plan is fully covered in the EIS. The EIS is available for review in the BLM administrative record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that the supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These supplementary rules are not considered a "major rule" as defined under 5 U.S.C. 804(2). The supplementary rules are rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector of more than $100 million per year; nor do they have a significant or unique effect on small governments. The rules have no effect on governmental or Tribal entities and would impose no requirements on any of these entities. The supplementary rules merely establish rules of conduct for public use of a limited selection of public lands and do not affect Tribal, commercial, or business activities of any

kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules do not have significant takings implications, nor are they capable of interfering with Constitutionally-protected property rights. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect anyone's property rights. Therefore, the BLM has determined that these rules will not cause a "taking" of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These supplementary rules will not have a substantial direct effect on the States, the relationship between the national government and the States, nor the distribution of power and responsibilities among the various levels of government. These supplementary rules do not come into conflict with any State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these supplementary rules do not include policies that have Tribal implications. The supplementary rules do not affect land held for the benefit, nor impede the rights of Indians or Alaska Natives.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final supplementary rules do not comprise a significant energy action. The rules will not have an adverse effect on energy supplies, production, or consumption. The rules would have no conceivable connection with energy policy.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that these supplementary rules will not impede facilitating cooperative conservation; will take appropriate account of and consider the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodate local participation in the Federal decision-making process; and provide that the programs, projects, and activities are consistent with protecting public health and safety. These rules merely establish rules of conduct for recreational use of certain public lands.

Paperwork Reduction Act

These supplementary rules do not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecution conducted under these proposed supplementary rules is exempt from the provisions of the Paperwork Reduction Act of 1995, as provided at 44 U.S.C. 3518(c)(1).

Information Quality Act

In developing these supplementary rules, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Author

The principal author of this supplementary rule is Eric Boik, Law Enforcement Officer, Bureau of Land Management Colorado, Grand Junction Field Office, Grand Junction, CO.

For the reasons stated in the preamble, and under the authorities for supplementary rules found at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management, issues supplementary rules for public lands managed by the BLM in Colorado, to read as follows:

Final Supplementary Rules for Public Lands in Colorado: McInnis Canyons National Conservation Area

These supplementary rules apply, except as specifically exempted, to activities within the McInnis Canyons National Conservation Area (MCNCA), which is comprised of public lands administered by the Bureau of Land Management (BLM) near Grand Junction, Colorado. These supplementary rules are in effect on a year-round basis and will remain in effect until modified by the authorized officer.

Prohibited Acts

1. You must not camp in sites or areas not designated as open to camping by a BLM sign or map.
2. You must not start or maintain a fire in sites or areas not designated as open for such use by a BLM sign or map.
3. In areas designated as open for starting or maintaining a fire, any fire must be fully contained in a metal fire grate, fire pan, or other metal device to contain ashes. Mechanical stoves and other appliances that are fueled by gas, and equipped with a valve that allows the operator to control the flame, are among the devices that meet this requirement.
4. When starting or maintaining a fire outside of a developed recreation site, you must contain and completely remove fire ashes and debris from BLM land.
5. You must not cut, collect, or use live, dead, or down wood except in areas designated as open to such use by a BLM sign or map.
6. The hours of operation are sunrise to sunset in any area that is for day-use only as indicated by a BLM sign or map. You must not enter or remain in such an area after sunset or before sunrise. Licensed hunters in legitimate pursuit of game during the proper season may access and remain in day use-only areas during the time periods defined as legal hunting hours by the Colorado Division of Wildlife.
7. You must not park in areas not designated for parking by a BLM sign or map.
8. Exceeding group size limits, as indicated by a BLM sign or map, is prohibited.
9. Exceeding length of stay limits, as indicated by a BLM sign or map, is prohibited.
10. Individuals and/or groups must register and possess proof of registration as indicated by a BLM sign or map.
11. You must not use roads and/or trails by motorized or mechanized vehicle or equestrian or pedestrian travel except where designated as open to such use by a BLM sign or map.
12. You must not discharge a firearm of any kind, including those used for target shooting or paintball. Licensed hunters in legitimate pursuit of game during the proper season with

appropriate firearms, as defined by the Colorado Division of Wildlife, are exempt from this rule.

13. You must not collect or disturb rocks, minerals, fossils, chipped rocks, arrowheads, or other paleontological, prehistoric or historical artifacts.

14. You must not enter an area that is designated as closed by a BLM sign or map.

15. You must remove and properly dispose of canine solid waste when and where indicated by a BLM sign or map.

16. You must not bring any dog into the MCNCA that is not controlled by visual, audible, or physical means.

17. You must not burn wood or other material containing nails, glass, or any metal.

18. You must dispose of solid human waste as indicated by a BLM sign or map.

Exemptions

The following persons are exempt from these supplementary rules:

A. Any Federal, State, local and/or military in the scope of their duties;

B. Members of any organized rescue or fire-fighting force in performance of an official duty;

C. Persons, agencies, municipalities, or companies holding an existing special-use permit inside the MCNCA and operating within the scope of their permit.

Penalties

Under the Taylor Grazing Act of 1934, 43 U.S.C. 315a, any willful violation of these supplementary rules on public lands within a grazing district shall be punishable by a fine of not more than $500.

Under Section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a), and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both.

Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Anna Marie Burden,

Acting State Director.

[FR Doc. 2010–16148 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Klamath Hydroelectric Settlement Agreement, Including Secretarial Determination on Whether To Remove Four Dams on the Klamath River in California and Oregon

AGENCY: Department of the Interior.

ACTION: Notice; correction.

SUMMARY: The Department of the Interior (Department) through the Bureau of Reclamation published a notice of intent and notice of public scoping meetings for an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) in the **Federal Register** on June 14, 2010. The notice contained an incorrect date for when the Department will accept scoping comments for this EIS/EIR.

FOR FURTHER INFORMATION CONTACT: Tanya Sommer, Bureau of Reclamation, 916–978–6153, *tsommer@usbr.gov.*

Correction

In the **Federal Register** of June 14, 2010, (75 FR 33634), in column 2, correct the **DATES** caption to read:

DATES: Written comments on the scope of the EIS/EIR and potential alternatives to be analyzed are requested by July 21, 2010. Oral comments will also be accepted during the public scoping meetings. Please see the **SUPPLEMENTARY INFORMATION** section for public scoping meeting dates and locations.

Dated: June 23, 2010.

Dennis Lynch,

Program Manager, Klamath Basin Secretarial Determination.

[FR Doc. 2010–16134 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Patent, Trademark and Copyright Acts

AGENCY: Geological Survey, Interior.

ACTION: Notice of prospective intent to award exclusive license.

SUMMARY: The United States Geological Survey (USGS) is contemplating awarding an exclusive license to: Ozone Technologies Group, Inc., 253 Portman Lane, Suite 107, Bridgeville, PA 15017 on U.S. Patent No. 6,485,696 B1, entitled "Recovery/Removal of Metallic Elements from Waste Water Using Ozone."

Inquiries: If other parties are interested in similar activities, or have comments related to the prospective awards, please contact Neil Mark, USGS, 12201 Sunrise Valley Drive, MS 201, Reston, Virginia 20192, voice (703) 648–4344, fax (703) 648–7219, or e-mail *nmark@usgs.gov.*

SUPPLEMENTARY INFORMATION: This notice is submitted to meet the requirements of 35 U.S.C. 208 *et seq.*

Dated: June 16, 2010.

Karen D. Baker,

Associate Director, Office of Administrative Policy and Services.

[FR Doc. 2010–15670 Filed 7–1–10; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CA–920–1310–FI; CACA 46594]

Proposed Reinstatement of Terminated Oil and Gas Lease CACA 46594

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease CACA 46594 from Gasco Production Company. The petition was filed on time and was accompanied by all required rentals and royalties accruing from January 1, 2010, the date of termination.

FOR FURTHER INFORMATION CONTACT: Rita Altamira, Land Law Examiner, Branch of Adjudication, Division of Energy & Minerals, BLM California State Office, 2800 Cottage Way, W–1623, Sacramento, California 95825, (916) 978–4378.

SUPPLEMENTARY INFORMATION: No intervening valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the BLM for the cost of this **Federal Register** notice. The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate the lease effective January 1, 2010, subject to the original terms and conditions of

the lease and the increased rental and royalty rates cited above.

Debra Marsh,

Supervisor, Branch of Adjudication, Division of Energy and Minerals.

[FR Doc. 2010–16150 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000 L14300000.ET0000 241A; NVN–50507; MO#4500012779; 10–08807; TAS: 14X1109]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management proposes to extend the duration of Public Land Order (PLO) No. 6818 for an additional 20-year term. PLO No. 6818 withdrew 5 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws, to protect the Bureau of Land Management's Tonopah Administrative Site in Nye County. The withdrawal created by PLO No. 6818 will expire on November 28, 2010, unless extended. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by September 30, 2010. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and at least one local newspaper 30 days before the scheduled date of the meeting.

ADDRESSES: Comments and meeting requests may be mailed to the Field Manager, BLM Tonopah Field Office, Attn: NVN–50507 Tonopah Administrative Site Withdrawal Extension, P.O. Box 911, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Jacqueline M. Gratton, 775–861–6532, or e-mail: *Jacqueline_Gratton@blm.gov.*

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6818 (55 FR 49522 (1990)) will expire on November 28, 2010, unless extended. PLO No. 6818 is incorporated herein by reference. The BLM has filed a petition/application to extend the withdrawal established by PLO No. 6818 for an additional 20-year term. The withdrawal was made to protect the Tonopah Administrative Site and contains 5 acres in Nye County.

The purpose of the proposed extension is to continue the withdrawal created by PLO No. 6818 for an additional 20-year term for protection of the capital investment in the Tonopah Administrative Site.

The use of a right-of-way, interagency, or cooperative agreement would not adequately constrain nondiscretionary uses which could result in the loss of the capital investment.

There are no suitable alternative sites as the land described contains permanent Federal facilities. Structures and improvements on the site include the Tonopah administrative office, employee covered break area, visitor and employee parking area, two warehouses, garage/storage building, and storage yard for equipment and vehicles.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Field Manager, BLM Tonopah Field Office at the address noted above. Comments, including names and street addresses of respondents, and records relating to the application, will be available for public review at the address stated above, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. 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. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension must submit a written request to the Field Manager, BLM Tonopah Field Office, by September 30, 2010.

This withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Authority: 43 CFR 2310.3–1.

Brian C. Amme,

Acting Deputy State Director, Resources, Lands and Planning.

[FR Doc. 2010–16149 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTM01000–L14300000.ET0000; MTM 89170]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management proposes to extend the duration of Public Land Order (PLO) No. 7464, as extended by PLO 7643, for an additional 5-year term. This PLO withdrew 3,530.62 acres of public land in Phillips County, Montana, from settlement, sale, location, or entry under the general land laws, including the mining laws, to protect the reclamation of the Zortman-Landusky mining area. The withdrawal created by Public Land Order No. 7464, as extended, will expire on October 4, 2010, unless extended. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by September 30, 2010.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Micah Lee, Malta Field Office, 406–262–2851, or Sandra Ward, BLM Montana State Office, 406–896–5052.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) has

filed an application to extend the duration of the withdrawal established by Public Land Order No. 7464 (65 FR 59463 (2000)), which withdrew 3,530.62 acres of public land in Phillips County, Montana, from settlement, sale, location, or entry under the general land laws, including the United States mining laws, for an additional 5-year term, subject to valid existing rights. PLO 7464 is incorporated herein by reference.

The purpose of the proposed extension is to continue the protection of the reclamation of the Zortman and Landusky mining area.

The use of a right-of-way, interagency agreement, or cooperative agreement would not provide adequate protection.

There are no suitable alternative sites available where the withdrawal would facilitate mine reclamation since the location of the mines and necessary reclamation materials are fixed.

No water rights will be needed to fulfill the purpose of the requested withdrawal.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the BLM Montana State Director by September 30, 2010, at the address above.

Comments, including names and street addresses of respondents, and records relating to the application will be available for public review at the Malta Field Office, 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047, during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM Montana State Director at the address above by September 30, 2010. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and in at least one local newspaper not less than 30 days before the scheduled date of the meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.3–1)

Dated: June 28, 2010.

Cynthia Staszak,

Chief, Branch of Land Resources.

[FR Doc. 2010–16347 Filed 6–30–10; 4:15 pm]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL01000 L14300000.EU0000 241A; N–86667; 10–08807; MO #4500012445; TAS: 14X5232]

Notice of Realty Action: Competitive Auction of Public Lands in White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer one parcel of public land of approximately 2.5 acres in White Pine County, Nevada for competitive sale at not less than the appraised fair market value (FMV). The sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719, respectively, and the BLM land sale and mineral conveyance regulations at 43 CFR 2710 and 2720.

DATES: Interested persons may submit written comments regarding this proposed sale of public lands until August 16, 2010. If the BLM decision is to proceed with the sale, a sale date and time will be announced in local news papers and on the BLM Ely website at least 15 days in advance of the sale. In no case will the lands be sold prior to 60 days following publication of this Notice of Realty Action.

ADDRESSES: Written comments may be submitted by mail: BLM Manager, Egan Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, Nevada 89301; *Fax:* 775–289–1910, *Attn:* Cynthia Longinetti; or e-mail: *Cynthia_Longinetti@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Cynthia Longinetti at 775–289–1809 or *e-mail: Cynthia_Longinetti@blm.gov.*

SUPPLEMENTARY INFORMATION: The following described land is located southwest of Ely, Nevada, about 11 miles northwest of Lund, Nevada, at the junction of U.S. Highway 6 and State Route 318, and is legally described as:

Mount Diablo Meridian, Nevada

T. 13 N., R. 61 E.
Sec. 9, SW¼NE¼SW¼SW¼.

The area described contains 2.5 acres, more or less.

This parcel of public land is proposed for competitive auction at not less than the appraised FMV of $6,900. Maps delineating the proposed sale parcel will be available for public review at the following Web site: *http://www.blm.gov/nv/* (click on the Ely District), and at the BLM Ely District Office, until August 16, 2010.

Consistent with Section 203 of FLPMA, the tract of public lands may be sold as a result of approved land use planning if the sale of the tract meets the disposal criteria. The sale is in conformance with the Ely District Record of Decision and Resource Management Plan (RMP), approved in August 2008. The BLM has determined that the proposed action conforms to the RMP (LR–11) under the authority of FLPMA. The lands are also identified as suitable for disposal and are in compliance with Public Law 109–432, the Tax Relief and Health Care Act of 2006. No significant resource values will be affected by this disposal. This parcel is not required for any Federal purposes.

These public lands have been examined and found suitable for disposal using competitive sale procedures at 43 CFR 2711–3–1. The use of competitive sale procedures is consistent with 43 CFR 2710.0–6(c)(3)(i), which states "this title is the general procedure for sales of public lands and may be used where there would be a number of interested parties bidding for the lands and (A) wherever in the judgment of the authorized officer the lands are accessible and usable regardless of adjoining land ownership."

If the BLM decides to proceed with the sale, a public auction will be scheduled to be held at the BLM Ely District Office, 702 North Industrial Way, Ely, Nevada. This oral auction will be a day event. Bidding on the subject parcel will begin at the established FMV. At the conclusion of the auction, the person declared to have entered the highest qualifying oral bid shall submit a bid deposit of not less than 20 percent of the successful high bid amount. Failure to submit the deposit will result in forfeiture of the sale offer. If the high bidder is unable to consummate the transaction, the second-highest bidder's bid may then be considered for award.

Payment must be in the form of a bank draft, cashier's check, certified check or U.S. postal money order, or any combination thereof, and made payable in U.S. dollars to the Department of the Interior—Bureau of Land Management, immediately following the close of the sale. Personal or company checks will not be accepted. No contractual or other rights against the United States may accrue until BLM officially accepts the offer to purchase and the full bid price is paid.

The remainder of the purchase price must be paid prior to the expiration of the 180th day following the date of the sale offer. Failure to pay the full price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. Arrangements for electronic fund transfer to BLM for the balance due shall be made a minimum of 2 weeks prior to the payment date.

Terms and Conditions: Certain minerals of the parcel will be reserved in accordance with the BLM's Mineral Potential report, dated June 2, 2009. An offer to purchase these parcels will constitute an application for mineral conveyance of the "no known value" mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50 non-refundable filing fee for processing the conveyance of the "no known value" mineral interests which will be sold simultaneously with the surface interests. The following numbered terms, conditions, and reservations will appear on the conveyance document for the parcel.

1. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, and geothermal resources are reserved to the United States, its permittees, licensees and lessees, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary of the Interior may prescribe, along with all necessary access and exit rights.

3. The parcel is subject to valid existing rights.

4. Under 43 CFR 2711.1–3, the grazing permittee has unconditionally waived the 2-year prior notification by signing the proper form.

5. By accepting this patent, the patentee agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) judgments, claims or demands of any kind assessed against the United States; (3) costs, expenses, or damages of any kind incurred by the United States; (4) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) activities by which solid waste or hazardous substances or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction.

6. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances has been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of the parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA.

Federal law requires that bidders must be (1) United States citizens 18 years of age or older; (2) a corporation subject to the laws of any state or of the United States; (3) an entity including, but not limited to associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) a state, state instrumentality, or political subdivision authorized to hold real property. U.S. citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to the BLM within 30 days from receipt of the high bidder letter shall result in the cancellation of the bid.

Parcels may be subject to land use applications received prior to publication of this notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Encumbrances of record that may appear in the BLM public files for the parcel proposed for sale are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time (PT), Monday through Friday, at the Ely District Office, except during federally recognized holidays.

The parcel is subject to limitations prescribed by law and regulation and prior to patent issuance, a holder of any right-of-way within the parcel may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable, or to an easement.

The BLM will notify valid existing right-of-way holders of their ability to convert their compliant rights-of-way to perpetual rights-of-way or easements. Each valid holder will be notified in writing of their rights and then must apply for the conversion of their current authorization.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee.

Requests for all escrow instructions must be received by the Ely District Office prior to 30 days before the bidder's scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the Ely District Office 30 days from the date

on the high bidder letter by 4:30 p.m. PT. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change on the Certificate of Eligibility form to the Ely District Office in writing. Certificate of Eligibility forms are available at the Ely District Office and at the BLM Web site at: *http://www.blm.gov/nv/* (click on the Ely District).

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of the exchange is the bidder's responsibility in accordance with Internal Revenue Service regulations. The BLM is not a party to any 1031 Exchange.

All sales are made in accordance with and subject to the governing provisions of law and applicable regulations.

In accordance with 43 CFR 2711.3–1(f), the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons.

If the parcel is not sold by competitive sale auction, it may be identified for sale at a later date without further legal notice.

On publication of this notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the parcel identified for sale. However, land use applications may be considered after completion of the sale if the parcel is not sold.

In order to determine the FMV, certain assumptions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government. It is the buyer's responsibility to be aware of all applicable Federal, state, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands will be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It will be the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or state law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Only written comments will be considered properly filed.

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.

(Authority: 43 CFR 2711)

Jeffrey A. Weeks,

Field Manager, Egan Field Office.

[FR Doc. 2010–16140 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI01000–L143000000.EU0000; IDI–19600–03]

Notice of Realty Action: Non-Competitive (Direct) Sale of Public Lands and Termination of a Recreation and Public Purposes Act Classification, Madison County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 139.76-acre parcel of public land in Madison County, Idaho, to Madison County for continued use as a construction and demolition (C&D) landfill. In addition, this notice will terminate the Recreational and Public Purpose Act (R&PPA) classification that encumbers the land identified for sale.

DATES: Comments regarding this direct sale must be received by the BLM at the address listed below by August 16, 2010.

ADDRESSES: Written comments regarding the proposed sale should be addressed to Wendy Reynolds, Upper Snake Field Office Manager, BLM Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. Comments received in electronic form, such as e-mail or by fax, will not be considered.

FOR FURTHER INFORMATION CONTACT: BLM Upper Snake Field Office at the above address or (208) 524–7500.

SUPPLEMENTARY INFORMATION: The following described public land is proposed for sale:

Boise Meridian

T. 6 N., R. 38 E.,
Sec. 26, lots 11, 12, and 13;
Sec. 27, lots 9 and 14.

The area described contains 139.76 acres, more or less, in Madison County, Idaho.

The authority for the sale is found in Sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) and regulations found at 43 CFR 2710 and 2720. This property is not required for Federal purposes and was identified for disposal in the November 25, 2008 amendment to the BLM Medicine Lodge Resource Management Plan (1985).

On July 2, 2010 the property will be segregated from all forms of appropriation under the public land laws, including the mining laws, except as it relates to a direct sale to Madison County under Section 203 of FLPMA as herein proposed. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on July 2, 2012, whichever occurs first.

In addition, the property was classified on September 27, 1983 under the R&PPA. A portion of the property was classified as suitable for recreation and public purposes (T. 6 N., R. 38 E., lots 11 and 12 of sec. 26 and lots 9 and 14 of sec. 27), and the remainder of the property (T. 6 N., R. 38 E., lot 13 of sec. 26) was classified as non-suitable for recreation and public purposes. This notice terminates both the suitable and non-suitable R&PPA classifications on these lands. These classifications are no longer needed, as the property is proposed to be sold. On July 2, 2010, the R&PPA classification identified above and any associated segregations will be terminated, and the lands described above shall be open to direct sale to Madison County under Section 203 of FLPMA, subject to valid existing rights, the provisions of existing withdrawals and other segregations of record, and the requirements of applicable laws. The Madison County Commissioners propose to continue using the property as a C&D landfill to meet public needs.

On November 23, 1983, the BLM issued Madison County a lease under the R&PPA, as amended, for a municipal solid waste landfill. In 1994, the County stopped using the site as a municipal

solid waste landfill and changed the use of the site to a C&D landfill. At this time, the County would like to purchase the property it leased under the R&PPA as well as an additional 39.46 acres to be used as a source of material for cover and future expansion of the C&D landfill. These lands are being offered for direct sale to Madison County at no less than the appraised Fair Market Value of $38,500. The sale meets the criteria for direct sale, pursuant to 43 CFR 2711.3–3, which allows direct sales when in the opinion of the authorized officer a competitive sale is not appropriate and the public interest would best be served by a direct sale, such as a sale to a State or local government.

Upon patent, if and when issued, the unreserved mineral interests will be conveyed simultaneously with the sale of the land. These unreserved mineral interests have been determined to have no known mineral values pursuant to 43 CFR 2720.2(a). Acceptance of the sale offer will constitute an application for conveyance of those unreserved mineral interests. The Purchaser will be required to pay a $50.00 non-refundable fee for conveyance of the mineral interests.

The patent, if and when issued, will contain the following reservations, covenants, terms and conditions:

1. Rights-of-way for ditches and canals constructed by the authority of the United States will be reserved pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. The conveyance will be subject to valid existing rights of record, including, but not limited to, those documented on the BLM public land records at the time of conveyance of the lands.

3. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA), 42 U.S.C. 9620(h), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), the patentee, its successors or assigns, by accepting a patent, will agree to indemnify, defend, and hold harmless the United States, its officers, agents, representatives, and employees (hereinafter "United States") from any costs, damages, claims, causes of action in connection with the patentee's use, occupancy, or operations on the patented real property. This agreement includes, but is not limited to, acts or omissions of the patentee and its employees, agents, contractors, lessees, or any third party arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property which cause or give rise to, in whole or in part: (1) Violations of Federal, State and local laws and regulations that are now, or may in the future become, applicable to the real property and/or applicable to the use, occupancy, and/or operations thereon; (2) judgments, claims, or demands of any kind assessed against the United States; (3) costs, expenses, or damages of any kind incurred by the United States; (4) releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s), pollutant(s), or contaminant(s), and/or petroleum product(s) or derivative(s) of a petroleum product, as defined by Federal or State environmental laws; of, on, into, or under land, property, and other interests of the United States; (5) natural resource damages as defined by Federal and State law; or (6) other activities by which solid or hazardous substance(s) or waste(s), pollutant(s) or contaminant(s), or petroleum product(s) or derivative(s) of a petroleum product as defined by Federal or State environmental laws are generated, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to the said solid or hazardous substance(s) or waste(s) or contaminant(s), or petroleum product(s) or derivative(s) of a petroleum product as defined by Federal or State laws. Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State, and local environmental laws and regulatory provisions, throughout the life of the facility, including any closure and/or post-closure requirements that may be imposed with respect to any physical plant and or facility upon the real property under any Federal, State, or local environmental laws or regulatory provisions. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

4. The conveyance will be also subject to additional terms and conditions that the authorized officer deems appropriate to ensure proper land use and protection of the public interest.

Public Comments: For a period until August 16, 2010, interested parties and the general public may submit written comments to the BLM Upper Snake Field Office at the address above. Comments, including names and street addresses of respondents, will be available for public review at the BLM Upper Snake Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. 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 information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM State Director, Idaho State Office, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. Information concerning the proposed land sale, including the appraisal report, planning and environmental documents, and the mineral report is available for review in the BLM Upper Snake Field Office at the address listed above.

These parcels will not be sold until at least August 31, 2010.

Authority: 43 CFR 2711.1–2.

Wendy Reynolds,

Field Manager, BLM Upper Snake Field Office.

[FR Doc. 2010–16260 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC02000 L57000000.BX0000 241A; 10–08807; MO# 4500013122; TAS: 14X5017]

Notice of Temporary Closures of Public Lands in Washoe County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure.

SUMMARY: As authorized under the provisions of the Federal Land Policy and Management Act of 1976, notice is hereby given that certain public lands near Stead, Nevada, will be temporarily closed to all public use to provide for public safety during the 2010 Reno Air Racing Association Pylon Racing Seminar and the Reno National Championship Air Races.

DATES: *Effective Dates:* Closure periods to all public use are September 11 through September 19, 2010.

FOR FURTHER INFORMATION CONTACT: Linda J. Kelly, (775) 885–6000, e-mail: *Linda_J_Kelly@blm.gov.*

SUPPLEMENTARY INFORMATION: This closure applies to all public use,

including pedestrian use and vehicles. The public lands affected by this closure are described as follows:

Mount Diablo Meridian, Nevada

T. 21 N., R. 19 E.,
Sec. 8, N½NE¼, SE¼NE¼, E½SE¼;
Sec.16, N½, SE¼.

The area described contains approximately 680 acres. The closure notice and map of the closure area will be posted at the BLM Carson City District Office, 5665 Morgan Mill Road, Carson City, Nevada and on the BLM Web site: *http://www.blm.gov/nv/st/en/fo/carson_city_field.html.* Roads leading into the public lands under closure will be posted to notify the public of the closure.

Exceptions: Closure restrictions do not apply to event officials, medical and rescue personnel, law enforcement, and agency personnel monitoring the events.

Penalties: Any person who fails to comply with the closure orders is subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months under 43 CFR 8360.0–7, violations may also be subject to the provisions of title 18, U.S.C. sections 3571 and 3581.

Authority: 43 CFR 8360.0–7 and 8364.1.

Linda J. Kelly,

Manager, Sierra Front Field Office.

[FR Doc. 2010–16151 Filed 7–1–10; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of Performance Review Board

AGENCY: United States International Trade Commission.

ACTION: Appointment of Individuals to Serve as Members of Performance Review Board.

DATES: *Effective Date:* June 23, 2010.

FOR FURTHER INFORMATION CONTACT: Cynthia Roscoe, Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chair of the PRB: Commissioner Daniel R. Pearson.

Vice-Chair of the PRB: Commissioner Dean A. Pinkert.

Member—David Beck.
Member—Catherine DeFilippo.
Member—Robert B. Koopman.
Member—Karen Laney.
Member—Lynn I. Levine.
Member—James M. Lyons.
Member—Stephen A. McLaughlin.
Member—Lyn M. Schlitt.

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Chairman.
Issued: June 29, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–16120 Filed 7–1–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Recent Trends in U.S. Services Trade, 2011 Annual Report

AGENCY: United States International Trade Commission.

ACTION: Schedule for 2011 report and opportunity to submit information; availability of 2010 report.

SUMMARY: The Commission has prepared and published annual reports in this series under investigation No. 332–345 since 1996. The 2010 report is now available from the Commission online and in CD and printed form. The 2011 report, which the Commission plans to publish in June 2011, will cover cross-border trade for the period ending in 2009 and transactions by affiliates based outside the country of their parent firm for the period ending in 2008. The Commission is inviting interested members of the public to furnish information in connection with the 2011 report.

DATES:

October 12, 2010: Deadline for filing written submissions of information to the Commission.

June 30, 2011: Anticipated date for publishing the report.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov/edis3-internal/app.*

FOR FURTHER INFORMATION CONTACT: Project Leader Samantha Brady (202–205–3459 or *samantha.brady@usitc.gov*) or Services Division Chief Richard Brown (202–205–3438 or *richard.brown@usitc.gov*) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

BACKGROUND: Under this investigation, the Commission publishes two annual reports, one on services trade (*Recent Trends in U.S. Services Trade*), and a second on merchandise trade (*Shifts in U.S. Merchandise Trade*). The latest version of the Commission's *Recent Trends in U.S. Services Trade* is now available online at *http://www.usitc.gov*; it is also available in CD and printed form from the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104.

The initial notice of institution of this investigation was published in the **Federal Register** on September 8, 1993 (58 FR 47287) and provided for what is now the report on merchandise trade. The Commission expanded the scope of the investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 FR 66974). The separate report on services trade has been published annually since 1996, except in 2005. As in past years, the report will summarize trade in services in the aggregate and provide analyses of trends and developments in selected services during the latest period for which data are published by the U.S. Department of Commerce, Bureau of Economic Analysis (for the 2011 report, data for the periods described above). The 2011 report will focus on selected business and professional services, alternating with the focus of the 2010 report on infrastructure services.

Written Submissions: Interested parties are invited to submit written statements and other information

concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written submissions related to the Commission's report should be submitted at the earliest practical date and should be received not later than 5:15 p.m., October 12, 2010. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

The Commission intends to prepare only a public report in this investigation. The report that the Commission makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: June 28, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 2010–16078 Filed 7–1–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on June 28, 2010, a proposed Consent Decree ("Decree") in *United States* v. *West Side Metals Corp.,* Civil Action No. 1:10–cv–01427, was lodged with the United States District Court for the Northern District of Ohio.

In this action the United States, on behalf of the U.S. Environmental Protection Agency ("U.S. EPA"), sought penalties and injunctive relief under the Clean Air Act ("CAA") against West Side Metals Corp. ("Defendant") relating to Defendant's Cleveland, Ohio facility ("Facility"). The Complaint alleges that Defendant has violated Section 608(b)(1)of the CAA, 42 U.S.C. 7671g(b)(1) (National Recycling and Emission Reduction Program) and the regulations promulgated thereunder, 40 CFR Part 82, Subpart F, by failing to follow the requirement to recover or verify recovery of refrigerant from appliances it accepts for disposal. The Consent Decree provides for a civil penalty of $10,000 based upon ability to pay. The Decree also requires Defendant to (1) purchase equipment to recover refrigerant or contract for such services and provide such service at no additional cost; (2) no longer accept appliances with cut lines unless the supplier can provide appropriate verification that such appliances have not leaked; (3) require its suppliers to use the verification statement provided in Appendix A; and (4) keep a refrigerant recovery log regarding refrigerant that it has recovered.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *West Side Metals Corp.,* D.J. Ref. 90–5–2–1–09619. The Decree may be examined at U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–16099 Filed 7–1–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on June 28, 2010, the United States lodged a Partial Consent Decree with El Dorado County, California (the "County") in *United States of America* v. *El Dorado County, California, et al.,* Civil No. S–01–1520 MCE GGH (E.D. Cal.), with respect to the Meyers Landfill Site, located in Meyers, El Dorado County, California (the "Site").

On August 3, 2001, Plaintiff United States of America ("United States"), on behalf of the United States Department of Agriculture, Forest Service ("Forest Service"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, against Defendants, El Dorado County, California (the "County") and the City of South Lake Tahoe, California ("the City"). The complaint filed by the United States seeks recovery of environmental response costs, with accrued interest, incurred by the Forest Service related to the release or threatened release and/or disposal of

hazardous substances at or from the Meyers Landfill Site, a former municipal waste disposal facility located on National Forest Service System lands administered by the Lake Tahoe Basin Management Unit of the Forest Service, and a declaration of the County's and the City's liability for future response costs incurred by the United States related to the Site. The County filed a counterclaim for contribution against the United States as well as a Third Party Complaint for contribution against a number of third party defendants.

Under the proposed Partial Consent Decree, the County will implement the Operable Unit One ("OU–1") remedy, which involves consolidating the landfill waste and encasing it under an impervious cap and construction of certain enhanced drainage features around the cap. The County will also pay $1,651,000 to resolve the United States' claim for Past Response Costs (as defined in the proposed Partial Consent Decree) at the Site. In exchange, the County will receive from the United States a covenant not to sue or to take administrative action pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. 9606 and 9607, for the performance of response actions at OU–1 and for the United States' Past Response Costs and Future Oversight Costs (as defined in the proposed Partial Consent Decree).

In addition, the proposed Partial Consent Decree resolves the County's contribution counterclaims against the United States regarding response costs incurred, or to be incurred, by the County at OU–1, referred to in the proposed Partial Consent Decree as "Settling Defendant Past Response Costs" and "Settling Defendant Future OU–1 Response Costs," in exchange for a payment of $1,612,349 to the County. The County, in turn, must deposit that amount into a special account to fund implementation of the OU–1 remedy.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *El Dorado County, California, et al.,* Civil No. S–01–1520 MCE GGH (E.D. Cal.) (DOJ Ref. No. 90–11–3–06554) (Partial Consent Decree with El Dorado County).

The Partial Consent Decree may be examined at U.S. Department of Agriculture, Office of General Counsel, 33 New Montgomery Street, 17th Floor, San Francisco, CA 94150 (contact Rose Miksovsky, (415) 744–3158). During the public comment period, the Partial Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States of America* v. *El Dorado County, California, et al.,* Civil No. S–01–1520 MCE GGH (E.D. Cal.) (DOJ Ref. No. 90–11–3–06554) (Partial Consent Decree with El Dorado County), and enclose a check in the amount of $66.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–16119 Filed 7–1–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving D–11448, The PNC Financial Services Group, Inc., 2010–19; D–11514, Citigroup Inc. and its Affiliates (Citigroup or the Applicant), 2010–20; D–11527, Barclays California Corporation (Barcal), 2010–21; D–11533 and D–11534, Respectively, CUNA Mutual Pension Plan for Represented Employees and CUNA Mutual Pension Plan for Non-Represented Employees (Together, the Plans), 2010–22

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Exemption

Section I—Exemption for In-Kind Redemption of Assets

The restrictions in sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,

shall not apply [1] to certain in-kind redemptions (the Redemption(s)) by The Employees' Thrift Plan of Mercantile Bankshares Corporation and Participating Affiliates (the Mercantile Plan) that occurred overnight on October 31, 2007, of shares (the Shares) of proprietary mutual funds (the Funds) for which The PNC Financial Services Group, Inc. (PNC) or an affiliate thereof provides investment advisory and other services, provided that the following conditions were satisfied:

(A) No sales commissions, redemption fees, or other similar fees were paid in connection with the Redemptions (other than customary transfer charges paid to parties other than PNC and any affiliates of PNC (PNC Affiliates));

(B) The assets transferred to the Mercantile Plan pursuant to the Redemptions consisted entirely of cash and Transferable Securities, as such term is defined in Section II, below;

(C) In each Redemption, the Mercantile Plan received its *pro rata* portion of the securities with respect to the Capital Opportunities Fund, and certain securities, selected pursuant to a verifiable methodology, that were approved by an independent fiduciary (Independent Fiduciary, as such term is defined in Section II) with respect to the other four Funds covered by this exemption, such that the securities received were equal in value to that of the number of Shares redeemed, as determined in a single valuation (using sources independent of PNC and PNC Affiliates) performed in the same manner and as of the close of business on the same day, in accordance with Rule 2a–4 under the Investment Company Act of 1940, as amended (the 1940 Act) and the then-existing procedures adopted by the Board of Directors of PNC Funds, Inc., which were in compliance with all applicable securities laws;

(D) Neither PNC nor any PNC Affiliate received any direct or indirect compensation or any fees, including any fees payable pursuant to Rule 12b–1 under the 1940 Act, in connection with any Redemption of the Shares;

(E) Prior to a Redemption, the Independent Fiduciary received a full written disclosure of information regarding the Redemption;

(F) Prior to a Redemption, the Independent Fiduciary communicated its approval for such Redemption to PNC;

(G) Prior to a Redemption, based on the disclosures provided to the Independent Fiduciary, the Independent Fiduciary determined that the terms of the Redemption were fair to the Mercantile Plan, and comparable to and no less favorable than terms obtainable at arm's length between unaffiliated parties, and that the Redemption was in the best interests of the Mercantile Plan and its participants and beneficiaries;

(H) Not later than thirty (30) business days after the completion of a Redemption, the Independent Fiduciary received a written confirmation regarding such Redemption containing:

(i) The number of Shares held by the Mercantile Plan immediately before the Redemption (and the related per Share net asset value and the total dollar value of the Shares held) for each Fund;

(ii) The identity (and related aggregate dollar value) of each security provided to the Mercantile Plan pursuant to the Redemption, including each security valued in accordance with Rule 2a–4 under the 1940 Act and procedures adopted by the Board of Directors of PNC Funds, Inc. (using sources independent of PNC and PNC Affiliates);

(iii) The current market price of each security received by the Mercantile Plan pursuant to the Redemption; and

(iv) If applicable, the identity of each pricing service or market maker consulted in determining the value of such securities;

(I) The value of the securities received by the Mercantile Plan for each redeemed Share equaled the net asset value of such Share at the time of the transaction, and such value equaled the value that would have been received by any other investor for shares of the same class of the Fund at that time;

(J) Subsequent to the Redemptions, the Independent Fiduciary performed a post-transaction review that included, among other things, a random sampling of the pricing information it received;

(K) Each of the Mercantile Plan's dealings with the Funds, the investment advisors to the Funds, the principal underwriter for the Funds, or any affiliated person thereof, were on a basis no less favorable to the Mercantile Plan than dealings between the Funds and other shareholders holding shares of the same class as the Shares;

(L)) Prior to the publication of this final exemption in the **Federal Register** regarding the subject transactions, PNC: (i) Reimbursed The PNC Financial Services Group, Inc. Incentive Savings Plan (the PNC Plan), into which the Mercantile Plan was merged on November 1, 2007, for all brokerage costs incurred by the Mercantile Plan on November 1, 2007 to liquidate the securities that the Mercantile Plan received in kind pursuant to a Redemption; and (ii) provided the Department with written documentation indicating reimbursement to the PNC Plan for such brokerage costs;

(M) PNC maintains, or causes to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in paragraph (N) below to determine whether the conditions of this exemption have been met, except that (i) a separate prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of PNC, the records are lost or destroyed prior to the end of the six-year period and (ii) no party in interest with respect to the Mercantile Plan other than PNC shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if such records are not maintained or are not available for examination as required by paragraph (N) below;

(N)(1) Except as provided in subparagraph (2) of this paragraph (N), and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (M) above are unconditionally available at their customary locations for examination during normal business hours by (i) any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities and Exchange Commission (SEC), (ii) any fiduciary of the PNC Plan as the successor to the Mercantile Plan or any duly authorized representative of such fiduciary, (iii) any participant or beneficiary of the PNC Plan as the successor to the Mercantile Plan or duly authorized representative of such participant or beneficiary, and (iv) any employer whose employees are covered by the PNC Plan as the successor to the Mercantile Plan and any employee organization whose members are covered by such plan;

(2) None of the persons described in paragraphs (N)(1)(ii), (iii) and (iv) shall be authorized to examine trade secrets of PNC or the Funds, or commercial or financial information which is privileged or confidential;

(3) Should PNC or the Funds refuse to disclose information on the basis that such information is exempt from disclosure pursuant to paragraph (N)(2) above, PNC or the Funds shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

reasons for the refusal and that the Department may request such information.

Section II—Definitions

For purposes of this exemption—

(A) The term "affiliate" means:

(1) Any person (including corporation or partnership) directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(B) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(C) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund, less the liabilities charged to each such Fund, by the number of outstanding shares.

(D) The term "Independent Fiduciary" means a fiduciary who is: (i) independent of and unrelated to PNC and its affiliates, and (ii) appointed to act on behalf of the Mercantile Plan with respect to the in-kind transfer of assets from one or more Funds to, or for the benefit of, the Mercantile Plan. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to PNC if: (i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with, PNC; (ii) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption (except that an independent fiduciary may receive compensation from PNC in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon, or in any way affected by, the independent fiduciary's decision); and (iii) an amount equal to more than one percent (1%) of such fiduciary's gross income (for federal income tax purposes, in its prior tax year), is paid by PNC and its affiliates to the fiduciary in 2007, the year at issue.

(E) The term "Transferable Securities" means securities (1) for which market quotations are readily available (as determined under Rule 2a–4 of the 1940 Act) from persons independent of PNC and (2) which are not:

(i) Securities that, if publicly offered or sold, would require registration under the Securities Act of 1933;

(ii) Securities issued by entities in countries which (a) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (b) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange;

(iii) Certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions, certificates of deposit, and repurchase agreements) that, although liquid and marketable, involve the assumption of contractual obligations, require special trading facilities, or can only be traded with the counter-party to the transaction to effect a change in beneficial ownership;

(iv) Cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements);

(v) Other assets that are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable); and

(vi) Securities subject to "stop transfer" instructions or similar contractual restrictions on transfer.

(F) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, sister, or a spouse of a brother or a sister.

Effective Date: The exemption is effective as of October 31, 2007.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 19, 2010 at 75 FR 3060.

Written Comments

No substantive comments were received by the Department with respect to the notice of proposed exemption.

For Further Information Contact: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

Exemption

Section I. Sales of Auction Rate Securities From Plans to Citigroup: Unrelated to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan (as defined in Section V(e)) of an Auction Rate Security (as defined in Section V(c)) to Citigroup, where such sale (an Unrelated Sale) is unrelated to, and not made in connection with, a Settlement Agreement (as defined in Section V(f)), provided that the conditions set forth in Section II have been met.[3]

Section II. Conditions Applicable to Transactions Described in Section I

(a) The Plan acquired the Auction Rate Security in connection with brokerage or advisory services provided by Citigroup to the Plan;

(b) The last auction for the Auction Rate Security was unsuccessful;

(c) Except in the case of a Plan sponsored by Citigroup for its own employees (a Citigroup Plan), the Unrelated Sale is made pursuant to a written offer by Citigroup (the Offer) containing all of the material terms of the Unrelated Sale. Either the Offer or other materials available to the Plan provide: (1) The identity and par value of the Auction Rate Security; (2) the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Security; and (3) the most recent rate information for the Auction

[2] As a general matter, it is the Department's view that the model practice to effect an in-kind redemption by a mutual fund to a shareholder-pension plan, subject to Title I of ERISA, is through a *pro rata* distribution because the adoption of such a method ensures that the individual stocks selected for the in-kind redemption are objectively determined. The Department recognizes that the in-kind redemption for which exemptive relief is provided involves unique circumstances because, among other things, it facilitated the transfer of plan assets and the merger of The Employees' Thrift Plan of Mercantile Bankshares Corporation and Participating Affiliates (the Mercantile Plan) with The PNC Financial Services Group, Inc. Incentive Savings Plan (the PNC Plan). *See also* Facts and Representations #12 contained in the notice of proposed exemption, which summarizes the basis for satisfying the section 408(a) statutory criteria for providing exemptive relief. In this regard, an important condition of this exemption is that PNC paid all brokerage commissions associated with the Mercantile Plan's sale of the securities received in the Redemptions. *See* Section I(L) of the exemption. Further, the Department encourages applicants, their advisers and counsel to confer, in advance, with EBSA's Office of Exemption Determinations as to whether a contemplated non-*pro rata* in-kind redemption involving plan assets may qualify for prohibited transaction exemptive relief. Although the applicant requested both retroactive and prospective exemptive relief, the Department is granting only retroactive exemptive relief relating to the October 31, 2007 Redemptions.

[3] For purposes of this exemption, references to section 406 of the Act should be read to refer as well to the corresponding provisions of section 4975 of the Code.

Rate Security (if reliable information is available). Notwithstanding the foregoing, in the case of a pooled fund maintained or advised by Citigroup, this condition shall be deemed met to the extent each Plan invested in the pooled fund (other than a Citigroup Plan) receives advance written notice regarding the Unrelated Sale, where such notice contains all of the material terms of the Unrelated Sale;

(d) The Unrelated Sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security;

(e) The sales price for the Auction Rate Security is equal to the par value of the Auction Rate Security, plus any accrued but unpaid interest or dividends;

(f) The Plan does not waive any rights or claims in connection with the Unrelated Sale;

(g) The decision to accept the Offer or retain the Auction Rate Security is made by a Plan fiduciary or Plan participant or IRA owner who is independent (as defined in Section V(d)) of Citigroup. Notwithstanding the foregoing: (1) In the case of an IRA (as defined in Section V(e)) which is beneficially owned by an employee, officer, director or partner of Citigroup, the decision to accept the Offer or retain the Auction Rate Security may be made by such employee, officer, director or partner; or (2) in the case of a Citigroup Plan or a pooled fund maintained or advised by Citigroup, the decision to accept the Offer may be made by Citigroup after Citigroup has determined that such purchase is in the best interest of the Citigroup Plan or pooled fund; [4]

(h) Except in the case of a Citigroup Plan or a pooled fund maintained or advised by Citigroup, neither Citigroup nor any affiliate exercises investment discretion or renders investment advice within the meaning of 29 CFR 2510.3–21(c) with respect to the decision to accept the Offer or retain the Auction Rate Security;

(i) The Plan does not pay any commissions or transaction costs with respect to the Unrelated Sale;

(j) The Unrelated Sale is not part of an arrangement, agreement or understanding designed to benefit a party in interest to the Plan;

(k) Citigroup and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of the Unrelated Sale, such records as are necessary to enable the persons described below in paragraph (l)(1), to determine whether the conditions of this exemption, if granted, have been met, except that:

(1) No party in interest with respect to a Plan which engages in an Unrelated Sale, other than Citigroup and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (l)(1); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Citigroup or its affiliates, as applicable, such records are lost or destroyed prior to the end of the six-year period;

(l)(1) Except as provided below in paragraph (l)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (k) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission;

(B) Any fiduciary of any Plan, including any IRA owner, that engages in an Unrelated Sale, or any duly authorized employee or representative of such fiduciary; and

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the Unrelated Sale, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraphs (l)(1)(B)–(C) shall be authorized to examine trade secrets of Citigroup, or commercial or financial information which is privileged or confidential; and

(3) Should Citigroup refuse to disclose information on the basis that such information is exempt from disclosure, Citigroup shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section III. Sales of Auction Rate Securities From Plans to Citigroup: Related to a Settlement Agreement

The restrictions of section 406(a)(1)(A) and (D) and section 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the sale by a Plan of an Auction Rate Security to Citigroup, where such sale (a Settlement Sale) is related to, and made in connection with, a Settlement Agreement, provided that the conditions set forth in Section IV have been met.

Section IV. Conditions Applicable to Transactions Described in Section III

(a) The terms and delivery of the Offer are consistent with the requirements set forth in the Settlement Agreement and acceptance of the Offer does not constitute a waiver of any claim of the tendering Plan;

(b) The Offer or other documents available to the Plan specifically describe, among other things:

(1) *How a Plan may determine:* the Auction Rate Securities held by the Plan with Citigroup; the number of shares or par value of the Auction Rate Securities; the interest or dividend amounts that are due and unpaid with respect to the Auction Rate Securities; and (if reliable information is available) the most recent rate information for the Auction Rate Securities;

(2) The background of the Offer;

(3) That neither the tender of Auction Rate Securities nor the purchase of any Auction Rate Securities pursuant to the Offer will constitute a waiver of any claim of the tendering Plan;

(4) The methods and timing by which Plans may accept the Offer;

(5) The purchase dates, or the manner of determining the purchase dates, for Auction Rate Securities tendered pursuant to the Offer;

(6) The timing for acceptance by Citigroup of tendered Auction Rate Securities;

(7) The timing of payment for Auction Rate Securities accepted by Citigroup for payment;

(8) The methods and timing by which a Plan may elect to withdraw tendered Auction Rate Securities from the Offer;

(9) The expiration date of the Offer;

(10) The fact that Citigroup may make purchases of Auction Rate Securities outside of the Offer and may otherwise buy, sell, hold or seek to restructure,

[4] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 of the Act requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things, the decision to sell the Auction Rate Security to Citigroup for the par value of the Auction Rate Security, plus unpaid interest and dividends. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with this type of transaction following disclosure by Citigroup of all relevant information.

redeem or otherwise dispose of the Auction Rate Securities;

(11) A description of the risk factors relating to the Offer as Citigroup deems appropriate;

(12) How to obtain additional information concerning the Offer; and

(13) The manner in which information concerning material amendments or changes to the Offer will be communicated to the Plan;

(c) The terms of the Settlement Sale are consistent with the requirements set forth in the Settlement Agreement; and

(d) All of the conditions in Section II have been met.

Section V. Definitions

For purposes of this exemption:

(a) The term "affiliate" means any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(c) The term "Auction Rate Security" or "ARS" means a security: (1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and (2) with an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(d) A person is "independent" of Citigroup if the person is: (1) not Citigroup or an affiliate; and (2) not a relative (as defined in section 3(15) of the Act) of the party engaging in the transaction;

(e) The term "Plan" means an individual retirement account or similar account described in section 4975(e)(1)(B) through (F) of the Code (an IRA); an employee benefit plan as defined in section 3(3) of the Act; or an entity holding plan assets within the meaning of 29 CFR 2510.3–101, as modified by section 3(42) of the Act; and

(f) The term "Settlement Agreement" means a legal settlement involving Citigroup and a U.S. state or federal authority that provides for the purchase of an ARS by Citigroup from a Plan.

Effective Date: This exemption is effective as of February 1, 2008.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 23, 2010 at 75 FR 8128.

For Further Information Contact: Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act, section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986, as amended (FERSA), and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective September 4, 2008, to the cash sales (the Sales) by the Barclays Global Investors "Money Market Fund" and "Cash Equivalent Fund II," which are short-term collective investment funds (STIFs) managed or maintained by Barclays Global Investors, N.A. (BGI, or together with Barcal and any of their affiliates, collectively, "the Applicant"), of certain short-term debt instruments (the Notes) to Barcal, provided that the following conditions are met:

(a) The Sales were one-time transactions for cash payment made on a delivery versus payment (*i.e.,* same day) basis in the amount described in paragraph (b);

(b) The STIFs received an amount equal to the greater of:

(1) The amortized cost (including accrued and unpaid interest) of the Notes, determined as of the dates of the Sales, or

(2) the fair market value (including accrued and unpaid interest) of the Notes, determined by an independent third party source;

(c) The STIFs did not bear any commissions, transaction costs or other expenses in connection with the Sales;

(d) The terms and conditions of the Sales were at least as favorable to the STIFs as those available in an arm's-length transaction with an unrelated party.

(e) BGI, as fiduciary of the STIFs, determined that the Sales were in the best interest of the STIFs and any employee benefit plans (the Plans) invested in the STIFs as of the dates of the Sales.

(f) BGI took all appropriate actions necessary to safeguard the interests of the STIFs and any Plans invested in the STIFs in connection with the Sales.

(g) If the exercise of any of Barcal's rights, claims, or causes of action in connection with its ownership of the Notes results in Barcal recovering from the issuer of the Notes, or from any third party, an aggregate amount that is more than the sum of:

(1) The purchase price paid for such Notes by Barcal; and

(2) the interest due on the notes from and after the date Barcal purchased the Notes from the STIFs, Barcal will refund such excess amount promptly to the STIFs (after deducting all reasonable expenses incurred in connection with the recovery);

(h) BGI maintains, or causes to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons described below in paragraph (i)(1), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the covered transactions, other than BGI and its affiliates, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (i)(1);

(2) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of BGI, such records are lost or destroyed prior to the end of the six-year period. (i)(1) Except as provided, below, in paragraph (i)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (h) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or of the Internal Revenue Service; or

(B) Any fiduciary of any Plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a Plan that engages in a covered transaction, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described, above, in paragraph (i)(1)(B)–(D) shall be authorized to examine trade secrets of BGI, or commercial or financial information which is privileged or confidential; and

(3) Should BGI refuse to disclose information on the basis that such information is exempt from disclosure, BGI shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on March 15, 2010 at 75 FR 12308.

Effective Date: This exemption is effective September 4, 2008.

Written Comments

The only written comment received by the Department was submitted by the Applicant. The Applicant requested changes with respect to condition (i) of the Notice concerning the entities to whom the records maintained pursuant to condition (h) of the Notice are required to be made available by BGI. First, the Applicant requested that the records need not be made unconditionally available to duly authorized employees or representatives of the Securities and Exchange Commission (the SEC) because, unlike the cases involving Auction Rate Securities, the subject Sales were not required by an SEC settlement; nor are the STIFs within the jurisdiction of the SEC. The Department accepts these representations by the Applicant and has amended the grant accordingly. Second, the Applicant requested that the records need not be made unconditionally available to any participant or beneficiary of a Plan that engages in a covered transaction, or duly authorized employee or representative of such participant or beneficiary. The Applicant noted that there are nearly 1,000 Plans whose fiduciaries will have access to these records. There are millions of participants in these Plans, none of whom have a relationship with the Applicant. In order to protect the confidentiality of Plan arrangements, every time a Plan participant sought to review these records, the Applicant would be required to contact a Plan fiduciary to verify that the participant was in fact a participant in the Plan on the date of the transaction and is still a participant in the Plan. This would cause the Applicant to spend countless hours just so that a participant or his or her representative could review material that the Plan fiduciary already had in its possession. The Applicant stated that this would impose a considerable and unwarranted burden. However, because participants and beneficiaries of the Plans are affected by the subject Sales and have an interest in the fiduciary management of their Plan assets, it is the Department's view that they also should have access to the records maintained by BGI, which are otherwise required to be maintained and made available pursuant to the grant of exemptive relief. Accordingly, the Department has not made this requested change to the condition contained in section (i) of the Notice.

The Department has given full consideration to the entire record, including the comment letter received. The Department has determined to grant the exemption, with the one change as noted above.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Exemption

The restrictions of sections 406(a)(1)(A), 406(a)(1)(B), 406(a)(1)(D), 406(b)(1), and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (i) the February 20, 2009 cash sale (the Sale), at aggregate cost basis plus interest, by each of the Plans of interests in certain private equity funds (the Funds) to the CUNA Mutual Insurance Society (the Applicant), the sponsor of the Plans and a party in interest with respect to the Plans, pursuant to a contract between the Applicant and the trustee of the Plans concluded on that same date; (ii) the September 14, 2009 payment by the Applicant of certain additional cash amounts, including interest (the Top-Up Payments); to the Plans pursuant to the terms of the foregoing contract; and (iii) the extension of credit between the Plans and the Applicant from the date of the Sale (February 20, 2009) to the date of the Top-Up Payments (September 14, 2009), provided that the following conditions were satisfied:

(a) An independent fiduciary reviewed the terms and conditions of the Sale and of the Top-Up Payments prior to their execution, and determined that both were protective of the interests of the Plans;

(b) The independent fiduciary determined that the terms and conditions of both the Sale and of the Top-Up Payments were at least as favorable to the Plans as those that would have been obtained in an arm's length transaction between unrelated parties;

(c) The terms and conditions of both the Sale and of the Top-Up Payments were at least as favorable to the Plans as those that would have been obtained in an arm's length transaction between unrelated parties; and

(d) The independent fiduciary provided its opinion in written reports on behalf of the Plans as to the fairness and reasonableness of the Sale of the Plans' interests in the Funds to the Applicant, and determined that the terms of the original Sale and subsequent Top-Up Payments were especially beneficial to each of the Plans because: (i) On February 20, 2009, the Plans received a return of their aggregate cost basis of their interests in the Funds (which cost basis was determined by the independent fiduciary to exceed the aggregate fair market value of the Plans' interests in the Funds as of October 31, 2008), plus interest accrued on the Funds from their date of acquisition by each Plan through the date of the Sale; and (ii) On September 14, 2009, the independent fiduciary determined that, in instances where the fair market value of any Fund on December 31, 2008 exceeded its original cost basis, each of the Plans received a Top-Up Payment on September 14, 2009 comprised of the increased value of such Fund, plus interest accrued on such increased value from December 31, 2008 to the date of the Top-Up Payments (September 14, 2009).

Written Comments

The Notice of Proposed Exemption (The Notice), Published in the **Federal Register** on April 2, 2010 beginning on page 16849, invited all interested persons to submit written comments and requests for a hearing to the Department within forty-five (45) days of the date of its publication. At the close of the comment period, the Department received a single written comment from two current beneficiaries of the CUNA Mutual Pension Plan for Non-Represented Employees. While expressing concern about the Plan's initial decision to invest in the Funds, the comment letter was supportive of the proposed exemption for the sale of the Plan's interests in the Funds as described in the Notice. The Department did not receive any other written comments from interested persons with respect to the Notice during the aforementioned 45-day comment period, nor did it receive any requests for a hearing.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the text of the Notice at 75 FR 16849.

For Further Information Contact: Mr. Mark Judge of the Department at (202) 693–8550. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of June, 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–16097 Filed 7–1–10; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Application Nos. and Proposed Exemptions; D–11489, Morgan Stanley & Co., Incorporated; L–11609, The Finishing Trades Institute of the Mid-Atlantic Region (the Plan) et al.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No.___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "*moffitt.betty@dol.gov*", or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Warning: If you submit written comments or hearing requests, do not include any personally-identifiable or confidential business information that you do not want to be publicly-disclosed. All comments and hearing requests are posted on the Internet exactly as they are received, and they can be retrieved by most Internet search engines. The Department will make no deletions, modifications or redactions to the comments or hearing requests received, as they are public records.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1974 (the Code), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Transactions Involving Plans Described in Both Title I and Title II of ERISA

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and section 406(b) of ERISA, and the sanctions resulting from the application of sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met: [1]

(a) The sale or exchange of an "Auction Rate Security" (as defined in Section IV (b)) by a "Plan" (as defined in Section IV(h)) to the "Sponsor" (as defined in Section IV (g)) of such Plan; or

[1] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer also to the corresponding provisions of section 4975 of the Code.

(b) A lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security by the Plan, from (1) Morgan Stanley & Co. Incorporated or an Affiliate (Morgan Stanley); (2) an "Introducing Broker" (as defined in Section IV (f)); or (3) a "Clearing Broker" (as defined in Section IV (d))—where the loan is (i) repaid in accordance with its terms, and (ii) guaranteed by the Plan Sponsor.

II. Transactions Involving Plans Described in Title II of ERISA Only

If the proposed exemption is granted, the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met: (a) The sale or exchange of an Auction Rate Security by a "Title II-Only Plan" (as defined in Section IV(i)) to the Beneficial Owner" (as defined in Section IV(c)) of such Plan; or (b) *A* lending of money or other extension of credit to a Title II-Only Plan in connection with the holding of an Auction Rate Security by the Title II-Only Plan, from (1) Morgan Stanley; (2) an Introducing Broker; or (3) a Clearing Broker—where the loan is (i) repaid in accordance with its terms, and (ii) guaranteed by the Beneficial Owner.

III. Conditions

(a) Morgan Stanley acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction;

(b) For transactions involving a Plan (including a Title II-Only Plan) not sponsored by Morgan Stanley for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is "Independent" (as defined in Section IV(e)) of Morgan Stanley. Notwithstanding the foregoing, an employee of Morgan Stanley who is the Beneficial Owner of a Title II-Only Plan may direct such Plan to engage in a transaction described in Section II, if all of the other conditions of this Section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the loan or sale as a condition of engaging in the above described transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement, or understanding designed to benefit a party in interest or disqualified person;

(g) With respect to any sale described in Section I(a) or Section II(a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest; [2]

(h) With respect to an in-kind exchange described in Section (I)(a) or Section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a "Delivered Security," as such term is defined in Section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and is a security that the Plan is otherwise permitted to hold under applicable law; [3]

(5) The total value of the Auction Rate Security (*i.e.,* par, plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in Section I(b) or II(b):

(1) The loan is documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

(A) The coupon rate for the Auction Rate Security;

(B) The Federal Funds Rate; or

(C) The Prime Rate;

(3) The loan is unsecured; and

(4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

(j) Morgan Stanley maintains, or causes to be maintained, for a period of at least six (6) years from the date of a covered transaction, such records as are necessary to enable the persons described in paragraph (k), below, to determine whether the conditions of this exemption, if granted, have been met, except that—

(1) No party in interest with respect to a Plan that engages in a covered transaction, other than Morgan Stanley shall be subject to a civil penalty under section 502(i) of ERISA or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or are not available for examination, as required, below, by paragraph (k); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of Morgan Stanley, such records are lost or destroyed prior to the end of the six-year period; and

(k)(1) Except as provided in subparagraph (2), below, and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of ERISA, the records referred to in paragraph (j), above, are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the U.S. Securities and Exchange Commission;

(B) Any fiduciary of any Plan, including any IRA owner, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by the Plan that engages in a covered transaction, or any authorized employee or representative of these entities;

(2) None of the persons described above in paragraph (k)(1)(B) or (C) shall be authorized to examine trade secrets of Morgan Stanley, or commercial or financial information which is privileged or confidential; and

[2] The Department notes that this proposed exemption does not address tax issues. The Department has been informed by the Internal Revenue Service and the Department of the Treasury that they are considering providing limited relief from the requirements of sections 72(t)(4), 401(a)(9), and 4974 of the Code with respect to retirement plans that hold Auction Rate Securities. The Department has also been informed by the Internal Revenue Service that if Auction Rate Securities are purchased from a Plan in a transaction described in Sections I and II at a price that exceeds the fair market value of those securities, then the excess value would be treated as a contribution for purposes of applying applicable contribution and deduction limits under sections 219, 404, 408, and 415 of the Code.

[3] The Department notes that ERISA's general standards of fiduciary conduct would also apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivered Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the transactions, to fully understand the risks associated with these types of transactions, following disclosure by Morgan Stanley of all the relevant information.

(3) Should Morgan Stanley refuse to disclose information on the basis that such information is exempt from disclosure, Morgan Stanley shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

IV. Definitions

(a) The term "Affiliate" means any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term "Auction Rate Security" or "ARS" means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch Auction process;

(c) The term "Beneficial Owner" means the individual for whose benefit the Title II-Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term "Clearing Broker" means a member of a securities exchange who acts as a liaison between an investor and a clearing corporation, helps to ensure that a trade is settled appropriately, ensures that the transaction is successfully completed, and is responsible for maintaining the paper work associated with the clearing and execution of a transaction;

(e) The term "Independent" means a person who is (1) not Morgan Stanley or an Affiliate, and (2) not a "relative" (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(f) The term "Introducing Broker" means a registered broker who is able to perform all the functions of a broker, except for the ability to accept money, securities, or property from a customer;

(g) The term "Sponsor" means a plan sponsor as described in section 3(16)(B) of ERISA and any Affiliates;

(h) The term "Plan" means any plan described in section 3(3) of ERISA and/or section 4975(e)(1) of the Code;

(i) The term "Title II-Only Plan" means any plan described in section 4975(e)(1) of the Code that is not an employee benefit plan covered by Title I of ERISA;

(j) The term "Delivered Security" means a security that is (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) A U.S. Treasury obligation; or (3) A fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an Independent nationally recognized statistical rating organization (*e.g.,* a highly rated municipal bond or a highly rated corporate bond); or (4) A certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term "Delivered Security" shall not include any Auction Rate Security, or any related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

Summary of Facts and Representations

1. The applicant Morgan Stanley & Co. Incorporated and its Affiliates (hereinafter, either "Morgan Stanley" or the "applicant"), headquartered in New York, New York, is one of the nation's pre-eminent global financial services firms. Morgan Stanley serves a large and diversified group of clients and customers, including corporations, governments, financial institutions, and individuals around the world. On September 21, 2008 Morgan Stanley obtained approval from the Board of Governors of the Federal Reserve System to become a bank holding company upon the conversion of its wholly owned indirect subsidiary, Morgan Stanley Bank (Utah), from a Utah industrial bank to a national bank. On September 23, 2008 the Office of the Comptroller of the Currency authorized Morgan Stanley Bank (Utah) to commence business as a national bank, operating as Morgan Stanley Bank, N.A. Concurrent with this conversion, Morgan Stanley became a financial holding company under the Bank Holding Company Act of 1956, as amended. Morgan Stanley & Co. Incorporated, Morgan Stanley's primary operating unit, is also both a registered investment adviser subject to the Investment Advisers Act of 1940 and a SEC-registered broker-dealer subject to the supervision of various governmental and self-regulatory bodies. Morgan Stanley offers a full array of investment-related services, including securities research, brokerage, execution, asset allocation, financial planning, investment advice, discretionary asset management services, sweep, and trust/custody services.

Morgan Stanley Smith Barney has recently been formed as a joint venture. Under the joint venture agreement, Citigroup, Inc. (Citigroup) and Morgan Stanley (including their respective subsidiaries) each contributed specified businesses to the joint venture, together with all contracts, employees, property licenses, and other assets (as well as liabilities) used primarily in the contributed businesses. Generally, in the case of Citigroup, the contributed businesses include Citigroup's retail brokerage and futures business operated under the name "Smith Barney" in the United States and Australia and operated under the name "Quilter" in the United Kingdom, Ireland and Channel Islands. Certain investment advisory and other businesses of Citigroup are also included. In the case of Morgan Stanley, the contributed businesses generally consist of Morgan Stanley's global wealth management (retail brokerage) and private wealth management businesses.

As of September 30, 2009, Morgan Stanley employed 62,000 individuals and operates 1200 offices in 36 countries with over $1.5 trillion in client assets held at its broker-dealer.

The applicant requests both retroactive and prospective exemptive relief for transactions involving certain of Morgan Stanley's client accounts in the time frame prior to the formation of the joint venture and going forward.

2. Among other things, Morgan Stanley acts as a broker and dealer with respect to the purchase and sale of securities, including Auction Rate Securities (ARS). The applicant describes ARS and the arrangement by which ARS are bought and sold as follows. ARS are securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate

securities among the bidders at such rate on a *pro rata* basis.

3. The applicant represents that Morgan Stanley is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the ARS market in its sole discretion. Morgan Stanley may routinely place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent (1) a failed auction (*i.e.,* an event where there are insufficient clearing bids that would result in the auction rate being set at a specified rate); or (2) an auction from clearing at a rate that Morgan Stanley believes does not reflect the market for the particular ARS being auctioned.

4. The applicant represents that for many ARS, Morgan Stanley has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Morgan Stanley is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Morgan Stanley. That agreement provides that Morgan Stanley will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Morgan Stanley.

5. The applicant states that Morgan Stanley may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Morgan Stanley, for those orders that Morgan Stanley successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Morgan Stanley act as dealer, such other broker-dealers may share auction dealer fees with Morgan Stanley for orders submitted by Morgan Stanley.

6. According to the applicant, since February 2008, a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals, and expense payments when due.[4]

7. The applicant represents that, in certain instances, Morgan Stanley may have previously advised or otherwise caused a Plan to acquire and hold an ARS and thus may be considered a fiduciary to the Plan so that a loan to the Plan by Morgan Stanley may violate section 406(a) and (b) of ERISA; in addition, a sale between a Plan and its sponsor or an IRA and its Beneficial Owner violates ERISA section 406 and/or section 4975(c)(1) of the Code.[5] The applicant is therefore requesting relief for the following transactions, involving all employee benefit plans: (1) The sale or exchange of an ARS from a Plan to the Plan's Sponsor;[6] and (2) a lending of money or other extension of credit to a Plan in connection with the holding of an ARS from Morgan Stanley, an Introducing Broker, or a Clearing Broker—where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Plan Sponsor.

8. The applicant is requesting similar relief for plans covered by only Title II of ERISA. In this regard, the applicant is requesting relief for: (1) The sale or exchange of an ARS from a Title II-Only Plan to the Beneficial Owner of such Plan; and (2) a lending of money or other extension of credit to a Title II-Only Plan in connection with the holding of an ARS from Morgan Stanley, an Introducing Broker, or a Clearing Broker—where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Beneficial Owner.

9. The applicant represents that the proposed transactions are in the interests of the Plans. In this regard, the applicant represents that the exemption, if granted, will provide Plan fiduciaries with liquidity, notwithstanding changes that have occurred in the ARS markets. The applicant also notes that, other than for Plans sponsored by the applicant, the decision to enter into a transaction described herein will be made by a Plan fiduciary who is Independent of Morgan Stanley.

10. The proposed exemption contains a number of safeguards designed to protect the interests of each Plan. With respect to the sale of an ARS by a Plan, the Plan must receive cash equal to the par value of the Security, plus any accrued interest. The sale must also be unconditional, other than being for payment against prompt delivery. For in-kind exchanges covered by the proposed exemption, the security delivered to the Plan (*i.e.,* the Delivered Security) must be: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (*e.g.,* a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. The Delivered Security must be appropriate for the Plan and must be a security that the Plan is permitted to hold under applicable law. The proposed exemption further requires that the Delivered Security be valued at its fair market value, as determined at the time of the exchange from a third party pricing service or other objective source and must equal the total value of the ARS being exchanged (*i.e.,* par value, plus any accrued interest).

11. With respect to a loan to a Plan holding an ARS, such loan must be documented in a written agreement containing all of the material terms of the loan, including the consequences of default. Further, the Plan may not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan: The coupon rate for the ARS, the Federal Funds Rate, or the Prime Rate. Additionally, such loan must be unsecured and for an amount that is no more than the total par value of ARS held by the affected Plan.

12. Additional conditions apply to each transaction covered by the exemption, if granted. Among other things, the Plan may not pay any fees or commissions in connection with the transaction and the transaction may not be part of an arrangement, agreement, or understanding designed to benefit a party in interest or disqualified person. Further, any waiver of rights or claims by a Plan is prohibited, in connection with the sale or exchange of an ARS by a Plan, or a lending of money or other extension of credit to a Plan holding an ARS.

13. In summary, the applicant represents that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of ERISA and section 4975(c)(2) of the Code because:

(1) Any sale will be:

(A) For no consideration other than cash against prompt delivery of the ARS; and

(B) At par, plus any accrued but unpaid interest;

[4] The Department notes that Prohibited Transaction Exemption (PTE) 80–26 (45 FR 28545 (Apr. 29, 1980), as amended at 71 FR 17917 (Apr. 7, 2006)) is a class exemption that permits interest-free loans or other extensions of credit from a party in interest to a plan if, among other things, the proceeds of the loan or extension of credit are used only (1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the plan.

[5] The Department notes that the relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of ERISA.

[6] The Applicant represents that, as of May 7, 2010, no in-kind exchanges have occurred but may in the future.

(2) Any in-kind exchange will be unconditional, other than being for payment against prompt delivery, and will involve Delivered Securities that are:

(A) Appropriate for the Plan;

(B) Listed on a national securities exchange (but not OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); U.S. Treasury obligations; fixed income securities; or certificates of deposit; and

(C) Securities that the Plan is permitted to hold under applicable law; and,

(3) Any loan will be:

(A) Documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(B) At an interest rate not in excess of the coupon rate for the ARS, the Federal Funds Rate, or the Prime Rate;

(C) Unsecured; and

(D) For an amount that is not more than the total par value of ARS held by the affected Plan.

Notice to Interested Persons

The applicant represents that all the potentially interested persons cannot be identified and that, therefore, the only practicable means of notifying interested persons of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing are due within 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8557. (This is not a toll-free number.)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act shall not apply to the proposed loan of approximately $1,081,416 (the Loan) to the Plan by the International Union of Painters and Allied Trades, District Council 21 (the Union), a party in interest with respect to the Plan, for (1) the repayment of an outstanding loan (the Original Loan) made to the Plan by Commerce Bank and currently held by TD Bank (the Bank), both of which are unrelated parties; and (2) to facilitate the expansion of a training facility (the Facility) that is situated on certain real property (the Land)[7] owned by the Plan, provided that the following conditions are met:

(a) The terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's length transaction with an unrelated party;

(b) The Plan's trustees determine in writing that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) A qualified, independent fiduciary that is acting on behalf of the Plan (the Qualified Independent Fiduciary) reviews the terms of the Loan and determines that the Loan is an appropriate investment for the Plan and protective of and in the best interests of the Plan and its participants and beneficiaries;

(d) In determining the fair market value of the Property that serves as collateral for the Loan, the Qualified Independent Fiduciary (1) obtains an appraisal of the Property from a qualified, independent appraiser (the Qualified Independent Appraiser); and (2) ensures that the appraisal prepared by the Qualified Independent Appraiser is consistent with sound principles of valuation;

(e) The Qualified Independent Fiduciary monitors the Loan, as well as the terms and conditions of the exemption, and takes whatever actions are necessary and appropriate to safeguard the interests of the Plan and its participants and beneficiaries under the Loan;

(f) The Loan is repaid by the Plan solely with the funds the Plan retains after paying all of its operational expenses; and

(g) The Plan does not pay any fees or other expenses in connection with the servicing or administration of the Loan.

Summary of Facts and Representations

1. The Union is located in Philadelphia, Pennsylvania, and it represents members in the finishing trades, such as painters, drywall finishers, wall coverers, glaziers and glass workers, in Pennsylvania and New Jersey. The Plan was established by the Union in 1966 as a training program for individuals who are Union members and are employed by contributing employers with regard to the Plan. The Plan has twelve (12) trustees (the Trustees). Half of the Trustees represent Union members and half of the Trustees represent contributing employers. The purpose of the Plan is to provide eligible participants (the Participants) with training for career advancement to journeyperson status and continued education in the Union's construction industries. As of February 15, 2010, the Plan had approximately 5,000 Participants and approximately $5,649,370 in total assets.

2. Among the Plan's assets is the Facility, which is located at 2190 Hornig Road, Philadelphia, PA. The Facility is comprised mainly of classrooms and indoor work areas, and it is used by Participants to acquire construction training.

3. In 2004, the Trustees determined a need to purchase a training facility to better serve the ongoing needs of the Participants due to the increasingly sophisticated requirements of workers in the finishing trades, particularly with regard to glazing and architectural glass and metalworking. In November 2004, the Trustees identified the Property as a viable option to serve their training needs.

4. The Trustees secured third party financing of $1,200,000 to assist in the purchase of the Property, for a total purchase price of $2,600,000 (the Purchase).[8] The Property was purchased from a party that was not related to the Plan or the Union. To finance the Purchase, the Trustees caused the Plan to receive the Original Loan from the Bank. The Original Loan was entered into on March 23, 2005.

5. The Original Loan, which is in the principal amount of $1,200,000, has a term of 15 years, and it requires the Plan to pay an adjustable rate of interest. At the time the Original Loan was made, the interest rate was set at the prime rate published in *The Wall Street Journal,* or 5.5%, calculated based on a 360-day year. Since entering into the Original Loan with the Plan, the Bank has reduced the interest rate to 3.5%. The Bank is required to review the annual interest rate of the Original Loan on the fifth and tenth anniversaries of the Original Loan, but the annual interest rate cannot exceed 5.5%.

Under the terms of the Original Loan, the Plan is required to make, commencing May 1, 2005, 179 consecutive monthly installments of principal and interest, amortized over the fifteen (15) year loan period in an amount equal to $9,805, followed by one final payment of all outstanding principal, interest and fees on the maturity date of April 1, 2020.

Further, under the Original Loan, the Plan has assigned its lessor's interest in all rents, income and profits arising from leases pertaining to the Property as

[7] Unless otherwise stated herein, the Facility and the Land are together referred to as the "Property."

[8] The difference between $2,600,000 and $1,200,000 was paid with a cash down payment.

well as all contracts, licenses and permits associated with its ownership of the Property, and it has executed an environmental indemnity agreement. In addition, the Original Loan allows the Bank to reserve the right to elect, on the fifth and tenth anniversaries of the Original Loan, to call such loan in full and require the Plan to repay the remaining principal of the Original Loan and any interest then due and payable. Finally, as security for the Original Loan, the Plan has granted the Bank a first lien interest in both the Facility and the Land. As of March 23, 2010, the principal balance outstanding on the Original Loan was $881.418.95.[9]

6. In March 2010, despite the fact that the Plan has made all of the payments required under the Original Loan on time without any defaults or delinquencies, the Bank indicated that it may elect to call the Original Loan by July 1, 2010. Therefore, the Union proposes to lend the Plan, as of March 23, 2010, $1,081,416 under the terms of a replacement loan (*i.e.,* the Loan). The Loan will enable the Plan to repay the Original Loan and provide approximately $200,000 in additional funds to finance an expansion of the Facility by adding two new classrooms.[10] Accordingly, an administrative exemption is requested from the Department.

7. The Loan will have a fixed rate of interest of 4% per annum, and the Loan will not be able to be called by the Union, except in the event of a complete default upon the Loan. Under the terms of the Loan, the Plan will be required to make 180 consecutive monthly installments of principal and interest, amortized over the fifteen (15) year loan period, calculated over a 365-day year, followed by one final payment of all outstanding principal, interest and fees on the maturity date. The Plan will not be required to assign its lessor's interest in rents, income and profits arising from leases pertaining to the Property or its interests in contracts, licenses and permits associated with its ownership of the Property. In addition, the Loan will not require the Plan to execute an environmental indemnity agreement. As security for the Loan, the Plan will grant the Union a first lien interest in the Facility and the Land. Finally, the Plan will not be required to pay any fees or other expenses in connection with the servicing or the administration of the Loan.

8. The Trustees represent that the Loan will be beneficial to the Plan since it allows the Plan to forecast more accurately the cost of its debt service over the life of the Loan. Further, the Trustees explain that the potential for the interest rate of the Original Loan to reset on the fifth and tenth anniversaries of the Original Loan raises problems for the Plan's ability to conduct accurate expense forecasting.

The Trustees also represent that the terms of the Loan are more favorable to the Plan than the terms of the Original Loan for several reasons. First, the Loan cannot be called by the Union except in the event of a complete default upon the Loan. Second, unlike the Original Loan, the Loan does not require provisions such as environmental indemnity agreements; assignments of contracts, licenses and permits; and assignments of leases and rents. Third, the Loan provides a more favorable interest calculation in comparison to the Original Loan, with such interest being calculated based on a 365-day year instead of a 360-day year.

Further, the Trustees state that the Loan will be beneficial to the Plan in that it will allow the Plan to expand the Facility to better serve the Participants. The Trustees note that the Plan will add two classrooms with $200,000 of the proceeds from the Loan, thus allowing the Plan to offer training sessions in a broader range of subjects and to a higher number of Participants.

Finally, the Trustees assert that the Plan will repay the Loan solely with funds retained by the Plan after paying for all of its operational expenses (the Excess Funds).[11]

9. The Plan retained Louis A. Iatarola, MAI, SRA, to appraise the Property. Mr. Iatarola is a Qualified Independent Appraiser who is affiliated with the real estate appraisal firm of Louis A. Iatarola Appraisal Group, Ltd., located in Philadelphia, PA. Mr. Iatarola has no present or prospective interest in the Loan transaction, and he is unrelated to the Union. During 2009, he derived less than one percent of his gross revenue from parties in interest with respect to the Plan. Mr. Iatarola visited the Property on November 17, 2009, prepared a valuation report, dated December 16, 2009, and examined relevant public records. As of November 17, 2009, Mr. Iatarola opined in his appraisal report that an unencumbered fee simple interest in the Property had a fair market value $4,000,000, with such opinion based on a reconciliation of value estimates derived from the Sales Comparison Approach and the Income Capitalization Approach to valuation.

10. The terms of the Loan have been initially reviewed and, thereafter, will be monitored by John Ward, an attorney in Washington, DC, who will act as the Plan's Qualified Independent Fiduciary. Mr. Ward has no present or prospective interest in the Loan transaction, and he is unrelated to the Union. Mr. Ward has represented labor unions and their associated benefit funds throughout his career, and he has focused his professional energies on tax and ERISA matters faced by those organizations. During 2009, Mr. Ward derived less than one percent of his gross revenue from parties in interest with respect to the Plan. Mr. Ward represents that he is qualified to act as the Qualified

[9] The outstanding principal balance on the Original Loan will decline with each monthly payment made by the Plan. As a result, the anticipated Loan amount will be adjusted to reflect any such decline.

[10] The Department is expressing no opinion in this proposed exemption regarding whether the Loan violates any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Moreover, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration of those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–1). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

[11] The Union represents that the Plan's operational expenses are funded by contributions made to the Plan by contributing employers. These contributions are based on a portion of each Participant's hourly wage paid by such employers. The Union represents that the Participants' hourly wage rate is negotiated periodically between the Union and the contributing employers. Thus, the Union represents that the Participants' wage deduction amount for contributions made by the employers to the Plan is determined by the parties each year.

The Union further represents that the computation of the amount of Excess Funds available for repayment of the Loan will be according to generally accepted accounting principles by a certified public accountant representing the Plan.

Independent Fiduciary, and he understands and accepts the duties, responsibilities and liabilities in acting as a fiduciary with respect to the Plan. In this regard, Mr. Ward states (a) that the Loan is both an appropriate investment for the Plan and in the best interest of the Plan and its participants and beneficiaries and (b) that he will continue to monitor the Plan's repayment of the Loan and will take whatever actions are necessary to protect the interest of the Plan and its participants and beneficiaries.

11. As part of his review of the Loan transaction, Mr. Ward engaged two additional Qualified Independent Appraisers, George Calomiris, AIA, CDS, Certified General Appraiser, and Kevin Boyle, Certified Residential Appraiser, to confirm the accuracy of the initial appraisal performed by Mr. Iatarola. Messrs. Calomiris and Boyle are affiliated with the real estate appraisal firm of William Calomiris Company, LLC, located in Washington, DC. They have no present or prospective interest in the Loan transaction, and they are unrelated to the Plan and the Union. During 2009, Messrs. Calomiris and Boyle derived less than one percent of their gross revenue from parties in interest with respect to the Plan. In developing their opinion on the accuracy of Mr. Iatarola's appraisal, Messrs. Calomiris and Boyle visited the Property, reviewed a valuation report prepared by Mr. Iatarola, and examined relevant public records. In an appraisal report dated February 19, 2010, Messrs. Calomiris and Boyle confirmed the opinion of Mr. Iatarola that the Property would have a fair market value of at least $4,000,000, which would place the loan-to-value ratio at 28%.

12. Mr. Ward investigated the interest rates that would be available to the Plan were it to secure a fixed rate loan from an unrelated lender. In so doing, he noted that not only would any potential lender benefit from the 28% loan to value ratio, thereby making any potential loan highly secured, but that the Plan had consistently demonstrated over the past five (5) years that it was willing and able to make monthly mortgage payments on time and in full, with more than sufficient annual income to easily cover monthly obligations under nearly any potential mortgage loan.

Mr. Ward also opined that the current commercial interest rates would be higher than the rate charged by the Union under the Loan. Specifically, Mr. Ward sampled senior loan officers at PNC Bank and Wachovia Bank/Wells Fargo, and such senior loan officers indicated that neither bank would be able to match the terms provided in the Loan. In this regard, the PNC Bank representative informed Mr. Ward that a fixed rate loan at 4% for 15 years seemed rather low and that a 6% rate would be more realistic for a 15 year commercial loan. The Wachovia Bank/Wells Fargo representative concurred with the guidance offered by the PNC Bank representative.

In conclusion, Mr. Ward opined that (a) the Loan is both an appropriate investment for the Plan and in the best interest of the Plan and its participants and beneficiaries; and (b) the terms and conditions of the Loan are more favorable to the Plan and its participants and beneficiaries than the terms of similar loans which might be made to the Plan by an unrelated party in an arm's length transaction.[12]

13. In summary, the Plan represents that the transaction satisfies the statutory criteria for an administrative exemption that are contained in section 408(a) of the Act for the following reasons: (a) The terms and conditions of the Loan will be at least as favorable to the Plan as those which the Plan could obtain in an arm's length transaction with an unrelated party; (b) the Trustees have determined in writing that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (c) Mr. Ward, as the Plan's Qualified Independent Fiduciary, has reviewed the terms of the Loan and has determined that the Loan would be protective of and in the best interests of the Plan and its participants and beneficiaries; (d) in determining the fair market value of the Property, Mr. Ward has obtained an appraisal from a Qualified Independent Appraiser and has ensured that the appraisal prepared by the Qualified Independent Appraiser is consistent with sound principles of valuation; (e) Mr. Ward will monitor the Loan, as well as the terms and conditions of the proposed exemption (if granted), and will take whatever actions are necessary to safeguard the interests of the Plan and its participants and beneficiaries under the Loan; (f) the Loan will be repaid by the Plan solely with the funds the Plan retains after paying all of its operational expenses; and (g) the Plan will not pay any fees or other expenses in connection with the servicing or administration of the Loan.

[12] In an addendum to his Qualified Independent Fiduciary report, dated May 6, 2010, Mr. Ward stated that he was unaware that the interest rate for the Original Loan at its outset had been 5.5%, with the interest rate being lowered to 3.5% at a later date. Nevertheless, he explained that the fact that the Original Loan's interest rate had been reduced from 5.5 to 3.5 percent would have no bearing on his opinion regarding the appropriateness of the Loan.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shiker of the Department, telephone (202) 693–8552. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 28th day of June, 2010.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2010–16096 Filed 7–1–10; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Proposed Collection; Comment Request

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data is provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents is properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: Blanket Justification for NEA Funding Application Guidelines and Reporting Requirements. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**. The NEA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Can help the agency minimize the burden of the collection of information on those who are to respond, including through the use of electronic submission of responses through Grants.gov.

ADDRESSES: Send comments to Jillian Miller, Director, Office of Guidelines and Panel Operations, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 621, Washington, DC 20506–0001; telephone (202) 682–5504 (this is not a toll-free number), fax (202) 682–5049.

Kathleen Edwards,

Director, Administrative Services, National Endowment for the Arts.

[FR Doc. 2010–16155 Filed 7–1–10; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on ESBWR

The ACRS Subcommittee on ESBWR will hold a meeting on July 13, 2010, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is proprietary to General Electric—Hitachi Nuclear Americas, LLC (GEH) and its contractors pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, July 13, 2010—8:30 a.m. until 5 p.m.

The Subcommittee will discuss issues relating to long-term core cooling, containment peak pressure, vacuum breaker isolation, and accumulation of hydrogen in containment. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GEH, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: June 25, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–16170 Filed 7–1–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Subcommittee on Plant Operations and Fire Protection

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on July 29, 2010, at the U.S. NRC Region IV, Texas Health Resources Tower, 612 E. Lamar Blvd., Suite 400, Arlington, TX 76011–4125.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, July 29, 2010—8:30 a.m. until 2 p.m.

The Subcommittee will meet with the Administrator and Region IV staff on

items of mutual interest. The subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee at a later date.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mrs. Kathy Weaver, via e-mail *Kathy.Weaver@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. Presenters should also provide the DFO with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009 (74 FR 58268–58269).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Date: June 23, 2010.

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2010–16183 Filed 7–1–10; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed collection; comment request

Summary: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

1. Investigation of Claim for Possible Days of Employment; OMB 3220–0196

Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA), unemployment and sickness benefits are not payable for any day with respect to which remuneration is payable or accrues to the claimant. Also Section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulations, 20 CFR 322.4(a), a claimant's certification or statement on an RRB provided claim form that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day or days, investigation shall be made with a view to obtaining information sufficient for a finding.

Form ID–5S(SUP), Report of Cases for Which All Days Were Claimed During a Month Credited Per an Adjustment Report, collects information about compensation credited to an employee during a period when the employee claimed either unemployment or sickness benefits from a railroad employer. The request is generated as a result of a computer match that compares data which is maintained in the RRB's RUIA Benefit Payment file with data maintained in the RRB's records of service. The ID–5S(SUP) is generated annually when the computer match indicates that an employee(s) of the railroad employer was paid unemployment or sickness benefits for every day in one or more months for which creditable compensation was adjusted due to the receipt of a report of creditable compensation adjustment (RRB Form BA–4, OMB Approved 3220–0008) from their railroad employer.

The computer generated Form ID–5S(SUP) includes pertinent identifying information, the BA–4 adjustment process date and the claimed months in question. Space is provided on the report for the employer's use in supplying the information requested in the computer generated transmittal letter, Form ID–5S, which accompanies the report. The RRB estimates that 80 responses are received annually. Completion is voluntary. Completion time is estimated at 10 minutes. One response is requested of each respondent. The RRB proposes no changes to Form ID–5S(SUP).

2. Designation of Contact Officials; 3220–0200

Coordination between railroad employers and the RRB is essential to properly administer the payment of benefits under the Railroad Retirement Act (RRA) and the Railroad Unemployment Insurance Act (RUIA). In order to enhance timely coordination activity, the RRB utilizes Form G–117a, Designation of Contact Officials. Form G–117a is used by railroad employers to designate employees who are to act as point of contact with the RRB on a variety of RRA and RUIA-related matters.

The RRB estimates that 100 responses are received annually. Completion is voluntary. Completion time is estimated at 15 minutes. One response is requested from each respondent. The RRB proposes no changes to Form G–117a.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Patricia.Henaghan@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2010–16161 Filed 7–1–10; 8:45 am]

BILLING CODE 7905–01–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Notice of Submission of Proposed Information Collection to OMB Emergency Comment Request

ACTION: Notice of proposed information collection.

SUMMARY: The Recovery Accountability and Transparency Board (Board) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the emergency provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Comments are due July 16, 2010.

ADDRESSES: Send all comments to Sharon Mar, Desk Officer for the Recovery Accountability and Transparency Board, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax 202–395–5167; or e-mail to *smar@omb.eop.gov.*

Title of Collection: Jobs Reporting under Section 1512 of the American Recovery and Reinvestment Act of 2009.

OMB Control No.: 0430—Pending.

Description: Section 1512 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5, 123 Stat. 115 (2009)) (Recovery Act) requires recipients of Recovery Act funds to report an estimate of the number of jobs created or retained by particular projects or activities. These reports are submitted to FederalReporting.gov, and information from these reports is later posted to the publicly available Web site *Recovery.gov*. Among other things, the purpose of the Recovery Act is "to preserve and create jobs and promote economic recovery." An integral part of the nation's recovery is the creation of jobs. However, there has been very little oversight of the job numbers reported by recipients of Recovery funds. The U.S. Government Accountability Office (GAO) and the Inspectors General (IGs) have done limited testing on some recipients. The limited testing to date has found the following: (1) Some recipients were confused by the revised guidance issued by the Office of Management and Budget (OMB) on December 18, 2009 (M–10–08); (2) some recipients decided not to use the updated jobs reporting guidance; (3) one state recipient estimated the number of jobs that could potentially be created; and (4) one recipient was calculating jobs by dividing average salaries by the number of employees. Therefore, a statistically valid sample test would provide the insight needed to better understand these jobs numbers. The sample would be approximately 200 recipients and should provide enough data to determine whether the jobs numbers reported are reasonable. The information requested would be limited to the recipients' policies and procedures for compiling and reporting the jobs data; documentation for the jobs reported; and identifying any on-going challenges faced in complying with the job reporting requirements. The information requested in most circumstances will be less than 10 pages.

Affected Public: Recipients, as defined in section 1512(b)(1) of the Recovery Act, of Recovery Act funds.

Total Estimated Number or Respondents: 200.

Frequency of Responses: Once.

Total Estimated Annual Burden Hours: 400.

Ivan J. Flores,

Paralegal Specialist, Recovery Accountability and Transparency Board.

[FR Doc. 2010–16125 Filed 7–1–10; 8:45 am]

BILLING CODE 6820–GA–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62386; File No. SR–CBOE–2010–060]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Establishment of the Initial Fees for Post-Demutualization Trading Permits, Tier Appointment and Bandwidth Packets

June 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 21, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. 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

CBOE proposes to establish the initial fees for CBOE's initial post-demutualization Trading Permits, tier appointment and bandwidth packets. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, 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, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the demutualization of the Exchange through which the Exchange is restructuring from a non-stock corporation to a stock corporation and a wholly-owned subsidiary of CBOE Holdings, Inc., the Exchange has amended its Rules to provide for the use of Trading Permits, instead of memberships, to access the Exchange.

CBOE Rule 2.20 grants the Exchange the authority to, from time to time, fix the fees and charges payable by Trading Permit Holders. The purpose of this proposed rule change is to establish the initial fees for CBOE's initial post-demutualization Trading Permits, tier appointment and bandwidth packets. These post-demutualization Trading Permits, tier appointment and bandwidth packets will become effective immediately following the close of trading on the date of the closing of the Exchange's demutualization transaction, and CBOE members on the date of the closing of the demutualization transaction will retain their then current access to the Exchange until the close of trading on that date. The Exchange also proposes to amend the CBOE Stock Exchange, LLC ("CBSX")[3] Fees Schedule to cross-reference that CBSX Trading Permit access fees are set forth in the CBOE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] CBSX is a facility of CBOE for the trading of non-option securities, and trading on CBSX is governed by CBOE Rules.

Fees Schedule. As further described below, there is no access fee proposed for CBSX-only Trading Permit Holders.

Trading Permit Fees:

CBOE Rule 1.1(ggg) defines a Trading Permit as a license issued by the Exchange that grants the holder or the holder's nominee the right to access one or more of the facilities of the Exchange for the purpose of effecting transactions in securities traded on the Exchange without the services of another person acting as broker, and otherwise to access the facilities of the Exchange for purposes of trading or reporting transactions or transmitting orders or quotations in securities traded on the Exchange, or to engage in other activities that, under CBOE Rules, may only be engaged in by Trading Permit Holders, provided that the holder or the holder's nominee, as applicable, satisfies any applicable qualification requirements to exercise those rights. A Trading Permit does not convey any ownership interest in the Exchange, is only available through the Exchange, and is subject to the terms and conditions set forth in CBOE Rule 3.1. Holders of Trading Permits fall within the definition of "member" in Section 3(a)(3)(A) of the Securities Exchange of 1934, as amended ("Act").[4]

CBOE Rule 3.1 provides, among other things, that the Exchange may issue different types of Trading Permits and determine the fees for those Trading Permits. Specifically, under Rule 3.1(a)(iv), the Exchange may issue different types of Trading Permits that allow holders to trade one or more products authorized for trading on the Exchange and to act in one or more trading functions authorized by CBOE Rules. The Exchange will have four initial types of Trading Permits immediately following its demutualization. These Trading Permits will be issued in accordance with the provisions of CBOE Rule 3.1A which addresses the initial issuance of post-demutualization Trading Permits and Rule 3.1 which sets forth the general provisions that are applicable to post-demutualization Trading Permits. In addition, Rule 3.1(a)(v) provides, in relevant part, that Trading Permits will be subject to such fees and charges as are established by the Exchange from time to time pursuant to CBOE Rule 2.20 and the Exchange Fees Schedule.

The first type of Trading Permit is a Market-Maker Trading Permit that entitles the holder to act as a Market-Maker (including a Market-Maker trading remotely), DPM, eDPM or LMM. This permit provides an appointment credit of 1.0, a quoting and order entry bandwidth allowance, up to three logins, trading floor access and Trading Permit Holder status. A Market-Maker Trading Permit also provides trading access to CBSX. The Exchange is proposing to establish the initial fee for a Market-Maker Trading Permit at $7,500 per month, commencing July 1, 2010. However, for the remainder of 2010, CBOE will provide a 20% discount on this fee, such that the fee for a Market-Maker Trading Permit will be $6,000 per month between July 2010 and December 2010.

The quoting bandwidth allowance for a Market-Maker Trading Permit is equivalent to a maximum of 31,200,000 quotes over the course of a trading day. The quoting bandwidth allowance for a Market-Maker Trading Permit in which the holder has a Market-Maker appointment in a Hybrid 3.0 option class shall be proportionately reduced by the appointment cost of the class. To the extent that a Market-Maker is able to submit electronic quotes in a Hybrid 3.0 class (such as an LMM that streams quotes in the class), the Market-Maker shall receive the quoting bandwidth allowance attributable to that Hybrid 3.0 class to quote in, and only in, that class. For example, the appointment cost for SPX, which is a Hybrid 3.0 class, is .95. Accordingly, the quoting bandwidth for a Market-Maker Trading Permit in which the holder has a Market-Maker appointment in SPX would be .05 of the quoting bandwidth for non-Hybrid 3.0 classes, unless the Market-Maker is an LMM and is using a Market-Maker Trading Permit to stream quotes in SPX. With the exception of LMMs, Market-Makers do not quote electronically in Hybrid 3.0 classes so they are not allocated quoting bandwidth with respect to Market-Maker appointments in those classes. This is consistent with CBOE's pre-demutualization quoting bandwidth allocations to SPX Market-Makers.

The second type of Trading Permit is a Floor Broker Trading Permit that entitles the holder to act as a Floor Broker. This permit provides an order entry bandwidth allowance, up to three logins, trading floor access and Trading Permit Holder Status. A Floor Broker Trading Permit also provides access to CBSX. The Exchange is proposing to establish the initial fee for a Floor Broker Trading Permit at $7,500 per month, commencing July 1, 2010. However, for the remainder of 2010, CBOE will provide a 20% discount on this fee, such that the fee for a Floor Broker Trading Permit will be $6,000 per month between July 2010 and December 2010.

The third type of Trading Permit is the Electronic Access Permit that entitles the holder to electronic access to the Exchange. Electronic Access Permit holders must be broker-dealers registered with the Exchange in one or more of the following capacities: (a) Clearing Trading Permit Holder; (b) TPH organization approved to transact business with the public; (c) Proprietary Trading Permit Holder;[5] and (d) order service firm. The Electronic Access Permit does not grant access to the trading floor. This permit provides an order entry bandwidth allowance, up to three logins and Trading Permit Holder status. An Electronic Access Permit also provides access to CBSX. The Exchange is proposing to establish the initial fee for an Electronic Access Permit at $2,000 per month, commencing July 1, 2010. However, for the remainder of 2010, CBOE will provide a 20% discount on this fee, such that the fee for an Electronic Access Permit will be $1,600 per month between July 2010 and December 2010.

The fourth type of Trading Permit is a CBSX Trading Permit that entitles the holder to perform any of the trading functions of a Trading Permit Holder on CBSX and to receive the CBSX login and bandwidth allowances. The CBSX Trading Permit provides trading access only to CBSX. The proposed initial CBSX Trading Permit fee is the same as the access fee that applied with respect to the CBSX trading permits that granted trading access to CBSX prior to CBOE's demutualization in that there was no access fee charged for pre-demutualization CBSX trading permits (just as there is no access fee initially proposed to be charged with respect to post-demutualization CBSX Trading Permits). Because CBSX is a relatively new trading venue, CBSX has sought to encourage broker-dealers to become participants in CBSX's market in order to build volume and market share by, among other things, not assessing an access fee. This proposed rule change continues that approach with respect to the initial CBSX Trading Permit access fee following CBOE's demutualization.

Trading Permit fees will be assessed by the Exchange commencing on July 1, 2010. The Exchange is delaying the commencement of the fee until then because the leases for the transferable memberships that existed prior to CBOE's demutualization generally provided for monthly lease payments

[4] 15 U.S.C. 78c(a)(3)(A).

[5] A Proprietary Trading Permit Holder is a proprietary broker-dealer engaged in principal trading. A proprietary broker-dealer may not use an Electronic Access Permit to submit Market-Maker orders (*i.e.,* M orders) for its own account or an affiliated Market-Maker account.

and the Exchange assessed temporary members and Interim Trading Permit holders monthly access fees. Therefore, most post-demutualization Trading Permit holders have already paid to access the Exchange for the month of June 2010 in some form. As a result, the Exchange will not charge an additional amount for access to the Exchange during that month. Trading Permit fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month.[6] If a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) a written notification[7] to cancel the Trading Permit effective at or prior to the end of the applicable month.[8]

The Exchange proposes to amend the CBOE Fees Schedule effective on June 21, 2010 to set forth the initial access fees for these four initial Trading Permit types by including in the Fees Schedule the initial access fee applicable to each Trading Permit type, the description of each Trading Permit type included above, and the procedural provisions included above describing the manner in which Trading Permit access fees will be assessed by the Exchange.

Tier Appointment Fee:

CBOE Rule 8.3(e) provides that the Exchange may establish one or more types of tier appointments. In accordance with CBOE Rule 8.3(e), a tier appointment is an appointment to trade one or more options classes that must be held by a Market-Maker to be eligible to act as a Market-Maker in the options class or options classes subject to that appointment. The Exchange will have one type of tier appointment immediately following its demutualization, the SPX Tier Appointment. A Market-Maker Trading Permit Holder must obtain an SPX Tier Appointment to act as a Market-Maker in SPX. Further, consistent with the provisions of Rule 8.3(e), each SPX Tier Appointment may only be used with one designated Market-Maker Trading Permit. The Exchange is proposing that the initial fee for an SPX Tier Appointment be set at $3,000 per month, commencing July 1, 2010, the same date as the commencement of the Trading Permit fees. The SPX Tier Appointment fee is not eligible for the 20% discount for the remainder of 2010 that is applicable to the Trading Permit fees.

SPX Tier Appointment fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month. The SPX Tier Appointment fee will be assessed to any Market-Maker Trading Permit Holder, registered with the Exchange to conduct business on the Exchange as a Market-Maker, that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX at any time during a calendar month. SPX Tier Appointments will be renewed automatically for the next month unless the Trading Permit Holder submits by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) a written notification to cancel the SPX Tier Appointment effective at or prior to the end of the applicable month.

Bandwidth Packet Fees:

CBOE is also proposing to establish fees for bandwidth packets. Bandwidth packets provide Trading Permit Holders with additional bandwidth to use to electronically access the Exchange. Market-Makers will be offered the opportunity to purchase one or more Quoting and Order Entry Bandwidth Packets. Each Quoting and Order Entry Bandwidth Packet will entitle the Trading Permit Holder to up to three additional logins and contain the standard Market-Maker quoting and order entry bandwidth allowance, which may then be added onto the total bandwidth pool for a Market-Maker's acronym(s) and Trading Permit(s) without the Market-Maker having to obtain additional Trading Permits. All Trading Permit Holders will have the opportunity to purchase one or more Order Entry Bandwidth Packets. Each Order Entry Bandwidth Packet will entitle the Trading Permit Holder to up to three additional logins and an order entry bandwidth allowance.

The Exchange is proposing that the initial fee for a Quoting and Order Entry Bandwidth Packet be set at $3,750 per month. In addition, the Exchange is proposing that the initial fee for an Order Entry Bandwidth Packet be set at $2,000 per month. Bandwidth packet fees will be assessed by the Exchange commencing on July 1, 2010, the same date as the commencement of the Trading Permit and SPX Tier Appointment fees. However, for the remainder of 2010, CBOE will provide a 20% discount on these fees, such that, between July 2010 and December 2010, the fee for a Quoting and Order Entry Bandwidth Packet will be $3,000 per month and the fee for an Order Entry Bandwidth Packet will be $1,600 per month. Bandwidth packet fees are non-refundable and will be assessed through the integrated billing system during the first week of the following month. If a bandwidth packet is issued during a calendar month after the first trading day of the month, the bandwidth packet fee for that calendar month is prorated based on the remaining trading days in the calendar month. Bandwidth packets will be renewed automatically for the next month unless the Trading Permit Holder submits by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) a written notification to cancel the bandwidth packet effective at or prior to the end of the applicable month.

The same quoting and order entry bandwidth allowance will be provided for each Market-Maker Trading Permit and each Quoting and Order Entry Bandwidth Packet (except to the extent described above with respect to each Market-Maker Trading Permit in which the holder has a Market-Maker appointment in a Hybrid 3.0 option class). Similarly, the same order entry bandwidth allowance will be provided for each Floor Broker Trading Permit, Electronic Access Permit, and Order Entry Bandwidth Packet and the same bandwidth allowance will be made available for each CBSX Trading Permit. Accordingly, bandwidth will be available to all Trading Permit Holders on an equal basis. The Exchange has provided the Commission with a detailed description of the foregoing bandwidth allowances pursuant to a Freedom of Information Act confidential treatment request. To the extent that the Exchange changes these bandwidth allowances in the future, the Exchange will comply with the rule filing requirements of Section 19 of the Act.[9]

In addition to the proposed changes to the Fees Schedule described above, CBOE is proposing to revise its regulatory circular that sets forth the existing Trading Permit Holder

[6] Thus, Trading Permit Fees for access during July 2010 will be assessed through the integrated billing system during the first week of August 2010.

[7] Written notification may be submitted to the Registration Services Department by e-mail to *tradingpermits@cboe.com* or by other means of written notification, including, but not limited to, a hand-delivered letter or facsimile to the Registration Services Department.

[8] Thus, if a Trading Permit Holder has a Trading Permit in July 2010, notice must be provided by July 23, 2010 (the preceding business day prior to July 25, 2010 since July 25, 2010 is not a business day) if the Trading Permit Holder would like to terminate the Trading Permit by the end of July 2010 and not be assessed the applicable Trading Permit Fee for August 2010.

[9] 15 U.S.C. 78s.

application and other related fees. The Exchange proposes to revise this circular to incorporate the Trading Permit, tier appointment and bandwidth packet fees. The proposed changes to the circular are included as Exhibit 2 to the Form 19b–4.

CBOE believes that the proposed fees are reasonable when compared to the average access fee previously charged to CBOE temporary members and interim trading permit holders by the Exchange over the last twelve months. Specifically, the average of these access fees between July 2009 and June 2010 was $8,967. Additionally, these access fees were above $10,000 between July 2009 and November 2009, peaking at $11,900 in October 2009.

The Exchange may adjust the proposed Trading Permit, tier appointment and bandwidth packet fees in the future if the Exchange determines that it would be appropriate to do so based upon the circumstances at the time. The Exchange may also make future additions or changes to the types of Trading Permits, tier appointments or bandwidth packets in accordance with Exchange Rules. Any future Trading Permit, tier appointment or bandwidth packet fee changes and the fees for any new or modified types of Trading Permits, tier appointments or bandwidth packets will be reflected in amendments to the CBOE Fees Schedule that will be submitted to the Commission through further rule filings pursuant to Section 19(b)(3)(A)(ii) of the Act [10] (provided that the fee changes will only apply to Trading Permit Holders and their associated persons). Any other such fee changes, including those that will be applicable to persons that are not Trading Permit Holders or associated persons of Trading Permit Holders, will be submitted to the Commission through further rule filings pursuant to Section 19(b)(2) of the Act.[11]

2. Statutory Basis

The proposed rule change will treat similarly situated Trading Permit Holders in the same manner by assessing the same Trading Permit, tier appointment and bandwidth packet fees (and applying the same discount to the trading permit and bandwidth packet fees) to all Trading Permit Holders based on the type of Trading Permit(s), tier appointment and bandwidth packet(s) requested and by assessing no Trading Permit fee to all Trading Permit Holders with access solely to CBSX. Accordingly, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities for the reasons described above.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and subparagraph (f)(2) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2010–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2010–060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2010–060 and should be submitted on or before July 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16141 Filed 7–1–10; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] The Exchange also believes that it is equitable to assess different access fees for trading permits that provide differential access as long as the same access fee is assessed to all Holders of the same type of Trading Permit.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62389; File No. SR–ISE–2010–63]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List Options on Trust Issued Receipts in $1 Strike Intervals

June 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 24, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 504 to allow the Exchange to list options on Trust Issued Receipts in $1 strike price intervals. The text of the proposed rule change is available on the Exchange's Web site at *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Rule 504 by adding Supplementary Material .07 to Rule 504 to allow the Exchange to list options on the Trust Issued Receipts ("TIRs"), including Holding Company Depository Receipts ("HOLDRs"), in $1 or greater strike price intervals, where the strike price is $200 or less and $5 or greater where the strike price is greater than $200.[3]

Currently, the strike price intervals for options on TIRs are as follows: (1) $2.50 or greater where the strike price is $25.00 or less; (2) $5.00 or greater where the strike price is greater than $25.00; and (3) $10.00 or greater where the strike price is greater than $200.[4]

The Exchange is seeking to permit $1 strikes for options on TIRs (where the strike price is less than $200) because TIRs have characteristics similar to exchange-traded funds ("ETFs"). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike is greater than $200.[5] Accordingly, the Exchange believes that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for options on TIRs.

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary system capacity to handle the additional traffic associated with the listing and trading of $1 strikes, where the strike price is less than $200, for options on TIRs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing the Exchange to list options on TIRs at $1 strike price intervals. The Exchange believes that the marketplace and investors expect options on TIRs to trade in a similar manner to ETF options and this filing would allow the marketplace and investors the ability in trading options on TIRs. The Exchange further believes that investors will be better served if $1 strike price intervals are available for options on TIRs, where the strike price is less than $200.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] HOLDRs are a type of Trust Issued Receipt and the current proposal would permit $1 strikes for options on HOLDRs (where the strike price is less than $200).

[4] *See* ISE Rule 504(d).

[5] *See* ISE Rule 504(h).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a rule of another exchange that has been approved by the Commission.[10] Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2010–63 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–ISE–2010–63. 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–ISE–2010–63 and should be submitted on or before July 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16142 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

[10] *See* Securities Exchange Release No. 34–62141 (May 20, 2010), 75 FR 29787 (May 27, 2010) (SR–CBOE–2010–036).

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62393; File No. SR–BX–2010–043]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Pricing for Direct Circuit Connections

June 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2010, NASDAQ OMX BX, Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to establish pricing for 10Gb direct circuit connections and codify pricing for 10Gb [sic] direct circuit connections for customers who are not co-located in the Exchange's datacenter. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to establish fees for direct 10Gb circuit connections, and codify fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter. Currently, the Exchange already makes available to co-located customers a 10Gb circuit connection and charges for each a $1,000 initial installation charge as well as an ongoing monthly fee of $5,000. The Exchange is establishing the same fees for non co-located customers with a 10Gb circuit.[3]

The Exchange also already makes available to both co-located and non co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of $500 for co-located customers and $1,000 for non co-located customers. Monthly fees are higher for non co-located customers because direct connections require BX

[3] BX provides an additional 1Gb copper connection option to the Exchange for co-located customers. Given the technological constraints of copper connections over longer distances, the Exchange does not offer a copper connection option to users outside of its datacenter.

to provide cabinet space and middleware for those customers' third-party vendors to connect into the datacenter and, ultimately, to the trading system. Finally, for non co-located customers the Exchange charges an optional installation fee of $925 if the customer chooses to use an on-site router.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide greater transparency into the connectivity options available to market participants.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The filing codifies and makes transparent the fees imposed for direct connections to non co-located customers. These fees are uniform for all such customers and are either comparable to fees charged to co-located customers or vary due to different costs associated with providing service to the two customer types.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–043. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–043 and should be submitted on or before July 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16143 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62373; File No. SR–BX–2010–038]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Certain Rule Text Which Has Been Made Unnecessary Due to the Decommissioning of the OCC Hub

June 24, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on June 21, 2010, NASDAQ OMX BX, Inc. ("BX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the "Exchange") proposes to amend the Rules of the Boston Options Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Group, LLC ("BOX") to eliminate certain rule text which has been made unnecessary due to the decommissioning of the Options Clearing Corporation ("OCC") Hub. The text of the proposed rule change is available on BX's Web site, on the Commission's Web site, at BX, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange was previously a party to the Plan for the Purpose of Creating and Operating an InterMarket Option Linkage ("Linkage Plan").[3] One of the essential aspects of the Linkage Plan was the central data and communications network ("Hub"), operated and maintained by the OCC that electronically linked the several options exchanges. The Linkage Plan was recently replaced by the Options Order Protection and Locked/Crossed Market Plan ("Decentralized Plan").[4]

Unlike the Linkage Plan, which exclusively required use of the OCC Hub, the Decentralized Plan enables the Plan Participants thereto to act jointly in establishing a framework for a non-exclusive method of providing and achieving order protection and addressing Locked and Crossed Markets in Eligible Options Classes. Upon the migration from the Linkage Plan to the Decentralized Plan, and for a short period thereafter, BOX and BOX Options Participants continued to utilize the sending of P and P/A Orders via the OCC Hub to fulfill their obligations to seek the best price available for their customers and to prevent Trade-Throughs. Thus the Exchange maintained and enforced certain rule text regarding the sending and receipt of P and P/A Orders and use of the OCC Hub.

BOX has not utilized the sending of P and P/A Orders or the OCC Hub since it began using non-affiliated third party routing ("TPR") broker/dealers ("Routing Broker(s)") to route options Eligible Orders to one or more Away Exchange(s) when such Away Exchange(s) display the Best Bid or Best Offer in accordance with the Decentralized Plan.[5] The recent decommissioning of the OCC Hub has rendered the legacy rule text pertaining to the Linkage Plan obsolete, including rule text regarding P and P/A Orders and the OCC Hub. This proposal seeks to remove such rule text, and make such other changes to the BOX Rules, as necessary, so as to render the BOX Rules consistent with current Exchange practices.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed changes will render the BOX Rules consistent with current Exchange practices and provide great clarity to BOX Options Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

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[3] *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (File No. 4–429) (Order approving the Linkage Plan and the original parties thereto). The Exchange became a party to the Linkage Plan on January 14, 2004 by executing a copy of said Linkage Plan with the Commission as well as completing the other steps required. Terms not otherwise defined herein shall have the meaning assigned to them in the BOX Rules, the Decentralized Plan, or the Linkage Plan, respectively.

[4] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (Order Approving the National Market System Plan Relating to Options Order Protection and Locked/Crossed Market Plan). The Exchange amended the BOX Rules to reflect the Exchange's filing to become a participant in the Decentralized Plan. *See* Securities Exchange Act Release No. 60530 (August 18, 2009), 74 FR 43200 (August 26, 2009) (SR–BX–2009–028).

[5] *See* Securities Exchange Act Release No. 60832 (October 16, 2009), 74 FR 54607 (October 22, 2009) (SR–BX–2009–066) (Notice of Filings and Order Granting Accelerated Approval of Proposed Rule Change Relating to Chapter XII of the BOX Rules). *See also* Securities Exchange Act Release No. 61399 (January 22, 2010), 75 FR 54607 (January 28, 2010) (SR–BX–2010–007) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Order Routing Pilot on the Boston Options Exchange Facility). *See also* Securities Exchange Act Release No. 61536 (February 18, 2010), 75 FR 8763 (February 25, 2010) (SR–BX–2010–014) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing on the Boston Options Exchange Facility). Chapter XII, Section 5, describes Eligible Orders, as "orders that are specifically designated by Options Participants as eligible for routing will be routed to an Away Exchange."

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2010–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2010–038 and should be submitted on or before July 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16124 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62376; File No. SR–NYSEAmex–2010–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Amend the Bylaws of NYSE Euronext To Adopt a Majority Voting Standard in Uncontested Elections of Directors

June 25, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 14, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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 is submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the "Corporation"),[4] to amend its bylaws ("Bylaws") to replace the plurality vote standard for election of directors in uncontested elections that is currently in the Bylaws with a majority vote standard for such elections. The existing plurality vote standard will be retained in connection with contested elections for directors. The proposed rule change is identical to a rule change filed by the New York Stock Exchange LLC ("NYSE") that was recently approved by the Commission.[5] The text of the proposed rule change is available at the Exchange, the Commission's Web site at *http://www.sec.gov*, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this rule filing in connection with the Corporation's proposal to amend its Bylaws to replace the plurality vote standard for election of directors in uncontested elections that is currently in the Bylaws with a majority vote standard for such elections. Specifically, the Bylaws currently provide that "directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors." Under the Corporation's corporate governance guidelines previously adopted by the Board of Directors of the Corporation ("Board"), however, any director nominee in an uncontested election (being an election in which the number of nominees equals the number of directors to be elected) who receives a greater number of "withheld" votes than "for" votes (including any "against" votes if that option were to be made available on the proxy card) must immediately tender his or her resignation from the Board. The Board will then decide, through a process managed by the Nominating and Governance Committee and excluding the nominee in question, whether to accept the resignation. In a contested election (being an election in which the number of nominees exceeds the number of directors to be elected), the unqualified plurality vote standard controls.

Uncontested Election

The Corporation is proposing to add an explicit majority voting provision for uncontested director elections to the Bylaws, thereby replacing the plurality vote standard for election of directors in such elections that is currently in the Bylaws. The existing plurality vote standard will be retained in connection with contested elections for directors. Under the proposed amendment to the Bylaws, the proxy card would change for an uncontested election, and the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Amex, a Delaware limited liability company, is an indirect wholly-owned subsidiary of NYSE Euronext.

[5] Securities Exchange Act Release No. 61947 (April 20, 2010), 75 FR 22169 (April 27, 2010) (SR–NYSE–2010–18).

stockholders would be given the choice to vote "for," "against" or "abstain" with respect to each director nominee individually.[6] In such an election, each director would be elected by the vote of the majority of the votes cast with respect to such director's election, meaning that the number of votes cast "for" such director's election exceeded the number of votes cast "against" that director's election (with "abstentions" not counted as a vote cast either "for" or "against" such director's election). In the event that any incumbent director fails to receive a majority of the votes cast, such director would be required to tender his or her resignation to the Nominating and Governance Committee of the Board (or another committee designated by the Board), and such committee would make a recommendation to the Board as to whether to accept or reject such resignation or whether other action should be taken. The Board would then act on the recommendation of such committee and publicly disclose its decision regarding the tendered resignation and the rationale behind the decision.

The proposed amendment to the Bylaws also provides that a director who tenders his or her resignation as described above will not participate in the recommendation by the Nominating and Governance Committee or the Board of Directors action regarding whether to accept the tendered resignation. In the event that each member of the Nominating and Governance Committee fails to receive a majority of the votes cast in the same uncontested election, then the independent directors who received a majority of the votes cast in such election must appoint a committee among themselves to consider the tendered resignation and recommend to the Board whether to accept it. However, if the only directors who received a majority of the votes cast in such election constitute three or fewer directors, all directors may participate in the action regarding whether to accept the tendered resignation.

Pursuant to the proposed amendment to the Bylaws, if the Board accepts a director's resignation as part of the process described above for uncontested elections, or if a nominee for director is not elected and the nominee is not an incumbent director, the Board may (i) fill the remaining vacancy as provided in Section 3.6 of the Bylaws and Article VI, Section 6 of the Certificate of Incorporation (involving a majority vote of the remaining directors then in office, though less than a quorum, or by the sole remaining director) or (ii) decrease the size of the Board as provided in Section 3.1 of the Bylaws and Article VI, Section 3 of the Certificate of Incorporation (involving adoption of a resolution by two-thirds of the directors then in office).

General Election Requirements

The following applies to elections of directors and is not being amended. Section 2.7 of the Bylaws provides that, unless otherwise provided in the Certificate of Incorporation of the Corporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder that has voting power upon the matter in question. This entitlement, however, is subject to the voting limitation in the Certificate of Incorporation that generally prohibits a beneficial owner, either alone or together with related parties, from voting or causing the voting of shares of stock of the corporation, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter. Any votes purported to be cast in excess of this limitation will be disregarded.[7]

Relative to the foregoing, if any beneficial owner of the Corporation's stock, either alone or together with related parties, is party to any agreement, plan or other arrangement with any other person or entity relating to shares of stock of the Corporation entitled to vote on any matter under circumstances in which (i) the result would be that shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement would not be voted on any matter, or any proxy relating thereto would be withheld and (ii) the effect of the agreement, plan or arrangement would be to enable a beneficial owner (but for these provisions), either alone or together with related parties, to vote, possess the right to vote or cause the voting of shares of the Corporation's stock to exceed 10% of the then outstanding votes entitled to be cast (assuming that all shares of stock of the Corporation that are subject to the agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), then this recalculated 10% voting limitation will be applicable. Any votes purported to be cast in excess of this recalculated voting limitation will be disregarded.[8]

At each meeting of stockholders of the Corporation, except as otherwise provided by law or the Certificate of Incorporation of the Corporation, the holders of a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or represented by proxy, will constitute a quorum (it being understood that any shares in excess of the applicable voting limitation discussed above will not be counted as present at the meeting and will not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that such voting limitation shall have been duly waived as provided in the Certificate of Incorporation).[9]

As noted above, the proposed rule change is identical to a rule change filed by the NYSE (the "NYSE Rule Change") that was recently approved by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(1)[11] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of, Section 6(b)(5)[12] of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by codifying in the Bylaws the existing policy of the Corporation aimed at ensuring better corporate governance and accountability

[6] Stockholders are currently given three choices when voting for a slate of director nominees: They can vote (1) "for" all nominees, (2) "withheld" for all nominees or (3) "withheld" for certain nominees and "for" the remaining nominees.

[7] *See* NYSE Euronext Amended and Restated Certificate of Incorporation at Article V, Section 1(A).

[8] *See id.*

[9] *See* NYSE Euronext Amended and Restated Certificate of Incorporation at Article VIII, Section 2.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(5).

to stockholders by means of a voting procedure leading to election results that more accurately reflect the views of stockholders on the qualifications and suitability of individual director nominees, even if there are no alternative director nominees to vote for on the ballot.

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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on the date of its approval by the Euronext College of Regulators, which approval the Exchange believes is imminent. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to implement the proposed rule change immediately upon receiving the approval of the Euronext College of Regulators. In addition, as noted by the Exchange, the proposal is identical to the recently approved NYSE Rule Change.[15] For these reasons, the Commission designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–58. 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–58 and should be submitted on or before July 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16105 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] *See* Securities Exchange Act Release No. 61947 (April 20, 2010), 75 FR 22169 (April 27, 2010) (SR–NYSE–2010–18) (order approving identical proposal submitted by NYSE).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62377; File No. SR–NYSEArca–2010–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NYSE Arca, Inc. To Amend the Bylaws of NYSE Euronext To Adopt a Majority Voting Standard in Uncontested Elections of Directors

June 25, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 14, 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 is submitting this rule filing in connection with the proposal of its ultimate parent, NYSE Euronext (the "Corporation"),[4] to amend its bylaws ("Bylaws") to replace the plurality vote standard for election of directors in uncontested elections that is currently

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] NYSE Arca, a Delaware corporation, is an indirect wholly-owned subsidiary of NYSE Euronext.

in the Bylaws with a majority vote standard for such elections. The existing plurality vote standard will be retained in connection with contested elections for directors. The proposed rule change is identical to a rule change filed by the New York Stock Exchange LLC ("NYSE") that was recently approved by the Commission.[5] The text of the proposed rule change is available at the Exchange, the Commission's Web site at *http://www.sec.gov,* the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is submitting this rule filing in connection with the Corporation's proposal to amend its Bylaws to replace the plurality vote standard for election of directors in uncontested elections that is currently in the Bylaws with a majority vote standard for such elections. Specifically, the Bylaws currently provide that "directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors." Under the Corporation's corporate governance guidelines previously adopted by the Board of Directors of the Corporation ("Board"), however, any director nominee in an uncontested election (being an election in which the number of nominees equals the number of directors to be elected) who receives a greater number of "withheld" votes than "for" votes (including any "against" votes if that option were to be made available on the proxy card) must immediately tender his or her resignation from the Board. The Board will then decide, through a process managed by the Nominating and Governance Committee and excluding the nominee in question, whether to accept the resignation. In a contested election (being an election in which the number of nominees exceeds the number of directors to be elected), the unqualified plurality vote standard controls.

Uncontested Election:

The Corporation is proposing to add an explicit majority voting provision for uncontested director elections to the Bylaws, thereby replacing the plurality vote standard for election of directors in such elections that is currently in the Bylaws. The existing plurality vote standard will be retained in connection with contested elections for directors. Under the proposed amendment to the Bylaws, the proxy card would change for an uncontested election, and the stockholders would be given the choice to vote "for," "against" or "abstain" with respect to each director nominee individually.[6] In such an election, each director would be elected by the vote of the majority of the votes cast with respect to such director's election, meaning that the number of votes cast "for" such director's election exceeded the number of votes cast "against" that director's election (with "abstentions" not counted as a vote cast either "for" or "against" such director's election). In the event that any incumbent director fails to receive a majority of the votes cast, such director would be required to tender his or her resignation to the Nominating and Governance Committee of the Board (or another committee designated by the Board), and such committee would make a recommendation to the Board as to whether to accept or reject such resignation or whether other action should be taken. The Board would then act on the recommendation of such committee and publicly disclose its decision regarding the tendered resignation and the rationale behind the decision.

The proposed amendment to the Bylaws also provides that a director who tenders his or her resignation as described above will not participate in the recommendation by the Nominating and Governance Committee or the Board of Directors action regarding whether to accept the tendered resignation. In the event that each member of the Nominating and Governance Committee fails to receive a majority of the votes cast in the same uncontested election, then the independent directors who received a majority of the votes cast in such election must appoint a committee among themselves to consider the tendered resignation and recommend to the Board whether to accept it. However, if the only directors who received a majority of the votes cast in such election constitute three or fewer directors, all directors may participate in the action regarding whether to accept the tendered resignation.

Pursuant to the proposed amendment to the Bylaws, if the Board accepts a director's resignation as part of the process described above for uncontested elections, or if a nominee for director is not elected and the nominee is not an incumbent director, the Board may (i) fill the remaining vacancy as provided in Section 3.6 of the Bylaws and Article VI, Section 6 of the Certificate of Incorporation (involving a majority vote of the remaining directors then in office, though less than a quorum, or by the sole remaining director) or (ii) decrease the size of the Board as provided in Section 3.1 of the Bylaws and Article VI, Section 3 of the Certificate of Incorporation (involving adoption of a resolution by two-thirds of the directors then in office).

General Election Requirements:

The following applies to elections of directors and is not being amended. Section 2.7 of the Bylaws provides that, unless otherwise provided in the Certificate of Incorporation of the Corporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of stock held by such stockholder that has voting power upon the matter in question. This entitlement, however, is subject to the voting limitation in the Certificate of Incorporation that generally prohibits a beneficial owner, either alone or together with related parties, from voting or causing the voting of shares of stock of the corporation, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter. Any votes purported to be cast in excess of this limitation will be disregarded.[7]

Relative to the foregoing, if any beneficial owner of the Corporation's stock, either alone or together with related parties, is party to any agreement, plan or other arrangement with any other person or entity relating

[5] Securities Exchange Act Release No. 61947 (April 20, 2010), 75 FR 22169 (April 27, 2010) (SR–NYSE–2010–18).

[6] Stockholders are currently given three choices when voting for a slate of director nominees: They can vote (1) "for" all nominees, (2) "withheld" for all nominees or (3) "withheld" for certain nominees and "for" the remaining nominees.

[7] *See* NYSE Euronext Amended and Restated Certificate of Incorporation at Article V, Section 1(A).

to shares of stock of the Corporation entitled to vote on any matter under circumstances in which (i) the result would be that shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement would not be voted on any matter, or any proxy relating thereto would be withheld and (ii) the effect of the agreement, plan or arrangement would be to enable a beneficial owner (but for these provisions), either alone or together with related parties, to vote, possess the right to vote or cause the voting of shares of the Corporation's stock to exceed 10% of the then outstanding votes entitled to be cast (assuming that all shares of stock of the Corporation that are subject to the agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), then this recalculated 10% voting limitation will be applicable. Any votes purported to be cast in excess of this recalculated voting limitation will be disregarded.[8]

At each meeting of stockholders of the Corporation, except as otherwise provided by law or the Certificate of Incorporation of the Corporation, the holders of a majority of the voting power of the outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or represented by proxy, will constitute a quorum (it being understood that any shares in excess of the applicable voting limitation discussed above will not be counted as present at the meeting and will not be counted as outstanding shares of stock of the Corporation for purposes of determining whether there is a quorum, unless and only to the extent that such voting limitation shall have been duly waived as provided in the Certificate of Incorporation).[9]

As noted above, the proposed rule change is identical to a rule change filed by the NYSE (the "NYSE Rule Change") that was recently approved by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(1)[11] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act. The proposed rule change is also consistent with, and furthers the objectives of, Section 6(b)(5)[12] of the Act, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change will protect investors and the public interest by codifying in the Bylaws the existing policy of the Corporation aimed at ensuring better corporate governance and accountability to stockholders by means of a voting procedure leading to election results that more accurately reflect the views of stockholders on the qualifications and suitability of individual director nominees, even if there are no alternative director nominees to vote for on the ballot.

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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on the date of its approval by the Euronext College of Regulators, which approval the Exchange believes is imminent. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will enable the Exchange to implement the proposed rule change immediately upon receiving the approval of the Euronext College of Regulators. In addition, as noted by the Exchange, the proposal is identical to the recently approved NYSE Rule Change.[15] For these reasons, the Commission designates the proposed rule change as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–55 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–2010–55. This file number should be included on the subject line if e-mail is used. To help the

[8] *See id.*

[9] *See* NYSE Euronext Amended and Restated Certificate of Incorporation at Article VIII, Section 2.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] *See* Securities Exchange Act Release No. 61947 (April 20, 2010), 75 FR 22169 (April 27, 2010) (SR–NYSE–2010–18) (order approving identical proposal submitted by NYSE).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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, 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–2010–55 and should be submitted on or before June 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16106 Filed 7–1–10; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62385; File No. SR–NSCC–2010–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance the Process for Transfers Through the Automated Customer Account Transfer Service

June 25, 2010.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder[2] notice is hereby given that on June 4, 2010, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to enhance NSCC's process for transfers through the Automated Customer Account Transfer Service ("ACATS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's ACATS system enables Members to effect automated transfers of customer accounts among themselves.[3] For ACATS transfers processed through NSCC's Continuous Net Settlement ("CNS") system,[4] long and short positions are passed against Members' positions at The Depository Trust Company ("DTC") and available securities are delivered from short Members' accounts at DTC and allocated to long Members' accounts by book-entry.

NSCC is proposing changes to its ACATS system in connection with a concurrent rule change proposed by DTC.[5] NSCC is proposing these changes for two general reasons. First, NSCC would like to enhance protection for customer securities in ACATS transfers so that customer account transfers to new firms would be maximized in the event of a Member failure. Accordingly, NSCC would modify its ACATS processing and its Rules so that deliveries or receives processed through CNS would satisfy a Member's ACATS receive or deliver obligation prior to satisfying another CNS-related obligation of that Member in the same security. NSCC would also track CNS ACATS items to prevent reversal of completed items in the event of a Member's failure. Second, NSCC would like to facilitate compliance by its Members with their securities possession and control requirements.[6] To that end, NSCC proposes modifying its Rules to clarify that in no event does NSCC have a lien on securities carried by a Member for the account of its customers that are delivered through the CNS ACATS service.[7]

1. ACATS Transfers Through the CNS System

Through ACATS, an NSCC Member to which a customer's securities account is to be transferred ("Receiving Member") may submit a Transfer Initiation Request to initiate the account transfer process. When a Receiving Member accepts a customer account transfer, NSCC causes all CNS-eligible items in that customer account to enter NSCC's CNS accounting operation on the day before settlement date unless the Receiving Member notifies NSCC that

[3] ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

[4] CNS is an ongoing accounting system which nets today's settling trades with yesterday's closing positions to produce a net short or long position for a particular security for a particular Member. NSCC is the counter party for all positions. The positions are then passed against the Member's designated depository positions and available securities are allocated by book-entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

[5] DTC is proposing its concurrent rule change with the Commission in filing SR–DTC–2010–09.

[6] Commission Rule 15c3–3 provides that a broker-dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully paid securities and excess margin securities carried for the account of customers.

[7] DTC's Settlement Service Guide currently provides that securities delivered to a receiving DTC Participant's account from CNS are classified as collateral which may otherwise be made available to NSCC in the event that the DTC Participant fails to meet its NSCC settlement obligation. Pursuant to a separate rule filing, DTC is proposing revisions to its service guide so that ACAT deliveries from CNS would be designated by the DTC Participant as "Minimum Amount Securities" when credited to the Participant's account. This designation would prevent the securities from being designated as collateral for either this purpose or for purposes of DTC's Rules. DTC Rule 1 for the definition of Minimum Amount Securities.

certain items should be withheld from CNS processing.[8]

Ordinary CNS items enter the system at contract value, but ACATS items enter CNS unvalued. This reflects the nature of the ACATS CNS items as "free" transfers. To incentivize deliveries, ACATS items are marked-to-the-market on the morning of settlement date using their full CNS value as of the prior day's closing price. Consequently, the Delivering Member's CNS projection report shows a short securities position, and its CNS cash reconciliation report shows a cash debit for the "full value" mark. Conversely, the Receiving Member's projection report shows a long securities position, and its cash reconciliation report shows a cash credit equal to the "full value" mark. If the Delivering Member fulfills its ACATS delivery obligation, then its short position is cancelled, and the debit for the mark is offset by a credit. Likewise, upon receipt of the securities by the Receiving Member, the Receiving Member's long position is offset, and the credit for the mark is offset by the debit. The net result is a "free" transfer of securities because no money is paid by either the Delivering Member or Receiving Member.

For transactions processed through CNS, NSCC normally becomes the counter party to the transaction and guarantees settlement.[9] However, a CNS ACATS transfer is not guaranteed for a party that fails to pay any portion of its money settlement obligation on settlement date.[10] In this circumstance, NSCC may reverse uncompleted ACATS items and any associated debits or credits calculated using the marking process described above would be eliminated.

Currently, ACATS transfers settled through CNS are fungible with all other CNS activity. The CNS system does not distinguish between ACATS transactions and other transactions, which means that CNS ACATS receives and delivers are netted with guaranteed settling trades in the same securities. Pursuant to this proposal, NSCC would begin tracking ACATS receive and deliver obligations in CNS, and CNS allocations would be applied to ACATS receive and deliver obligations for a Member in a security before satisfying another obligation in the same security.[11] At the end of each processing day, CNS ACATS fails would continue to be marked to the full-market value and netted with all other CNS obligations under NSCC's Rules.

In the event of a Member failure, NSCC would use this proposed automated tracking capability to differentiate between completed and uncompleted CNS ACATS transactions. In a failure to settle situation, NSCC would therefore be able to reverse pending ACATS obligations for uncompleted transfers of a failing Member while still allowing assets associated with completed ACATS transfers to remain with the Receiving Member. NSCC believes this would help maximize CNS-related transfers of customer accounts to new firms.

An ACATS transfer of a failing Member would be deemed uncompleted if the failing Member is a Delivering Member and it failed to deliver to CNS all or a portion of the securities associated with the ACATS transfer. If the failing Member is a Receiving Member and it failed to receive all or a portion of the securities associated with the ACATS transfer from CNS, then the transfer would likewise be deemed uncompleted. In either case, if the Delivering Member makes a partial delivery of securities to CNS then the transfer would be deemed completed for the amount of securities received from CNS by the Receiving Member to the extent that amount does not exceed the amount delivered to CNS by the Delivering Member. The transfer would be deemed uncompleted as to any remaining securities beyond that amount, and only the uncompleted portion of the item would be subject to reversal. Transfers would also be deemed uncompleted when the failing Member is the Delivering Member and it has a flat or overall long CNS position or when the failing member is the Receiving Member and it has a flat or CNS short position.

In the event a Delivering Member and Receiving Member fail on the same settlement day and have an ACATS transfer obligation between them, any transfer deemed uncompleted for the Delivering Member would also be deemed uncompleted for the Receiving Member. NSCC would notify the affected Members of the details associated with the assets subject to the reversal and the affected Members would have to reestablish customer positions accordingly.

2. Possession and Control Requirements

To facilitate the compliance of Members with their securities possession and control requirements in ACATS transfers processed through CNS, NSCC proposes modifying its Rules to clarify that it does not maintain a lien over ACATS assets delivered to a Receiving Member through CNS.

3. Amendments to Rules and Procedures

To provide for the modifications to ACATS described in this filing, NSCC proposes amending its rules as described in the summaries below. The proposed changes to NSCC's Rules and Procedures can be found in Exhibit 5 to proposed rule change SR–NSCC–2010–05 at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-05.pdf.*

(a) *Amend Rule 18 (Procedures for When NSCC Declines or Ceases to Act).*

Section 7 of Rule 18 (Procedures for when the Corporation Declines or Ceases to Act) provides that NSCC maintains a lien on all property placed in its possession by a Member as security for any and all liabilities of that Member to NSCC. An existing exception to this rule is where such a lien would be prohibited under Commission Rules 8c–1 and 15c2–1. NSCC proposes modifying this section to clarify that it does not maintain a lien on ACATS assets that have been delivered to a Receiving Member through CNS.

(b) *Procedure VII (CNS Accounting Operation).*

NSCC proposes modifying Procedure VII to provide for the tracking of customer transfers by stating that deliveries of a particular security through CNS would be designated to apply to a Member's ACATS receive and deliver obligations before satisfying another obligation, such as a trade-related obligation of that Member. In addition, the modified language would indicate that this designation would be provided to the Member's Designated Depository to facilitate its processing of the item.

(c) *Rule 50 (ACATS).*

NSCC would amend Rule 50 to clarify that NSCC may reverse uncompleted ACATS items when either the Delivering or Receiving Member failed to meet its settlement obligation to NSCC. In addition, this Rule would be revised to note that in the event of such a reversal of uncompleted CNS ACAT obligations, NSCC would make files available to each Member to show each open security position due to settle that day that would be subject to the reversal as well as such other information as NSCC may deem advisable. The

[8] NSCC Rule 50 (Automated Customer Account Transfer Service).

[9] Pursuant to Addendum K of its Rules, NSCC generally guarantees the completion of Continuous Net Settlement ("CNS") and Balance Order trades that reach the later of midnight of T+1 or midnight of the day they are reported to Members. Shortened process trades, such as same-day and next-day settling trades, are guaranteed upon comparison or trade recording processing.

[10] This includes failure by a Member to pay a mark-to-market charge.

[11] This includes a trade-related obligation.

proposed change also includes a technical correction to clarify that ACATS transactions enter the CNS Accounting Operation on the day before Settlement Date (SD–1), rather than T+1.

NSCC proposes implementing the changes proposed in this filing during the third quarter of 2010 and advising Members of the implementation date through issuance of NSCC Important Notices.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [12] and the rules and regulations thereunder because the proposed modifications would facilitate NSCC's prompt and accurate clearance and settlement of securities transactions by implementing a tracking mechanism to distinguish ACATS activity from other items processed through CNS and by clarifying that NSCC does not maintain a lien on ACATS assets delivered to a Receiving Member through CNS.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2009–05 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–NSCC–2010–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of the NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010–05.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2009–05 and should be submitted on or before July 23, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16108 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78q–1.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62384; File No. SR–DTC–2010–09]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change To Revise Its Procedures Regarding Securities Delivered To or From Participant Accounts Through the Automated Customer Account Transfer Service of National Securities Clearing Corporation

June 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder [2] notice is hereby given that on June 4, 2010, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The purpose of this proposed rule change is to revise DTC's Procedures regarding securities delivered to or from Participant accounts through the Automated Customer Account Transfer Service ("ACATS") of National Securities Clearing Corporation ("NSCC").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC proposes modifying certain provisions of its Settlement Services Guide ("Guide") in connection with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

concurrent rule changes proposed by NSCC concerning ACATS transfers through NSCC's Continuous Net Settlement ("CNS") system.[3]

NSCC's ACATS enables members to effect automated transfers of customer accounts among themselves.[4] For ACATS transfers processed through NSCC's Continuous Net Settlement ("CNS") system,[5] long and short positions are passed against Members' positions at The Depository Trust Company ("DTC"). Available securities are delivered from short Members' accounts at DTC and allocated to long Members' accounts by book-entry.

An NSCC Member to which a customer's securities account is to be transferred through ACATS ("Receiving Member") may initiate the transfer process by submitting a Transfer Initiation Request ("TIF") to NSCC. For the transfer to be processed, the TIF must be accepted by the NSCC Member from which the customer's securities account is being transferred ("Delivering Member"). After a Delivering Member accepts a customer account transfer and all other preconditions of NSCC's rules for processing ACATS transfer are met, all CNS-eligible items in the account will be entered into NSCC's CNS accounting operation on the day before settlement date unless the Receiving Member notifies NSCC that certain items should be withheld.[6]

DTC proposes modifying the Guide in several ways to clarify that securities moving through NSCC's ACATS system are not subject to a lien by DTC when they are debited from a delivering Participant's DTC account or when they are credited to a receiving Participant's DTC account.[7] DTC believes its proposed clarifications would help NSCC Members and DTC Participants meet their legal obligations to maintain securities possession or control of certain customer securities[8] and would concurrently protect the interests of NSCC and DTC.

DTC proposes modifying the CNS section of the Guide to clarify that when a Participant holds securities in its DTC account in a no-lien location[9] and those securities are part of an ACATS transfer through CNS, then DTC would not have any lien on such securities to satisfy the Participant's CNS ACATS delivery obligation. DTC also proposes clarifying within the Guide that ACAT deliveries from CNS would be deemed to be designated by the receiving Participant as "Minimum Amount Securities" when they are credited to the receiving Participant's account.[10] Minimum Amount Securities are not considered collateral under DTC's rules.[11] Additional clarification would be included to explain that an ACATS transfer would be deemed null and void and the underlying securities could be used to satisfy settlement obligations to NSCC if NSCC determines that a Delivering Member and a Receiving Member defaulted on their settlement obligations to NSCC and the Delivering Member also fails to meet its ACATS delivery obligation.

DTC proposes implementing the proposed changes in this filing during the third quarter of 2010 and advising Members of the specific implementation date through issuance of DTC Important Notices.

DTC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder because the proposed changes would facilitate DTC's prompt and accurate clearance and settlement of securities transactions by clarifying when securities involved in ACATS transfers through CNS are subject to a lien by DTC.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions 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–DTC–2010–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

[3] NSCC is proposing these concurrent changes in filing SR–NSCC–2010–05 with the Commission.

[4] ACATS complements a Financial Industry Regulatory Authority ("FINRA") rule requiring FINRA members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames.

[5] CNS is an ongoing accounting system which nets today's Settling Trades with yesterday's Closing Positions to produce a net short or long position for a particular security for a particular Member. NSCC is the contra party for all positions. The positions are then passed against the Member's Designated Depository positions and available securities are allocated by book-entry. This allocation of securities is accomplished through an evening cycle followed by a day cycle. Positions which remain open after the evening cycle may be changed as a result of trades accepted for settlement that day. CNS allocates deliveries in both the night and day cycles using an algorithm based on priority groups in descending order, age of position within a priority group, and random numbers within age groups.

[6] NSCC Rule 50 (Automated Customer Account Transfer Service).

[7] As part of NSCC's companion rule filing, NSCC proposes amending its Rules to provide that any deliveries and receives in a particular security processed through CNS would be designated by NSCC to satisfy a Member's ACATS receive or deliver obligation prior to satisfaction of other CNS-related obligations for that Member in the same security. This would allow NSCC to track the completion status of CNS ACATS deliveries and would facilitate NSCC's ability to notify DTC of which CNS deliveries are ACATS transfers.

[8] Commission Rule 15c3–3 provides that a broker dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities, in each case, carried by a broker or dealer for the account of customers.

[9] For example, when the securities are designated as "Minimum Amount Securities" and not as Net Additions.

[10] As "Minimum Amount Securities", DTC would not have any lien on such securities transferred through ACATS and received from CNS. Such securities would not constitute collateral to which DTC could assert a claim, and accordingly they would not be counted as part of the Participant's Collateral Monitor unless the receiving Participant designates such securities as "Net Additions" in accordance with DTC Rules and Procedures.

[11] DTC Rule 1 and DTC Rule 4(A) respectively for the definition of Minimum Amount Securities and for the implications of this designation in protecting such securities from any lien or other claim of DTC.

[12] 15 U.S.C. 78q–1.

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2010–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of the DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/dtc/2010-09.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2010–09 and should be submitted on or before July 23, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16107 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62394; File No. SR–Phlx–2010–89]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing of Proposed Rule Change Relating to Pricing for Direct Circuit Connections

June 28, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to establish pricing for 10Gb direct circuit connections and codify pricing for 10Gb [sic] direct circuit connections for customers who are not co-located in the Exchange's datacenter. The text of the proposed rule change is available at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to establish fees for direct 10Gb circuit connections, and codify fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter. Currently, the Exchange already makes available to co-located customers a 10Gb circuit connection and charges for each a $1000 initial installation charge as well as an ongoing monthly fee of $5000. The Exchange is establishing the same fees for non co-located customers with a 10Gb circuit.[3]

The Exchange also already makes available to both co-located and non co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of $500 for co-located customers and $1000 for non co-located customers. Monthly fees are higher for non co-located customers because direct connections require the Exchange to provide cabinet space and middleware for those customers' third-party vendors to connect into the datacenter and, ultimately, to the trading system. Finally, for non co-located customers the Exchange charges an optional installation fee of $925 if the customer chooses to use an on-site router.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposal will provide greater transparency into the connectivity options available to market participants.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The filing codifies and makes transparent the fees imposed for direct connections to non co-located customers. These fees are uniform for all such customers and are either

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange provides an additional 1Gb copper connection option to the Exchange for co-located customers. Given the technological constraints of copper connections over longer distances, the Exchange does not offer a copper connection option to users outside of its datacenter.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

comparable to fees charged to co-located customers or vary due to different costs associated with providing service to the two customer types.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–89 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–Phlx–2010–89. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–89 and should be submitted on or before July 23, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16144 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62395; File No. SR–Phlx–2010–18]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving a Proposed Rule Change To Codify Prices for Co-Location Services

June 28, 2010.

I. Introduction

On January 29, 2010, NASDAQ OMX PHLX ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to co-location services and related fees. The proposed rule change was published for comment in the **Federal Register** on February 9, 2010.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

II. Description

As described in the Notice, the Exchange is proposing to codify fees for its existing co-location services. Co-location services are a suite of hardware, power, telecommunication, and other ancillary products and services that allows market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange. Phlx provides co-location services and imposes fees through Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are housed.[4] Users of co-location services include private extranet providers, data vendors, as well as the Exchange members and non-members. The use of co-location services is entirely voluntary.

As detailed in its fee schedule, the Exchange imposes a uniform set of fees for various co-location services, including: fees for cabinet space usage, or options for future space usage; installation and related power provision for hosted equipment; connectivity among multiple cabinets being used by the same customer as well as customer connectivity to the Exchange and telecommunications providers;[5] and related maintenance and consulting services. Fees related to cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment, or the re-selling of cabinet space.

NASDAQ OMX PHLX is implementing a Cabinet Proximity Option program where, for a monthly fee, customers can obtain an option for future use on available currently-unused cabinet floor space in proximity to their existing equipment. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61486 (February 3, 2010), 75 FR 6426 ("Notice").

[4] Currently, the Exchange provides its co-location services through data centers located in the New York City and Mid-Atlantic areas.

[5] The Exchange states that these fees are for telecommunications connectivity only. Market data fees are charged independently by NASDAQ OMX PHLX and other exchanges.

endeavor to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: Proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.

In the Notice, the Exchange made certain representations regarding its co-location services. First, the Exchange represents that co-location customers are not provided any separate or superior means of direct access to the Exchange quoting and trading facilities, nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among co-location customers themselves within the datacenter. Second, the Exchange represents that it does not make available to co-located customers any market data or data feed product or service for data going into, or out of, the Exchange systems that is not likewise available to all the Exchange members.[6] Finally, the Exchange represents that all orders sent to the Exchange market enter the marketplace through the same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, according to the Exchange, it has created no special market technology or programming that is available only to co-located customers and has organized its systems to minimize, to the greatest extent possible, any advantage for one customer versus another.

The Exchange also has represented that co-location services are generally available to all qualified market participants who desire them. With the exception of customers participating in the Cabinet Proximity Option program, the Exchange allocates cabinets and power on a first-come/first-serve basis. Should available cabinet inventory shrink to 40 cabinets or less, the Exchange will limit new cabinet orders to a maximum of 4 cabinets each, and all new cabinets will be limited to a maximum power level of 5kW. Should available cabinet inventory shrink to zero, the Exchange will place firms seeking services on a waiting list based on that the Exchange receives signed orders for the services from the firm. In order to be placed on the waiting list, a firm must have utilized all existing cabinets they already have in the datacenter. Once on the list, the firms, on a rolling basis, will be allocated a single 5kW cabinet each time one becomes available. After receiving a cabinet, the firm will move to the bottom of the waiting list.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[9] which requires, among other things, that that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed co-location fees are reasonable and equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. The Commission notes that charges may vary depending on the use of cabinet space and/or power usage. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: (1) Co-location services are offered to all interested market participants who request them and pay the appropriate fees; (2) as represented by Phlx, the Exchange has architected its systems so as to reduce or eliminate differences among users of its systems, whether co-located or not; and (3) the Exchange has stated that it has sufficient space to accommodate new co-locaters and has set forth in the proposed rule change objective procedures to allocate space should it become limited in the future.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2010–18) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16145 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62396; File No. SR–BX–2010–012]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change To Codify Prices for Co-Location Services

June 28, 2010.

I. Introduction

On January 29, 2010, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to co-location services and related fees. The proposed rule change was published for comment in the **Federal Register** on February 10, 2010.[3] The Commission received no comment letters on the proposal. This

[6] The Exchange made a 10Gb fiber connection available to co-located customers early in the first quarter of 2010. On March 26, 2010, the Exchange filed a proposed rule change that would, among other things, establish pricing for 10Gb fiber connections for customers who are not co-located in Phlx's datacenter. *See* SR–Phlx–2010–89.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61487 (February 3, 2010), 75 FR 6746 ("Notice").

order approves the proposed rule change.

II. Description

As described in the Notice, the Exchange is proposing to codify fees for its existing co-location services. Co-location services are a suite of hardware, power, telecommunication, and other ancillary products and services that allows market participants and vendors to place their trading and communications equipment in close physical proximity to the quoting and execution facilities of the Exchange. BX provides co-location services and imposes fees through Nasdaq Technology Services LLC and pursuant to agreements with the owner/operator of its data center where both the Exchange's quoting and trading facilities and co-located customer equipment are housed.[4] Users of co-location services include private extranet providers, data vendors, as well as the Exchange members and non-members. The use of co-location services is entirely voluntary.

As detailed in its fee schedule, the Exchange imposes a uniform set of fees for various co-location services, including: fees for cabinet space usage, or options for future space usage; installation and related power provision for hosted equipment; connectivity among multiple cabinets being used by the same customer as well as customer connectivity to the Exchange and telecommunications providers;[5] and related maintenance and consulting services. Fees related to cabinet and power usage are incremental, with additional charges being imposed based on higher levels of cabinet and/or power usage, the use of non-standard cabinet sizes or special cabinet cooling equipment, or the re-selling of cabinet space.

NASDAQ OMX BX is implementing a Cabinet Proximity Option program where, for a monthly a fee, customers can obtain an option for future use on available currently-unused cabinet floor space in proximity to their existing equipment. Under the program, customers can reserve up to maximum of 20 cabinets that the Exchange will endeavor to provide as close as reasonably possible to the customer's existing cabinet space, taking into consideration power availability within segments of the datacenter and the overall efficiency of use of datacenter resources as determined by the Exchange. Should reserved datacenter space be needed for use, the reserving customer will have three business days to formally contract with the Exchange for full payment for the reserved cabinet space in contention or it will be reassigned. In making determinations to require exercise or relinquishment of reserved space as among numerous customers, the Exchange will take into consideration several factors, including: Proximity between available reserved cabinet space and the existing space of a customer seeking additional space for actual cabinet usage; a customer's ratio of cabinets in use to those reserved; the length of time that a particular reservation(s) has been in place; and any other factor that the Exchange deems relevant to ensure overall efficiency in use of the datacenter space.

In the Notice, the Exchange made certain representations regarding its co-location services. First, the Exchange represents that co-location customers are not provided any separate or superior means of direct access to the Exchange quoting and trading facilities, nor does the Exchange offer any separate or superior means of access to the Exchange quoting and trading facilities as among co-location customers themselves within the datacenter. Second, BX represents that it does not make available to co-located customers any market data or data feed product or service for data going into, or out of, the Exchange systems that is not likewise available to all the Exchange members.[6] Finally, the Exchange represents that all orders sent to the Exchange market enter the marketplace through the same central system quote and order gateway regardless of whether the sender is co-located in the Exchange data center or not. In short, according to the Exchange, it has created no special market technology or programming that is available only to co-located customers and has organized its systems to minimize, to the greatest extent possible, any advantage for one customer versus another.

The Exchange also has represented that co-location services are generally available to all qualified market participants who desire them. With the exception of customers participating in the Cabinet Proximity Option program, the Exchange allocates cabinets and power on a first-come/first-serve basis. Should available cabinet inventory shrink to 40 cabinets or less, the Exchange will limit new cabinet orders to a maximum of 4 cabinets each, and all new cabinets will be limited to a maximum power level of 5kW. Should available cabinet inventory shrink to zero, the Exchange will place firms seeking services on a waiting list based on that date the Exchange receives signed orders for the services from the firm. In order to be placed on the waiting list, a firm must have utilized all existing cabinets they already have in the datacenter. Once on the list, the firms, on a rolling basis, will be allocated a single 5kW cabinet each time one becomes available. After receiving a cabinet, the firm will move to the bottom of the waiting list.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,[9] which requires, among other things, that that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposed co-location fees are reasonable and equitably allocated insofar as they are applied on the same terms to similarly-situated market participants. The Commission notes that charges may vary depending on the use of cabinet space and/or power usage. In addition, the Commission believes that the co-location services described in the proposed rule change are not unfairly discriminatory because: (1) Co-location

[4] Currently, NASDAQ OMX BX provides its co-location services through data centers located in the New York City and Mid-Atlantic areas.

[5] The Exchange states that these fees are for telecommunications connectivity only. Market data fees are charged independently by NASDAQ OMX BX and other exchanges.

[6] The Exchange made a 10Gb fiber connection available to co-located customers early in the first quarter of 2010. On March 26, 2010, the Exchange filed a proposed rule change that would, among other things, establish pricing for 10Gb fiber connections for customers who are not co-located in BX's datacenter. *See* SR–BX–2010–043.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

services are offered to all interested market participants who request them and pay the appropriate fees; (2) as represented by BX, the Exchange has architected its systems so as to, as much as possible, reduce or eliminate differences among users of its systems, whether co-located or not; and (3) the Exchange has stated that it has sufficient space to accommodate new co-locaters has set forth in the proposed rule change objective procedures to allocate space should it become limited in the future.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–BX–2010–012) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16146 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62399; File No. SR–ISE–2010–34]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Relating to Fees for the ISE Order Feed

June 28, 2010.

I. Introduction

On May 11, 2010, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Schedule of Fees to adopt subscription fees for the sale of a new market data offering called the ISE Order Feed. The proposed rule change was published for comment in the **Federal Register** on May 25, 2010.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62117 (May 18, 2010), 75 FR 29381 ("Notice").

II. Description of the Proposed Rule Change

ISE proposes to establish subscription fees for the sale of the ISE Order Feed, which provides real-time updates every time a new limit order that is not immediately executable at the best bid/offer ("BBO") is placed on the ISE order book.[4] ISE Order Feed contains information on individual limit orders including the order type (buy/sell), the order price, the order size, and customer indicator (which reflects whether the order is a customer order), as well as details for each instrument series, including the symbols (series and underlying security), put or call indicator, the expiration and the strike price of the series.

The Exchange proposes to charge distributors [5] of the ISE Order Feed $2,000 per month and $10 per external controlled device [6] per month. For subscribers who redistribute the ISE Order Feed externally, or redistribute the ISE Order Feed internally and externally, the Exchange proposes to limit for any one month the combined maximum amount of fees payable to $2,500. The ISE Order Feed will be made available to both members and non-members on a subscription basis. Upon Commission approval, the Exchange intends to begin charging the ISE Order Feed fees on July 1, 2010.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, it is consistent with Section 6(b)(4) of the Act,[8] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[10] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has reviewed the proposal using the approach set forth in the approval order for SR–NYSEArca-2006–21 for non-core market data fees.[11] In the NYSE Arca Order, the Commission stated that "when possible, reliance on competitive forces is the most appropriate and effective means to assess whether the terms for the distribution of non-core data are equitable, fair and reasonable, and not unreasonably discriminatory." [12] It noted that the "existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory." [13] If an exchange "was subject to significant competitive forces in setting the terms of a proposal," the Commission will approve a proposal unless it determines that "there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder." [14]

As noted in the NYSE Arca Order, the standards in Section 6 of the Act do not differentiate between types of data and therefore apply to exchange proposals to distribute both core data and non-core data.[15] All U.S. options exchanges are required pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan") to provide "core data"—the best-priced quotations and comprehensive last sale reports—to

[4] The ISE Order Feed does not include market orders, immediate or cancel orders, quotes, or any non-displayed interest.

[5] A "distributor" is any firm that receives the ISE Order Feed directly from ISE or indirectly through a "redistributor" and then distributes it either internally or externally. All distributors will be required by the Exchange to execute an ISE distributor agreement. "Redistributors" include market data vendors and connectivity providers such as extranets and private network providers.

[6] A "controlled device" is as any device that a distributor of the ISE Order Feed permits to access the information in the ISE Order Feed.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) ("NYSE Arca Order").

[12] *Id.* at 74771.

[13] *Id.* at 74782.

[14] *Id.* at 74781.

[15] *Id.* at 74779.

OPRA, which data is then distributed to the public pursuant to the OPRA Plan.[16] In contrast, individual exchanges and other market participants distribute non-core data voluntarily.[17] The mandatory nature of the core data disclosure regime leaves little room for competitive forces to determine products and fees.[18] Non-core data products and their fees are, by contrast, much more sensitive to competitive forces. The Commission therefore is able to rely on competitive forces in its determination of whether an exchange's proposal to distribute non-core data meets the standards of Section 6.[19]

Because ISE's instant proposal relates to the distribution of non-core data, the Commission will apply the market-based approach set forth in the NYSE Arca Order. Pursuant to this approach, the first step is to determine whether ISE was subject to significant competitive forces in setting the terms of its non-core market data proposal, including the level of any fees. As in the NYSE Arca Order, in determining whether ISE was subject to significant competitive forces in setting the terms of its proposal, the Commission has analyzed ISE's compelling need to attract order flow from market participants, and the availability to market participants of alternatives to purchasing ISE's non-core market data.

The Commission believes that the options industry currently is subject to significant competitive forces.[20] It is generally accepted that the start of wide-spread multiple listing of options across exchanges in August 1999 greatly enhanced competition among the exchanges.[21] The launch of four options exchanges since that time, numerous market structure innovations, and the start of the options penny pilot[22] have all further intensified intermarket competition for order flow.

ISE currently competes with seven options exchanges for order flow. Attracting order flow is an essential part of ISE's competitive success.[23] If ISE cannot attract order flow to its market, it will not be able to execute transactions. If ISE cannot execute transactions on its market, it will not generate transaction revenue. If ISE cannot attract orders or execute transactions on its market, it will not have market data to distribute, for a fee or otherwise, and will not earn market data revenue and thus not be competitive with other exchanges that have this ability.

ISE must compete vigorously for order flow to maintain its share of trading volume. This compelling need to attract order flow imposes significant pressure on ISE to act reasonably in setting its fees for ISE market data, particularly given that the market participants that will pay such fees often will be the same market participants from whom ISE must attract order flow. These market participants include broker-dealers that control the handling of a large volume of customer and proprietary order flow. Given the portability of order flow from one exchange to another, any exchange that sought to charge unreasonably high data fees would risk alienating many of the same customers on whose orders it depends for competitive survival.[24]

In addition to the need to attract order flow, the availability of alternatives to the ISE Order Feed significantly affects the terms on which ISE can distribute this market data.[25] In setting the fees for the ISE Order Feed, ISE must consider the extent to which market participants would choose one or more alternatives instead of purchasing its data.[26] The most basic source of information concerning the depth generally available at an exchange is the complete record of an exchange's transactions that is provided in the core data feeds.[27] In this respect, the core data feeds that include an exchange's own transaction information are a significant alternative to the exchange's market data product.[28] Further, other options exchanges can produce their own market data products, and thus are sources of potential competition for ISE.[29] In addition, one or more securities firms could act independently and distribute their own order data, with or without a fee.[30]

The Commission believes that there are a number of alternative sources of information that impose significant competitive pressures on ISE in setting the terms for distributing the ISE Order Feed. The Commission believes that the availability of those alternatives, as well as ISE's compelling need to attract order flow, imposed significant competitive pressure on ISE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because ISE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that the terms of the proposal fail to meet the applicable requirements of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis. Further, the Commission did not receive any comment letters raising concerns of a substantial countervailing basis that the terms of the proposal failed to meet the requirements of the Act or the rules thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–ISE–2010–34) be, and it hereby is, approved.

[16] *See* OPRA Plan, Sections V(a)–(c).

[17] *See* NYSE Arca Order, *supra,* note 11, at 74779.

[18] *Id.*

[19] *Id.*

[20] The Commission has previously stated that the options industry is subject to significant competitive forces. *See* Securities Exchange Act Release No. 59949 (May 20, 2009), 74FR 25593 (May 28, 2009) (SR–ISE–2007–97) (order approving the ISE's proposal establishing fees for a real-time depth of market data offering).

[21] *See* generally *Concept Release: Competitive Developments in the Options Markets,* Securities Exchange Act Release No. 49175 (February 3, 2004), 69 FR 6124 (February 9, 2004); *see also* Battalio, Robert, Hatch, Brian, and Jennings, Robert, *Toward a National Market System for U.S. Exchange-listed Equity Options,* The Journal of Finance 59 (933–961); De Fontnouvelle, Patrick, Fishe, Raymond P., and Harris, Jeffrey H., *The Behavior of Bid-Ask Spreads and Volume in Options Markets During the Competition for Listings in 1999,* The Journal of Finance 58 (2437–2463); and Mayhew, Stewart, *Competition, Market Structure, and Bid-Ask Spreads in Stock Option Markets,* The Journal of Finance 57 (931–958).

[22] *See, e.g.,* Securities Exchange Act Release Nos. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106); 55073 (January 9, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–48); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–Phlx–2006–62); 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73); and 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74).

[23] ISE states in its filing that it "has a compelling need to attract order flow from market participants in order to maintain its share of trading volume." *See* Notice, *supra* note 3, at 29382.

[24] *Id.* at 29383.

[25] *See* NYSE Arca Order, *supra* note 11, at 74784.

[26] *Id.* at 74783.

[27] *Id.*

[28] *Id.* Information on transactions executed on ISE is available through OPRA.

[29] In its filing, ISE states that "[o]ther exchanges, including some who may enjoy greater market share than ISE, are potential competitors as they too sell similar market data offerings that market participants may choose to purchase instead. For example, NASDAQ OMX PHLX ("PHLX") has filed a proposed rule change to adopt fees for a market data product that includes a data feed that is similar to the ISE Order Feed. *See* Securities Exchange Act Release No. 61878 (April 8, 2010), 75 FR 20023 (April 16, 2010) (SR–PHLX–2010–48). The PHLX' Specialized Order Feed, which PHLX has proposed to integrate into its TOPO Plus Orders market data offering, includes 'real-time information to keep track of single order book(s).' " *See* Notice, *supra* note 3, at 29383.

[30] *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–16147 Filed 7–1–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34—62239; File No. SR—NYSEAMEX—2010—48]

Self–Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting Rule 405(4)–NYSE Amex Equities to Correspond with Rule Changes of the Financial Industry Regulatory Authority, Inc.

June 8, 2010.

Correction

In notice document 2010–14360 beginning on page 33880 in the issue of Tuesday, June 15, 2010, make the following correction:

On page 33880, in the first column, the docket number is corrected to read as it appears above.

[FR Doc. C1–2010–14360 Filed 7–1–10; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34—62161; File No. SR—ODD—2010—01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Certain Changes to Disclosure Regarding Options on Conventional Index-Linked Securities and Amendment to the Options Disclosure Document Inside Front Cover

May 24, 2010.

Correction

In notice document 2010–12986 beginning on page 30451 in the issue of Tuesday, June 1, 2010, make the following correction:

On page 30451, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C1–2010–12986 Filed 7–1–10; 8:45 am]

BILLING CODE 1505–01–D

[31] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 7074]

Culturally Significant Objects Imported for Exhibition Determinations: "The Origins of Writing in the Ancient Middle East"

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 "The Origins of Writing in the Ancient Middle East," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Oriental Institute Museum, Chicago, IL, from on or about September 26, 2010, until on or about March 6, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 21, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–16207 Filed 7–1–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7072]

Culturally Significant Objects Imported for Exhibition Determinations: "Venice: Canaletto and His Rivals"

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 "Venice: Canaletto and His Rivals," 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 National Gallery of Art, Washington, DC, from on or about February 20, 2011, until on or about May 30, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: June 25, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–16211 Filed 7–1–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7073]

Culturally Significant Objects Imported for Exhibition Determinations: "Salvador Dali: The Late Work"

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 "Salvador Dali: The Late Work," 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 High Museum of Art, Atlanta, GA, from on or about August 7, 2010, until on or about January 9, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: June 24, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–16208 Filed 7–1–10; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at June 11, 2010, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on June 11, 2010, in Harrisburg, Pennsylvania, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: (1) Approved and tabled certain water resources projects, including approval of two projects involving diversions into the basin; and (2) approved amendments to its Regulatory Program Fee Schedule.

DATES: June 11, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net;* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: (1) A presentation by the IMAX movie production staff at the Harrisburg Whitaker Center for Science and the Arts on development of an educational production on the future of the Chesapeake Bay; (2) a concluding report on the Paxton Creek Stormwater Management Project; (3) a progress report on implementation of the SRBC Remote Water Quality Monitoring Network; (4) a report on the present hydrologic conditions of the basin; (5) approval for proposed rulemaking amending 18 CFR parts 806 and 808, and deleting and reserving part 807; (6) ratification/approval of grants/contracts; (7) adoption of a FY-2012 budget commencing July 1, 2011; and (8) election of the member representing the State of New York as the new Chair and the member representing the Commonwealth of Pennsylvania as the new Vice Chair of the Commission to serve in the next fiscal year. The Commission heard counsel's report on legal matters affecting the Commission. The Commission also convened a public hearing and took the following actions:

Public Hearing—Projects Approved

1. Project Sponsor and Facility: Carrizo Oil & Gas, Inc. (East Branch Wyalusing Creek—Bonnice), Jessup Township, Susquehanna County, PA. Surface water withdrawal of up to 0.720 mgd.

2. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Salisbury and Caernarvon Townships, Lancaster County, PA. Groundwater withdrawal of 0.075 mgd (30-day average) from two wells and six collection sumps; into-basin diversion of up to 0.050 mgd from the Delaware River Basin; and consumptive water use of up to 0.075 mgd.

3. Project Sponsor and Facility: Chief Oil & Gas LLC (Chest Creek—Kitchen), Chest Township, Clearfield County, PA. Surface water withdrawal of up to 0.216 mgd.

4. Project Sponsor and Facility: East Resources, Inc. (Cowanesque River—Egleston), Nelson Township, Tioga County, PA. Surface water withdrawal of up to 0.267 mgd.

5. Project Sponsor: EOG Resources, Inc. Project Facility: Blue Valley AMD Treatment Plant, Horton Township, Elk County, PA. Into-basin diversion of up to 0.322 mgd from the Ohio River Basin.

6. Project Sponsor and Facility: KMI, LLC (West Branch Susquehanna River—Owner), Mahaffey Borough, Clearfield County, PA. Surface water withdrawal of up to 2.000 mgd.

7. Project Sponsor: New Morgan Landfill Company, Inc. Project Facility: Conestoga Landfill, Bethel Township, Berks County, PA. Modification to increase consumptive water use approval (Docket No. 20061206).

8. Project Sponsor and Facility: P.H. Glatfelter Company, Spring Grove Borough, York County, PA. Consumptive water use of up to 0.460 mgd.

9. Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (Loyalsock Creek—Hershberger), Gamble Township, Lycoming County, PA. Surface water withdrawal of up to 0.918 mgd.

10. Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (Pine Creek—Poust), Watson Township, Lycoming County, PA. Surface water withdrawal of up to 0.918 mgd.

11. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek—Stang), Rush Township, Susquehanna County, PA. Surface water withdrawal of up to 0.750 mgd.

12. Project Sponsor and Facility: Susquehanna Gas Field Services, L.L.C., Meshoppen Borough, Wyoming County, PA. Groundwater withdrawal of up to 0.216 mgd from the Meshoppen Pizza Well.

13. Project Sponsor and Facility: Talisman Energy USA Inc. (Susquehanna River—Welles), Terry Township, Bradford County, PA. Surface water withdrawal of up to 2.000 mgd.

14. Project Sponsor: United Water PA. Project Facility: Newberry System, Newberry Township, York County, PA. Groundwater withdrawal of up to 0.071 mgd from Reeser Well 1 and 0.071 mgd from Reeser Well 2.

15. Project Sponsor: United Water PA. Project Facility: Newberry System, Newberry Township, York County, PA. Groundwater withdrawal of up to 0.066 mgd from Susquehanna Village Well 1 and 0.066 mgd from Susquehanna Village Well 2.

Public Hearing—Projects Tabled

1. Project Sponsor and Facility: Linde Corporation (Lackawanna River—Carbondale Industrial Development Authority), Fell Township, Lackawanna County, PA. Application for surface water withdrawal of up to 0.905 mgd.

2. Project Sponsor and Facility: Novus Operating, LLC (Tioga River—Mitchell), Covington Township, Tioga County, PA. Application for surface water withdrawal of up to 1.750 mgd.

3. Project Sponsor and Facility: Walker Township Water Association, Walker Township, Centre County, PA. Modification to increase the total groundwater system withdrawal limit (30-day average) from 0.523 mgd to 0.962 mgd (Docket No. 20070905).

Public Hearing—Amended Regulatory Program Fee Schedule

The Commission approved amendments to its Regulatory Program Fee Schedule intended to clarify the application of fees to certain projects and ease the impact of fees on groundwater remediation and municipal projects. There were no changes to the fee amounts.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: June 22, 2010.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. 2010–16121 Filed 7–1–10; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Approved Projects.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: May 1, 2010 through May 31, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423, ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238–0423, ext. 304; fax: (717) 238–2436; e-mail: *srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in and 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued under 18 CFR 806.22(f)

1. East Resources, Inc., Pad ID: Johnson 434, ABR–20100501, Shippen Township, Tioga County, Pa.; Approval Date: May 3, 2010.

2. East Resources, Inc., Pad ID: Red Run Mountain 736, ABR–20100502, McIntyre Township, Lycoming County, Pa.; Approval Date: May 3, 2010.

3. East Resources, Inc., Pad ID: Newlin 476, ABR–20100503, Charleston Township, Tioga County, Pa.; Approval Date: May 3, 2010.

4. Stone Energy Corporation, Pad ID: Loomis Well No. 2H, ABR–20100504, Rush Township, Susquehanna County, Pa.; Approval Date: May 4, 2010.

5. Chief Oil & Gas, LLC, Pad ID: Flook Drilling Pad #1, ABR–20100505, Mifflin Township, Lycoming County, Pa.; Approval Date: May 5, 2010.

6. Chief Oil & Gas, LLC, Pad ID: Kerr Drilling Pad #1, ABR–20100506, Lathrop Township, Susquehanna County, Pa.; Approval Date: May 5, 2010.

7. Chesapeake Appalachia, LLC, Pad ID: Verex, ABR–20100507, Auburn Township, Susquehanna County, Pa.; Approval Date: May 6, 2010.

8. Chesapeake Appalachia, LLC, Pad ID: Pauliny, ABR–20100508, Terry Township, Bradford County, Pa.; Approval Date: May 6, 2010.

9. Chesapeake Appalachia, LLC, Pad ID: Coates, ABR–20100509, Standing Stone Township, Bradford County, Pa.; Approval Date: May 6, 2010.

10. Chesapeake Appalachia, LLC, Pad ID: Woodburn, ABR–20100510, Armenia Township, Bradford County, Pa.; Approval Date: May 6, 2010.

11. Chesapeake Appalachia, LLC, Pad ID: Jack, ABR–20100511, Windham Township, Wyoming County, Pa.; Approval Date: May 6, 2010.

12. EOG Resources, Inc., Pad ID: ROGERS 1H, ABR–20100512, Springfield Township, Bradford County, Pa.; Approval Date: May 10, 2010.

13. EXCO Resources (PA), Inc., Pad ID: Litke (Pad 2), ABR–20100513, Burnside Township, Centre County, Pa.; Approval Date: May 12, 2010, including a partial waiver of 18 CFR Section 806.15.

14. EXCO Resources (PA), Inc., Pad ID: Litke (Pad 3), ABR–20100514, Burnside Township, Centre County, Pa.; Approval Date: May 12, 2010, including a partial waiver of 18 CFR Section 806.15.

15. EXCO Resources (PA), Inc., Pad ID: Litke (Pad 5), ABR–20100515, Burnside Township, Centre County, Pa.; Approval Date: May 12, 2010, including a partial waiver of 18 CFR Section 806.15.

16. East Resources, Inc., Pad ID: Walker 438, ABR–20100516, Shippen Township, Tioga County, Pa.; Approval Date: May 12, 2010.

17. East Resources, Inc., Pad ID: Dandois 482, ABR–20100517, Sullivan Township, Tioga County, Pa.; Approval Date: May 12, 2010.

18. Cabot Oil & Gas Corporation, Pad ID: WarrinerR P2, ABR–20100518, Dimock Township, Susquehanna County, Pa.; Approval Date: May 13, 2010.

19. Cabot Oil & Gas Corporation, Pad ID: WarrinerR P5, ABR–20100519, Dimock Township, Susquehanna County, Pa.; Approval Date: May 13, 2010.

20. Cabot Oil & Gas Corporation, Pad ID: CarsonJ P1, ABR–20100520, Springville Township, Susquehanna County, Pa.; Approval Date: May 15, 2010.

21. Cabot Oil & Gas Corporation, Pad ID: HawleyW P1, ABR–20100521, Dimock Township, Susquehanna County, Pa.; Approval Date: May 15, 2010.

22. Talisman Energy USA, Inc., Pad ID: Gardiner 01 071, ABR–20100522, Troy Township, Bradford County, Pa.; Approval Date: May 15, 2010.

23. Talisman Energy USA, Inc., Pad ID: Vanblarcom 03 054, ABR–20100523, Columbia Township, Bradford County, Pa.; Approval Date: May 15, 2010.

24. Chesapeake Appalachia, LLC, Pad ID: Fred, ABR–20100524, Leroy Township, Bradford County, Pa.; Approval Date: May 15, 2010.

25. Chesapeake Appalachia, LLC, Pad ID: McConnell, ABR–20100525, Overton Township, Bradford County, Pa.; Approval Date: May 15, 2010.

26. Chesapeake Appalachia, LLC, Pad ID: Janet, ABR–20100526, Monroe Township, Bradford County, Pa.; Approval Date: May 15, 2010.

27. Chesapeake Appalachia, LLC, Pad ID: Treat, ABR–20100527, Rome Township, Bradford County, Pa.; Approval Date: May 15, 2010.

28. Chesapeake Appalachia, LLC, Pad ID: Morse, ABR–20100528, Leroy Township, Bradford County, Pa.; Approval Date: May 15, 2010.

29. Ultra Resources, Inc.; Pad ID: Patel 914, ABR–20100529, Abbott Township, Potter County, Pa.; Approval Date: May 17, 2010.

30. Anadarko E&P Company, LP, Pad ID: COP Tract 231 D, ABR–20100530, Snow Shoe Township, Centre County, Pa.; Approval Date: May 18, 2010, including a partial waiver of 18 CFR Section 806.15

31. EOG Resources, Inc., Pad ID: COP Pad A, ABR–20100531, Lawrence

Township, Clearfield County, Pa.; Approval Date: May 18, 2010.

32. East Resources, Inc., Pad ID: Greenwood Hunting Lodge 427, ABR–20100532, McIntyre Township, Lycoming County, Pa.; Approval Date: May 18, 2010.

33. EOG Resources, Inc., Pad ID: PHC 28H/29H, ABR–20090918.1, Lawrence Township, Clearfield County, Pa.; Approval Date: May 19, 2010.

34. EOG Resources, Inc., Pad ID: PHC 4H, ABR–20090501.1, Lawrence Township, Clearfield County, Pa.; Approval Date: May 19, 2010.

35. EOG Resources, Inc., Pad ID: PHC 5H, ABR–20090502.1, Lawrence Township, Clearfield County, Pa.; Approval Date: May 19, 2010.

36. EOG Resources, Inc., Pad ID: PHC 6H, ABR–20090721.2, Lawrence Township, Clearfield County, Pa.; Approval Date: May 19, 2010.

37. XTO Energy Incorporated, Pad ID: Everbe Farms 8518H, ABR–20100533, Franklin Township, Lycoming County, Pa.; Approval Date: May 20, 2010.

38. Range Resources—Appalachia, LLC; Pad ID: Arrowhead Hunting Club Unit, ABR–20100534, Gallagher Township, Clinton County, Pa.; Approval Date: May 20, 2010.

39. Chesapeake Appalachia, LLC; Pad ID: Hayward New, ABR–20100535, Rome Township, Bradford County, Pa.; Approval Date: May 20, 2010.

40. Chesapeake Appalachia, LLC; Pad ID: Madden, ABR–20100536, Asylum Township, Bradford County, Pa.; Approval Date: May 21, 2010.

41. Chesapeake Appalachia, LLC; Pad ID: McGraw, ABR–20100537, Auburn Township, Susquehanna County, Pa.; Approval Date: May 21, 2010.

42. Chesapeake Appalachia, LLC; Pad ID: Cerca, ABR–20100538, Wyalusing Township, Bradford County, Pa.; Approval Date: May 21, 2010.

43. Chesapeake Appalachia, LLC; Pad ID: Rich, ABR–20100539, Troy Township, Bradford County, Pa.; Approval Date: May 21, 2010.

44. Chesapeake Appalachia, LLC; Pad ID: Flash, ABR–20100540, Rome Township, Bradford County, Pa.; Approval Date: May 21, 2010.

45. Anadarko E&P Company, LP, Pad ID: COP Tract 685 A, ABR–20100541, Cummings Township, Lycoming County, Pa.; Approval Date: May 24, 2010, including a partial waiver of 18 CFR Section 806.15.

46. Cabot Oil & Gas Corporation, Pad ID: RozellC P1, ABR–20100542, Jessup Township, Susquehanna County, Pa.; Approval Date: May 24, 2010.

47. Chesapeake Appalachia, LLC; Pad ID: Burkett, ABR–20100543, Smithfield Township, Bradford County, Pa.; Approval Date: May 25, 2010.

48. Chesapeake Appalachia, LLC; Pad ID: Matt Will Farms, ABR–20100544, Troy Township, Bradford County, Pa.; Approval Date: May 26, 2010.

49. Ultra Resources, Inc., Pad ID: Simonetti 817 (rev), ABR–20100545, Gaines Township, Tioga County, Pa.; Approval Date: May 26, 2010.

50. Chief Oil & Gas, LLC, Pad ID: Kitzmiller Drilling Pad #1, ABR–20100546, Jordan Township, Lycoming County, Pa.; Approval Date: May 27, 2010.

51. Chief Oil & Gas, LLC, Pad ID: Severcool Drilling Pad #1, ABR–20100547, Forkston Township, Wyoming County, Pa.; Approval Date: May 27, 2010.

52. Chief Oil & Gas, LLC, Pad ID: R & D Drilling Pad #1, ABR–20100548, Mehoopany Township, Wyoming County, Pa.; Approval Date: May 27, 2010.

53. Talisman Energy USA, Inc., Pad ID: Cole 03 016, ABR–20100549, Columbia Township, Bradford County, Pa.; Approval Date: May 27, 2010.

54. Cabot Oil & Gas Corporation, Pad ID: PettyJ P1, ABR–20100550, Dimock Township, Susquehanna County, Pa.; Approval Date: May 27, 2010.

55. EOG Resources, Inc., Pad ID: PHC Pad Q, ABR–20100551, Lawrence Township, Clearfield County, Pa.; Approval Date: May 27, 2010.

56. Talisman Energy USA, Inc., Pad ID: Wilber 03 065, ABR–20100552, Columbia Township, Bradford County, Pa.; Approval Date: May 27, 2010.

57. East Resources, Inc.; Pad ID: Breon 492, ABR–20100553, Sullivan Township, Tioga County, Pa.; Approval Date: May 28, 2010.

58. Range Resources—Appalachia, LLC; Pad ID: Harman, Lewis Unit #1H; ABR–20100554, Moreland Township, Lycoming County, Pa.; Approval Date: May 28, 2010.

59. EOG Resources, Inc., Pad ID: JBR PARTNERS 1V, ABR–20100555, Saint Marys City, Elk County, Pa.; Approval Date: May 28, 2010.

60. XTO Energy Incorporated, Pad ID: Tome 8522H, ABR–20100556, Moreland Township, Lycoming County, Pa.; Approval Date: May 28, 2010.

61. Chesapeake Appalachia, LLC; Pad ID: Kenyon, ABR–20100557, Overton Township, Bradford County, Pa.; Approval Date: May 28, 2010.

62. Chesapeake Appalachia, LLC; Pad ID: Feusner New, ABR–20100558, Litchfield Township, Bradford County, Pa.; Approval Date: May 28, 2010.

63. Ultra Resources, Inc.; Pad ID: Miksis 831, ABR–20100559; Gaines Township, Tioga County, Pa.; Approval Date: May 28, 2010.

64. Ultra Resources, Inc.; Pad ID: Coon Hollow 904, ABR–20100560; West Branch Township, Potter County, Pa.; Approval Date: May 28, 2010.

65. East Resources, Inc., Pad ID: Young 431, ABR–20100561, Shippen Township, Tioga County, Pa.; Approval Date: May 31, 2010.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR Parts 806, 807, and 808.

Dated: June 22, 2010.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2010–16122 Filed 7–1–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Solicitation of Applications and Notice of Funding Availability for Reducing the Effects of Traumatic Exposure to Grade Crossing and Trespasser Incidents on Train Crews

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funds availability, solicitation of applications.

SUMMARY: Under this notice, FRA is soliciting applications from interested and responsible parties for a grant to assess the applicability of current knowledge about post traumatic interventions and to advance evidence-based recommendations for controlling the risks associated with traumatic exposure in the railroad setting.

DATES: FRA will begin accepting applications immediately after publication of this notice in the **Federal Register**. FRA will accept applications for this grant opportunity until August 16, 2010. Reviews will be conducted immediately following the solicitation close date and selection announcements will be made promptly.

ADDRESSES: Applications for grants under this Program must be submitted electronically to Grants.gov (*http://www.grants.gov*) following the detailed procedures in the grant application package online. The Grants.gov Web site allows organizations to find and apply electronically for competitive grant opportunities from all Federal grant-making agencies. Any entity wishing to submit an application pursuant to this notice should immediately initiate the process of registering with Grants.Gov.

FOR FURTHER INFORMATION CONTACT: Technical inquiries should be directed to Mr. Michael Coplen, Human Factors Program Manager, FRA, Mail Stop 20, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Phone: (202)

493–6346; e-mail: *Michael.Coplen@dot.gov*). Non-technical inquiries should be directed to Ms. Jennifer Capps, Grants Officer, Office of Acquisition and Grants Services, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Phone: (202) 493–0112; e-mail: *Jennifer.Capps@dot.gov*).

SUPPLEMENTARY INFORMATION: FRA's Office of Research and Development and Office of Railroad Safety are concerned about the health and safety of train crews who witness traumatic events from grade crossing and trespasser incidents. These incidents carry the risk of exposure to the sort of situations known to trigger severe emotional and psychological distress, including Post Traumatic Stress Disorder (PTSD) and the more immediate Acute Distress Disorder (ASD). FRA seeks to fund a grant assessing the applicability of current knowledge about post traumatic interventions and to advance evidence-based recommendations for controlling the risks associated with traumatic exposure in the railroad setting. The selected entity will develop one or more program designs suitable for implementation by rail carriers in partnership with their respective unions and researchers. FRA's Office of Research and Development has $50,000 available in fiscal year 2010 to fund a grant for the initial development of an intervention plan for reducing the effects of traumatic exposure to grade crossing and trespasser incidents in particular. Additional funding may be available in future years for expansion and implementation of the intervention.

Eligible Organizations. Any individual or organization with previous experience designing and implementing a PTSD intervention program, along with the skills, knowledge, and resources necessary to carry out the proposed research as the project director/principal investigator, is invited to develop an application for support.

Selection Criteria. Proposals submitted under this notice must, at a minimum, satisfy the following requirement: The principal investigator(s) identified to lead the technical effort under this program must have demonstrated experience working with employees and employers to successfully implement programs mediating the effects of employees' exposure to trauma. Proposals that meet the minimum qualifications will be evaluated using the following criteria:

1. *Key Personnel and Supporting Organization.* The technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts (*e.g.,* holding a Ph.D. in psychology or related fields, having peer-reviewed publications relating to PTSD, ASD, or other trauma interventions); and qualifications of primary and supporting organizations to fully and successfully execute the proposal plan within the proposed time frame and budget.

2. *Technical Merit.* Degree to which proposed ideas exhibit a basis in established scientific and psychological principles and practices; and the perceived likelihood of technical and practical success in a railroad environment.

Requirements and Conditions for Grant Applications. Detailed application requirements and conditions may be found in the grant application guidance (CFDA Number 20.313) for this solicitation on Grants.gov.

Issued in Washington, DC, on June 28, 2010.

Mark Yachmetz,

Associate Administrator for Railroad Policy and Development.

[FR Doc. 2010–16156 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non domestic Gear-Motor Assembly with Horsepower 7.5, Output RPM 15, Torque 33011 in-lb, Voltage 220/460 and brakes torque 55.3 in-lb for rehabilitation of Federal-aid project FPID 415386–2–38–01; West Columbus Drive Bridge project in Tampa, Florida.

DATES: The effective date of the waiver is July 6, 2010.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via e-mail at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via e-mail at *michael.harkins@dot.gov.* Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., *est.,* Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non domestic Gear-Motor Assembly with Horsepower 7.5, Output RPM 15, Torque 33011 in-lb, Voltage 220/460 and brakes torque 55.3 in-lb. The use of the Gear-Motor assembly is for replacement of original machinery that meets Federal design code, AASHTO LRFD for Movable Highway Bridge Design Specifications for bascule bridges.

In accordance with Division A, section 123 of the "Consolidated Appropriations Act, 2010" (Pub. L. 111–117), the FHWA published a notice of intent to issue a waiver on its Web site for Gear-Motor assembly (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=48*) on May 5, 2010. The FHWA received no comments in response to the publication, which suggests that the Gear-Motor assembly may not be available domestically. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for Gear-Motor assembly with Horsepower 7.5, Output RPM 15, Torque 33011 in-lb, Voltage 220/460 and brakes torque 55.3 in-lb. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers for Gear-Motor assembly; with Horsepower 7.5, Output RPM 15, Torque 33011 in-lb, Voltage 220/460 and brakes torque 55.3 in-lb.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat.1572), the FHWA

is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's web site via the link provided to the Florida waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: June 23, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–16088 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of the non-domestic steel component of UNISTRUT fall arrest system, for replacement in kind on Stickel Bridge project no. BR–280–6(091) in New Jersey.

DATES: The effective date of the waiver is July 6, 2010.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via e-mail at *gerald.yakowenko@dot.gov*. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via e-mail at *michael.harkins@dot.gov*. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., *et.,* Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use for the non-domestic steel component for the UNISTRUT fall protection system, which is compatible with the existing system.

In accordance with section 123 of Division A, of the "Consolidated Appropriations Act, 2010" (Pub. L. 111–117), the FHWA published a notice of intent to issue a waiver on its Web site for the steel component of the UNISTRUT fall protection system (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=50*) on May 25, 2010. The FHWA received three comments in response to the publication. The three comments suggested different domestic manufacturers of fall protection systems and opposed the approval of the waiver request. The New Jersey Department of Transportation responded with a comment stating that the waiver is for replacement of a component of the existing UNISTRUT fall protection system and not for an entirely new fall protection system. During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers of a compatible steel component for the UNISTRUT fall protection system. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of compatible steel components for the UNISTRUT fall protection system.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the New Jersey waiver page, noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: June 23, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–16082 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic high strength steel bars ASTM A722M 150 ksi (1⅞ inches in diameter) for emergency repairs of broken eye bars on the San Francisco Oakland Bay Bridge in California. These emergency repairs did not require prior FHWA authorization. The California Department of Transportation (Caltrans) conducted a search and was not able to find a domestic source for the high strength steel bars ASTM A722M 150 ksi (1⅞ inches in diameter). As a result, Caltrans proceeded to utilize a foreign source for this product. Based on the emergency situation, and Caltrans' reasonable efforts to comply with Buy America, the FHWA concludes that a public interest waiver is appropriate for the use of non-domestic high strength steel bars for emergency repairs of broken eye bars on the San Francisco Oakland Bridge in California.

DATES: The effective date of the waiver is July 6, 2010.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via e-mail at *gerald.yakowenko@dot.gov*. For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via e-mail at *michael.harkins@dot.gov*. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., est., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also

provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non-domestic high strength steel bars based on the public interest provision in FHWA's policy.

On October 27, 2009, a repair made during the 2009 Labor Day weekend to a cracked eye bar on the San Francisco Oakland Bay Bridge failed, requiring the closure of the bridge. The San Francisco Oakland Bay Bridge carries over 280,000 vehicles per day creating transportation gridlock in the area. Caltrans' goals were to ensure the safety of the bridge and reopen it as soon as possible through an emergency repair contract. Caltrans contacted four steel fabricators regarding their ability to supply domestic high strength bars to meet the schedule for the emergency repairs. They were unable to find a fabricator who had domestic high strength steel on hand that was able to meet their schedule.

In accordance with Division K, section 130 of the "Consolidated Appropriations Act, 2008" (Pub. L. 110–161), the FHWA published a notice of intent to issue a waiver on its Web site for the high strength steel bars (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=46*) on March 22, 2010. The FHWA received four comments in response to the notice. One commenter suggested that Gerdau Ameristeel manufactures the high strength steel bars domestically. Caltrans contacted Gerdau Ameristeel to verify availability of high strength steel bars during the period of emergency repairs. Gerdau Ameristeel indicated that a lead time is required and the high strength steel bars would not have been available for emergency repairs. Two comments were from Caltrans explaining the circumstances surrounding the project, as well as the efforts made by Caltrans in contacting potential domestic manufacturers. The fourth comment expressed general support for the Buy America requirement.

During the 15-day comment period, the FHWA conducted additional nationwide review to locate potential domestic manufacturers for the high strength steel bars. Based on all the information available to the agency, the FHWA concludes that there were no domestic high strength steel bars ASTM A 722M 150ksi (1⅞ inches diameter) readily available for emergency repairs of the broken eye bars.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat.1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the California waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Issued on: June 24, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–16085 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Guidance to States Regarding Driver History Record Information Security, Continuity of Operation Planning, and Disaster Recovery Planning

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces guidance to State driver licensing agencies (SDLAs) to support their efforts at maintaining the security of information contained in the driver history record of commercial driver's license (CDL) holders. Further, FMCSA provides States with recommendations related to continuity of operation and disaster recovery planning to ensure the permanence of information contained in the driver history record of a CDL holder. This action is in response to the Department of Transportation Office of the Inspector General's (OIG) 2009 report *Audit of the Data Integrity of the Commercial Driver's License Information System (CDLIS).*

FOR FURTHER INFORMATION CONTACT: Selden Fritschner, Chief, Commercial Driver's License Division, E-mail: *selden.fritschner@dot.gov,* Telephone: 202–366–0677, or Kelvin Taylor, Information Systems Security Officer, E-mail: *kelvin.taylor@dot.gov,* Telephone: 202–366–4028. Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

In July 2009, the Department of Transportation's Office of Inspector General released the report *Audit of the Data Integrity of the Commercial Driver's License Information System* as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). CDLIS consists of a database, known as the Central Site, which maintains individual Master Pointer Records (MPR) with identifying information for each CDL holder in the United States. This database directs or points inquirers to the database of each of the 51 CDL-issuing jurisdictions for more complete driver history records. Connectivity for the system is provided through an encrypted communications network. The FMCSA has designated the American Association of Motor Vehicle Administrators (AAMVA) as the operator of the Central Site and the communications network. States are responsible for ensuring their systems comply with the CDLIS specifications and procedures as published by AAMVA.

In preparing its report, OIG evaluated several factors related to the information stored at the CDLIS Central Site and on State databases. Specifically, OIG attempted to determine "whether CDLIS and State department of motor vehicles (DMV) information systems were adequately secured," and "the adequacy of contingency plans to ensure continued CDLIS service to DMVs following a disaster or emergency." (**Note:** The OIG report refers to DMVs. However, as States continue to reorganize their organizations away from all-inclusive DMVs, FMCSA has used the term "State Driver Licensing Agencies" in previous rulemakings to refer to these same agencies responsible for issuing CDLs).

The identifying information on the MPR at the CDLIS Central Site includes the name, date of birth, social security number, State of Record, and driver's license number. Because this information, both as individual and cumulative data elements, is considered personally identifiable information (PII), possessors of the information must take specific steps to prevent unauthorized access and dissemination. At the same time, because the information contained at the CDLIS Central Site and on SDLA databases is crucial to highway safety during the CDL issuance process and at roadside enforcement/inspection, it is paramount that the data be available to all authorized users with minimal disruption.

In its report, OIG noted that FMCSA had neither developed and implemented sufficient comprehensive security policies and procedures to protect the portal it uses to access CDLIS, nor had it developed complete contingency and testing plans for this system to ensure uninterrupted CDL information services in the event of a disaster or system outage. The FMCSA is currently addressing these findings by working directly with its service providers and is reporting its progress to OIG through corrective action plan updates. As the operator of CDLIS, AAMVA is also modernizing the system to adhere to standards established by the Federal Information Security Management Act (FISMA). Similar FISMA standards are being applied to the portal FMCSA owns and uses to access CDLIS.

The OIG also noted similar deficiencies in some State systems and programs. In five of nine States reviewed, the OIG found that information security practices, including continuity of operation and disaster recovery policies and plans, were either non-existent or informal, and that State continuity of operations, disaster recovery, and information system contingency planners had never engaged in adequate testing exercises.

Guidance

As a result of OIG's findings, FMCSA encourages States to evaluate their information security programs and either establish or update policies, plans, and procedures, to provide an adequate level of protection to sustain their operational mission and responsibilities.

While States are not required to meet Federal information security standards, each State should ensure that it has adequate and comprehensive processes and procedures in place to protect PII and sensitive information and to sustain its key operations during an outage. The National Institute of Standards and Technology's (NIST) Computer Security Division maintains a Computer Security Resource Center (CSRC) that provides free information to government and non-governmental entities in an effort to protect information systems against threats and ensure availability of information and services. FMCSA recommends that States consider NIST standards and review the publications available at its Web site: *http://csrc.nist.gov/index.html.*

I. Information Security

The key deficiency in States that OIG noted was the lack of current information security plans. Adequate planning is necessary to document standards and provide for continuous review and improvement. FMCSA strongly encourages States to develop an Information Security Strategic Plan (ISSP) that addresses organizational structure and governance, roles and responsibilities, and enterprise architecture. From this ISSP, the State should develop specific policies and guidance to ensure information security. Further, a coordinated plan allows for systematic monitoring and improvement.

While obviously not intended to be comprehensive for large organizations such as State driver licensing agencies, NIST Interagency Report (IR) 7621, *Small Business Information Security: The Fundamentals* provides basic information about information security issues. Topics in this publication include: Protecting information systems from damage by viruses, spyware, and malicious code; protecting internet connections; using firewalls; updating operating systems and applications; securing wireless access points and networks; controlling physical access to network components; training employees about information security; and limiting employee authority to install software, access certain websites, and gain access to network controls. Though States are not required to comply with FISMA, NIST Special Publication (SP) 800–53, *Recommended Security Controls for Federal Information Systems and Organizations (Rev. 3, August 2009),* provides a comprehensive guide to information security standards. NIST SP 800–100, *Information Security Handbook: A Guide for Managers,* also provides overview information for developing a security plan. NIST currently makes available over 30 additional publications related specifically to information security on topics ranging from wireless network access authentication to enterprise password management.

II. System and Service Unavailability

To mitigate the risks associated with system and service unavailability, FMCSA encourages States to establish and implement:

Continuity of Operations Plan (COOP)—A plan that focuses on restoring an organization's essential functions at an alternate site and performing those functions for up to 30 days before returning to normal operations.

Disaster Recovery Plan (DRP)—An information technology plan designed to restore operability of a system, application, or computer facility after an emergency.

Information Technology Contingency Plan (ITCP)—A plan focused on ensuring continuity-of-support for major applications in the event of a disruption in normal operations due to an emergency.

These plans should include a business impact analysis (BIA) to determine: the interdependence of systems and work priorities in the event of a disruption; actions necessary to restore system operations on a short term basis after a disruption until a more permanent solution can be implemented; and actions necessary to reconstitute a disrupted facility or lost data to its previous level of capability. The BIA should also include an analysis of the organization's reliance upon contracted support and connectivity, a prioritization list of the systems necessary for the organization's mission-critical functions, maximum allowable outages for system components (measured in hours or days), and responsibilities associated with restoring critical functions (including a line of succession in cases of staff unavailability). For further information on contingency planning, consult NIST's Special Publication 800–34: *Contingency Planning Guide for Information Technology Systems.*

In addition to establishing plans for service disruption and disaster recovery, it is critical to perform tests that assure the plans will work. These tests should be designed as cost-effective ways of determining if contingency systems and personnel perform as expected. The tests also provide the organization and its personnel with the confidence and experience necessary to respond to a real event. Tests can range from classroom exercises to full system testing that simulates a real event. Tests should be documented and the results examined for lessons learned and improvements necessary to the contingency plans. For further information on contingency testing, consult NIST's Special Publication 800–84: *Guide to Test, Training, and Exercise Programs for IT Plans and Capabilities.*

Issued on: June 23, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–16226 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0083]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt thirty-three individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective July 2, 2010. The exemptions expire on July 2, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://www.regulations.gov.*

Background

On May 10, 2010, FMCSA published a Notice of receipt of Federal diabetes exemption applications from thirty-three individuals and requested comments from the public (75 FR 25919). The public comment period closed on June 9, 2010 and one comment was received.

FMCSA has evaluated the eligibility of the thirty-three applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These thirty-three applicants have had ITDM over a range of 1 to 28 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the May 10, 2010, **Federal Register** Notice and they will not be repeated in this Notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Bethany Pisulak stated the following, "I feel that it is in the best safety to look for possible downsides of these people being able to work. They need to be focused for a long time, meaning they may go awhile without food or drink, which could lower their sugars, making them need insulin. There should be multiple tests done to ensure that each worker is qualified for the job or position."

In response to this comment, FMCSA's exemption process supports drivers with ITDM who seek to operate in interstate commerce. In addition, FMCSA relies on the expert medical opinion of the endocrinologist and the medical examiner, who are required to analyze individual ability to control and manage the diabetic condition, including the individual ability and willingness of the driver to monitor blood glucose level on an ongoing basis. Until the Agency issues a Final Rule, however, drivers with ITDM must continue to apply for exemptions from FMCSA, and request renewals of such exemptions. FMCSA will grant exemptions only to those applicants who meet the specific conditions and comply with all the requirements of the exemption.

Conclusion

Based upon its evaluation of the thirty-three exemption applications, FMCSA exempts, Spencer W. Alexander, Nelson Alvarez, Cody R. Anderson, Ronnie L. Barker, Eric D. Benham, Brian C. Blevins, Charles E. Bonner, Sr., Michael J. Brieske, Frederick Brown, William D. Elam, Jr., Devin S. Gibson, Lewis M. Hendershott, Mark E. Henning, Duane C. Jackson, John J. Long, Jerry A. McMurdy, Steven L. Miller, Joe E. Montoya, Jonathan A. Morisoli, Timothy J. Nowak, Lawrence W. Patterson, Jr., Peter J. Pendola, Frederick E. Robinson, Larry D. Schweisberger, Joseph C. Shaw, Michael Shuler, Kevin C. Simerick, Matthew E. Sipel, Michael S. Tanko, James P. Tomasik, Leonard D. Tournear, Booker T. Ware and Joseph H. Watkins, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 25, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–16222 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2010–0115]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt thirty-seven individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective July 2, 2010. The exemptions expire on July 2, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://www.regulations.gov.*

Background

On May 21, 2010, FMCSA published a Notice of receipt of Federal diabetes exemption applications from thirty-seven individuals and requested comments from the public (75 FR 28677). The public comment period closed on June 21, 2010 and one comment was received.

FMCSA has evaluated the eligibility of the thirty-seven applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These thirty-seven applicants have had ITDM over a range of 1 to 31 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning

symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the May 21, 2010, **Federal Register** Notice and they will not be repeated in this Notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving record for Scott A. Yon and was in favor of granting a Federal diabetes exemption to this individual.

Conclusion

Based upon its evaluation of the thirty-seven exemption applications, FMCSA exempts, Billy Banks, Joseph P. Beagan, John M. Charlton, Stuart A. Dietz, Marie C. Eddy, Michael G. Eikenberry, Francisco K. Gallardo, John P. Gould, David B. Graef, Jason C. Green, Kimmy D. Hall, Bruce G. Hammill, Jr., Edward G. Harbin, Timothy R. Hefling, Christopher M. Hultman, Michael R. Jackson, Gerald A. Johnson, Jay T. Kirschmann, Duane K. Kohls, John F. Lohmuller, Rodney A. Markham, Christopher P. Martin, H. Alan Miller, Andrew D. Monson, Cheryl T. Murphy, Kurt D. Oertelt, Joseph M. Pirrello, Audrey R. Roddy, Theodore J. Rolfe, Ross R. Romano, Max S. Sklarski, Gerald J. Solwey, Darren G. Steil, Jason D. Sweet, Robert M. Thomson, Kevin R. Welch and Scott A. Yon, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 28, 2010.

Larry W. Minor,

Associate Administration for Policy and Program Development.

[FR Doc. 2010–16225 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0203]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption, request for comments.

SUMMARY: FMCSA announces receipt of applications from seventeen individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy (or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV)) from operating CMVs in interstate commerce. If granted, the exemptions would enable these individuals with seizure disorders to operate CMVs in interstate commerce.

DATES: Comments must be received on or before August 2, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0203 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket No. for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The seventeen individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness, or any loss of ability to control a commercial motor vehicle.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate commercial motor vehicles in intrastate commerce. The advisory criteria indicates that if an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a commercial motor vehicle should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (*e.g.,* drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication.

Drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

Summary of Applications

Bruce B. Baum

Mr. Baum is a CMV driver in the state of New Mexico. He experienced a single episode of a seizure in 1999, and is currently taking anti-seizure medication Dilantin. His neurologist states that he has been seizure-free for five years. Mr. Baum believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure free and compliant on medication since 1999.

Todd A. Davis

Mr. Davis is a CMV driver in the state of Wisconsin. He experienced a single episode of a seizure in 2007, and is currently taking anti-seizure medication Lamictal. His neurologist certified that he has been seizure-free for three years. Mr. Davis believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure free and compliant on medication since 2007.

James Dyer

Mr. Dyer is a CMV driver in the state of Texas. He experienced a single seizure like event in 2008 and was placed on anti-seizure medication but discontinued use in 2009. His neurologist states that he is stable, has a low risk of future seizures, and has been seizure free for one year and 6 months. Mr. Dyer believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he experienced a "seizure-like" event, discontinued use of anti-seizure medication, and has remained seizure-free for years.

Richard R. Gurda

Mr. Gurda is a CMV driver in the state of Wisconsin. He experienced a single seizure event in 2005, and is currently taking anti-seizure medication Lamictal. His neurologist certified that he has been seizure-free for four years since the single event and remains stable on his current dose of medication. Mr. Gurda believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has maintained good medication control and has remained seizure-free for four years. Mr. Gurda currently has a CDL exemption issued by the state to operate municipal/government vehicle in intrastate.

Christian E. Henry

Mr. Henry is a CMV driver in the state of Pennsylvania. He has a history of seizures during medical procedures when he was a juvenile. His doctor states that he has been seizure-free for nine years on his current dose of medication and is stable to drive. Mr. Henry believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free since 1998, has a safe driving record, and he's compliant with his medication.

Denton L. Hineline

Mr. Hineline is a CMV driver in the state of Florida. He has a history of nocturnal seizures and was diagnosed with epilepsy in 1978, and is currently taking anti-seizure medication Dilantin. His doctor certified that he has been seizure-free for twenty-nine years on his current dose of medication. Mr. Hineline believes that he would achieve a level of safety that is equivalent to the

level of safety obtained by complying with the regulation because he has remained seizure-free since 1979 and he's compliant with his medication.

Henrietta M. Ketcham

Ms. Ketcham is a CMV driver in the state of New York. She has a history of seizure disorder since 1992. She experienced her last seizure in 2001, and is currently taking anti-seizure medication Topomax. Her doctor states that she has been seizure-free for seven years on her current dose of medication and remains stable. Ms. Ketcham believes that she would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because she has maintained good medication control and has remained seizure-free for seven years.

Danny Lingle

Mr. Lingle is a CMV driver in the state of Iowa. He states that he had a stroke from a brain hemorrhage and not a seizure in 2006. He did not take an anti-seizure medication after the event. He has not experienced another episode. His neurologist states that he is safe to drive without restrictions. Mr. Lingle believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he did not experience a seizure and is a safe driver.

James C. Loiodice

Mr. Loiodice is a CMV driver in the state of New York. He experienced an isolated seizure episode in 2001, and is currently taking anti-seizure medication Carbatrol. His neurologist certified that he has been seizure-free for 8 years, is well controlled and has an extremely low risk of a breakthrough seizure. Mr. Loiodice believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free on anti-seizure medication for eight years.

Leo J. Lombardio

Mr. Lombardio is a CMV driver in the state of California. He experienced a single seizure episode in 2007, and is currently taking anti-seizure medication Phenytoin. His doctor states that he has been stable with no seizure activity on medication since 2007. His medication was changed from Keppra to Phenytoin in 2008 due to side effects. He believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he continues to take his medication as directed by his doctor and has remained seizure free.

Mike D. Rafalski

Mr. Rafalski is a CMV driver in the state of Michigan. He was diagnosed with epilepsy in 2002, and is currently taking anti-seizure medications Keppra and Trileptal. He experienced his last seizure in 2006. Mr. Rafalski believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free on anti-seizure medication for four years.

Phillip S. Sage

Mr. Sage is a CMV driver in the state of Michigan. He developed seizures after a motor vehicle accident in 2007. He experienced his last seizure in 2008, and was taking anti-seizure medication Keppra. He has since discontinued anti-seizure medication in 2008. He believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has a history of safe driving and has discontinued the medication and has remained seizure-free.

Floyd R. Strader Jr.

Mr. Strader is a CMV driver in the state of North Carolina. He was diagnosed with a childhood seizure disorder. His last seizure was in 2000, he was thirteen years old at this time. He discontinued the use of anti-seizure medication in 2001 when he was fourteen. Mr. Strader experienced a motor vehicle collision which resulted in head-trauma. He did not experience a seizure; however, he was treated for migraine headaches. Mr. Strader believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure-free for nine years and off anti-seizure medication for eight years.

Joseph A. Suhy

Mr. Suhy is CMV driver in the state of Pennsylvania. He was diagnosed with a seizure disorder after a head injury in 1986. His last seizure was in 1991 at the time he was taking Tegretol. Subsequently his anti-seizure medication was changed to Valproic acid and he remains on this medication to date. His doctor states that he has been seizure-free for seventeen years. Mr. Suhy believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has remained seizure free and is compliant with treatment.

Paul C. Warren

Mr. Warren is a CMV driver in the state of Maine. He was diagnosed with epilepsy in 2000. He experienced his last seizure in 2002, and is currently taking anti-seizure medication Keppra. His neurologist states that he has been seizure free for seven years and is compliant with treatment. Mr. Warren believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has a history of safe driving in CMVs and has remained seizure free for seven years.

Jeffery P. Weis

Mr. Weis is a CMV driver in the state of Illinois. He experienced seizures in 2006 caused by metabolic derangement related to stress and alcohol use. He was placed on Dilantin but discontinued use per doctor's orders after 6 months. He has remained seizure and medication free for three years. Mr. Weis believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has a history of safe driving, decreased alcohol consumption and has discontinued anti-seizure medication and has remained seizure-free.

Brian H. Wetzel

Mr. Wetzel is a CMV driver in the state of Missouri. He was diagnosed with a seizure disorder after brain surgery in 1976. He experienced his last seizure in 1995, and is currently taking anti-seizure medication Carbamazepine. His neurologist's medical opinion is that he has been seizure free for fourteen years and is safe to drive. Mr. Wetzel believes that he would achieve a level of safety that is equivalent to the level of safety obtained by complying with the regulation because he has been seizure free for fourteen years and is compliant with treatment.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption application described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: June 25, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–16216 Filed 7–1–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2003–14223; FMCSA–2003–16564; FMCSA–2004–17195; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0021]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 1, 2010. Comments must be received on or before August 2, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2001–11426; FMCSA–2003–14223; FMCSA–2003–16564; FMCSA–2004–17195; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2008–0021, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This Notice addresses 13 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 13 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Manuel A. Almeida
Ronald B. Brown
Thomas L. Corey
Lawrence M. Daley
Brian G. Hagen
Alfred G. Jeffus
Christopher P. Lefler
Michael G. Martin
Charles R. Murphy
Willard L. Riggle
Robert H. Rogers
Jose M. Suarez
Barney J. Wade

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 13 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR

51568; 64 FR 68195; 65 FR 20251; 67 FR 38311; 69 FR 26221; 71 FR 27033; 73 FR 52451; 69 FR 26921; 73 FR 28186; 67 FR 17102; 69 FR 17267; 71 FR 26601; 73 FR 27017; 67 FR 10471; 67 FR 19798; 69 FR 19611; 71 FR 19604; 73 FR 27014; 68 FR 10301; 68 FR 19596; 70 FR 74102; 73 FR 52451; 68 FR 74699; 69 FR 10503; 71 FR 16410; 73 FR 28188; 69 FR 17263; 69 FR 31447; 71 FR 43556; 73 FR 52451; 73 FR 36954; 71 FR 14566; 71 FR 30227; 73 FR 27014; 73 FR 52451; 71 FR 32183; 71 FR 41310; 73 FR 15567; 73 FR 27015). Each of these 13 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 2, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing its decision to exempt these 13 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its Notices of applications. The Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: June 28, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–16180 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2006–23773]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 21 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on June 16, 2010 (75 FR 27623).

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 21 renewal applications, FMCSA renews the Federal vision exemptions for James C. Askin, Paul J. Bannon, Ernie E. Black, Ronnie F. Bowman, Gary O. Brady, Stephen H. Goldcamp, Steven F. Grass, Wai F. King, Dennis E. Krone, Richard J. McKenzie, Jr., Christopher J. Meerten, Craig W. Miller, William J. Miller, Robert J. Mohorter, James A. Mohr, Roderick F. Peterson, Tommy L. Ray, Jr., George S. Rayson, Donald W. Sidwell, Elmer K. Thomas and Raul R. Torres.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: June 28, 2010.

Larry W. Minor

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–16210 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

State Responsibility for the Timely Reporting and Posting of Certain Convictions and Disqualifications Involving Commercial Driver's License Holders

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Motor Carrier Safety Administration announces guidance to State driver licensing agencies (SDLAs) to support their efforts at achieving compliance with the Federal Commercial Driver's license (CDL) rules concerning timely reporting and posting of convictions for traffic offenses. This action is in response to the Department of Transportation Office of the Inspector General's (OIG) 2009 report *Audit of the Data Integrity of the Commercial Driver's License Information System (CDLIS).*

FOR FURTHER INFORMATION CONTACT: Selden Fritschner, Chief, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590. E-mail: *selden.fritschner@dot.gov,* Telephone: 202–366–0677.

SUPPLEMENTARY INFORMATION:

I. Background

Section 202 of the Motor Carrier Safety Improvement Act of 1999 (PL 106–159) requires that whenever an individual is convicted of certain traffic offenses in a State, and the individual has a commercial driver's license (CDL) issued by another State, the State of Conviction (SOC) must notify the driver's State of Record (SOR) in a timely manner. This includes all convictions (as defined in 49 CFR 383.5), in any type of motor vehicle, involving a State or local law relating to motor vehicle traffic control (other than a parking violation). This also includes some convictions listed in 49 CFR 383.51 that are not directly related to motor vehicle traffic control but that are deemed critical to ensuring highway safety.

On July 31, 2002, FMCSA published a final rule (67 FR 49761) requiring SOCs to begin notifying a driver's SOR within 30 days for all convictions occurring after September 30, 2005. Beginning September 30, 2008, the SOCs were required to report convictions to the SORs within 10 days (49 CFR 384.209).

In July 2009, the Department of Transportation's Office of Inspector General released the report *Audit of the Data Integrity of the Commercial Driver's License Information System)* as required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). In preparing this report, OIG evaluated several factors related to CDLIS, including the timeliness of convictions received from courts and posted by State driver licensing agencies. In its *CDLIS report,* OIG estimated that 500,000 active CDL holders have convictions on their driver history record (DHR) from States other than their SOR. The OIG further estimated that up to 20 percent of those CDL holders have convictions on their DHR that were not reported to their SOR and posted in a timely manner.

This reporting delay reduces highway safety by enabling CDL holders convicted of disqualifying offenses to continue driving without being detected by roadside inspection officials. These delays also make it difficult for motor carriers to identify and remove from service drivers who have been convicted of disqualifying offenses. In some instances, this includes drivers who have been convicted of multiple major traffic offenses and who should be disqualified from holding a CDL for life. As part of its mission to reduce the number of fatalities, injuries, and crashes involving large trucks and buses, and as part of its responsibility to ensure State compliance with the minimum CDL program standards established by Federal regulations, FMCSA provides this notice and guidance to all SDLAs on the conviction reporting requirements.

II. Requirements

Whenever a CDL holder, or a person operating a CMV who is required to have a CDL, is convicted of a traffic offense in a State other than the State in which he or she is licensed, the SOC must notify the SOR within 10 days of the conviction (*See* 49 CFR 384.209).

Whenever a CDL holder is disqualified or has his driving privileges withdrawn or suspended from operating a CMV for longer than 60 days in a State other than the State in which he or she is licensed, the State of Withdrawal must notify the SOR within 10 days of the disqualification action. This notification must include information related to the disqualification and the violation that resulted in the disqualification, or suspension (*See* 49 CFR 384.208).

Whenever a SDLA receives notification of a conviction or disqualification from another State, it must post the information to the DHR within 10 days of receipt (*See* 49 CFR 384.225(c) (1)). Further, whenever a SDLA receives notification of a conviction occurring within the same State, it must post the information to the DHR within 10 days of the conviction (*See* 49 CFR 384.225(c) (2)).

Guidance

FMCSA provides the following guidance to States on how to come into compliance with the provisions of the Federal regulations related to the timely reporting and posting of convictions and disqualifications.

I. Incoming Conviction Reports on Paper

SDLAs that receive conviction data from courts on paper (either direct mailing of the traffic citation with the disposition indicated or conviction summary reports generated by the courts) have several options to expedite processing:

- Sort incoming conviction data and prioritize handling for any conviction that indicates the violation involved a CDL holder, a CMV that requires the driver to hold a CDL, hazardous material, or a passenger CMV (collectively hereafter referred to as CDL/CMV convictions);
- Designate certain data entry personnel within the SDLA to process CDL/CMV convictions exclusively, or as their highest priority when such data is received;
- Request that courts pre-sort CDL/CMV conviction data and provide special markings when reporting it to the SDLA (*see* section III for further information);
- Request that courts send conviction data related to CDL/CMV convictions as soon as practicable after disposition (the same day if possible);
- Prioritize the correction of any internal or external data entry errors that involve CDL/CMV convictions;
- Explore options for expedited delivery of CDL/CMV conviction data to the SDLA; and
- Explore options for an electronic conviction transmission system (*see* section II for further information).

II. Incoming Conviction Reports via Electronic Transmission

SDLAs that receive CDL/CMV conviction data from courts by an electronic conviction transmission system are at an advantage. The data entry is already completed and can be posted to the driver's record with minimal effort, and the actual transmission of the information is either instantaneous or submitted daily through a batch process. SDLAs can expedite processing electronic transmission further if they:

- Request that courts process dispositions for CDL/CMV offenses into their case management systems the same day as the final determination;
- Request that courts alter their case management systems to transmit CDL/CMV conviction data to the SDLA on a daily basis (rather than weekly or monthly);

• Prioritize the correction of any transmission or processing errors involving CDL/CMV convictions;

• Work to ensure that all courts use electronic transmission of CDL/CMV convictions if it is an available alternative; and

• Continuously improve the electronic conviction transmission system to take advantage of emerging technological advances.

III. Judicial Outreach

SDLAs should strengthen their partnerships with the courts in their jurisdiction to bring about greater success in achieving compliance with the reporting requirements. SDLAs can take several steps to help strengthen these partnerships and their judicial outreach efforts if they:

• Determine which court personnel are most responsible for ensuring that information related to CDL/CMV offenses are transmitted to the SDLA in a timely manner; this may be the Judge, the Clerk of Court's Office, or the Prosecutor;

• Designate an individual or organizational unit within the SDLA as having responsibility to engage in judicial outreach activities;

• Ensure that all involved personnel understand the importance of timely conviction reporting. FMCSA evaluates compliance of the SDLA and all involved entities that impact the State's CDL program and contribute to compliance with the requirements of 49 CFR part 384;

• Engage in proactive steps to discuss process improvement, including site visits, routine e-mails or newsletters, and presentations at State or regional conferences;

• Request assistance in outreach efforts from other State level agencies and organizations if appropriate (*e.g.,* Administrative Office of the Courts, the Governor's Highway Safety Office, Associations/Counsels for judges, clerks, and prosecutors); and

• Request from FMCSA information and guidance on judicial training.

IV. Utilize CDLIS

CDLIS has the capability to transmit conviction and disqualification information to other States. All States now have the ability to receive these convictions and disqualifications electronically. States should utilize this functionality whenever possible to expedite the transmission and final posting of CDL/CMV convictions and disqualifications.

V. Statutory Reporting Periods

If State statutes address the timely reporting and posting of convictions, they must not conflict with the applicable Federal regulations (this includes court reporting convictions to the SDLA, the SDLA reporting out-of-State convictions to the SOR, or the SDLA posting in-State convictions to the DHR).

Some States have statutory or due process requirements that prevent courts from sending a conviction to the SDLA immediately upon disposition. This requirement generally allows for appeals or other procedural actions prior to the State posting the conviction to the DHR or sending it to the SOR. States reported to FMCSA that these mandatory holding periods negatively impact their ability to comply with the timeliness requirements. In these instances, FMCSA stands ready to discuss the requirements unique to each State and discuss alternatives that may reduce or eliminate the negative impact to the State's compliance.

VI. Funding

SDLAs have secured various funding sources for electronic conviction reporting systems, including fees assessed against those convicted of traffic offenses, direct appropriation in the State's budget, or through other available revenue. The FMCSA encourages SDLAs to engage in direct communication with other SDLAs to solicit ideas and implementation strategies.

States also have the option of requesting grants from various Federal agencies, including FMCSA's CDL Program Improvement grant (CDLPI). While CDLPI grants cannot fund an entire statewide electronic conviction system, and cannot be used to support any effort indefinitely, States can request financial assistance to establish demonstration projects and other proof-of-concept efforts that can help SDLAs secure additional funding through other means.

Compliance

FMCSA takes seriously its responsibility to ensure State compliance with all provisions of 49 CFR part 384, especially those involving the timely reporting and posting of convictions and disqualifications. FMCSA will work with the States to the greatest extent practicable to address the findings in the OIG report and to ensure compliance by using available electronic reporting and manual auditing methods. FMCSA will examine these reports and conduct audits independently of any established evaluation cycle or review process. FMCSA will begin posting maps and matrices providing details regarding State compliance with timeliness requirements on the FMCSA Web site in the third quarter of fiscal year 2010. FMCSA will post this information quarterly. States should review this status information to determine the scope of the efforts needed to come into compliance.

Issued on: June 23, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–16218 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Surface Transportation Environment and Planning Cooperative Research Program (STEP)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: Section 5207 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Environment and Planning Cooperative Research Program (STEP). The FHWA anticipates that the STEP or a similar program to provide resources for national research on issues related to planning, environment, and realty will be included in future surface transportation legislation. In Fiscal Year (FY) 2011, the FHWA expects to seek partnerships that can leverage limited research funding in the STEP with other stakeholders and partners in order to increase the total amount of resources available to meet the Nation's surface transportation research needs.

The purpose of this notice is to announce revisions to the STEP implementation strategy for FY 2011 and to request suggested lines of research for the FY 2011 STEP via the STEP Web site at *http://www.fhwa.dot.gov/hep/step/index.htm* in anticipation of future surface transportation legislation.

DATES: Suggestions for lines of research should be submitted to the STEP Web site on or before September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Felicia Young, Office of Interstate and Border Planning, (202) 366–1263, *Felicia.young@dot.gov;* or Grace Reidy, Office of the Chief Counsel, (202) 366–6226; Federal Highway Administration,

1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., *e.t.,* Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

Background

Section 5207 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005), established the Surface Transportation Environment and Planning Cooperative Research Program, in section 507 of Title 23, United States Code. The FHWA anticipates that the STEP or a similar program to provide resources for national research on issues related to planning, environment, and realty will be included in future surface transportation legislation. The general objective of the STEP is to improve understanding of the complex relationship between surface transportation, planning, and the environment.

The SAFETEA–LU provided $16.875 million per year for FY 2006–2009 to implement this cooperative research program. Due to obligation limitations, recissions, and congressional designation of Title V Research in SAFETEA–LU, on average $14.5 million of the $16.875 million authorized was available each fiscal year. We anticipate similar funding levels in the next authorization.

The STEP is the primary source of funds for FHWA to conduct research and develop tools and technologies to advance the state of the practice regarding national surface transportation and environmental decisionmaking. In FY 2011, the FHWA expects to seek partnerships that can leverage limited research funding in the STEP with other stakeholders and partners in order to increase the total amount of resources available to meet the nation's surface transportation research needs.

The FY 2011 STEP will support the implementation of a national research agenda that includes:

(1) Conducting research to develop climate change mitigation, adaptation and livability strategies;

(2) Developing and/or supporting accurate models and tools for evaluating transportation measures and developed indicators of economic, social, and environmental performance of transportation systems to facilitate alternative analysis;

(3) Developing and deploying research to address congestion reduction efforts;

(4) Developing transportation safety planning strategies for surface transportation systems and improvements;

(5) Improving planning, operation, and management of surface transportation systems and rights of way;

(6) Enhancing knowledge of strategies to improve transportation in rural areas and small communities;

(7) Strengthening and advancing State/local and tribal capabilities regarding surface transportation and the environment;

(8) Improving transportation decisionmaking and coordination across borders;

(9) Improving state of the practice regarding the impact of transportation on the environment;

(10) Conducting research to promote environmental streamlining/stewardship and sustainability;

(11) Disseminating research results and advances in state of the practice through peer exchanges, workshops, conferences, etc;

(12) Meeting additional priorities as determined by the Secretary; and

(13) Refining the scope and research emphases through active outreach and in consultation with stakeholders.

The FHWA is issuing this notice to: (1) To announce revisions to the STEP Implementation Strategy for the FY 2011 STEP in anticipation of future surface transportation legislation, and (2) to solicit comments on proposed research activities to be undertaken in the FY 2011 STEP via the STEP Web site. The STEP Implementation Strategy was revised to: Update information on the graph and chart regarding historical planning and environment research funding, and to add information about proposed FY 2011 STEP including proposed funding levels, goals, and potential research activities.

We invite the public to visit this Web site to obtain additional information on the STEP, as well as information on the process for forwarding comments to the FHWA regarding the STEP implementation plan. The URL for the STEP Web site is:

The FHWA will use this Web site as a major mechanism for informing the public regarding the status of the STEP.

Authority: 23 U.S.C. 507.

Issued on: June 21, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–15949 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2010–0059]

Temporary Closure of I–70 (I–70/I–465 West Leg Interchange to the I–70/I–65 South Split Interchange) on October 7, 2010, in Indianapolis, IN

AGENCIES: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and Request for Comment.

SUMMARY: The Indiana Department of Transportation (INDOT) has requested FHWA approval of INDOT's proposed plan to temporarily close a segment of I–70 (from the I–70/I–465 west leg interchange to the I–70/I–65 south split interchange) on October 7, 2010, for a 12-hour period from 6 a.m. to 6 p.m. The closure is requested to accommodate a concentrated I–70 beautification project sponsored by INDOT. The request is based on the provisions 23 CFR 658.11 which authorizes the deletion of segments of the federally designated routes that make up the National Network designated in Appendix A of 23 CFR Part 658 upon approval by the FHWA.

The FHWA seeks comments from the general public on this request submitted by INDOT for a deletion in accordance with section 658.11(d) for the considerations discussed in this notice.

DATES: Comments must be received on or before 30 days after date of publication in the **Federal Register.**

ADDRESSES: The letter of request along with justifications can be viewed electronically at the docket established for this notice at *http://www.regulations.gov.* Hard copies of the documents will also be available for viewing at the DOT address listed below.

Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the on-line instructions for submitting comments). All comments should include the docket number that appears in the

heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. All comments received into any docket may be searched in electronic format by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may view the statement at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael P. Onder, Team Leader Truck Size and Weight and Freight Operations and Technology Team, (202) 366–2639, Raymond W. Cuprill, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration; 1200 New Jersey Avenue, SE., Washington, DC 20590, and Mr. Robert Tally, FHWA Division Administrator-Indiana, (317) 226–7476. Office hours for FHWA are from 7:45 a.m. to 4:15 p.m., *e.t.,* Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

Background

The INDOT has submitted a request to FHWA for approval of the temporary closure of a segment of I–70 in Indiana (from the I–70/I–465 west leg interchange to the I–70/I–65 south split interchange) on October 7, 2010, for a 12-hour period from 6 a.m. to 6 p.m. (The incoming request and supporting documents can be viewed electronically at the docket established for this notice at *http://www.regulations.gov.*) This closure will be undertaken in support of the I–70 beautification project that will take place with the participation of approximately 9,100 Lilly "Day of Service" volunteers. These volunteers will be working within five different I–70 interchanges along both sides of I–70. Approximately 5,600 volunteers will be assigned to work on the north side of I–70 and approximately 3,500 workers will be assigned to the south side. Both groups have 1 hour appropriated for arrival and parking as well as 1 hour for departure from the construction corridor. A comprehensive plan for the arrival and departure times, parking, and emergency evacuation (should it be necessary) has been developed. The INDOT has indicated that by closing the Interstate through the work zone, lengthy delays caused by the restriction of lanes will be eliminated as well as distractions to the motoring public caused by the 9,100 workers and associated activities. In addition, the temporary closure would eliminate the risk of work zone accidents in the area of these work zones. The INDOT believes that the best way to ensure the safety of the workers will be to eliminate vehicular travel through the corridor while the work in the interchange areas is being conducted. The closure also provides additional safety to the motorists by eliminating the distraction that could be caused by the significant amount of workers within the interchanges and by eliminating the need for traffic restrictions in the actual work zone. A 12-hour condensed closure provides a safer condition for workers and provides better conditions than a long-term construction work zone with the associated work zone set ups and restrictions that would otherwise take place over many days.

The FHWA is responsible for enforcing the Federal regulations applicable to the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended, designated in accordance with 23 CFR Part 658 and listed in Appendix A. In accordance with sec. 658.11, the FHWA may approve deletions or restrictions of the Interstate system or other National Network route based upon specified justification criteria in sec. 658.11(d)(2). Requests for deletions are published in the **Federal Register** for notice and comment.

The FHWA seeks comments on this request for temporary deletion from the National Network in accordance with 23 CFR 658.11(d). Specifically, the request is for deletion of I–70 (from the I–70/I–465 west leg interchange to the I–70/I–65 south split interchange) from the National Network on October 7, beginning at 6 a.m., for one consecutive 12-hour period. The temporary closure of I–70 to general traffic should have a negligible impact to interstate commerce. Using a comparison of lane mile computations, traffic will be detoured to I–465 around the south side of Indianapolis adding only 2 to 3 minutes additional time to Interstate travel. Re-routed I–70 through traffic via I–465 is approximately 18 miles around the south side of I–465 (to get to the interchange of I–70 and I–465 on the east side). If I–70 were to remain open with restrictions, the mileage to I–70 and I–465 on the east side would be approximately 16 miles. However, vehicles would be traveling at a reduced speed limit, resulting in large queue lengths creating back-ups which would add significant time to their commute. The detour will have a negligible impact on interstate commerce as the I–465 diversion route would add little distance or time to an interstate or long distance trip. Businesses requiring deliveries adjacent to the closed area will be encouraged to receive deliveries before or after the October 7 closure times in order to minimize these local impacts.

Commercial motor vehicles will use I–465 around the south side of Indianapolis. During the time of closure there will be some INDOT construction along the detour route and along Interstate I–465 on the west side of Indianapolis. The detour route will have no lane restrictions for motorists during this time and INDOT will not plan for any lane closures in other nearby construction zones. The INDOT will increase the Hoosier Helper workforce (freeway service patrols) along I–465 to address incident response and minimize any incident impacts. The INDOT will issue a press release to inform the community of the closure and will post the closure in Road Restriction System (RRS) and INDOT's traveler information Web site Traffic Wise (*http://www.trafficwise.in.gov*) to help with notification to the motorists.

The temporary closure plan has been prepared in accordance with INDOT's transportation plan and has been reviewed and approved by the city of Indianapolis and the Indianapolis Metropolitan Police Department. The INDOT has reached out to Federal, State, and local agencies to ensure a collaborative and coordinated effort to address the logistical challenges of the I–70 beautification project. The Illinois Department of Transportation and the Ohio Department of Transportation have been informed of this proposal.

Additionally, efforts have been made to work with the various transit systems as well as the American Trucking Association. The INDOT has met with, and gained support from the Indiana Motor Trucking Association, and has the endorsement of the city of Indianapolis, specifically The Greater Indianapolis Chamber of Commerce and the local business districts adjacent to the closure. (Full list of endorsements can be viewed electronically at the docket established for this notice at *http://www.regulations.gov*).

The INDOT has carefully evaluated all possible alternatives and after doing so believes the temporary closure of I–70 is the best way to ensure the safety not only to the volunteer workers, but also to the motorists. The INDOT is actively working with KIB and Lilly to develop an aggressive communications plan utilizing local business associations along the I–70 corridor, Indianapolis Downtown, Inc., and media outlets. Special consideration will be given to local and national trucking publications. Event day media staging areas and command posts are also included in the plan.

Authority: 23 U.S.C. 127, 315 and 49 U.S.C. 31111, 31112, and 31114; 23 CFR Part 658.

Issued on: June 22, 2010.

Victor M. Mendez,

Administrator.

[FR Doc. 2010–16094 Filed 7–1–10; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Departmental Offices: Privacy Act of 1974, as Amended

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Alteration of Privacy Act System of Records for the Home Affordable Modification Program.

SUMMARY: The U.S. Department of the Treasury gives notice of a proposed alteration to the system of records entitled "Home Affordable Modification Program—Treasury/DO." The system was last published in its entirety in the **Federal Register** on April 20, 2010, at 75 FR 20699.

DATES: Comments should be received no later than July 2, 2010. The proposed routine use will be effective August 11, 2010 unless the Department receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Deputy Assistant Secretary Fiscal Operations and Policy, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 622–0990 (this is not a toll-free number). All comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Theodore R. Kowalsky, Manager, Data & Information Technology, Office of Financial Agents, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at 202–927–9445 (not a toll free number) or at *Ted.Kowalsky@do.treas.gov*.

SUPPLEMENTARY INFORMATION: The Department established the Home Affordable Modification Program (HAMP), pursuant to the Emergency Economic Stabilization Act of 2008 (Pub. L. 110–343) (the "EESA"), to enable eligible homeowners who have a record of making timely mortgage payments, but are experiencing hardships in doing so, to modify the principal amounts and interest rates of their mortgage loans. The purpose of this alteration to Routine Use (13) is to increase the number of Federal entities to whom information may be disclosed under the routine use by adding the Department of Justice ("DOJ") and the Federal financial regulators who supervise and regulate financial institutions that participate in or receive certain benefits from HAMP, or who evaluate programs of similar design.

Additionally, the Bank of New York Mellon ("BNYM") has been designated as another Financial Agent for the Home Affordable Modification Program ("HAMP") and its facilities in Nashville, TN, and Somerset, NJ are being added under the heading "System Location." The system of records notice was last published in its entirety on April 20, 2010, at 75 FR 20699.

The report of an altered system of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been provided to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

For the reasons set forth in this preamble, the Department proposes to alter system of records Treasury/DO .218, entitled "Home Affordable Modification Program," as follows:

TREASURY/DO .218

SYSTEM NAME:

Home Affordable Modification Program Records—Treasury/DO.

SYSTEM LOCATION:

Description of change. Remove the current entry and in its place add the following: "The Office of Financial Stability, Department of the Treasury, Washington, DC. Other facilities that maintain this system of records are located in: Urbana, MD, Dallas, TX, and a backup facility located in Reston, VA, all belonging to the Federal National Mortgage Association ("Fannie Mae"); in McLean, VA, Herndon, VA, Reston, VA, Richardson, TX, and Denver, CO, facilities operated by or on behalf of the Federal Home Loan Mortgage Corporation ("Freddie Mac"); and facilities operated by or on behalf of the Bank of New York Mellon ("BNYM") in Nashville, TN, and a backup facility located in Somerset, NJ. Fannie Mae, Freddie Mac and Bank of New York Mellon have been designated as Financial Agents for the Home Affordable Modification Program ("HAMP")."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The phrase "the Federal financial regulators, the U.S. Department of Justice (DOJ)," is added to Routine Use (13) between the phrases "Department of Housing & Urban Development," and "and the Federal Housing." In addition, the phrase "to ensure compliance with HAMP and other laws," is added between the words "HAMP" and "and to report" such that Routine Use (13) is revised to read as follows:

"(13) Disclose information and statistics to the Department of Housing & Urban Development, Federal financial regulators, the U.S. Department of Justice ("DOJ"), and the Federal Housing Finance Agency to improve the quality of services provided under HAMP, to ensure compliance with HAMP and other laws, and to report on the program's overall execution and progress;"

* * * * *

Dated: June 21, 2010.

Melissa Hartman,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2010–16162 Filed 7–1–10; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Friday,
July 2, 2010

Part II

Department of Health and Human Services

Administration for Children and Families
45 CFR Parts 301, 302, 303, 305, and 308

Child Support Enforcement Program; Intergovernmental Child Support; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 301, 302, 303, 305, and 308

RIN 0970–AC–37

Child Support Enforcement Program; Intergovernmental Child Support

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This rule revises Federal requirements for establishing and enforcing intergovernmental support obligations in Child Support Enforcement (IV–D) program cases receiving services under title IV–D of the Social Security Act (the Act). This final rule revises previous interstate requirements to apply to case processing in all intergovernmental cases; requires the responding State IV–D agency to pay the cost of genetic testing; clarifies responsibility for determining in which State tribunal a controlling order determination is made where multiple support orders exist; recognizes and incorporates electronic communication advancements; and makes conforming changes to the Federal substantial compliance audit and State self-assessment requirements.

DATES: This rule is effective January 3, 2011.

FOR FURTHER INFORMATION CONTACT: LaShawn Williams, OCSE Division of Policy, 202–401–9386, e-mail: *Lashawn.williams@acf.hhs.gov*. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 454(9), 42 U.S.C. 654(9), of the Act addresses interstate cooperation. These final rules are published under the authority granted to the Secretary of the U.S. Department of Health and Human Services (the Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 authorizes the Secretary to publish regulations, not inconsistent with the Act, which may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub.L. 104–193), amended the Act by adding section 466(f), 42 U.S.C. 666(f), which mandated that all States have in effect by January 1, 1998, the Uniform Interstate Family Support Act (UIFSA) as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws (NCCUSL). PRWORA also added sections 454(32) and 459A of the Act, 42 U.S.C. 654(32) and 659a, requiring State IV–D agencies to provide services in international cases and authorizing the Secretary of the Department of State (DOS), with the concurrence of the Secretary, to enter into bilateral arrangements with foreign countries for child support enforcement, respectively. The Federal Full Faith and Credit for Child Support Orders Act of 1994 (FFCCSOA), 28 U.S.C. 1738B, as amended by PRWORA, requires each State and Tribe to enforce, according to its terms, a child support order issued by a court or administrative authority of another State or Tribe (*See* OCSE–AT–02–03). Further, section 455(f) of the Act, 42 U.S.C. 655(f), which authorized direct funding of Tribal Child Support Enforcement programs, was added by PRWORA and amended by the Balanced Budget Act of 1997 (Pub. L. 105–33).

II. Background

A. Nature of the Problem

The Child Support Enforcement (CSE) program is a Federal/State/Tribal/local partnership established to help families by ensuring that parents support their children even when they live apart. Payment of child support increases family income and promotes child well-being. Child support has become one of the most substantial income supports for low-income families who receive it. All States and territories run a IV–D program.

On March 30, 2004, the IV–D program expanded its scope to include federally-recognized American Indian Tribes and Tribal organizations with approved Tribal IV–D programs through the Final Rule on Tribal Child Support Enforcement Programs (45 CFR part 309). Currently, thirty-six Tribes operate a comprehensive child support program and nine Tribes operate a start-up program funded under title IV–D of the Social Security Act. From 2004 to 2008, Comprehensive Tribal IV–D programs collected more than $83.3 million in child support. The Tribal IV–D program continues to grow as more federally-recognized Tribes and Tribal organizations apply for OCSE funding to operate Tribal IV–D programs.

The complexities of child support enforcement are compounded when parents reside in different jurisdictions and the interjurisdictional caseload is substantial. In FY 2008, over a million cases were sent from one State to another. This number does not include cases where a single State established or enforced a support obligation against a nonresident using long-arm jurisdiction or direct enforcement remedies without involving another IV–D agency. Additionally, in FY 2008, interstate collections increased 13.2 percent over FY 2004 collections.

The enactment of UIFSA by States and nearly a decade of State experience under this uniform law, as well as the passage of FFCCSOA, have served to harmonize the interjurisdictional legal framework. Expanded use of long-arm jurisdiction, administrative processes, and direct income withholding have been instrumental in breaking down barriers and improving interstate child support. As a result, the former regulations governing interstate cases are outdated. While they broadly addressed UIFSA, they did not fully reflect the legal tools available under that Act, other Federal mandates and remedies, improved technology, or IV–D obligations in Tribal and international cases.

Additionally, although our regulatory authority extends only to States and Tribes operating IV–D programs, the IV–D caseload includes cases from Tribal IV–D programs, other States, and other countries. The creation of the Tribal IV–D program pursuant to section 455(f) of the Act and implementing regulations at 45 CFR part 309, and the central role of OCSE and State IV–D agencies in international cases under section 459A of the Act, highlight the need to refocus interstate regulations to address requirements for State IV–D programs' processing of intergovernmental IV–D cases.

B. Current Law on Intergovernmental Case Processing

1. Uniform Interstate Family Support Act (UIFSA)

UIFSA is a comprehensive model Act focusing on the interstate establishment, modification, and enforcement of support obligations. As indicated earlier, section 466(f) of the Act requires all States to enact UIFSA as approved by the American Bar Association on February 9, 1993, as in effect on August 22, 1996, including any amendments officially adopted as of such date by NCCUSL.

Many of UIFSA's provisions provide solutions to the problems inherent with the interstate establishment and enforcement of child support obligations. For example, UIFSA covers all cases where the custodial and noncustodial parents reside in different States. In addition to traditional State-to-State legal actions, it provides for long-arm jurisdiction to establish paternity or child support, continuing jurisdiction by a State to enforce an existing support order, and one-state enforcement remedies such as direct income withholding. UIFSA contains enhanced evidentiary provisions, including use of teleconferencing, electronic transmission, and federally-mandated forms. It precludes the entry of a new (*de novo*) support order where a valid order exists, ending the longstanding practice of establishing multiple support orders, and strictly prescribes when a State has the authority to modify the child support order of another State, Tribe, or country.

UIFSA introduced the principle of continuing, exclusive jurisdiction (CEJ) to child support. CEJ requires that only one valid current support order may be in effect at any one time. As long as one of the individual parties or the child continues to reside in the issuing State, and as long as the parties do not agree to transfer the case to another jurisdiction, the issuing tribunal's authority to modify its order is continuing and exclusive. Jurisdiction to modify an order may be lost only if all the relevant persons have permanently left the issuing State or if the parties file a written consent to transfer jurisdiction of the case to the tribunal of another State. UIFSA provides that the one order remains in effect as the family or its individual members move from one State to another.

UIFSA includes a transitional procedure for the eventual elimination of existing multiple support orders in an expeditious and efficient manner. To begin the process toward a one-order system, UIFSA provides a relatively straight-forward decision matrix designed to identify a single valid order that is entitled to prospective enforcement in every State. This process is referred to as determination of controlling order (DCO). UIFSA specifies in detail how the DCO should be made. If only one child support order exists, it is the controlling order irrespective of when and where it was issued and whether any of the individual parties or the child continues to reside in the issuing State.

UIFSA is currently State law in all 50 States, the District of Columbia and the territories. Twenty-one States have adopted the 2001 amendments and received a State Plan exemption under section 466(d) of the Act, 42 U.S.C. 666(d), from OCSE allowing use of the 2001 provisions. Currently, three States have adopted UIFSA (2008), with the effective date of the amendments delayed until the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Nov. 23, 2007, is ratified and the U.S. deposits its instrument of ratification. OCSE does not require that these States request an exemption.

2. One-State Approaches to Interstate Case Processing

Historically, IV–D agencies have sought to resolve cases involving nonresident noncustodial parents by using the State's statutory authority to obtain or retain personal jurisdiction over the out-of-state party. The authority of a State to subject a nonresident to its laws is set out in State statutes, subject to the due process provisions of the U.S. Constitution. As described earlier, UIFSA is a State law, containing both an expansive long-arm provision (section 201), continuing, exclusive jurisdiction to modify an existing support order, and continuing, although not exclusive, jurisdiction to enforce an existing order (*e.g.* sections 205 and 206). Since 1984, States have been required to adopt procedures for enforcing the income withholding orders of another State (section 466(b)(9) of the Act, 42 U.S.C. 466(b)(9)). UIFSA authorizes direct income withholding, allowing a State to serve directly the obligor's employer in the other State with the income withholding order/notice (*e.g.* sections 501 and 502). These provisions afford IV–D agencies a greater opportunity to use one-state remedies in factually-appropriate cases, rather than involving a second State. As discussed later, cooperation among States in requesting and providing limited services, such as quick locate, coordination of genetic testing, and facilitation of gathering and transmitting evidence, makes the use of one-state remedies more robust.

3. Tribal IV–D and International Child Support Enforcement

PRWORA authorized direct funding of Tribes and Tribal organizations for operating child support enforcement programs under section 455(f) of the Act, 42 U.S.C. 655(f). The U.S. Department of Health and Human Services (the Department) acknowledges the special government-to-government relationship between the Federal Government and federally-recognized Tribes in the implementation of the Tribal provisions of PRWORA. The direct Federal funding provisions provide Tribes with an opportunity to administer their own IV–D programs to meet the needs of children and their families. A Tribal IV–D agency must specify in its Tribal IV–D plan that the Tribal IV–D agency will:

- Extend the full range of services available under its IV–D plan to respond to all requests from, and cooperate with, State and other Tribal IV–D agencies; and
- Recognize child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with the requirements under the FFCCSOA, 28 U.S.C. 1738B. (*See* 45 CFR 309.120).

Likewise, as stated in 45 CFR 302.36(a)(2), a State must extend the full range of services available under its IV–D plan to cases referred from Tribal IV–D programs.

Regarding international cases, section 459A of the Act, 42 U.S.C. 659a authorizes the Department of State (DOS), with the concurrence of the Secretary, to enter into bilateral arrangements with foreign countries for child support enforcement. To date, the U.S. has Federal-level arrangements with fourteen countries and eleven Canadian Provinces and Territories. Information about these arrangements and guidance on working international cases is on the OCSE international Web site: *http://www.acf.hhs.gov/programs/cse/international/*.

UIFSA recognizes the importance of the Tribes and foreign countries to provide for their children. Under UIFSA the term "State" includes Indian Tribes (section 101(19)). The definition of "State" in UIFSA (2001) (section 102(21)) also includes foreign countries or political subdivisions that have been declared to be a foreign reciprocating country or political subdivision under Federal law or that have established a reciprocal agreement for child support with a U.S. State. While UIFSA governs State child support proceedings, it does not govern child support activities in other countries or Tribes.

C. Need for and Purpose of This Rule

The interstate regulations that appeared in 45 CFR 303.7 prior to the publication of this rule were originally effective February 22, 1988. Many changes have taken place in the IV–D program since 1988, including the passage of UIFSA, PRWORA, and FFCCSOA (28 U.S.C. 1738B).

State IV–D agencies have more authority to take actions directly across State lines than they used to. Because they have the authority to bypass IV–D

agencies in other States, confusion can sometimes arise on the part of custodial and noncustodial parents, employers, and State IV–D workers about correct arrearage balances and how to account for collections. It is to address these issues and otherwise update the interstate regulations that we revised 45 CFR 303.7.

This rule extensively reorganizes the 1988 interstate regulations at 45 CFR 303.7 to clarify and streamline case processing responsibilities in intergovernmental cases, incorporating both optional and required procedures under PRWORA and enhanced technology, particularly in the area of communications. We also responded to specific changes requested by State IV–D agencies, for example, by revising responsibility for advancing the cost of genetic testing. The rule addresses case processing ambiguities raised by practitioners regarding determination of controlling orders, interstate income withholding, and case closure rules in 45 CFR 303.11. Finally, the rule makes conforming changes to the Federal substantial compliance audit (45 CFR 305.63) and State self-assessment requirements (45 CFR 308.2).

III. Provisions of the Regulation and Changes Made in Response to Comments

The following is a summary of the regulatory provisions included in this final rule. The Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register** on December 8, 2008 (73 FR 74408). The comment period ended February 6, 2009. During the comment period, we received 25 sets of comments. In general, the commenters were supportive of changes in the proposed rule to update and revise the rules for intergovernmental cases.

With a few exceptions explained in the applicable sections, we have substituted "intergovernmental" in lieu of "interstate" throughout these provisions. The term encompasses not only IV–D cases between States, but also all IV–D cases where the parents reside in different jurisdictions, including cases between a State and Tribal IV–D program, cases between a State and a foreign country under sections 454(32) and 459A of the Act, and cases where the State has asserted authority over a nonresident under long-arm jurisdiction. Please note that while this intergovernmental regulation applies to all cases involving referrals for services between States and other States, Tribes, or countries, the intergovernmental rule also applies more broadly to include some cases where a referral has not been made. Specifically, the rule also applies to instances when an initiating agency is either engaging in preliminary fact-finding activities, such as taking steps toward getting a determination of controlling order, or is deciding whether to use a one-State approach and/or has requested services from another agency using a one-state approach.

Specific changes made in response to comments are discussed in more detail under the Response to Comments section of this preamble.

Part 301—State Plan Approval and Grant Procedures

Section 301.1—General Definitions

This rule adds definitions of terms used in program regulations. In this section of the preamble, we have grouped the new definitions by topic for a more coherent discussion, rather than alphabetically as they will appear in § 301.1.

Two definitions pertain particularly to international child support case processing. We define *Country* to include both a foreign reciprocating country (FRC) and any foreign country (or political subdivision thereof) with which a State has entered into a reciprocal arrangement pursuant to section 459A(d) of the Act. We also define *Central Authority* as the agency designated by a government to facilitate support enforcement with an FRC. The Federal statute requires that the country with which a Federal-level agreement is entered establish a central authority to facilitate implementation of support establishment and enforcement in cases involving residents of the U.S.

In the final rule, in response to comments, we edited the proposed definition of *Intergovernmental IV–D case* to make the wording parallel to the definition for *Interstate IV–D case,* discussed below, since the concepts are similar. Also in response to comments, we clarified that an intergovernmental IV–D case also may include cases in which the State is seeking only to collect assigned arrearages, and may no longer involve the parents and children. In this final rule, the definition for *Intergovernmental IV–D case* reads as follows: "*Intergovernmental IV–D case* means a IV–D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV–D case may include any combination of referrals between States, Tribes, and countries. An intergovernmental IV–D case also may include cases in which a State agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State."

To identify cases in which the State IV–D agency's responsibility extends only to cases involving two or more States, we define *Interstate IV–D case.* In response to comments, we made several changes to the definition of *Interstate IV–D case* by removing the concept of one-state interstate from the definition, clarifying that there has to be a referral between States, and including cases in which the State is seeking only to collect assigned arrearages. In this final rule, *Interstate IV–D case* means "a IV–D case in which the noncustodial parent lives and/or works in a different State than the custodial parent and child(ren) that has been referred by an initiating State to a responding State for services. An interstate IV–D case also may include cases in which a State is seeking only to collect support arrearages, whether owed to the family or assigned to the State."

In response to comments, OCSE omitted the proposed definition for *One-state interstate IV–D case* and removed reference to the phrase in the final rule. We have added, however, the definition for *One-state remedies,* which includes both long-arm and direct enforcement techniques. In the final rule, use of *One-state remedies* means "the exercise of a State's jurisdiction over a non-resident parent or direct establishment, enforcement, or other action by a State against a non-resident parent in accordance with the long-arm provision of UIFSA or other State law."

Uniform Interstate Family Support Act (UIFSA) means "the model act promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and mandated by section 466(f) of the Act to be in effect in all States."

The definitions of *Initiating agency* and *Responding agency* establish a common understanding in the context of all intergovernmental IV–D cases. In response to comments, *Initiating agency* is no longer defined as an agency that has referred a case to another agency; but instead as an agency in which an individual has applied for or is receiving services. The definition now reads, "a State or Tribal IV–D agency or an agency in a country, as defined in this rule, in which an individual has applied for or is receiving services."

Responding agency means "the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV–D case." Although the definitions are inclusive, the requirements in this rule only apply to

State IV–D programs, not Tribal IV–D programs or other countries.

Two other terms flow principally from UIFSA: *Tribunal* and *Controlling Order State. Tribunal* means "a court, administrative agency, or quasi-judicial entity authorized under State law to establish, enforce, or modify support orders or to determine parentage."

Because of the need to determine the controlling order in multiple order situations, we responded to requests from our partners to set out State IV–D responsibilities when multiple support orders exist in an interstate case. The rules regarding determination of controlling order (DCO) are contained in § 303.7. We define *Controlling Order State* as "the State in which the only order was issued or, where multiple orders exist, the State in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued."

The definition of *Form* accommodates new storage and transmission technologies as they become available. In response to comments, we updated the name of the income withholding form that is mentioned within the definition. The definition reads, "*Form* means a federally-approved document used for the establishment and enforcement of support obligations whether compiled or transmitted in written or electronic format, including but not limited to the Income Withholding for Support form, and the National Medical Support Notice. In interstate IV–D cases, such forms include those used for child support enforcement proceedings under UIFSA. *Form* also includes any federally-mandated IV–D program reporting form, where appropriate." Current versions of these forms are located on the OCSE Web site at *http://www.acf.hhs.gov/programs/cse/forms/.*

Part 302—State Plan Requirements

Section 302.36—Provision of Services in Intergovernmental IV–D Cases

Former § 302.36 addressed State plan requirements in interstate and Tribal IV–D cases. We made changes to both the heading and the body of the section to address international IV–D cases. The changes clarify that a State must provide services in all intergovernmental IV–D cases as we defined that term in § 301.1.

Paragraph (a)(1) requires the State plan to: "provide that, in accordance with § 303.7 of this chapter, the State will extend the full range of services available under its IV–D plan to: (1) Any other State." Paragraph (a)(2) requires States to provide services to Tribal IV–D programs. Paragraph (a)(3) requires that the full range of services also be provided to: "Any country as defined in § 301.1 of this chapter." In the final rule, we corrected the regulatory citation for the definition of the term "Country" by replacing § 303.1 with § 301.1. Section 302.36(b) is revised by substituting "intergovernmental" for "interstate" and amending the reference to State central registry responsibilities to § 303.7(b), consistent with changes we made to § 303.7.

Part 303—Standards for Program Operations

Section 303.7—Provision of Services in Intergovernmental IV–D Cases

We reorganized § 303.7 to clarify IV–D agency responsibilities and to expand the scope from interstate to all intergovernmental IV–D cases, as defined by § 301.1. In many cases, existing paragraphs were moved with minor language changes only to improve readability. Other paragraphs of this section were revised to either shift responsibility between the initiating and responding agencies or address new case processing responsibilities.

The heading of § 303.7 substitutes "intergovernmental" for "interstate."

(a) General responsibilities

Paragraph (a) contains requirements that apply to States, irrespective of the IV–D agency's role in the case as either an initiating or responding agency.

Paragraph (a)(1) requires a IV–D agency to: "Establish and use procedures for managing its intergovernmental IV–D caseload that ensure provision of necessary services as required by this section and include maintenance of necessary records in accordance with § 303.2 of this part." This is a general responsibility of all IV–D agencies.

Similarly, § 303.7(a)(2) and (3) require the IV–D agency to periodically review program performance for effectiveness and to ensure adequate organizational structure and staffing to provide services in intergovernmental cases.

Section 303.7(a)(4) requires the IV–D agency to: "Use federally-approved forms in intergovernmental IV–D cases, unless a country has provided alternative forms as part of a chapter of *A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.* When using a paper version, this requirement is met by providing the number of complete sets of required documents needed by the responding agency, if one is not sufficient under the responding agency's law." In response to comments, we now mention the possibility that an FRC may request a State use a particular FRC-specific form. Also in response to comments, we added the second sentence of § 303.7(a)(4) to require the initiating State IV–D agency, when it sends a paper version of the required documents, to send the number of sets needed by the responding State if one copy is not sufficient under the responding State's law.

Section 303.7(a)(5) requires IV–D agencies to: "Transmit requests for information and provide requested information electronically to the greatest extent possible." In response to comments, we removed the proposed phrase "in accordance with instructions issued by the Office." Nevertheless, OCSE may provide instructions to States if deemed necessary and appropriate.

In response to State comments, we clarified in the rule the responsibilities of IV–D agencies to determine which of multiple current support orders is controlling prospectively. Section 303.7(a)(6) includes a general responsibility which requires all IV–D agencies to: "Within 30 working days of receiving a request, provide any order and payment record information requested by a State IV–D agency for a controlling order determination and reconciliation of arrearages, or notify the State IV–D agency when the information will be provided." In response to concerns by commenters that 30 working days may be inadequate, we added an option in § 303.7(a)(6) to notify the State IV–D agency when the information will be provided if there is a delay.

Section 303.7(a)(7) requires IV–D agencies to: "Notify the other agency within 10 working days of receipt of new information on an intergovernmental case."

Section 303.7(a)(8) requires all IV–D agencies to: "Cooperate with requests for the following limited services: quick locate, service of process, assistance with discovery, assistance with genetic testing, teleconferenced hearings, administrative reviews, high-volume automated administrative enforcement in interstate cases under section 466(a)(14) of the Act, and copies of court orders and payment records. Requests for other limited services may be honored at the State's option." In response to comments, the final rule specifies the limited services that State IV–D agencies must provide if requested and adds that State IV–D agencies have the option to honor requests for other types of limited services.

(b) Central registry

Section 303.7(b)(1) provides: "The State IV–D agency must establish a central registry responsible for receiving, transmitting, and responding

to inquiries on all incoming intergovernmental IV–D cases."

Paragraph (b)(2) requires that the State's central registry must: "Within 10 working days of receipt of an intergovernmental IV–D case," take the following four actions: "(i) Ensure that the documentation submitted with the case has been reviewed to determine completeness; (ii) Forward the case for necessary action either to the central State Parent Locator Service for location services or to the appropriate agency for processing; (iii) Acknowledge receipt of the case and request any missing documentation; and (iv) Inform the initiating agency where the case was sent for action."

Paragraph (b)(3) requires: "If the documentation received with a case is incomplete and cannot be remedied by the central registry without the assistance of the initiating agency, the central registry must forward the case for any action that can be taken pending necessary action by the initiating agency." In response to comments, we replaced "inadequate" with "incomplete."

Paragraph (b)(4) requires the central registry to: "respond to inquiries from initiating agencies within 5 working days of receipt of the request for a case status review."

(c) Initiating State IV–D agency responsibilities

The first step in deciding whether a determination of controlling order (DCO) is necessary is to identify all support orders. Accordingly, § 303.7(c)(1) adds the requirement that an initiating agency must first: "Determine whether or not there is a support order or orders in effect in a case using the Federal and State Case Registries, State records, information provided by the recipient of services, and other relevant information available to the State."

In paragraph (c)(2), the initiating agency must: "Determine in which State a determination of the controlling order and reconciliation of arrearages may be made where multiple orders exist." If more than one State tribunal has the jurisdiction to determine the controlling order, pursuant to paragraph (c)(4)(i), the initiating agency must decide which State IV–D agency should file for such relief.

Under paragraph (c)(3), the initiating agency must: "Determine whether the noncustodial parent is in another jurisdiction and whether it is appropriate to use its one-state remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding."

Under § 303.7(c)(4), in response to comments, we made additional clarifying changes. The final rule specifies that: "Within 20 calendar days of completing the actions required in paragraphs (1) through (3), and, if appropriate, receipt of any necessary information needed to process the case," the initiating agency must under paragraph (c)(4)(i), if multiple orders are in existence and identified under paragraph (c)(1), "ask the appropriate intrastate tribunal, or refer the case to the appropriate responding State IV–D agency, for a determination of the controlling order and a reconciliation of arrearages if such a determination is necessary." In addition, within the 20-calendar-days time frame, under paragraph (c)(4)(ii), the initiating agency must "refer any intergovernmental IV–D case to the appropriate State Central Registry, Tribal IV–D program, or Central Authority of a country for action, if one-state remedies are not appropriate."

Section 303.7(c)(5) requires the initiating agency to: "Provide the responding agency sufficient, accurate information to act on the case by submitting with each case any necessary documentation and intergovernmental forms required by the responding agency." Similarly, § 303.7(c)(6) requires the initiating agency to: "Within 30 calendar days of receipt of the request for information, provide the responding agency with an updated intergovernmental form and any necessary additional documentation, or notify the responding agency when the information will be provided."

Section 303.7(c)(7) requires the initiating agency to: "Notify the responding agency at least annually, and upon request in an individual case, of interest charges, if any, owed on overdue support under an initiating State order being enforced in the responding jurisdiction." In response to comments on the proposed rule, we added a requirement to provide notice annually, rather than quarterly as previously proposed in the NPRM, and upon request in an individual case.

Under paragraph (c)(8), the initiating State agency must: "Submit all past-due support owed in IV–D cases that meet the certification requirements under § 303.72 of this part for Federal tax refund offset." As explained under the discussion in response to comments, we deleted the proposed requirement that only the initiating State could submit past-due support for other Federal remedies, such as administrative offset or passport denial. In the proposed rule, we expressly assigned responsibility in an interstate case to the initiating agency to submit qualifying past-due support for all Federal remedies, consistent with submittal rules for Federal tax refund offset under § 303.72(a)(1). Our intent was to avoid both States submitting the same arrearage in a single case; however, we have learned that there may be situations where the responding State IV–D agency may submit the case that it is working on behalf of the initiating State IV–D agency for administrative offset, passport denial, Federal insurance match, and Multi State Financial Institution Data Match (MSFIDM) on its own, or at the initiating State IV–D agency's request. Therefore, under paragraph (c)(8) in the final rule, the initiating State IV–D agency must: "Submit all past-due support owed in IV–D cases that meet the certification requirements under § 303.72 of this part for Federal tax refund offset."

Section 303.7(c)(9) requires that the initiating State must send a request for a review of a support order and supporting documentation within 20 calendar days of determining that such a request is required.

Section 303.7(c)(10) requires the initiating State to: "Distribute and disburse any support collections received in accordance with this section and §§ 302.32, 302.51, and 302.52 of this chapter, sections 454(5), 454B, 457, and 1912 of the Act, and instructions issued by the Office."

Section 303.7(c)(11) requires an initiating State agency to: "Notify the responding agency within 10 working days of case closure that the initiating State IV–D agency has closed its case pursuant to § 303.11 of this part, and the basis for case closure." In response to comments, we added the phrase, "and the basis for case closure."

Paragraph (c)(12) addresses the issue of duplicate withholding notices/orders for the same obligor being sent to the obligor's employer by both the initiating and responding States in the same interstate case. We are requiring the initiating agency under paragraph (c)(12) to: "Instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice, with respect to the same case, to the same or another employer unless the two States reach an alternative agreement on how to proceed." The phrase "with respect to the same case" was added to the final rule for clarity. This procedure will avoid duplicate State income withholding orders or notices; however, there is nothing in

this rule that authorizes a State to change the payee on another State's order through direct income withholding. This prohibition is addressed in Policy Interpretation Question PIQ–01–01, which states, "if a support order or income withholding order issued by one State designates the person or agency to receive payments and the address to which payments are to be forwarded, an individual or entity in another State may not change the designation when sending an Order/Notice to Withhold [Income for] Child Support." (The Order/Notice to Withhold Income for Child Support form is now referred to as the "Income Withholding for Support" form.) While we recognize that section 466(f) of the Act requires States to enact UIFSA 1996, section 319(b) of UIFSA (2001) provides a mechanism for redirection of payments when neither the obligor, obligee, nor child reside in the State that issued the controlling order.

The final requirement on initiating IV–D agencies, § 303.7(c)(13) addresses concerns about undistributed collections in a responding State because the initiating State closed its case and refuses to accept any collections in that case from the responding State. Section 303.7(c)(13) requires the initiating State to: "If the initiating agency has closed its case pursuant to § 303.11 and has not notified the responding agency to close its corresponding case, make a diligent effort to locate the obligee, including use of the Federal Parent Locator Service and the State Parent Locator Service, and accept, distribute and disburse any payment received from a responding agency."

(d) Responding State IV–D agency responsibilities

In the final rule, we have revised the introductory language from the proposed rule to clarify that the requirements in section 303.7(d) apply to State IV–D agencies specifically. The introductory language now reads as follows: "Upon receipt of a request for services from an initiating agency, the responding State IV–D agency must* * *." Section 303.7(d)(1) requires a responding agency to: "Accept and process an intergovernmental request for services, regardless of whether the initiating agency elected not to use remedies that may be available under the law of that jurisdiction."

The opening sentence in § 303.7(d)(2) states that: "Within 75 calendar days of receipt of an intergovernmental form and documentation from its central registry* * *" the responding agency must take the specified action.

Paragraph (d)(2)(i) requires the responding State IV–D agency to: "Provide location services in accordance with § 303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the noncustodial parent." Paragraph (d)(2)(ii) provides: "If unable to proceed with the case because of inadequate documentation, notify the initiating agency of the necessary additions or corrections to the form or documentation." Paragraph (d)(2)(iii) provides: "If the documentation received with a case is incomplete and cannot be remedied without the assistance of the initiating agency, process the case to the extent possible pending necessary action by the initiating agency." In response to comments, we replaced "inadequate" with "incomplete."

In the proposed rule, OCSE requested feedback regarding actions that should be taken when a noncustodial parent is located in a different State. Based on the comments received, § 303.7(d)(3) was revised to replace the phrase "initiating State" with "initiating agency," and the term "forward" with "forward/transmit." In response to comments, we also have clarified that the responding State's own central registry should be notified where that case has been sent. The paragraph now reads as follows: "Within 10 working days of locating the noncustodial parent in a different State, the responding agency must return the forms and documentation, including the new location, to the initiating agency, or, if directed by the initiating agency, forward/transmit the forms and documentation to the central registry in the State where the noncustodial parent has been located and notify the responding State's own central registry where the case has been sent."

Paragraph (d)(4) requires the responding State IV–D agency to: "Within 10 working days of locating the noncustodial parent in a different political subdivision within the State, forward/transmit the forms and documentation to the appropriate political subdivision and notify the initiating agency and the responding State's own central registry of its action." Again, we changed "initiating State" to "initiating agency," and clarified that the central registry in the responding State also should be notified where the case has been sent. In addition, to avoid ambiguity, we replaced the term "jurisdiction" with "political subdivision."

Paragraph (d)(5) adds a notice requirement where the initiating State agency has requested a controlling order determination. In this case, the responding agency must under paragraph (d)(5)(i): "File the controlling order determination request with the appropriate tribunal in its State within 30 calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later." In response to comments we increased the time frame from 10 working days to 30 calendar days. Under paragraph (d)(5)(ii), the responding State must: "Notify the initiating State agency, the Controlling Order State and any State where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within 30 calendar days of receipt of the determination from the tribunal." The 30-calendar-days time frame in paragraph (d)(5)(ii) is identical to that included under section 207(f) of UIFSA, under which the party obtaining the order shall file a certified copy of the order with each tribunal that issued or registered an earlier order of child support, within 30 calendar days after issuance of an order determining the controlling order.

Section 303.7(d)(6) requires the responding agency to: "Provide any necessary services as it would in an intrastate IV–D case," including 6 specific services. Paragraph (d)(6)(i) requires responding State agencies to provide services including: "Establishing paternity in accordance with § 303.5 of this part and, if the agency elects, attempting to obtain a judgment for costs should paternity be established." Paragraph (d)(6)(ii) requires responding State agencies to provide services including: "Establishing a child support obligation in accordance with § 302.56 of this chapter and §§ 303.4, 303.31 and 303.101 of this part." In response to comments, paragraph (d)(6)(i) allows State IV–D agencies to attempt to obtain a judgment for costs when paternity is established.

In response to comments, we moved the responsibility to report overdue support to Consumer Reporting Agencies, in accordance with section 466(a)(7) of the Act and § 302.70(a)(7), from initiating State IV–D agencies, as suggested in the proposed rule, to responding State IV–D agencies under paragraph (d)(6)(iii).

Paragraph (d)(6)(iv) addresses a responding State agency's responsibility for processing and enforcing orders referred by an initiating agency. In response to comments to the initiating State agency's responsibility under paragraph (c)(8), to submit past due support for Federal enforcement remedies, we have added language to

indicate that the responding State agency may submit cases for other Federal enforcement remedies such as administrative offset and passport denial. The paragraph now reads as follows: "Processing and enforcing orders referred by an initiating agency, whether pursuant to UIFSA or other legal processes, using appropriate remedies applied in its own cases in accordance with §§ 303.6, 303.31, 303.32, 303.100 through 303.102, and 303.104 of this part, and submit the case for such other Federal enforcement techniques as the State determines to be appropriate, such as administrative offset under 31 CFR 285.1 and passport denial under section 452(k) of the Act."

Paragraph (d)(6)(v) requires the responding agency to provide any necessary services as it would in an intrastate IV–D case including: "Collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the initiating agency. The IV–D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter, and include the responding State's case identifier and locator code, as defined in accordance with instructions issued by this Office." This change allows OCSE greater flexibility to define consistent identifier and locator codes, including ones for FRCs (International Standards Organization (ISO) codes) and Tribal IV–D programs (Bureau of Indian Affairs (BIA) codes). OCSE DCL–07–02 (*http://www.acf.hhs.gov/programs/cse/pol/DCL/2007/dcl-07–02.htm*) provides locator code instructions, including for Tribal IV–D and international cases.

Under paragraph (d)(6)(vi), the responding State IV–D agency is responsible for: "Reviewing and adjusting child support orders upon request in accordance with § 303.8 of this part."

Paragraph (d)(7) requires the responding State IV–D agency to: "Provide timely notice to the initiating agency in advance of any hearing before a tribunal that may result in establishment or adjustment of an order."

In the NPRM, we added proposed § 303.7(d)(8) to address allocation of collections in interstate cases with arrearages owed by the same obligor and assigned to the responding State in a different case. In response to comments, however, this requirement was removed from the final rule. Given the lack of consensus reflected in the comments, we believe the issue of how a responding State should allocate collections between assigned arrearages on its own case and an interstate case may better be addressed in the context of meetings on intergovernmental cooperation rather than by regulation.

Section 303.7(d)(8) requires the responding State agency to: "Identify any fees or costs deducted from support payments when forwarding payments to the initiating agency in accordance with paragraph (d)(6)(v) of this section."

Section 303.7(d)(9) details the actions a responding State must take when an initiating State has elected to use direct income withholding in an existing intergovernmental IV–D case. The initiating State is authorized to use direct income withholding only where it follows requirements to instruct the responding agency to close its corresponding case under § 303.7(c)(12). In the final rule, paragraph (d)(9) requires the responding agency to: "Within 10 working days of receipt of instructions for case closure from an initiating agency under paragraph (c)(12) of this section, stop the responding State's income withholding order or notice and close the intergovernmental IV–D case, unless the two States reach an alternative agreement on how to proceed." In response to comments, the time frame by which a responding State must stop their income withholding order and close the intergovernmental case is clarified to be "working" days. Also in response to comments, we replaced the words "a request" in the proposed rule with "instructions" to emphasize that this requirement is mandatory, not optional, and to be consistent with the language in the corresponding initiating State responsibilities section, under paragraph (c)(12), which uses the word "instruct."

In the final rule, requirement (d)(10) requires the responding State IV–D agency to: "Notify the initiating agency when a case is closed pursuant to §§ 303.11(b)(12) through (14) and 303.7(d)(9) of this part." We added the reference to § 303.7(d)(9) and the applicable paragraphs in § 303.11 to clarify the authority under which a responding State IV–D agency may close an intergovernmental case and is required to notify the initiating agency.

(e) Payment and recovery of costs in intergovernmental IV–D cases

Section 303.7(e)(1) reads: "The responding IV–D agency must pay the costs it incurs in processing intergovernmental IV–D cases, including the costs of genetic testing. If paternity is established, the responding agency, at its election, may seek a judgment for the costs of testing from the alleged father who denied paternity."

Paragraph (e)(2) reads as follows: "Each State IV–D agency may recover its costs of providing services in intergovernmental non-IV–A cases in accordance with § 302.33(d) of this chapter, except that a IV–D agency may not recover costs from an FRC or from a foreign obligee in that FRC, when providing services under sections 454(32) and 459A of the Act." The limitation on cost recovery has been added as required by PRWORA. Services between FRCs must be cost free. States entering a state-level arrangement with a non-FRC country under section 459A may elect to provide cost-free services, but are not mandated to do so. Accordingly, this section refers to FRCs rather than using the more inclusive term "country." However, there is no similar prohibition to charging fees or recovering costs in cases with Tribal IV–D agencies. In addition, Tribal IV–D agencies have the option under § 309.75(e) to charge fees and recover costs.

Part 303—Standards for Program Operation

Section 303.11—Case Closure Criteria

Section 303.11(b)(12) allows a State IV–D agency to close a case if: "The IV–D agency documents failure by the initiating agency to take an action which is essential for the next step in providing services."

Paragraph (b)(13) adds a case closure criterion under which the responding State agency is authorized to close its intergovernmental case based on a notice under § 303.7(c)(11) from the initiating agency that it has closed its case. Under § 303.7(c)(11), an initiating State agency must: "Notify the responding agency within 10 working days of case closure that the initiating State IV–D agency has closed its case pursuant to § 303.11 of this part, and the basis for case closure." Paragraph (b)(13) provides, "The initiating agency has notified the responding State that the initiating State has closed its case under § 303.7(c)(11)."

In response to comments, paragraph (b)(14) adds a case closure criterion under which the responding State is authorized to close its intergovernmental case based on a notice from the initiating agency that the responding State's intergovernmental services are no longer needed.

For consistency with the language in § 303.11(b)(12), which allows a State IV–D agency to close a case if the IV–D agency documents failure by the initiating agency to take an action which is essential for the next step in case

processing, there is a technical change to § 303.11(c) to substitute the word "intergovernmental" for "interstate" and "initiating agency" for "initiating State." Since § 303.11(b)(12) may be used in both intergovernmental cases received from Tribal IV–D programs and other countries, the requirement for pre-notice of closure applies to these cases as well. Therefore, the case closure notice that responding States must give if they intend to close a case under § 303.11(b)(12) must be provided to all initiating agencies, and the responding State must keep the case open if that initiating agency supplies useable information in response to the notice.

Part 305—Program Performance Measures, Standards, Financial Incentives, and Penalties

Section 305.63—Standards for Determining Substantial Compliance With IV–D Requirements

We have made conforming changes to Part 305 at § 305.63 to correct outdated cross-references and to revise cross-references to § 303.7.

Part 308—Annual State Self-Assessment Review and Report

Section 308.2—Required Program Compliance Criteria

We have made conforming changes to Part 308 at § 308.2 to correct outdated cross-references and to revise cross-references to § 303.7. The language in paragraph (g) has been revised to reflect the corresponding changes to referenced provisions in § 303.7, and we also added two new program compliance criteria for State Self-Assessments.

First, there is a performance criterion for both initiating (§ 308.2(g)(1)(vi)) and responding (§ 308.2(g)(2)(vi)) cases under which, in accordance with the time frame under § 303.7(a)(6), the initiating and responding State IV–D agencies must, within 30 working days of receipt of a request, provide: "any order and payment record information requested by a State IV–D agency for a controlling order determination and reconciliation of arrearages, or notify the State IV–D agency when the information will be provided." The phrase: "or notify the State IV–D agency when the information will be provided," was added in response to comments.

A second new performance area involves case closure criteria. As discussed previously under § 303.7 and § 303.11, there are time-measured requirements for notification of the other State when closing a case. Measurable performance criteria are established where we impose time frames. Accordingly, we add notification regarding case closure in both initiating (§ 308.2(g)(1)(iv)) and responding (§ 308.2(g)(2)(vii)) cases.

IV. Response to Comments

We received 25 sets of comments from States, Tribes, and other interested individuals. Below is a summary of the comments and our responses.

General Comments

1. Comment: One commenter pointed out that the acronym SCR is used for both State Case Registry and State Central Registry in the NPRM.

Response: OCSE agrees that using the same acronym for two different terms in the preamble is confusing. Typically we use the acronym SCR to stand for State Case Registry. The final rule text does not use an acronym for either term.

2. Comment: The same commenter also raised concern about the lack of recourse for States that are trying to process intergovernmental cases when other States are not meeting mandated processing deadlines. The commenter suggested that OCSE add a § 303.7(f) to the intergovernmental regulation to set out responsibilities for the Federal Government to help States resolve complex intergovernmental case issues.

Response: OCSE acknowledges that intergovernmental case processing can be challenging and is concerned that some States may not be meeting processing deadlines. A procedure currently exists for States to work with OCSE in situations where they may need assistance resolving intergovernmental case issues with other States. The current procedure allows States to contact their Federal regional program manager, report the issue and then work with the program manager and other States to resolve the issue. In addition, case closure regulations under § 303.11(b)(12) offer responding States the option to close cases without permission from the initiating agency by documenting lack of cooperation by the initiating agency. This criterion was devised so that responding States would have grounds to close unworkable cases, provided the 60-calendar-day notice is given to the initiating agency, as required under § 303.11(c). Also the responding State should make a thorough, good faith effort to communicate with the State before initiating case closure procedures.

3. Comment: In the preamble to the NPRM, OCSE specifically requested feedback from States regarding other communication techniques for interstate case processing that would work as well as or better than the Child Support Enforcement Network (CSENet) to foster improved communication between States. In response, one commenter suggested that OCSE encourage more States to adopt Query Interstate Cases for Kids (QUICK) to improve interstate case processing communication.

Response: OCSE agrees that QUICK, an electronic communication format that allows caseworkers to view interstate case information in real time, can be an important interstate communication tool and encourages State use. As of November 2009, 21 States are in production with QUICK, 10 States are in the development phase, and more States are in the pre-development stage. These numbers demonstrate that many States recognize the benefits of utilizing QUICK for interstate communications. OCSE will continue its outreach and technical assistance efforts to further encourage and support States' development of QUICK for their use.

4. Comment: The same commenter also suggested an enhancement to CSENet to allow States to include electronic documents in CSENet transactions.

Response: Electronic transmission of intergovernmental forms, court orders and other supporting documentation was assessed by OCSE within the last several years. While technically feasible, States' comments during this assessment process indicated that their statewide systems were not prepared to transmit those documents or that their courts would not accept those documents. OCSE will revisit this issue with States in 2010 when we review the intergovernmental forms as required by the Paperwork Reduction Act of 1995.

5. Comment: Another commenter suggested that OCSE add more CSENet functions, specifying that all States should have the same functions with correct information, such as telephone numbers, FIPS codes, and fax numbers.

Response: OCSE has encouraged States to develop programs for all CSENet functional areas for several years. We continue outreach efforts on an individual basis with States that do not have all seven functional areas (Quick Locate, Case Status Information, Enforcement, Managing State Cases, Paternity, Establishment and Collections) programmed. Finally, we continue to focus interstate meetings, training sessions and end-user support activities on efforts to improve data quality and accuracy of transaction content.

6. Comment: The same commenter asked that the Quick Locate CSENet transaction not be limited to the noncustodial parent.

Response: The parameter of Quick Locate was broadened after PRWORA to include noncustodial parents and custodial parents, and the existing Quick Locate transaction is used for both noncustodial parent and custodial parent location. OCSE will conduct outreach in this area to determine if the single transaction is meeting States' needs.

7. Comment: One commenter suggested that OCSE develop a secure network that would allow States to send electronic documents to another State via the internet, similar to the way documents are filed electronically with the courts. The commenter said that this would allow States to accept referrals electronically and save on postage and worker time. Alternatively, the commenter suggested States obtain email encryption software and be able to certify that their emails are encrypted, thus allowing States to communicate case processing information by email correspondence and document exchange.

Response: OCSE does encourage email encryption and secure networks, including Internet-based solutions to facilitate electronic communications and to protect personally identifiable information. OCSE is considering providing the capability for States to electronically transmit documents to other States using the Federal Parent Locator Service (FPLS). As enhancements are made to FPLS systems, OCSE will continue to partner with States for input and pilot activities.

8. Comment: One commenter noted that while he knows of nothing better than CSENet for communications, the Interstate Data Exchange Consortium (IDEC), a group of States whose common objective is to pool resources to provide cost-effective solutions for interstate and intrastate child support issues, has also been very useful for processing transactions such as Automated, High-Volume Administrative Enforcement in Interstate Cases (AEI). IDEC is also effective for processing locate requests because it includes Social Security numbers, addresses, employment history, and demographic information. According to the commenter, however, IDEC is limited by the number of States that subscribe.

Response: OCSE agrees that consortia such as IDEC can be very useful, especially in processing requests for functions such as limited service requests, which cannot be processed using most statewide automated systems. However, since there are competing State consortia, OCSE cannot promote one group over another.

9. Comment: One commenter expressed that she had hoped the intergovernmental NPRM would have taken a stronger position on requiring States to adopt processes to accept electronic documents and signatures, noting that her State has made extraordinary progress in the area of electronic documentation, which has resulted in greater efficiency. The commenter believes that some States will never adopt electronic processing unless required to by OCSE.

Response: OCSE appreciates the comment and commends the innovation of the commenter's State. As discussed later in this section, while OCSE encourages all States to adopt electronic capabilities, OCSE has not mandated this because of the varying capabilities among IV–D agencies.

10. Comment: One commenter was concerned that the changes in terminology in the proposed regulation, such as using "intergovernmental" instead of "interstate" and adding the terms Tribal and international, will require numerous changes to forms and procedural manuals used by the States.

Response: OCSE is sympathetic to the commenter's concern that some changes to State forms and procedures may be necessary following publication of this rule. However, OCSE notes that current mandatory intergovernmental forms already use many of these terms. OCSE also believes that these terms accurately state specific requirements in the new intergovernmental rule and believes States will, as a result of these changes, be able to process intergovernmental cases more efficiently. OCSE will allow adequate time for States to make needed changes to their internal manuals and forms by extending the effective date of the final rule from the usual 60 days to 6 months after publication.

11. Comment: In regard to the background section addressing "Tribal IV–D and International Child Support Enforcement" in the preamble of the proposed rule, one commenter asked for clarification that, in the context of discussion about the "States" ratifying the Hague Convention for the International Recovery of Child Support and Other Forms of Family Maintenance, the term State refers to countries and that individual U.S. States will not sign the convention.

Response: In the context of the Hague Convention, the U.S. Government and other foreign countries sign the treaty. The term "State" in the context of the treaty does not refer to individual U.S. States. In the preamble to the final rule, we used the term "foreign country" instead of "State" for clarity.

12. Comment: One commenter stated that the proposed rule violates the HHS consultation policy, since OCSE did not follow the requirements for Tribal consultation mandated by its own Department according to Executive Order 13175 Consultation and Coordination with Indian Tribal Governments, HHS Tribal Consultation Policy. The commenter believes the proposed rule may have enormous Tribal implications, and that now there can be no meaningful dialogue between Tribal governments and OCSE because the proposed rule has already been published. Finally, the commenter asked for clarification as to whether the proposed intergovernmental regulation applies to all Tribal child support enforcement programs or only to Tribal IV–D programs established under 45 CFR part 309.

Response: This rule places no requirements on Tribal programs, IV–D or otherwise. The only Federal child support regulations that apply to Tribes are 45 CFR part 309, Tribal Child Support Enforcement (IV–D) Program, and 45 CFR part 310, Computerized Tribal IV–D Systems and Office Automation. 45 CFR parts 309 and 310 apply only to Tribal IV–D programs.

One of the major reasons for revising the intergovernmental rule was to recognize and account for the increasing diversity of partners involved in case processing, including Tribal and international agencies. However, while these rules address State case processing requirements in this larger context, the rules themselves only apply to State IV–D agencies.

For example, if a Tribal IV–D program is the initiating agency and a State is a responding agency in an intergovernmental context, the intergovernmental rules for responding States under § 303.7(d) apply to the State, while the rules for initiating States under § 303.7(c) do not apply to the Tribal IV–D program.

13. Comment: One commenter asked for clarification as to which parts of the proposed rules apply to a State IV–D program's interactions with a Tribe and which ones apply to a State IV–D program's interactions with a Tribal IV–D program.

Response: Under the Federal statute and regulations, there is no mandate that States provide services to non-IV–D Tribes. However, as described below, if a State decides to cooperate with a non-IV–D Tribe to provide child support services, then the intergovernmental rules do apply to the State. Also, applicants who apply directly to a State program must be served by the State, regardless of where they live.

Part 301—State Plan Approval and Grant Procedures

Section 301.1—General Definitions

While several commenters agreed with one or all of the proposed definitions in the General definitions section of § 301.1, most of those who commented expressed a variety of questions and concerns regarding specific definitions and terms.

1. Comments: In regard to the definition of *Country,* one commenter asked for confirmation that the term does not include countries with which no Federal or State-level reciprocal agreement exists; and that services to these countries are not mandated. The commenter asked to what extent the intergovernmental rule applies to those situations in which a State and a foreign country not included in the definition of *Country* in the regulation are cooperating to handle a shared case on the basis of comity as specified in UIFSA, or some other informal arrangement.

Response: The definition of *Country* does not include foreign countries with which no Federal or State-level reciprocal agreement exists; and IV–D services to these foreign countries are not federally mandated. However, if a State opts to cooperate with such a foreign country, as we understand is fairly routine, then the case becomes an intergovernmental IV–D case and this rule applies.

2. Comment: One commenter stated that proposed § 301.1 includes a referral requirement within the definition of an *Initiating agency;* however, the term *Initiating agency* also is used in the regulation to refer to an agency that takes unilateral action, such as direct income withholding. The commenter suggests that if the intent is to limit the initiating agency definition to those agencies that refer a case to the responding agency, then another term and definition should be developed for those agencies that take unilateral action.

Response: OCSE did not intend to limit the definition of *Initiating agency* to only refer to agencies that have sent a case to a responding agency. The term is intended to include agencies that make case referrals as well as take unilateral actions, such as direct income withholding.

In order to define the term more accurately, OCSE changed the definition of *Initiating agency* in this final rule to emphasize the relationship of the applicant or recipient of services to the agency, rather than focusing on the referral from the agency to a responding agency. By changing the definition, the term is inclusive of whatever actions an agency may take to process a case. The revised definition for initiating agency now reads:

"*Initiating agency* means a State or Tribal IV–D agency or an agency in a country, as defined in this rule, in which an individual has applied for or is receiving services."

In addition, this revised definition clarifies that State IV–D agencies must fulfill their responsibilities as initiating agencies under § 303.7(c) of the rules, particularly paragraphs (c)(1) through (3), even if no referral has been made to a responding agency.

3. Comment: The intergovernmental NPRM states that an *Initiating agency,* as defined, could include a State IV–D agency, a Tribal IV–D agency, or a country as defined by this rule. *Responding agency* is defined as "the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV–D case." In regard to both definitions, one commenter asked why all Tribal agencies were not referenced. In addition, the commenter asked whether a State could have a reciprocal case with a Tribe that does not have a IV–D program.

Response: This rule applies only to State IV–D programs, and State IV–D programs are only required to provide services to other State IV–D programs, Tribal IV–D programs, and countries with Federal or State-level agreements, not to all Tribes. However, a State may choose to open a reciprocal case with a Tribe that does not operate a IV–D program, so long as the State complies with this rule.

4. Comment: A commenter asked if all Tribes are bound by FFCCSOA.

Response: Yes, all Tribes are bound by FFCCSOA, 22 U.S.C. § 1738B. As explained in OCSE–AT–02–03: "FFCCSOA requires courts of all United States territories, states and tribes to accord full faith and credit to child support orders issued by another state or tribe that properly exercised jurisdiction over the parties and the subject matter." According to the Action Transmittal, "FFCCSOA defines "state" to include "Indian Country" as this term is defined in 18 U.S.C. section § 1151. This means that whenever the term is used in [FFCCSOA], it includes tribe as well."

5. Comment: One commenter pointed out that in the definition for *Form,* the income withholding form is improperly referred to by its former title, "Order/Notice to Withhold Income for Child Support," rather than its new title, "Income Withholding for Support."

Response: The commenter is correct. Since publication of AT–07–07, the name of the income withholding form is "Income Withholding for Support." In the final rule, the definition of *Form* has been updated to reflect the correct title.

6. Comment: One commenter asked for clarification for the definition of "State" with regard to the new definitions for *Intergovernmental IV–D case* and *Interstate IV–D case.* The commenter stated that Section 101(19) of UIFSA 1996 defines "State" to include States and territories, Indian Tribes, and foreign jurisdictions that have "enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under [UIFSA], the Uniform Reciprocal Enforcement of Support Act (URESA) or the Revised Uniform Reciprocal Enforcement of Support Act (RURESA)." The commenter suggested OCSE address whether the term "State" in the definition of *Interstate IV–D case* retains the broad definition as defined by UIFSA or refers more narrowly to one of the United States or its territories only.

Response: For the purposes of the IV–D program, *State* is defined in § 301.1 as "the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa," and does not include Tribes or foreign jurisdictions. Therefore, the definition of *State* in § 301.1 of this rule, and not the UIFSA definition, applies to the use of the term in the definition of *Intergovernmental IV–D case* and *Interstate IV–D case* in this rule.

7. Comment: One commenter believes that the proposed definition for *Intergovernmental IV–D case* leaves out cases in which the child has emancipated but the custodial and noncustodial parents live in different jurisdictions, and those cases in which a State is attempting to collect State debt from an obligor in another State. In these state-debt cases, the commenter said the State often does not know the location of the custodial parent or the child.

Response: We agree that there are cases in which the IV–D agency is only attempting to collect arrearages owed to the State, and therefore we have added the following additional sentence to the definition for *Intergovernmental IV–D case:* "An intergovernmental IV–D case also may include cases in which a State agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State." Since this scenario exists in interstate cases as well, we have added a similar sentence to the definition for *Interstate IV–D case.* For the final text of the definitions

of *Intergovernmental IV–D case* and *Interstate IV–D case,* see the next comment.

8. Comment: One commenter asked what the differences are between an *Intergovernmental IV–D case* and an *Interstate IV–D case.*

Response: OCSE intended that the only distinction between an intergovernmental IV–D case and an interstate IV–D case was the type of jurisdictions involved: An interstate case involves States, while an intergovernmental IV–D case could involve any combination of referrals between States, Tribes or countries (as defined in the regulations). OCSE acknowledges that the NPRM definitions suggested another distinction between the terms: That an intergovernmental IV–D case required a referral to a responding agency, while an interstate case did not require a referral to another State. In response to this comment, OCSE revised the definitions to clarify that both terms include a referral requirement and that the only distinction is the kinds of jurisdictions involved in the case. To do this, we changed the first sentence of the definition of *Intergovernmental IV–D case* for consistency and clarity to more clearly follow the wording used in the first sentence of the definition of *Interstate IV–D case.*

Regarding the definition for *Interstate IV–D case,* we revised the second half of the first sentence to clarify that the term refers only to cases that have been sent by a State to a responding State.

The revised definitions for *Intergovernmental IV–D case* and *Interstate IV–D case,* which include these changes as well as the change from the previous comment, read as follows:

"*Intergovernmental IV–D case* means a IV–D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV–D case may include any combination of referrals between States, Tribes, and countries. An intergovernmental IV–D case also may include cases in which a State agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State."

"*Interstate IV–D case* means a IV–D case in which the noncustodial parent lives and/or works in a different State than the custodial parent and child(ren) that has been referred by an initiating State to a responding State for services. An interstate IV–D case also may include cases in which a State is seeking only to collect support arrearages, whether owed to the family or assigned to the State."

9. Comment: One commenter observed that an *Intergovernmental IV–D case* is defined as a case where the noncustodial parent lives in a different jurisdiction from the child(ren), while an *Interstate IV–D case* is defined as a case where the noncustodial parent lives and/or works in a different State than the child(ren) *and* the custodial parent. The commenter asked why the former definition omits mentioning the custodial parent.

Response: As stated above, OCSE intended the only difference between intergovernmental and interstate cases to be that of the types of jurisdictions involved in a case. The status or any other features of the custodial and noncustodial parents or children, other than the jurisdictions where they may live or work, does not impact whether the case falls under the interstate or intergovernmental definition.

10. Comment: One commenter was concerned that the definition of *Interstate IV–D case* is too far-reaching. The commenter asked OCSE to consider, for example, the scenario in which a custodial parent living in Minnesota applies for IV–D services in North Dakota because the noncustodial parent is living and working in North Dakota and the support order was issued in North Dakota. Under the proposed definition, this would be considered an interstate IV–D case merely because the parties live in different States. However, this case would have no interstate implications—*e.g.,* enforcement would occur in North Dakota according to North Dakota law, North Dakota would have continuing exclusive jurisdiction for purposes of review and adjustment, and the State would not treat this case as an interstate case for purposes of OCSE–157 reporting. The commenter is concerned that applying the definition of *Interstate IV–D case* to such a case could have unforeseen and unintended consequences.

Response: As noted above, the definition for *Interstate IV–D case* has been revised in the final rule to pertain only to cases that have been referred for services from one State to another State. According to the revised definition, *Interstate IV–D case* does not include a case that is being processed by an initiating agency using one-state actions nor does it include a case that involves an applicant from one State applying directly for services in another State, as described in the commenter's scenario.

The revised definition for *Interstate IV–D case* now aligns with the instructions for reporting interstate cases on Form OCSE–157, "Child Support Enforcement Annual Data Report." The instructions for Form OCSE–157 describe interstate cases as those cases either "sent to another State" or "received from another State."

11. Comment: OCSE welcomed comments on whether the proposed definition of *One-state interstate IV–D case* is helpful, and if so, appropriate and sufficient. While we received one comment in support of the proposed definition of *One-state interstate IV–D case,* we received two comments in opposition to the definition, and approximately a half-dozen comments asking for clarification.

The commenters in opposition believe the term is not useful, especially in the broader context of interstate case processing and as included in the proposed definition of the term *Interstate IV–D case.* One commenter explained that the word interstate is commonly understood to mean "between" or "among" States, so that combining "interstate" and "one-state" in the same term is fundamentally problematic. The commenter felt that the definition for *Interstate IV–D case* should be limited to those cases where there has been a referral from one State IV–D program to another and that the one-state concept should not be included in the regulation. Another commenter disagreed with the use of the term "long-arm" in the proposed definition, while another pointed out that the definition could be read to apply to any case with a parent outside the State's borders, not just in another State.

Response: While the concept and use of the term *One-state interstate IV–D case* has grown over the last twenty years, OCSE notes that inclusion of the definition in this rule may have generated confusion. As a result, we have removed the definition of *One-state interstate IV–D case* from the regulation, and added the definition for *One-state remedies.* In addition, as noted above, we revised the definition of *Interstate IV–D case* so that it no longer includes the concept of one-state interstate. Proposed § 303.7(c)(3) also was modified to use the term *One-state remedies.* See discussion of the comments on proposed § 303.7(c)(3) below. In the final rule, *One-state remedies* means "the exercise of a State's jurisdiction over a non-resident parent or direct establishment, enforcement, or other action by a State against a non-resident parent in accordance with the long-arm provision of UIFSA or other State law."

12. Comment: Several of the comments on the proposed term *One-state interstate case* asked for clarification in regard to reporting on the Form OCSE–157, "Child Support Enforcement Annual Data Report." The

commenters asked whether such cases should be reported as interstate cases or local cases on Form OCSE–157. One commenter asked if OCSE would be creating a new reporting category for these kinds of cases.

Response: OCSE will not create a new case type for reporting requirements associated with a State's use of One-state remedies. In reporting on Form OCSE–157, States should only consider the reporting instructions included on the form.

13. Comment: One commenter asked if one-state interstate cases should be treated as local cases or interstate cases in terms of case processing requirements.

Response: In general, cases that involve one-state remedies should be treated as local cases. Only when a State makes a referral for services to another jurisdiction, turning the case into an interstate or intergovernmental case, must the State follow the intergovernmental case processing rules under § 303.7.

OCSE reminds States that the first three requirements for initiating State agencies under § 303.7(c) apply to States that may ultimately use a one-state approach on a case. These requirements describe the pre-referral steps an initiating State takes to decide how and whether to determine a controlling order and whether or not the State will employ a one-state strategy or refer the case. Once the State decides to process the case using one-state remedies, the rest of the responsibilities under this section do not apply, and the State would process the case under regular case processing rules.

14. Comment: One commenter was concerned that the proposed definition of Tribunal, "a court, administrative agency, or quasi-judicial entity authorized under State law to establish, enforce, or modify support orders or to determine parentage," did not allow States the option to choose the entity to serve as their Tribunal, as provided under Section 103 of UIFSA 1996 and 2001.

Response: OCSE believes that the phrase "authorized under State law" in the definition of Tribunal affords the States the same flexibility to choose the entity to serve as their Tribunal as provided under UIFSA. Therefore, we have not changed the definition in the final rule.

Part 302—State Plan Requirements

Section 302.36—Provision of Services in Intergovernmental IV–D Cases

1. Comment: While OCSE received a couple of comments in support of the changes to § 302.36, one commenter stated that his State's automated system is not equipped to add Tribal cases and does not have Tribal FIPS codes, etc. The commenter wondered if this would be a problem for other States as well.

Response: OCSE has given States several years notice about the requirement to start reporting Tribal and international cases. Form OCSE–157, "Child Support Enforcement Annual Data Report," as revised on September 6, 2005 by AT–05–09, requires States to report intergovernmental cases shared with Tribal IV–D programs (and with other countries) by October 30, 2009. In addition, DCL–08–35 reminded States to collect case data on Tribal and international cases for Fiscal Year 2009, in addition to collecting several other new categories of data. FIPS codes for use with Tribal and International cases are described in DCL–07–02 and DCL–08–04.

Part 303—Standards for Program Operations

Section 303.7—Provision of Services in Intergovernmental IV–D Cases

Section 303.7(a)—General Responsibilities

Section 303.7(a)(4)—Mandatory Use of Federally-Approved Forms

1. Comment: One commenter indicated that some countries provide the forms they require in *A Caseworker's Guide to Processing International Cases.* The commenter went on to ask if States should use the forms in *A Caseworker's Guide to Processing International Cases.*

Response: We believe it is appropriate for a State to use forms provided by a country in a chapter of *A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.* As a result, we have revised § 303.7(a)(4) to include this authority.

2. Comment: Several commenters appreciated the change under proposed § 303.7(a)(4) to require agencies to send only one copy of each federally-approved form in a case to the other jurisdiction. However, commenters noted that this change potentially conflicts with UIFSA (1996) and (2001). Section 304 of UIFSA (1996) requires agencies to send three copies of the petition. Section 602(a)(2) of UIFSA (2001) requires agencies to send two copies of the order to be registered, including a certified one.

Another commenter also suggested clarifying our terminology by referring to the forms as a "complete set of required forms" rather than as "copies" of forms, since at least some of the forms may be originals.

Response: In response to comments, OCSE notes that the required number of copies of forms and/or supporting documents will depend not on the initiating agency but on the needs of the responding agency receiving the forms. While OCSE's intent was to shift the burden of making copies onto the responding agency, we acknowledge UIFSA's requirements and have decided to change the rule to reduce confusion. We also agree with the request to clarify terminology and not use the word "copies."

In response, we have changed § 303.7(a)(4) to read: "When using a paper version, this requirement is met by providing the number of complete sets of required documents needed by the responding agency, if one is not sufficient under the responding agency's law."

Section 303.7(a)(5)—Use of Electronic Transmission

1. Comment: With respect to section § 303.7(a)(5), which requires State IV–D agencies to transmit requests for information and provide requested information electronically to the greatest extent possible, one commenter indicated that there are many ways to electronically transmit requests and provide information and expressed concern that use of the phrase, "in accordance with instructions issued by the office" is redundant and can be confusing.

Response: Issuance of instructions is discretionary for the Federal government; however, we agree that the language is not necessary. We have removed the language from the regulation.

2. Comment: One commenter indicated that the commenter's State cannot accept a new case without a paper copy of the forms. Another commenter asked that OCSE consider stating in this rule more explicitly, and any future proposed rules where electronic transactions and/or case records are referenced, that automated transactions may or may not be accompanied by paper documents and that the lack of paper documentation for an automated transaction is an expected and allowable occurrence.

Response: OCSE recognizes that all State systems do not function at the same level of automation, which is why we reiterate that electronic submission is encouraged, but not mandatory. Whether or not the lack of paper documentation for an automated transaction is allowable depends on whether or not the receiving State can

accept electronic transmissions. Some States are not as advanced in this area as other States; however, cases should be worked to the greatest extent possible based upon the electronic information received.

Section 303.7(a)(6)—Providing Order and Payment Record Information Upon Request

1. Comment: OCSE asked for comments on the proposed 30-day time frame within which a State IV–D agency must provide order and payment information as requested by a State IV–D agency for a DCO and reconciliation of arrearages. Several commenters supported increasing the timeframe to 60 days; however, there was an equal amount of support expressed for keeping the time frame at 30 days with the option to notify the initiating State if there is a delay.

Response: Thirty working days is the equivalent of six weeks, which, in most cases, should be a sufficient amount of time to provide any order and payment record information requested by a State IV–D agency. However, we have added an option in section § 303.7(a)(6) to notify the State IV–D agency when the information will be provided if there is a delay.

Section 303.7(a)(7)—Providing New Information on a Case

1. Comment: One commenter requested that OCSE provide clarification on the definition of "new information."

Response: We encourage initiating States to send new information that is needed and necessary for the responding State to establish or manage the interstate case, including data necessary to process or take action on the case. If it is information that a State would find valuable in managing an intrastate case, then it is probably information that the responding State also would find helpful. If the noncustodial parent already has been identified and has a verified Social Security Number (SSN), then it is not necessary to send that information because it is not new information. Similarly, a responding State should send new information about a case that would assist the initiating State in responding to customer service inquiries.

Section 303.7(a)(8)—Provision of Limited Services Upon Request

1. Comment: In regard to 45 CFR 303.7(a)(8), which requires State IV–D agencies to cooperate in the provision of certain limited services, one commenter suggested that OCSE include the requirement that States provide the same legal representation to an initiating State that would be available to the responding State's IV–D agency in intrastate litigation.

Response: We do not agree that we should specifically address legal representation, because States handle contested issues differently and it would be inappropriate to create a mandate in such circumstances.

2. Comment: One commenter indicated that the requirement for State IV–D agencies to respond to requests for the specified limited services in § 303.7(a)(8) will cause a major impact on automated systems modifications. The commenter also stated that the requirement will require "pseudo" cases that are only on State systems for a specific service or limited assistance to a requesting agency, and these cases would not be counted as cases in any statistics or management reporting.

Response: With the evolution of the IV–D program and authority for States to take action across State lines, the provision of limited services is fairly common. States currently perform limited services; *e.g.,* quick locate and service of process in intergovernmental child support cases. While the performance of limited services upon request is required, a modification to a statewide IV–D system is not mandated. OCSE recognizes that some statewide IV–D systems have difficulty accepting and processing limited service requests. Some States do utilize pseudo cases, while others process these requests outside of the statewide automated systems using outside consortia (*e.g.,* IDEC, the Michigan Financial Institute Data Match Alliance). While it is true that these activities would not be counted as cases on any statistics or management reporting, the provision of limited services is addressed in UIFSA, is a common State practice, and is reciprocal.

3. Comment: One commenter asked if "limited services" only refers to the ones listed in § 303.7(a)(8), and if so, should § 303.7(a)(8) be changed to read: "Cooperate with requests for limited services (quick locate, service of process, assistance with discovery, teleconferenced hearings, administrative reviews, and high volume automated administrative enforcement) in interstate cases under section 466(a)(14) of the Act." The commenter also asked, if "limited services" includes more than those listed in § 303.7(a)(8), can an initiating State ask another State to take only specific actions, such as initiate contempt of court proceedings, income withholding orders, or license sanction, while the initiating State handles all other enforcement activity?

Response: Yes, in response to this comment, the final rule includes a list of limited services in § 303.7(a)(8) that are mandatory. In addition, language was added to allow a State to provide other types of limited services, if requested by an initiating agency. (Please see the revised requirement below.) It would be inappropriate to include an open-ended mandate and we believe that the listed services are those that can most often be provided by State IV–D agencies upon request. In addition, an initiating agency may not direct a responding State IV–D agency to take specific actions in an intergovernmental IV–D case; that determination is up to the responding State IV–D agency.

4. Comment: One commenter recommended that the definition of limited services in proposed section 303.7(a)(8) be expanded to include review and adjustment, because there are some instances in which the appropriate jurisdiction for adjustment is not the enforcing State, and some States are reluctant to perform the necessary review and adjustment action without taking over the enforcement as a two-State interstate case.

Response: Most State child support automated systems do not have the capability of providing a single service or doing just one function. A State can provide the locate, financial, and asset information without opening a full case on the system, but very few have the capability of completing the entire review and adjustment function without establishing a full case on its automated system. Limited services are activities that an initiating agency requests a State IV–D agency to perform to assist the initiating agency in establishing, adjusting, or enforcing a child support order. We are concerned about adding this provision in the final rule without having provided States the opportunity to comment on its inclusion in advance. In addition, the provision in § 303.7(a)(8) gives States the option to honor requests for other limited services that are not listed. Under that provision, if a State is willing and able to honor a request for a review and adjustment, it may do so. Therefore, we do not agree that it is appropriate to add a request for review and adjustment of an order to the list of required limited services.

5. Comment: One commenter suggested that § 303.7(a)(8) include requests for court orders and payment records as a limited service.

Response: Section 303.7(a)(6) requires States to provide a copy of the payment record and a support order, thus we

added requests for copies of orders and payment records to the list of limited services to § 303.7(a)(8).

In response to all of the above comments, § 303.7(a)(8) now reads as follows: A State IV–D agency must "Cooperate with requests for the following limited services: quick locate, service of process, assistance with discovery, assistance with genetic testing, teleconferenced hearings, administrative reviews, high-volume automated administrative enforcement in interstate cases under section 466(a)(14) of the Act, and copies of court orders and payment records. Requests for other limited services may be honored at the State's option."

6. Comment: A commenter also suggested that State IV–D agencies have agreements with their courts to provide a copy of the court order to other States at no cost.

Response: While we encourage States to work with their courts to provide copies of orders at no cost, we do not believe it is appropriate to remove States' discretion to recover costs.

Section 303.7(b)—Central Registry

Section 303.7(b)(1)—Establishment of State Central Registry

1. Comment: In regard to the requirement under § 303.7(b)(1) for State IV–D agencies to establish a central registry responsible for receiving, transmitting, and responding to inquiries on intergovernmental IV–D cases, one commenter asked if case information should go directly into the statewide automated system rather than through the State Central Registry. The commenter also asked for specific guidance on how case information should be processed on statewide systems, for example, if the system needed to be able to "flag" a case pending review by State staff or if the system could require a certified copy of an order.

Response: According to OCSE statewide systems requirements, all State Central Registry functions must be integrated into the statewide system. Therefore, when an initiating agency sends an intergovernmental case to a responding State, the data will transmit to both the responding State's statewide system and the State Central Registry, although the State must have procedures so that it is the State Central Registry that initially processes the new case, as required by § 303.7(b)(1). OCSE does not mandate how States should integrate State Central Registry functions with their statewide system functions, so States will have different approaches. In addition, OCSE does not mandate how States develop their case processing workflows with respect to their systems. OCSE, for example, does not require that a statewide system be able to "flag" a case pending review by State staff or that documents such as certified copies of orders be in hard copy. States determine these issues.

2. Comment: One commenter requested clarification that OCSE is not mandating that responding jurisdictions accept electronically transmitted cases from initiating jurisdictions in lieu of mailing cases to the State Central Registry. The commenter referenced the Electronic Signatures in Global and National Commerce Act (ESIGN) (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ229.106*), saying the law gives electronic signatures the same legal effect as written signatures. However, the commenter indicated that the law only sets a baseline standard for what is required in an electronic signature. The commenter was concerned that many jurisdictions do not have the technical ability to accept electronic signatures and would be unable to process electronic transmissions if mandated.

Response: As we indicated above in the discussion of the general responsibility for States to transmit and provide information electronically to the greatest extent possible under § 303.7(a)(5), electronic transmissions, including electronic signatures, are encouraged, but not mandated. The initiating agency must provide the responding agency with the information that it needs in the format that is acceptable to the responding agency. Nevertheless, OCSE reiterates that electronic transmissions will be an increasingly important tool for doing business and encourages jurisdictions to adopt new technologies. (*See* PIQ–09–02, *http://www.acf.hhs.gov/programs/cse/pol/PIQ/2009/piq-09-02.htm)*

Section 303.7(b)(2)—Initial Required Activities Upon Receipt of a Case

1. Comment: Section 303.7(b)(2) requires State Central Registries to complete several tasks within 10 working days of receipt of an intergovernmental case, including reviewing documentation for completeness, forwarding the case for action either to the State Parent Locator Service or another agency for processing, acknowledging receipt of the case or requesting missing documentation, and informing the initiating agency where the case was forwarded.

In regard to § 303.7(b)(2), several commenters requested more guidance on requirements to open and close cases when the initiating agency does not provide complete information. One commenter asked for clarification regarding whether the regulation required States to open cases based on the CSENet transaction alone, especially in the absence of complete case information or paper documents. Another commenter was concerned that agencies would send only CSENet transactions without following up with required documents such as certified copies of court orders.

Response: In general, while the CSENet application is often used to request services on intergovernmental cases, some of the forms, such as the General Testimony Form, must be sent in a paper format. When sending a request for services through CSENet, the initiating State must indicate whether attachments in a paper format are to follow. Upon receipt of a CSENet transaction, OCSE guidance has always been that if a State can proceed without the paper documents, it should move forward. If the State determines that critical information is missing, it will notify the initiating agency that documents are missing and forward the case for any action that can be taken pending necessary action by the initiating agency.

In order to clarify that it is the initiating State's responsibility to provide information and documentation in the format required by the responding agency, we have changed the initiating State responsibility under § 303.7(c)(5). This responsibility now reads: the initiating State IV–D agency must: "provide the responding agency sufficient, accurate information to act on the case by submitting with each case any necessary documentation and intergovernmental forms *required by the responding agency*" (emphasis added). This change addresses the commenters' concern that initiating agencies would not follow-up with documentation in paper format, in the instances where the responding State requires that format.

OCSE encourages States to work with each other to ensure the transfer of case information is efficient and meets mutual needs. Further, we encourage States to work with OCSE on continuing to develop CSENet capabilities to meet those needs with even greater effectiveness.

Section 303.7(b)(3)—Forwarding the Case for Action

1. Comment: Thirteen commenters responded to OCSE's specific request for input on the pros and cons of the current central registry requirement "to forward the case for any action that can

be taken pending necessary action by the initiating agency," in proposed § 303.7(b)(3).

Eight commenters supported the current rule, saying that forwarding the case is more efficient for the central registry and for case processing, ultimately resulting in support reaching children faster. Commenters said that local offices often are better able to judge if the case can be processed even with partial information, preventing workable cases from being put on hold only for technical reasons. This is particularly significant if a case has been referred for two distinct activities. By forwarding the case, caseworkers can proceed with one activity even as they await necessary information to move forward with the other activity. One commenter noted how being able to pass along cases to local offices as soon as they are entered onto the automated system reduces the burden on the central registry, which is not equipped to manage this process, since its resources are focused on meeting the Federal time frames associated with otherwise reviewing and acknowledging incoming cases.

Five commenters objected to the requirement, saying that if the initiating agency never provides the missing or incomplete information, forwarding the case would be a waste of time and resources. One commenter suggested that the rule be revised to leave the decision of forwarding cases pending receipt of complete information from the initiating agency to the discretion of the States, which could base the decision on the size of their central registries.

Response: We agree with the majority of the comments in support of keeping the requirement in § 303.7(b)(3), for central registries to forward the case for any action that can be taken pending necessary action by the initiating agency if the documentation received with a case is incomplete and cannot be remedied by the central registry without the assistance of the initiating agency. As a result, this requirement will remain the same.

2. Comment: Several commenters asked for clarification on the minimum amount of information that would be required for a central registry to open an incoming case, perhaps provided as a checklist of required documents or data elements. In addition, one of these commenters also requested that the corresponding authority be authorized to reject cases not meeting a standard threshold of information or documentation. One commenter suggested that the central registry be allowed to "return" a case within 60 days under case closure criterion § 303.11(b)(12), which allows for case closure if the initiating agency fails "to take an action which is essential for the next step in providing services."

Response: As stated above, a State Central Registry is required to complete the activities described in § 303.7(b)(2), (*e.g.,* ensure documentation has been reviewed, forward the case for action to either the State Parent Locator Service or the appropriate agency) within 10 working days of receipt of an intergovernmental IV–D case. As part of this process, under § 303.7(b)(2)(i), the central registry determines, on a case-by-case basis, whether it is in receipt of complete documentation in the required format in order to proceed with the case. Because each case and the information sent with each case by the initiating agency is different, we believe it would be inappropriate to establish a checklist or a minimum standard of required information without which central registries could reject or return cases.

OCSE does not want States to approach intergovernmental case processing with the notion that incoming cases can be rejected or returned. The intent of this rule is to surmount barriers to intergovernmental case processing with the ultimate goal of providing support to children as soon as possible. However, if the central registry documents the failure by the initiating agency to take an action essential for the next step in providing services, the State would have grounds to close the case under § 303.11(b)(12), as long as the required notice of potential closure under § 303.11(c) is provided to the initiating agency.

3. Comment: In a related comment, a commenter requested clarification on the time frame for case closure for the failure of the initiating agency to act in response to requests for more information under § 303.11(b)(12), noting that the time frame policy on this case closure criterion varies widely among States.

Response: While there is no designated timeframe for how long a responding State IV–D agency must wait for information from an initiating agency before starting case closure actions under § 303.11(b)(12), we encourage States and agencies to work together so as not to initiate case closure proceedings prematurely.

Under § 303.7(c)(6), when an initiating State is in receipt of a request for case information from a responding agency, the initiating State has 30 calendar days to provide the information or to give notice as to when it will provide the information. If those 30 calendar days elapse with no response from the initiating agency, OCSE strongly encourages the responding State to follow-up with the initiating agency rather than automatically proceeding with case closure.

In addition, according to case closure rules stated in § 303.11(c), in order for a responding State to close a case for the failure of an initiating agency to take action pursuant to § 303.11(b)(12), the State must notify the initiating agency in writing 60 calendar days before closing the case.

4. Comment: One commenter also would like to be able to reject a case where there is no recently verified address or there does not appear to be a relationship between the obligor and the responding State.

Response: Sending a verified address is not a pre-requisite to forwarding a case for action to another jurisdiction. As stated previously, a State is required to start the activities described under § 303.7(b)(2) (*e.g.,* ensure documentation has been reviewed, forward the case for action to either the State Parent Locator Service or the appropriate agency) as soon as its central registry is in receipt of an intergovernmental IV–D case. If the relationship between the obligor and the State is not evident, States should request additional information from the initiating State to clarify the link.

5. Comment: One commenter asked for clarification of the responding State's responsibility to continue to perform locate activities as it would for an in-state case (three years if there is a verified SSN) even if the initiating agency cannot provide a recently verified address. The commenter noted that States that have strict requirements for current locate information on the noncustodial parent before they begin work on the case may close the case too quickly. The result is that the initiating agency has to make a second referral by the time the requested information is available, wasting time and resources.

Response: As noted above, sending a verified address is not a prerequisite to forwarding a case for action to another jurisdiction. In general, the initiating agency, not the responding State, decides whether to open or close an intergovernmental case. A responding State may not apply case closure criteria under § 303.11(b)(1) through (11), or any other criteria, to close intergovernmental cases unilaterally. In order for a responding State to close an intergovernmental case without permission from the initiating agency, the responding State must document lack of cooperation by the initiating agency, as required under § 303.11(b)(12), and provide a 60-

calendar-day notice to the initiating agency, as required by § 303.11(c).

Case closure rules at § 303.11(b)(4) establish time frames for closing a case if the noncustodial parent's location is unknown. The time frames are three years when there is sufficient information to initiate an automated locate effort or one year when there is insufficient information to perform automated location services. These time frames are applicable in the intergovernmental context. Even in the absence of a recently verified address, a responding agency can perform location services. For example, a State can perform automated location services with minimal data, such as a date of birth and name or a Social Security number and name. Please see the additional discussion of case closure requirements later in this section.

6. Comment: In proposed § 303.7(b)(3), if the documentation received with a case is inadequate and cannot be remedied by the central registry without the assistance of the initiating agency, the central registry must forward the case for any action that can be taken pending necessary action by the initiating agency. One commenter recommended substituting the word "incomplete" for "inadequate" when describing the problematic documentation because, by definition, inadequate documentation is insufficient for its intended purpose.

Response: We agree with the commenter and substituted "incomplete" for "inadequate" in the regulatory language at § 303.7(b)(3) and, correspondingly, in § 303.7(d)(2)(iii), which uses the same word.

Section 303.7(b)(4)—Responding to Case Status Inquiries

1. Comment: The provision under § 303.7(b)(4) requires the central registry to "respond to inquiries from initiating agencies within five working days of receipt of the request for a case status review." One commenter expressed agreement with the time frame, while another commenter felt that 10 working days would be more appropriate. Two commenters suggested that this requirement be moved to § 303.7(d), as a responding State responsibility.

Response: This requirement has been in effect since interstate regulations were implemented at § 303.7 in 1988. As we indicated in 1988, the requirement for central registries to respond to inquiries from other States is intended for situations in which an initiating agency loses track of a case or is unable to determine whether any action is being taken on a case. Inquiries to the central registry should, therefore, be limited to instances where direct contact between the initiating agency and the responding State IV–D agency is ineffective or impossible. In regard to the time frame, OCSE does not have enough evidence to suggest that five working days is insufficient for this requirement; therefore, the time frame is unchanged.

Section 303.7(c)—Initiating State IV–D Agency Responsibilities

Section 303.7(c)(1)—Identifying Whether There are Multiple Orders in a Case

1. Comment: Section 303.7(c)(1) requires initiating State agencies to "determine whether or not there is a support order or orders in effect in a case using the Federal and State Case Registries, State records, information provided by the recipient of services, and other relevant information available to the State."

One commenter asked if initiating States, in fulfilling their responsibility for determining whether there is a support order or orders in effect in a case, would be required to use their statewide automated systems.

Response: There is no explicit requirement for States to use their statewide automated systems to determine whether there is a support order or orders in effect for a case. States are required to use Federal and State case registries, State records, information provided by recipients, and other available information to determine whether there is a support order or orders in effect.

2. Comment: One commenter stated that the determination of controlling order may be made by any forum that has personal jurisdiction over the necessary individual parties and does not have to be a tribunal that has issued a support order. The commenter went on to say that UIFSA section 207(b)(3) contemplates that this may be a State that has not issued an order as it requires that a tribunal issue its own replacement order when all parties have left all of the States that have issued orders as part of the determination of controlling order process. According to the commenter, § 303.7(c)(2) provides the flexibility needed by the initiating agency to select the State to determine the controlling order and reconcile the arrears when multiple orders exist, including a State that has not issued a support order. The commenter asked that OCSE revise the commentary to not restrict the initiating State's selection of the DCO State to only a State where that State's tribunal issued a support order.

Response: OCSE agrees that when ascertaining in which State(s) a determination of controlling order may be made, an initiating agency is not limited to those tribunals that issued one of the support orders. UIFSA 2001 clarifies that a tribunal must have personal jurisdiction over both the obligor and individual obligee when determining which of the multiple orders is the controlling order. Section 302.7(c)(2) requires an analysis of what jurisdiction or jurisdictions have or may obtain personal jurisdiction over both individuals and the selection of the forum if there is an option to proceed in more than one State.

Section 303.7(c)(2)—Determination of Appropriate State To Make DCO

1. Comment: Under § 303.7(c)(2), an initiating State agency must: "determine in which State a determination of controlling order and reconciliation of arrearages may be made where multiple orders exist." One commenter said that a determination of controlling order is only necessary when there are multiple orders that also are "valid" orders. The commenter explained that since the effective date of FFCCSOA on October 20, 1994, there are fewer and fewer cases with legitimate multiple orders. Rather, additional orders issued since FFCCSOA are void. The commenter asked OCSE to clarify this point and to remind States to make sure orders are "valid" before pursuing a determination of controlling order.

Response: Section 303.7(c)(1) requires initiating State IV–D agencies to identify existing support orders. Section 303.7(c)(1) does not require initiating State IV–D agencies to decide on their validity under FFCCSOA. In cases involving multiple orders, the initiating State IV–D agency must determine which State should determine the controlling order. Once the State makes this determination, the State must "ask the appropriate intrastate tribunal or refer the case to the appropriate responding State IV–D agency, for a determination of the controlling order and a reconciliation of arrearages" as required in § 303.7(c)(4)(i). The tribunal within the State or in the responding State IV–D agency will address the issue of validity at that point.

2. Comment: One commenter stated that § 303.7(c)(2) indicates that the proper tribunal to make a determination of controlling order is the tribunal that is able to obtain personal jurisdiction over both the obligor and obligee; however, the rule does not address what the procedure should be if no tribunal is able to obtain personal jurisdiction

over both parties, which will often be the case in intergovernmental cases.

Response: The commenter is correct that a tribunal requires personal jurisdiction over both parties to make a DCO. If neither the issuing nor initiating State has personal jurisdiction over both parties because the initiating tribunal did not issue one of the multiple orders and neither the custodial parent, noncustodial parent, nor child remain in a State where one of the multiple orders was issued, then personal jurisdiction may always be obtained by referring the case to the State in which the opposing party resides. Section 207 of UIFSA provides the proper procedures to follow to obtain a DCO in this situation.

Section 303.7(c)(3)—Determine if Use of One-State Remedies Is Appropriate and Section 303.7(c)(4)—Actions Required Within 20 Calendar Days of Completing Requirements in Paragraphs (c)(1)–(3)

1. Comment: Section 303.7(c)(3) requires the initiating State agency to: "Determine the appropriateness of using its one-state interstate remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding." One commenter suggested replacing the term "one-state interstate" with the term "intrastate" because the commenter felt this would be consistent with terminology in § 303.7(c)(4)(i) and (ii), which discusses, in part, a State taking "intrastate" action for getting a determination of controlling order or referring a case.

Response: As indicated in the discussion above regarding the definition of the term "one-state interstate," we replaced the definition of that type of case with a definition of "one-state remedies." "One-state remedies" are defined as the exercise of a State's jurisdiction over a non-resident parent or direct establishment, enforcement, or other action by a State against a non-resident parent in accordance with the long-arm provision of UIFSA or other State law. In § 303.7(c)(3), we have removed the word "interstate" so that the regulation now reads: "Determine whether the noncustodial parent is in another jurisdiction and whether it is appropriate to use its one-state remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding."

2. Comment: One commenter agreed that one-state interstate actions be up to the initiating State. However, the commenter asked OCSE to clarify in the rule that States should not send cases to responding States for establishment when an adjustment is appropriate, particularly in regard to establishing cash medical support.

Response: OCSE agrees States should be careful to ask for establishment of an order only if there is no order in existence and should otherwise ask for an adjustment of the order. For example, if a State has an order that does not include cash medical support, and, later, an initiating State wants to add cash medical support to that first State's order, the initiating State should seek an adjustment of the order.

3. Comment: One commenter asked for agencies that decide to enforce an order through direct income withholding in another State to be required to notify the jurisdiction with the order that they are taking this action and also specify the arrears balance being enforced.

Response: A State may not use direct income withholding to collect payments and have them forwarded directly to the State Disbursement Unit rather than sending payments to the designation specified in the order. As mentioned in the preamble, this is prohibited by PIQ–01–01. Therefore, OCSE does not believe further notification requirements or statements of arrears balances are necessary.

4. Comment: One commenter expressed concern that reading § 303.7(c)(3) and § 303.7(c)(4)(ii) together, which discuss the State's decision to use one-state remedies and the State's decision to take intrastate action on a case, respectively, may be interpreted to mean that States must take direct action in cases where a noncustodial parent lives or works on the reservation of a Tribal IV–D program before referring the case to the appropriate Tribal IV–D program.

Response: The decision as to whether a State uses one-state remedies or refers a case to another State IV–D agency is entirely up to the initiating State agency. There is no Federal mandate that States use any one approach first. Because the language under proposed § 303.7(c)(4)(ii) may have been interpreted to mean that States were obligated to use one-state remedies first, we have changed and simplified this paragraph. The final language requires the initiating State IV–D agency to refer an intergovernmental case, within the 20-calendar-days time frame, to the appropriate State Central Registry, Tribal IV–D program, or Central Authority of a country for action, if the initiating agency has determined that use of one-state remedies are not appropriate.

5. Comment: Proposed § 303.7(c)(4) required the initiating State agency to ask the appropriate intrastate tribunal for a DCO and reconciliation of arrearages or determine the request for such a determination will be made through the appropriate responding agency. One commenter asked that OCSE clarify when the initiating State must make a DCO and when the initiating State must request the responding agency to make a DCO.

Response: If the initiating State has personal jurisdiction over both parties, it is the initiating State's election whether it should proceed with a DCO or request a responding State with personal jurisdiction to make a DCO. The conditions under which a State may make a DCO are set out in section 207 of UIFSA.

6. Comment: Several commenters asked for clarification about the 20-calendar-days time frame, and indicated confusion over the complexity of proposed § 303.7(c)(4).

Response: In response to the numerous requests for clarity in regard to this section, OCSE made a number of changes to simplify and refine the language. First, we moved the clause regarding the State determination that the noncustodial parent is in another jurisdiction from § 303.7(c)(4) to § 303.7(c)(3). It is logical for the State to identify that the noncustodial parent is in another jurisdiction before the State decides whether to use one-state remedies under § 303.7(c)(3), rather than afterwards, as previously constructed in the NPRM.

Section 303.7(c)(3) now reads: "Determine whether the noncustodial parent is in another jurisdiction and whether it is appropriate to use its one-state remedies, as defined in § 301.1 of this chapter, to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding."

Also, in § 303.7(c)(4), we clarified the two triggers for the start of the 20-calendar-days time frame. The first trigger of the time frame is the completion of the actions required in paragraphs (c)(1) through (c)(3), which are, respectively, determining existing support orders, determining in which State a DCO and reconciliation of arrearages may be made in a case with multiple orders, and determining the location of the noncustodial parent and whether or not to use one-state remedies. The second trigger of the 20-calendar-days time frame is the receipt of any necessary information needed to process the case. One example of necessary information is copies of

orders in a case where multiple orders exist.

In addition, we simplified paragraphs (c)(4)(i) and (ii). Under paragraph (c)(4)(i), we removed "If the agency has determined there are multiple orders in effect under paragraph (c)(1) of this section * * *," because the change specified above requires that this determination is completed before a State takes the actions under paragraph (4). Similarly, under paragraph (c)(4)(ii), we removed the clause, "unless the case requires intrastate action in accordance with paragraphs (c)(3) or (4)(i) of this section * * *," because it is redundant, given the previous changes. Finally, in paragraph (c)(4)(i) we added the phrase "State IV–D" to "responding agency." Since "responding agency" can include States, Tribes and countries, we wanted to be clear that, with respect to DCOs, only States are involved. The full text of § 303.7(c)(4) now reads:

"(4) Within 20 calendar days of completing the actions required in paragraphs (1) through (3) and, if appropriate, receipt of any necessary information needed to process the case:

(i) Ask the appropriate intrastate tribunal, or refer the case to the appropriate responding State IV–D agency, for a determination of the controlling order and a reconciliation of arrearages, if such a determination is necessary; and

(ii) Refer any intergovernmental IV–D case to the appropriate State Central Registry, Tribal IV–D program, or Central Authority of a country for action, if one-state remedies are not appropriate;"

The use of "and" between the two paragraphs is intentional because States should proceed to enforce an existing support order, pending a DCO. Enforcement of support obligations should not stop while tribunals make DCOs. To do otherwise would deprive children of the support they need on an on-going basis.

7. Comment: OCSE invited comments regarding reasonable time requirements for translation if needed. The majority of the commenters expressed agreement with the 20-calendar-days time frame, because § 303.7(c)(4) is qualified with the receipt of any necessary information needed to process the case. One commenter requested that the time frame be extended to 90 days so that the initiating State can locate a translation resource and enter into a necessary contract for the translation.

Response: OCSE has not built in time for translation within the specified 20 calendar days because we believe that, until the necessary translation is completed, the initiating agency will not have all "necessary information needed to process the case" under paragraph (4). OCSE agrees with the majority of the commenters who stated that the 20-calendar-days time frame to refer a case to another State is adequate.

8. Comment: One commenter requested that OCSE clarify how the 20-calendar-days time frame in § 303.7(c)(4) fits with the 30-working-days time frame in § 303.7(a)(6) to provide any order and payment record information requested by a State IV–D agency for a DCO and reconciliation of arrearages.

Response: The 30-working-days time frame for a State IV–D agency to provide any order and payment record information in § 303.7(a)(6) is a general responsibility; thus, it could apply to both initiating and responding State IV–D agencies. The order and payment information requested in § 303.7(a)(6) may very well be a part of the necessary information that the initiating State requires once it has determined that a noncustodial parent is in another jurisdiction in § 303.7(c)(3). Therefore, the 20-calendar-days time frame in § 303.7(c)(4) could be triggered after receipt of order and payment record information another State must provide to the initiating State IV–D agency under § 303.7(a)(6).

9. Comment: One commenter asked if 45 CFR 303.7(c)(4)(i) requires a Tribal IV–D program to complete a DCO and reconciliation of arrearages when the Tribal IV–D program is the "appropriate intrastate tribunal," or whether a Tribal IV–D program would not be the appropriate intrastate tribunal in such a situation.

Response: This rule does not apply to Tribes or Tribal IV–D programs.

Section 303.7(c)(7)—Notice of Interest Charges

1. Comment: With regard to § 303.7(c)(7), which requires the initiating State IV–D agency to notify the responding agency of interest charges, several commenters pointed out that programming for QUICK is a better use of their limited systems programming resources and provides better and timelier information on interest for interstate cases.

Response: While QUICK does provide an interest amount on the financial summary screen, it is an individual query by case and does not specify interest charged for a specified period. OCSE will evaluate whether this enhancement can be made to the application so case-specific queries can be made to obtain information about interest charged during a specified period of time.

2. Comment: Another commenter asked what type of CSENet transaction should be used to notify the responding agency quarterly of the interest amount.

Response: OCSE will also determine the feasibility of adding a specific transaction to CSENet to periodically advise States of the interest charged on a case. This type of proactive information-sharing lends itself well to the batch processing supported by CSENet. Periodic reporting could be timed with the initiating State's interest-charging frequency.

3. Comment: Seven commenters expressed that notifying the responding agency at least quarterly of the interest charges owed on overdue support is too frequent and would place a burden on States. Several commenters recommended changing the time frame to annually, and one commenter proposed that the annual date be uniform.

Response: We agree that requiring the initiating IV–D State agency to notify the responding agency quarterly of interest owed on overdue support may cause a burden on State IV–D agencies. We believe that providing interest charges annually, and upon request in an individual case, in those instances in which the information may be needed more frequently than annually, will still address States' concerns with case processing difficulties that are caused by the wide range of State policies on interest. We have changed the language in the regulation to "annually and upon request in an individual case." With respect to the suggestion for a uniform date for the interest information to be reported annually, we can identify no compelling reason to do so and leave it up to the States to decide.

4. Comment: OCSE requested comments on whether and how accounting records should be updated when the controlling order was not issued by the initiating State. Several commenters indicated that if the initiating agency is requesting enforcement of a third State's order, it should be the initiating State's responsibility to provide a calculation of the interest based on the issuing State's law.

Response: We agree that in situations where the initiating State is requesting enforcement of a third State's order, the initiating State should provide the amount of interest owed based on the issuing State's law.

5. Comment: One commenter indicated that the initiating agencies should report accumulated interest owed by obligors to responding agencies, but in an automated fashion. The commenter further stated that otherwise, the quarterly reporting would require manual updates to the

responding State's IV–D automated system.

Response: While we agree that electronic communication is more efficient, it is not mandated.

6. Comment: One commenter asked if the responding agency can refuse to collect interest for the initiating State or close its case if the initiating State fails to provide the quarterly interest calculation as required.

Response: A responding agency cannot refuse to collect interest for the initiating State if the interest is a part of the child support order that the responding State is enforcing. Section 453(p) of the Act defines the term "support order" as: "A judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief."

Without the interest calculation, the responding State may be unable to collect any interest earned. However, the responding State may not close its case due to the initiating State's failure to provide the interest calculation as required. The responding State must continue to enforce the initiating State's case, collecting current support and arrearages.

Section 303.7(c)(8)—Submitting Past-due Support for Federal Enforcement Remedies

1. Comment: One commenter asked that OCSE consider adding language that would allow the responding State to submit cases for passport denial or other Federal enforcement techniques at the initiating State's request. Another commenter asked if it would be possible to add MSFIDM as one of the Federal enforcement techniques that the initiating State IV–D agency will use when submitting past-due support as required in § 303.7(c)(8).

Response: OCSE proposed that the initiating State IV–D agency submit all past-due support owed in IV–D cases for administrative offset and passport denial because those Federal-level remedies are triggered by States' data on the Federal income tax refund offset file. However, we have been convinced that it may be in the best interest of the child and family, in certain circumstances, for a responding State to submit past-due support using the Federal administrative offset, passport denial, MSFIDM, and/or Federal insurance match remedies. For example, because the administrative offset remedy is optional for States, the responding State may choose to certify a case where the initiating State does not. This would allow a collection from an administrative offset to be received and distributed to the family where otherwise it would not have been, or similarly, if a responding State requires full payment for a passport denial release where the initiating State does not.

This flexibility provides a greater opportunity for a collection, so we have removed the requirement from this rule that the initiating State IV–D agency submit past-due support for other Federal enforcement techniques, such as administrative offset, under 31 CFR 285.1, and passport denial under section 452(k) of the Act. However, the requirement for the initiating State IV–D agency to submit for Federal tax refund offset remains because that is the State with the assignment of support rights or request for IV–D services.

Federal insurance match and MSFIDM are also Federal enforcement techniques that fall into the category of cases that we prefer to have submitted by the initiating State IV–D agency, but also may be submitted by the responding State IV–D agency if deemed appropriate.

2. Comment: Several commenters expressed support for the requirement in § 303.7(c)(8) that the initiating State submit arrearages for Federal tax refund offset. One commenter asked, if there are arrearages in multiple States, which State is allowed to submit for Federal tax refund offset and how are the States supposed to know about another State's submittal.

Response: Section 303.72(d)(1) specifies that: "the State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the Secretary of the U.S. Treasury." Since all Federal remedies, including administrative offset of other Federal payments, are initiated based on the Federal income tax refund offset file submitted by each State, any State submitting past-due support for federal-level remedies should notify the other State in an interstate situation.

3. Comment: One commenter asked that OCSE specify that § 303.7(c)(8) is applicable even when the initiating State is submitting arrearages due under an order from another State. Proposed § 303.7(c)(8) would have required a State to submit all past-due support owed in IV–D cases that meets the certification requirements under § 303.72 for Federal tax refund offset, and such past-due support, as the State determines to be appropriate, for other Federal enforcement techniques, such as administrative offset under 31 CFR 285.1, and passport denial under section 452(k) of the Act.

Response: This requirement applies to all interstate cases in which the initiating agency is submitting a case for Federal tax refund offset, including cases in which the initiating State is submitting arrearages due under an order from another State. The requirement in section § 303.72(d)(1), to notify any other State involved in enforcing the order when past-due support is submitted and when any offset is received, applies to these cases as well.

4. Comment: One commenter expressed concern that there is a probability that some States will adopt the option under the Deficit Reduction Act of 2005 (DRA) under which collections through Federal tax refund offset are distributed first to satisfy current support, while other States will continue to follow pre-DRA tax offset distribution under which collections are applied to satisfy only past-due and not current support. The commenter indicated that this will confuse amounts applied to current support and past-due amounts between States that opt for different approaches.

Response: We disagree with the commenter. In interstate cases, the initiating State IV–D agency is responsible for submitting past-due support owed in a IV–D case that meets the certification requirements under § 303.72 for Federal tax refund offset. The initiating State is similarly responsible for distribution. (*See* AT–07–05, Q & A 34, citing former paragraph § 303.7(c)(7)(iv) and 45 CFR 303.7(c)(11)). Distribution and disbursement will be made in accordance with the initiating State's rules. In interstate cases, § 303.72(d)(1) requires the submitting State to notify any other State involved in enforcing the support order when it receives the offset amount from the Secretary of the U.S. Treasury.

5. Comment: One commenter asked that we clarify that when the initiating jurisdiction is not a State within the United States, the responding jurisdiction should submit these cases under § 303.7(c)(8).

Response: There is currently no statutory authority for Tribal IV–D

programs to directly submit past-due support for Federal tax refund offset. However, past-due support owed to individuals receiving services from Tribal IV–D programs may be submitted for Federal tax refund offset by a State IV–D agency if the individual files an application for services from the State and the Tribal IV–D agency has a cooperative agreement with the State. See PIQT–07–02. Under current law at section 464(a)(1) and (2) of the Act, only past-due support owed in cases with an assignment of support rights or application for IV–D services under § 302.33(a)(1)(i) may be submitted for Federal tax refund offset; therefore, without an application for services from the State, past-due support owed in a case from another country cannot be submitted.

6. Comment: Proposed § 303.7(c)(8) and (9) require the initiating State IV–D agency to submit cases with qualified past-due support for Federal tax refund offset and other Federal enforcement remedies and to report overdue support to Consumer Reporting Agencies. One commenter asked if proposed § 303.7(c)(8) and (9) are any different than the current rules or if the paragraphs just clarify the initiating State responsibilities.

Response: As we indicated in the preamble to the NPRM, proposed § 303.7(c)(8), specifically addresses the responsibility of the initiating State IV–D agency to submit past-due support for Federal tax refund offset, administrative offset, and passport denial. The reference to administrative offset and passport denial is new, while the responsibility for Federal tax refund offset was clarified. However, the requirement for the initiating State to submit for any other Federal remedies, other than Federal tax refund offset, has been removed in the final regulation.

Proposed § 303.7(c)(9), Renumbered as (d)(6)(iii)—Submitting Arrearages to Consumer Reporting Agencies (CRAs)

1. Comment: Some commenters expressed agreement with the requirement in proposed § 303.7(c)(9) for initiating State IV–D agencies to report overdue support to CRAs. Other commenters suggested that reporting overdue support to CRAs should be the responding State IV–D agency's responsibility because the responding State is already providing due process and enforcement services, and challenges to these enforcement actions occur in the obligor's home State.

Response: We agree with the commenters that suggest the responding State IV–D agency should report overdue support to CRAs. In AT–98–30, the answer to question #33 states, "from an interstate perspective, the responding State is responsible for pursuing all appropriate enforcement activities (except for Federal Income Tax Refund Offset). Placing responsibility for reporting delinquencies to consumer reporting agencies upon the responding State follows the general rule in interstate enforcement, as opposed to the limited exception. In addition, having only one State responsible for such reporting eliminates the potential confusion in interstate cases associated with double reporting." AT–98–30 also points out that since the responding State will generally be the State of residence for the obligor, it is in the best position to efficiently handle any contest that may occur as a result of credit bureau reporting. OCSE agrees that this is a service best provided by the responding State IV–D agency, so proposed § 303.7(c)(9), has been renumbered as § 303.7(d)(6)(iii) and moved to the responding State responsibilities. Section 303.7(d)(6)(iii) assigns the responsibility of: "Reporting overdue support to Consumer Reporting Agencies, in accordance with section 466(a)(7) of the Act and § 302.70(a)(7) of this chapter" to responding State IV–D agencies.

2. Comment: One commenter suggested that both the initiating and responding State IV–D agency should be able to report overdue support to CRAs.

Response: We disagree with this comment because, as indicated in the preamble to the NPRM, it is necessary to specify which State must submit the overdue debt to CRAs to avoid both States submitting the same arrearage in a single case. Having both the initiating and responding State IV–D agency report overdue support to CRAs could result in the misconception that an obligor's child support debt is greater than it actually is. There are three major CRAs, Experian, Equifax, and TransUnion, and one State reporting arrearages is adequate and appropriate.

Proposed § 303.7(c)(10) Renumbered as (c)(9)—Request for Review of Support Order

1. Comment: One commenter asked that OCSE clarify that the requirement in proposed § 303.7(c)(10), to send a request for review of a support order to another State within 20 calendar days of determining that review is appropriate and receipt of the information necessary to conduct the review, means that the request should be sent to a State having continuing exclusive jurisdiction (CEJ) to modify an order.

Response: This requirement, renumbered as § 303.7(c)(9), has been retained from the previously existing regulation under initiating State responsibilities. The only change is adding a reference to section 466(a)(10) of the Act, as the timing and requirements for review and adjustment have changed over the years. If the initiating State has the legal authority to adjust the order, 45 CFR 303.8(f)(1) requires it to: "conduct the review and adjust the order pursuant to this section." Otherwise, a review request must be sent to a State that has legal authority to adjust the support order. This may be either the State with CEJ to modify its controlling order or, where everyone has left the State that issued the controlling order, the non-requesting party's State.

Proposed § 303.7(c)(11) Renumbered as (c)(10)—Distribution and Disbursement

1. Comment: One commenter stated that the requirement in proposed § 303.7(c)(11) for the initiating State to distribute and disburse support collections received should be strengthened to prohibit direct withholding by a State for arrearages assigned to that State when the obligee is receiving services in another State or when support is due to the family under the "families first" distribution provisions of PRWORA. Another commenter gave the following scenarios:

Scenario 1

The custodial party is receiving services in one State [the first State], the obligor lives in a second State, and assigned arrearages are owed to a third State for Temporary Assistance for Needy Families (TANF) paid to the family. The second State will only accept a reciprocal case from the first State, and will tell the third State to send its case to the first State to collect the third State's arrearages because the first State (the initiating State) is responsible for distribution.

Scenario 2

The commenter stated that there are also situations in which the custodial parent is not receiving services from any State IV–D agency, and a responding State will not accept another State's case for collection of assigned arrearages only, indicating that the responding State must collect both current support and arrearages, not just arrearages.

Response: Arrearage-only IV–D cases have long been a part of the child support program. Instructions to the Federal annual statistical reporting form OCSE–157 in AT–05–09 recognize and define an arrears-only case as: "A IV–D case in which the only reason the case

is open is to collect child or medical support arrearages owed to the state or to the family." Therefore, we believe it would be a significant change in this final regulation, without an opportunity for further discussion and comment, to prohibit direct withholding by a State for arrearages assigned to that State when the obligee is receiving services in another State or when support is due to the family under the "families first" distribution provisions of PRWORA. However, if a custodial parent is receiving IV–D services in another State, we would encourage States to work together to ensure that families receive adequate services, including current support and arrears owed to them.

With respect to the first scenario, a responding State IV–D agency may not refuse to accept an interstate case from a State with an arrears-only IV–D case and tell that State to send its case to collect the assigned arrearages to a State in which the custodial parent is currently receiving IV–D services. A responding State must accept and process an intergovernmental request for services regardless of the existence of a separate interstate case from a different State. As indicated in the definition section of this rule, an intergovernmental IV–D case and an interstate IV–D case may include cases in which a State/Agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State.

In the second scenario, we do not agree with the commenter that the responding State may not accept an intergovernmental request for collection of only arrearages assigned to a State. If the custodial parent is not receiving IV–D services from any State, the responding State that receives a request from a State to collect assigned arrearages may not refuse to process that case. States with assigned arrearages from a former assistance case may not be providing services to the custodial parent if the custodial parent refuses continued IV–D services in response to the notice under § 302.33(a)(4) when the family stopped receiving assistance.

These comments address the complex issue of States with an interest in assigned arrearages, different State policy with respect to distribution, more than one IV–D case existing with respect to the same parties, and parents' choice about whether or not to receive IV–D services. In the DRA of 2005, Congress adopted family distribution options to encourage States to pay more support collections to families. As States expand their distribution policies, some of the inherent tensions involved in allocating collections among States with an interest in assigned arrearages, or between States with differing distribution policies, should begin to resolve themselves.

Proposed § 303.7(c)(12), Renumbered as (c)(11)—Notice of Case Closure

1. Comment: One commenter indicated that while the change in proposed § 303.7(c)(12), now paragraph (c)(11), which requires the initiating State IV–D agency to notify the responding agency within 10 working days of case closure that the initiating State IV–D agency has closed its case pursuant to § 303.11, addresses the issue of overlapping enforcement efforts in a two-state interstate case, it does not address the problem of some States operating under UIFSA 1996 and others under UIFSA 2001. For example, an order is entered in State A, which has an open IV–D case. The custodial parent moves to State B and the noncustodial parent remains in State A. State B begins direct enforcement of State A's order and the employer begins remitting payments to State B, which disburses payments to the custodial parent. State A continues with enforcement provisions and becomes aware that State B has been receiving payments directly, generally when aggressive enforcement remedies are being taken against the noncustodial parent.

Response: State B would not be authorized under UIFSA 1996 or 2001 to take the action described. Although not all States have received waivers to adopt UIFSA (2001), section 319(b) offers a mechanism for State B to ask State A for redirection of payments if the custodial parent, noncustodial parent, and child have all left the State.

2. Comment: One commenter supported the change in proposed § 303.7(c)(12), now paragraph (c)(11), because, with notice that the initiating State had closed its case, the responding agency could close its case without having a basis for closure other than notice that the initiating agency closed its case. However, the commenter recommended that the initiating agency provide the responding State with the specific reason for which the initiating agency closed its case. The commenter noted that this information can be relevant to the responding State if the responding State has obtained and is enforcing its own State's order.

The commenter notes the example of a responding State that is enforcing its own State's order using income withholding, at the request of an initiating State. If the initiating agency closes its case without explanation, the responding State might be compelled to continue enforcement based on the order itself. In this situation, the responding State might close the intergovernmental IV–D case, and then open a non-IV–D case to continue collections, based on the support order, if it is under income withholding. However, information about the case closure from the initiating agency, such as that the custodial parent had died, would allow the responding State to appropriately close out the order.

Response: OCSE agrees that it may be important for a responding State to know the reason why an initiating State closes its case. Therefore, we are adding this requirement to the initiating State's responsibilities under § 303.7(c)(11) in the final rule. The revised rule reads as follows:

> "Notify the responding agency within 10 working days of case closure that the initiating State IV–D agency has closed its case pursuant to § 303.11 of this part, and the basis for case closure;"

Proposed § 303.7(c)(13), Renumbered as (c)(12)—Instruct Responding Agency To Close its Case

1. Comment: One commenter expressed agreement with the theory of the requirement in proposed paragraph (c)(13), now (c)(12), under which the initiating State IV–D agency must instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice to the same or another employer unless the two States reach an alternative agreement on how to proceed. However, the commenter felt that the reality of the situation is different. The commenter provided the following scenarios:

- A case has recently been sent to another State and that State does not yet have the case initiated. The initiating State receives information regarding a new employer. It sometimes takes the responding State months to initiate the case and collections would be lost during this time, not benefiting the child, obligee, or obligor. In these situations, we instruct our caseworkers to issue the income withholding order, but inform the responding State and agree to terminate the income withholding order when the responding State is ready to issue its income withholding order.
- The interstate case may have been open for some time and both States receive the new employer information. If the responding State fails to issue the income withholding order in a timely fashion, our caseworkers may again issue the income withholding order but

inform the other State and agree to terminate the income withholding order when the responding State is ready to issue its withholding notice. Especially if the obligor is a "job hopper," timely issuance of income withholding orders is critical.

Response: The central registry in the responding State is required to open an interstate case within 10 working days of receipt of the case in accordance with 45 CFR 303.7(b)(2). Therefore, it is not acceptable for States to take months to open a case or initiate income withholding. However, we believe that the provision in § 303.7(c)(12) that allows States to reach an alternative agreement could address these situations. The language allows both scenarios to exist under this rule if both States agree to the approach.

2. Comment: One commenter expressed disagreement with the provision in proposed § 303.7(c)(13), renumbered as (c)(12), under which the initiating State IV–D agency must instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice to the same or another employer unless the two States reach an alternative agreement on how to proceed. The commenter recommended that States be encouraged to communicate more effectively and not interrupt the flow of money to the family.

Response: Again, we believe that the commenter's recommendation can be achieved through the language in paragraph (c)(12) that allows States to agree to an alternative agreement.

3. Comment: One commenter indicated that proposed case closure criterion at § 303.11(b)(13) states that: "The initiating agency has notified the responding State that the initiating State has closed its case under [proposed] § 303.7(c)(12)," and suggested that § 303.11(b)(13) also refer to proposed § 303.7(c)(13), which required that the initiating State IV–D agency instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice to the same or another employer unless the two States reach an alternative agreement on how to proceed.

Response: The aforementioned requirement in proposed § 303.7(c)(12), which has been renumbered as (c)(11), corresponds directly with the case closure criteria found in proposed § 303.11(b)(13) as mentioned above. The requirement in proposed § 303.7(c)(13), which has been renumbered as (c)(12), provides the steps the initiating State should take after notifying the responding agency that the initiating agency has closed its case. Therefore, we do not believe this change is necessary.

Proposed § 303.7(c)(14), Renumbered as (c)(13)—Accept Collections if Responding State was not Notified Initiating State had Closed its Case

1. Comment: Several commenters expressed agreement with the provision in proposed § 303.7(c)(14), now (c)(13), that the initiating State IV–D agency must make a diligent effort to locate the obligee, including use of the Federal Parent Locator Service and the State Parent Locator Service, and accept, distribute and disburse any payment received from a responding agency if the initiating agency has closed its case pursuant to § 303.11 and has not notified the responding agency to close its corresponding case. However, one commenter read the provision to imply that closing a IV–D case somehow stops the child support obligation.

Response: Closing a IV–D case does not impact or eradicate a support order or obligation; it merely means that the IV–D agency is no longer working the case. Closing the IV–D case has no impact on any existing order in the case.

2. Comment: One commenter recommended that OCSE amend proposed § 303.7(c)(14), now (c)(13), to mandate that if no IV–D agency is providing IV–D services, support must be redirected to the State Disbursement Unit (SDU) of the State that issued the order, and that the issuing State's SDU must accept and distribute payments received under such orders.

Response: Whether or not there is a IV–D case, support payments must be directed to the person or entity specified in the support order. This is a matter of State and not Federal law. However, under section 454B and 466(b)(5) of the Act, support payments in IV–D cases and non-IV–D income withholding cases must be sent to the SDU. Therefore, in these situations, States need to ensure that the support order specifies that payments be sent to the SDU.

3. Comment: One commenter indicated that, if the location of the custodial parent is unknown and the initiating State does not have the controlling order, the initiating State should be prohibited from sending the money directly back to the obligor instead of returning it to the responding agency so the correct pay records can be preserved.

Response: The initiating agency is responsible for the distribution and disbursement of child support collections in intergovernmental cases, in accordance with § 303.7(c)(13). States must communicate with one another to ensure that payment records are consistent and accurate.

4. Comment: One commenter indicated support for proposed § 303.7(c)(14), now (c)(13), which requires the initiating State IV–D agency to accept, distribute and disburse payments from a responding agency when the initiating State IV–D agency fails to notify the responding agency that it has closed its case. However, the commenter suggested removing the phrase "make a diligent effort to locate the obligee, including use of the Federal Parent Locator Service and the State Parent Locator Service," which lists specific resources that operationally cannot be used if the initiating State IV–D agency has already closed its case.

Response: We believe it is appropriate to include this language. The initiating State IV–D agency's use of the Federal Parent Locator Service and the State Parent Locator Service is appropriate and necessary because it is for a IV–D purpose, as is distributing and disbursing the collections.

Section 303.7(d)—Responding State IV–D Agency Responsibilities

Section 303.7(d)(1)—Accept Referred Cases

1. Comment: One commenter expressed a belief that the requirement in § 303.7(d)(1), that responding State IV–D agencies accept and process an intergovernmental request for services, regardless of whether the initiating agency elected not to use remedies that may be available under the law of that jurisdiction, runs counter to the general notion that States should fully use their remedies in the first instance without involving another State. The commenter requested that OCSE consider clarifying that the initiating State must exhaust all in-State remedies that it determines may be effective before referral to the responding State. Then, once the matter is referred, the responding State must accept and process the referral.

Response: We disagree with the commenter. In AT–98–30, the answer to question #1 states that: "a responding State may not refuse to accept a two-state request for order establishment because it believes that the initiating State could exercise long-arm jurisdiction." As indicated in the preamble to the NPRM, OCSE recognizes the benefits of obtaining or retaining control of a case where the

responding party resides outside of State borders. Indeed, we encourage one-state solutions; however, the initiating State agency is free to weigh the legal and factual circumstances of a case and select whether it is appropriate to exercise long-arm jurisdiction or not. Nothing in this rule infringes upon a State's decision-making authority to select a one-state or two-state approach in interstate cases. The choice remains within the purview of the initiating State IV–D agency.

Section 303.7(d)(2)(iii)—Process Case to Extent Possible Pending Receipt of Additional Information

1. Comment: Some commenters agreed with the requirement in § 303.7(d)(2)(iii) that the responding State should process the case to the greatest extent possible, even if all necessary documentation has not been received, while a few commenters suggested that the case be returned to the initiating agency.

Response: OCSE continues to believe that this provision remains useful and serves to advance the effectiveness of case processing. A major focus of the National Child Support Enforcement Strategic Plan is to ensure that more children and families can rely on child support payments. Our goal is children's financial security.

2. Comment: One comment indicated that a time frame should be established in § 303.7(d)(2)(iii) for the initiating agency to provide the documentation needed to process a case when a responding State IV–D agency is prothe case to the fullest extent possible pending necessary action by the initiating agency.

Response: Under § 303.7(c)(6) the initiating State must provide the responding agency with an updated intergovernmental form and any necessary additional documentation within 30 calendar days of receipt of the request for information, or notify the responding agency when the information will be provided.

3. Comment: One commenter recommended substituting the word "incomplete" for "inadequate" in § 303.7(d)(2)(iii), when describing missing documentation, because by definition, inadequate documentation is insufficient for its intended purpose.

Response: We agree with the commenter and revised the regulatory language at § 303.7(b)(3) and § 303.7(d)(2)(iii) to reflect this change.

Section 303.7(d)(3)—Noncustodial Parent is Found in a Different State

1. Comment: We received a number of comments on the proposed requirement in § 303.7(d)(3) for the responding agency to, within 10 working days of locating the noncustodial parent in a different State, forward/transmit forms and documentation to the central registry in the State where the noncustodial parent is located and notify the initiating agency and central registry where the case has been sent. The majority of the commenters preferred that the forms and documentation be returned to the initiating agency.

Response: In response to the majority of the commenters, we will keep the requirement in § 303.7(c)(6) of the previously existing rule, which requires the responding State IV–D agency to return the forms and documentation, including the new location, to the initiating agency, unless directed to do otherwise by the initiating agency. We agree that forwarding the case directly to the State in which the noncustodial parent has been located reduces the initiating agency's control of the case and choice of whether it will use a one-state or two-state remedy in the State where the noncustodial parent has been located. Paragraph (d)(3) now reads as follows:

"(3) Within 10 working days of locating the noncustodial parent in a different State, the responding agency must return the forms and documentation, including the new location, to the initiating agency, or, if directed by the initiating agency, forward/transmit the forms and documentation to the central registry in the State where the noncustodial parent has been located, and notify the responding State's own central registry where the case has been sent."

2. Comment: We requested comments as to whether there is a need to notify both the initiating agency and the central registry, as required under § 303.7(d)(3), and if not, where the notice of the State's action should be directed; the majority of the commenters felt that the notice should only go to the initiating agency.

Response: We believe the language was confusing. It is important for a responding agency to notify the initiating agency and the responding State's own central registry (rather than the initiating State's central registry) where the case has been sent. We changed the language in the regulation in paragraph § 303.7(d)(3) to include this clarification, as indicated above.

Section 303.7(d)(4)—Locating the Noncustodial Parent in a Different Political Subdivision Within the Responding State

1. Comment: The provision in proposed § 303.7(d)(4) stated that within 10 working days of locating the noncustodial parent in a different jurisdiction within the State, the responding State IV–D agency must forward/transmit the forms and documentation to the appropriate jurisdiction and notify the initiating agency and central registry of its action. We received several comments, the majority of which suggested that only the initiating agency be notified.

Response: In response to the commenters above, we believe the responding State's central registry must be informed if a case is sent to another jurisdiction in the responding State. In addition, to avoid ambiguity, we replaced the term "jurisdiction" with "political subdivision." As such, § 303.7(d)(4) has been clarified to read as follows:

"(4) Within 10 working days of locating the noncustodial parent in a different political subdivision within the State, forward/transmit the forms and documentation to the appropriate political subdivision and notify the initiating agency and the responding State's own central registry of its action;"

2. Comment: One commenter asked if the 10 working days referenced in § 303.7(d)(4) is in addition to the 10 working days under paragraph § 303.7(b)(2), in which the central registry in the responding State agency must process the request.

Response: Yes, the 10 working days under § 303.7(d)(4) within which the responding State agency must forward/transmit the forms and documentation to the appropriate political subdivision within the State, is in addition to the 10 working days in which the central registry must process the request under § 303.7(b)(2).

3. Comment: One commenter questioned whether Tribal IV–D programs should be included in the definition of "appropriate tribunal" and "appropriate jurisdiction" and expected to comply with this directive and time frame in § 303.7(d)(4).

Response: As indicated previously in this preamble, while the intergovernmental child support rule recognizes that States will receive requests to work cases from Tribal IV–D agencies as well as other countries, it applies to State IV–D programs only. This rule does not apply to Tribes. By use of the phrase "a different jurisdiction within the State," proposed section 303.7(d)(4) referred to county-operated IV–D programs, in which a noncustodial parent is located in another county and the case is then forwarded from the receiving responding local IV–D agency to that other county. It does not include Tribal or foreign jurisdictions. As noted earlier, to avoid ambiguity, in the final rule we

replaced the term "jurisdiction" with "political subdivision."

It is possible, although unlikely, that a responding State IV–D agency may locate a noncustodial parent on Tribal land or in another country. However, in such instances, the responding agency should return the case to the initiating State IV–D agency. If a noncustodial parent is located in a foreign country, we believe it is more appropriate for the initiating State to prepare and send the case to another country, in accordance with guidance in the appropriate caseworker's guide.

Section 303.7(d)(5)—Time Frame for Filing a DCO Request

1. Comment: OCSE asked for comments on the time frame in proposed § 303.7(d)(5)(i), which requires a responding State IV–D agency to file the DCO request with the appropriate tribunal in its State within 10 working days of receipt of the request or location of the noncustodial parent, whichever occurs later. The majority of the commenters felt that the 10-day time frame was too short for the following reasons: Caseload sizes, tribunal involvement, and the fact that the IV–D agency has no control over court scheduling. Most suggested that the time frame be extended to 30 calendar days.

Response: We agree with the commenters that 10 working days might be an inadequate amount of time to prepare and file documents necessary to request a DCO. We have changed the time frame in § 303.7(d)(5)(i) to within 30 calendar days of receipt of the request for a DCO or location of the noncustodial parent, whichever occurs later.

Section 303.7(d)(6)(i)—Seeking a Judgment for Genetic Testing Costs

1. Comment: One commenter disagreed with retaining existing language in § 303.7(d)(6)(i), which provides that a responding IV–D agency must attempt to obtain a judgment for costs if paternity is established, and suggested that the language be revised to allow the responding IV–D agency the option to attempt to recover its costs without it being a mandate.

Response: We agree with the commenter. Now that the responding, rather than initiating State is responsible for the cost of genetic testing in intergovernmental IV–D cases, we agree that the responding State should be able to determine if it will or will not recover the costs of genetic testing. Therefore, we have changed the language in this paragraph to clarify that responding States may elect to attempt to obtain a judgment for genetic testing costs should paternity be established. Section 303.7(d)(6)(i) now reads as follows: "Establishing paternity in accordance with § 303.5 of this part and, if the agency elects, attempting to obtain a judgment for costs should paternity be established."

Proposed § 303.7(d)(6)(iv), Renumbered as § 303.7(d)(6)(v)—Collecting, Monitoring, and Forwarding Support Payments

1. Comment: One commenter indicated that § 303.7(d)(6)(v) will require changes to the Automated Clearinghouse formats as currently outlined by Federal banking guidelines. Section 303.7(d)(6)(v) requires that the responding State IV–D agency collect and monitor any support payments from the noncustodial parent; forward payments to the location specified by the initiating agency; include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter, and include the responding State's case identifier and locator code, as defined in accordance with instructions issued by OCSE.

Response: The "sufficient information" referenced in the paragraph is identical to the information required in National Automated Clearinghouse Association's interstate Electronic Data Interchange transaction, and States are currently required to transmit and receive information in this format.

Section 303.7(d)(7)—Notice of Hearings

1. Comment: Section 303.7(d)(7) requires responding agencies to provide timely notice to the initiating agency in advance of any hearing before a tribunal that might result in establishment or adjustment of an order. One commenter asked if the section would apply in the instance of an administrative review and adjustment, if no one requests a hearing to dispute the findings. The commenter also asked how the section applies to States that automatically issue cost-of-living adjustment (COLA) increases.

Response: The requirement under § 303.7(d)(7) for the responding State to provide timely notice to the initiating agency in advance of a hearing applies only if there is a hearing scheduled. If a responding State does not schedule hearings as part of its administrative review and adjustment process or its automatic COLA increase process, the requirement for the responding agency to provide notice of hearings under § 303.7(d)(7) does not apply.

The rules for review and adjustment of child support orders under § 303.8(b)(2) require that a State have procedures which permit either party to contest certain automatic adjustments, including a COLA increase, within 30 days after the date of the notice of the adjustment. If a party to the order contested the adjustment in response to the initial notice of the adjustment and a hearing before a tribunal in the responding State is scheduled as a result, the requirement under § 303.7(d)(7) would apply, and the responding State would be required to provide timely notice to the initiating agency.

2. Comment: Another commenter suggested that the requirement for a responding State to provide timely notice to the initiating State be placed in § 303.7(a), under general responsibilities. The commenter suggested that making this a general responsibility is appropriate since such hearings could take place in the initiating State, as well as in the responding State.

Response: OCSE agrees that a hearing that might result in the establishment or adjustment of an order that is associated with an interstate case could take place in the initiating or responding State, or even in a third State, depending on which State has been determined as having the controlling order. The requirement under § 303.7(d)(7) was designed to address the problem of responding agencies establishing or adjusting orders without providing both parents the opportunity to participate in the process. That remains its purpose.

In regard to the inverse scenario, when an initiating State is establishing or adjusting an order and an obligor is in a responding State, we do not believe there is a similar problem, *i.e.,* that the obligor will not be notified. A State, in this case an initiating State, that holds a hearing for establishment or adjustment of an order must ensure due process and provide notice to the obligated parent. Therefore, the requirement under § 303.7(d)(7) is appropriately listed as a responding State responsibility rather than a general responsibility of both responding and initiating States.

3. Comment: Section 303.7(d)(7) requires responding States to provide "timely notice" of review and adjustment hearings to initiating States. Two commenters requested clarification as to whether this requirement had a time frame. One commenter asked for a definition of the term "timely." Another commenter suggested that the notice be sent to the initiating State at the same

time it is provided to the parties to the child support order.

Response: In § 303.7(d)(7), the term "timely" in the phrase "provide timely notice" means sufficiently in advance so as to allow the initiating agency to provide information for the hearing and the opportunity to participate and to ensure that the custodial parent has also received notice and has the opportunity to participate. We defer to State procedures to define adequate notice of hearings, as we generally defer to States to follow their own due process requirements.

Proposed § 303.7(d)(8)—Allocation of Collections

1. Comment: OCSE received nearly a dozen comments on proposed § 303.7(d)(8) requiring responding States to allocate collections proportionately between arrearages assigned to the responding State in a separate case and to arrearages owed in an interstate case, either to an obligee in the initiating State or the initiating State itself.

All but one of the commenters on this provision appeared to be in opposition. Many were confused by the provision and preamble language and asked for clarification. A number of commenters objected to the practice that payments collected on a specific order could be allocated to other orders. The commenters questioned the legality of such an action, as well as the adverse impact it would have on maintaining correct arrearages and payment records and therefore ensuring proper enforcement in the responding State (*e.g.,* incorrect payment records could result in States erroneously reporting the obligor for tax offset, passport denial, or credit bureau reporting). Other commenters felt that this provision conflicted with or confused distribution requirements, and at least one was concerned about how the provision would impact its statewide automated system.

Response: The proposed requirement was designed to address a narrow interstate circumstance where a responding State retains a collection to satisfy its own assigned arrearages under the same support order on its own case before sending collections to an initiating State. In consideration of the commenters' strong opposition, OCSE has eliminated proposed § 303.7(d)(8). The issue of how responding States should allocate collections between assigned arrearages on its own case and support owed in an interstate case may better be addressed in the context of meetings on intergovernmental cooperation, rather than in regulation. However, it is important to note that, with the exception of Federal tax refund offset collections (unless the initiating State has opted to pay the offset collections to families first), any collection must first be applied to satisfy current support in accordance with § 302.51(a) before it is applied to satisfy arrearage.

It is also important to note that the rules on income withholding address the issue of allocating payments across multiple cases and apply in interstate as well as intrastate cases. Section 303.100(a)(5) states that: "If there is more than one notice for withholding against a single noncustodial parent, the State must allocate amounts available for withholding giving priority to current support up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)). The State must establish procedures for allocation of support among families, but in no case shall the allocation result in a withholding for one of the support obligations not being implemented."

2. Comment: In regard to this same proposed § 303.7(d)(8), several commenters discussed the second interstate "allocation" scenario described in the preamble of the proposed rule, involving an initiating State sending only one case to a responding State but then allocating collections from that one case across multiple cases with the same obligor in the initiating State. As stated in the preamble, this scenario is as follows: "A responding State makes a collection in an interstate Case A, credits the payment to the case, and forwards the money to the initiating State for distribution and disbursement. The initiating State receives the collection for Case A but applies it, in part, to support due by the same obligor to several families in Cases B and C. The initiating State may not advise the responding State how the payment was allocated and distributed."

Several commenters acknowledged the problems created for the responding State when payments collected by the responding State and sent to the initiating State on a specific order are allocated by the initiating State to other orders. At least one commenter supported OCSE's suggestion for an initiating State to send all cases to a responding State, while one commenter, from a State with a county-based child support system, strongly objected to this practice.

Response: We reiterate that States should refer all cases involving an obligor to a responding State. However, there is no consensus on this issue. Because statewide automated systems and current practices regarding the handling of multiple cases vary so broadly across States, and because the Federal statute only addresses distribution within a case, other than with respect to income withholding, we believe this issue may better be addressed in the context of meetings on intergovernmental cooperation, rather than in this rule.

Proposed § 303.7(d)(9), Renumbered as § 303.7(d)(8)—Notice of Fees and Costs Deducted

1. Comment: One commenter objected to the requirement, under proposed § 303.7(d)(9), for the responding State to identify fees or costs deducted from support payments when forwarding payments to the initiating agency, citing the impact on statewide automated systems. In a similar statement, another commenter voiced concern about the impact this requirement would have on the statewide systems considering the commenter's State does not currently charge any fees on interstate cases.

Response: This requirement should not have an impact on statewide automated systems because it is not a new requirement. This requirement has been in effect since the 1988 publication of the former interstate regulations and since the issuance of system certification requirements under PRWORA. Statewide automated systems must be able to record the receipt of payments on fees, including interest or late payment penalties, in the automated case record, whether or not the State practices cost recovery or imposes fees.

2. Comment: One commenter asked how the responding State would notify the initiating State of deducted fees and costs under proposed § 303.7(d)(9).

Response: Section 303.7(d)(8) of the final rule [proposed § 303.7(d)(9)] requires that the responding State identify any fees or costs deducted from support payments when forwarding the payments to the initiating State, but does not mandate any one approach or method for doing this. OCSE leaves it to States to develop their own best practices for how responding States share this information in intergovernmental cases.

3. Comment: The same commenter also asked whether the responding State could deduct fees before sending current support under proposed § 303.7(d)(9).

Response: No, in accordance with § 302.33(d)(3), the IV–D agency "shall not treat any amount collected from the individual as a recovery of costs * * * except amounts which exceed the current support owed by the individual

under the obligation." In other words, a responding State may not deduct costs before sending current support.

Proposed § 303.7(d)(10), Renumbered as § 303.7(d)(9)—Case Closure in Direct Income Withholding Cases

1. Comment: We received a half dozen comments on the responding State requirement, under proposed § 303.7(d)(10), to stop an income withholding order and close the intergovernmental IV–D case within 10 days of receipt of a request for case closure from an initiating agency, under proposed § 303.7(c)(13) [final rule § 303.7(c)(12)], unless the States reach an alternative agreement.

Two commenters remarked on the 10-day time frame. One suggested using "working" days to make the time frame consistent with other similar time frames in the rule. Another said the time frame was too short, particularly for States that implement income withholding through a judicial process as opposed to administratively.

Response: OCSE agrees that, for clarity and consistency, the time frame in the final rule § 303.7(d)(9) [proposed § 303.7(d)(10)] should be changed to "working" days. While this change does clarify the time frame, OCSE does not agree that a longer time frame is necessary to accommodate States with judicial income withholding processes. Income withholding procedures are designed to be an efficient enforcement tool and are required by statute and regulation to be applied and terminated quickly without the need for court involvement. As stated in section 466(b)(2) of the Act, and reiterated in 45 CFR 303.100(a)(4), income "withholding must occur without the need for any amendment to the support order involved or any other action by the court or entity that issued [the order] * * *." Further, the "Expedited Procedures" section of section 466(c)(1) of the Act requires States to enact laws under which State agencies have the authority to take certain actions, including income withholding, "without the necessity of obtaining an order from any other judicial or administrative tribunal."

2. Comment: One commenter emphasized that the requirement to stop income withholding and close an intergovernmental case under proposed § 303.7(d)(10) would not apply in instances where the responding State held the controlling order because the responding State must determine when its own order is paid in full and the case should be closed. In addition, the commenter believed that the initiating State should not be issuing direct withholding orders to employers for a case that is already being enforced by the State that has the controlling order.

Response: OCSE disagrees that the requirement to close the responding State IV–D case would not apply when the responding State holds the controlling order underlying the interstate case. The location of the controlling order has no bearing on the application of this rule, since the support order is not affected by the opening or closing of any IV–D case associated with it. Therefore, while a responding State may hold the controlling order, the responding State may still receive, work, and must, when instructed, close an intergovernmental IV–D case sent from an initiating agency based on that same order.

For example, a responding State could be using income withholding to collect assigned past-due support owed to the responding State in an arrears-only case and to collect on a case sent by an initiating State providing services to the custodial parent based on his or her application for IV–D services under § 302.33. In this instance, § 303.7(d)(9) of the final rule allows the initiating State to instruct the responding State to close its interstate case so that the initiating State can use direct withholding to collect support under the same order for the custodial parent. By closing the interstate IV–D case, the responding State does not have to close its separate IV–D arrears-only case, but could continue to collect on that case. Coordination between States which are both enforcing the same order, albeit for different purposes, is essential. In fact, § 303.7(d)(9) allows States to reach an alternative agreement if that will better serve the States in processing their cases. In response to the commenter's statement that the initiating State should not issue direct withholding orders to employers for a case that is already being enforced by the State with the controlling order, Section 466(b)(9) of the Act and UIFSA authorize direct income withholding. As stated in the preamble of the proposed rule: "the election to close an interstate case involving two States belongs exclusively to the initiating agency." The majority of States encouraged OCSE to take the approach in this rule under § 303.7(d)(9) rather than have duplicate income withholding orders in place against the same wages.

3. Comment: Another commenter requested that the regulation establish a time frame for the initiating State to issue the new income withholding order under proposed § 303.7(d)(10).

Response: OCSE does not agree a time frame is required. An initiating State that requests that the responding State stop its income withholding order and close its case is motivated to enforce its own case. We believe, in these circumstances, that the initiating State will issue a direct income withholding order in an appropriate time frame.

4. Comment: One commenter asked for clarification that the requirement to stop income withholding and close an intergovernmental case under proposed § 303.7(d)(10) applies in cases when the responding agency is only taking an income withholding action and is not also involved in a pending contempt proceeding for avoiding employment. The commenter is concerned about the effect this rule may have on the responding agencies' use of contempt proceedings as an enforcement tool in interstate cases, since an initiating State may elect to close the interstate case before the responding agency is able to complete the contempt process.

Response: The responding State requirement to stop income withholding and close an interstate IV–D case under § 303.7(d)(9) of the final rule applies in any interstate IV–D case, unless the States involved reach an alternative agreement. While an initiating State may ask a responding State to close its interstate case before the responding State can complete contempt proceedings in the case, the States may reach an alternative agreement that allows the contempt proceeding to ensue.

5. Comment: One commenter asked for confirmation that, while case closure criteria listed under § 303.11(b), which uses permissive language, give States the option to close cases, the requirement for responding States to close interstate IV–D cases at the request of the initiating State under proposed § 303.7(d)(10) [final rule § 303.7(d)(9)] is a mandate.

Response: The commenter's understanding is correct. The case closure rules under § 303.11(b) give States the option to close cases if certain conditions are met, but does not require States to close these cases. In contrast, § 303.7(d)(9) requires the responding State to stop the income withholding order and close its corresponding case within 10 working days of receipt of such instructions from the initiating State. Because this requirement is mandatory, OCSE purposely placed it in the intergovernmental regulation rather than under the case closure rule.

In the final rule § 303.7(d)(9), OCSE has replaced the words "a request" with the word "instructions," so that § 303.7(d)(9) now reads, in part: "Within 10 working days of receipt of instructions for case closure from an

initiating State agency under paragraph (c)(12) of this section * * *." OCSE replaced the word "request" to avoid any confusion that the requirement is optional when, in fact, it is mandatory. In addition, using the word "instructions" is consistent with the language in the corresponding initiating State responsibilities section, under final rule paragraph (c)(12), which uses the word "instruct." We also inserted the term "State" to clarify that the instructions for case closure under paragraph (c)(12) come from an initiating State agency.

Section 303.7(e)—Payment and Recovery of Costs in Intergovernmental IV–D Cases

Section 303.7(e)(1)—Payment and Recovery of Costs

1. Comment: Approximately eight commenters submitted their reactions to proposed § 303.7(e)(1), which reorganized and revised requirements for the payment and recovery of costs in former § 303.7(d). This section requires responding IV–D agencies to pay the costs of processing intergovernmental cases, including the costs of genetic testing. In the former rule, the initiating State had been responsible for these costs. Five commenters supported shifting the responsibility to pay for the costs of genetic testing from the initiating State to the responding State. One of these commenters said she believed the change would make intergovernmental case processing more efficient and effective.

A few commenters, however, were concerned about the impact the shift in responsibility for the costs of genetic testing would have on statewide automated systems. One of these commenters requested that OCSE recognize the time and cost associated with implementing this change on statewide systems. At least one of these commenters objected to the change entirely, citing an undue burden on larger States and a disincentive for initiating States to opt for long-arm solutions in establishing paternity.

Response: OCSE agrees with the majority of the commenters that requiring responding States to pay genetic testing costs, in addition to other costs in processing intergovernmental cases, is responsive to State concerns and in the long run simplifies interstate case processing. As stated earlier under the general comments section, States will have time to make needed adjustments to their statewide systems in order to implement changes associated with this part of the rule.

OCSE appreciates concerns that this change may burden some larger States. However, because the costs of genetic testing are low and States receive Federal reimbursement on two-thirds of program costs, and also may choose to recover costs, this should not be an undue burden on States. OCSE does not anticipate that this change will cause initiating States to choose a two-State solution for establishing paternity over possible long-arm solutions.

2. Comment: Two commenters objected to the mandate in proposed § 303.7(e)(1) that a responding agency must seek a judgment for the costs of paternity testing. These commenters argued that the responsibility for responding agencies to recover costs for genetic testing by obtaining a judgment should be optional. Commenters made the same argument concerning § 303.7(d)(6)(i), which required responding States to provide any necessary services as it would in an intrastate case, including "attempting to obtain a judgment for costs should paternity be established." One of these commenters pointed out that section 466(a)(5)(B)(ii)(I) of the Act states that while the State agency must pay for genetic testing, the State may "elect" to recoup those costs and thus is not required to do so. The commenters suggested revising § 303.7(e)(1) by substituting the term "may" for "must."

Response: OCSE agrees that responding States should not be required to seek a judgment for the costs of genetic testing from the alleged father once his paternity is established, since responding States are now responsible for absorbing these costs under the new section 303.7(e)(1). Therefore, we have changed the language in this paragraph to read, in part: "…If paternity is established, the responding agency, at its election, may seek a judgment for the costs of testing from the alleged father who denied paternity." This change also conforms to the change made in proposed § 303.7(d)(6)(i), which clarified that responding States may elect to obtain a judgment for genetic testing costs should paternity be established.

Section 303.7(e)(2)—Recovery of Costs

1. Comment: In regard to the prohibition under proposed § 303.7(e)(2) from recovering costs from an FRC or from a foreign obligee, one commenter questioned why international cases were treated differently from interstate cases in this context.

Response: Section 454(32)(A) of the Act requires that States "provide that no applications will be required from, and no costs will be assessed for * * * services against, the foreign reciprocating country or foreign obligee (but costs may, at State option, be assessed against the obligor)." Therefore, as required by Federal law, States may not collect fees from foreign obligees or FRCs, which are countries with which the United States has a reciprocal agreement under section 459A of the Act.

Section 303.11—Case Closure Criteria

1. Comment: One commenter requested an additional case closure criterion under § 303.11(b) that permits responding States to close interstate cases in instances when initiating States have made requests that cannot be completed. The commenter offered two examples. In one example, the initiating State has asked the responding State to establish paternity in the case of a man and a woman; however, the woman was previously married to another man whom the court had found to be the father during the divorce proceedings. In a second example, the initiating State has erroneously sent an interstate case for establishment when the case is really a modification case.

Response: In general, if a case is sent to a responding State in error or the responding State cannot take the action requested, we believe that the responding State should be able to resolve the issue by communicating directly with the initiating agency and asking the agency to revise the request or rescind the referral entirely. With respect to the second example, rather than closing this case, we believe it is more appropriate for States to communicate with each other to secure the necessary documentation to proceed to modify the support order, if the responding State has the jurisdiction to do so.

If the initiating agency is not responsive to requests for more or accurate information, the responding State has grounds to close the case under the case closure criterion in § 303.11(b)(12): "the IV–D agency documents failure by the initiating agency to take an action which is essential for the next step in providing services." Before closing the case, however, the responding State must follow the procedure described under § 303.11(c) that requires the responding State to notify the initiating agency in writing 60 calendar days prior to closure of the case of its intent to close the case.

2. Comment: One commenter took issue with the statement in the preamble of the proposed rule that: "[i]n intergovernmental cases, a responding State IV–D agency may apply any of the criteria for case closure set out in

current regulations at 45 CFR 303.11. Existing paragraphs (b)(1) through (b)(11) pertain to all IV–D cases." The commenter said that responding States have previously only been allowed to close cases with the permission of the initiating State and could not unilaterally close cases under criteria in § 303.11(b)(1) through (11). In fact, the commenter points out, case closure criterion under § 303.11(b)(12) was created (as noted in the final rule on case closure, OCSE–AT–99–04) to address the problem that responding States had been required to keep cases open if the initiating State did not grant permission to close the case, even when conditions existed that fit other case closure criteria, such as the responding State was not able to locate the noncustodial parent or had located him or her in another State.

In summary, the commenter asked for clarification as to whether a responding State may close a case based on criteria set out in current regulations at 45 CFR 303.11(b)(1) through (b)(11), or must the responding State use § 303.11(b)(12) to document lack of cooperation by the initiating State in order to close the case.

Response: The commenter is correct. A State may not unilaterally close intergovernmental cases under case closure criteria in § 303.11(b)(1) through (11) without the permission of the initiating agency. In general, the initiating agency decides whether to open or close an intergovernmental case. In order for a responding State to close an intergovernmental case, without permission from the initiating agency, the responding State must use § 303.11(b)(12) and document lack of cooperation by the initiating agency. This case closure criterion, which enables a responding State to close a case when it documents failure by the initiating agency to take an action essential for providing services, was devised so that responding States would have grounds to close cases on which they could not proceed, provided they give 60 calendar days notice to the initiating agency, as required under § 303.11(c).

This new rule provides three new case closure criteria that also apply to responding States, in addition to § 303.11(b)(12). The first of these new criteria is § 303.11(b)(13), which allows the responding State to close a case when the initiating agency provides notification that it has closed its case under proposed § 303.7(c)(12) [(c)(11) in the final rule]. This new criterion formalizes and provides a 10-working-days time frame under § 303.7(c)(11) for the well-established practice of a responding State closing intergovernmental cases when permitted by the initiating agency, in this instance, due to the closure of the initiating State's case.

In consideration of this comment, the second of the new case closure criteria addresses the situation where an initiating agency desires to keep its case open, but no longer needs the responding State's intergovernmental services. Section 303.11(b)(14) allows the responding State to close its case when: "the initiating agency has notified the responding State that its intergovernmental services are no longer needed."

The third new case closure rule applicable to responding States is the requirement under § 303.7(d)(9) for a responding State to stop an income withholding order and close an intergovernmental case within 10 working days of receipt of instructions from an initiating agency to do so. Unlike the criteria under case closure § 303.11(b)(12) through (14), this interstate case closure rule is mandatory.

In consideration of this comment, OCSE has made a change to § 303.7(d)(10) in the final rule [proposed § 303.7(d)(11)]. The proposed rule required a responding State to notify an initiating agency when a case was closed pursuant to § 303.11, implying incorrectly that a responding State could close an intergovernmental case under any of the case closure criteria under this part. The final rule clarifies the exact criteria under which a responding State may close a case and would, therefore, be required to notify the initiating agency. The final regulation under § 303.7(d)(10) now reads:

> "Notify the initiating agency when a case is closed pursuant to § 303.11(b)(12) through (14) and § 303.7(d)(9)."

Section 303.11(b)(12)—Lack of Cooperation by Initiating Agency

1. Comment: One commenter was in support of the case closure criterion under proposed § 303.7(b)(12), which allows responding States to close cases based on lack of cooperation by the initiating agency. However, the commenter asked OCSE to establish a time frame for when the responding States should implement closing cases under this criterion.

Response: A time frame is currently established under § 303.11(c) of the regulations: "the [responding] State * * * in an interstate case, meeting the criteria under (b)(12), [must notify] the initiating State, in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the * * * initiating State supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order * * *."

We realize conforming changes to § 303.11(c) are necessary to indicate that responsibility for a responding State to provide case closure notice under § 303.11(b)(12) to an initiating agency, which could be a country or Tribe as well as another State, and that the responding State must keep the case open if that initiating agency supplies useable information in response to the notice. Therefore, in § 303.11(c), we have substituted the word "intergovernmental" for "interstate" and "initiating agency" for "initiating State."

The revised § 303.11(c) now reads: "In cases meeting the criteria in paragraphs (b)(1) through (6) and (10) through (12) of this section, the State must notify the recipient of services, or in an intergovernmental case meeting the criteria for closure under (b)(12), the initiating agency, in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the recipient of services or the initiating agency supplies information in response to the notice * * * ."

2. Comment: One commenter said that responding States are consistently closing interstate cases without the direction of the initiating State, or under case closure § 303.11(b)(12), without following proper procedures. In order to provide clear instruction to responding State caseworkers as to their role in case closure, the commenter asked that OCSE re-publish the following statement from the preamble of the proposed rule: "Again, we note that the election to close an interstate case involving two States belongs exclusively to the initiating agency."

Response: OCSE agrees that the decision to close an intergovernmental case should only be made by the initiating agency, with the noted exception, under § 303.11(b)(12), of cases for which the State IV–D agency documents failure by the initiating agency to take an action essential to the responding State's ability to provide services. If a responding State does move to close a case as allowed under § 303.11(b)(12), it must provide 60-calendar-days written notice to the initiating agency, as required under § 303.11(c).

Section 303.11(b)(13)—Closing a Case Already Closed by Initiating State

1. Comment: Proposed § 303.11(b)(13) allows the responding State to close its

interstate case provided the initiating State notified the responding State that it had closed its case pursuant to proposed § 303.7(c)(12) [final rule, § 303.7(c)(11)]. (Final rule, § 303.7(c)(11) requires the initiating State to notify the responding agency of case closure within 10 working days of closing a case under § 303.11 and the basis for this case closure.)

One commenter requested clarification that upon receipt of notification that an initiating State had closed its case pursuant to § 303.11, the responding State would have authority, under § 303.11(b)(13), to close its case without having another basis, such as a court order.

Response: Yes, a responding State would have the authority to close its IV–D case upon receipt of notification that an initiating State had closed its case pursuant to § 303.11.

Section 308.2—Required Program Compliance Criteria

1. Comment: One commenter suggested that OCSE make conforming changes to § 308.2 if any changes are made to § 303.7 based on comments made.

Response: In the final rule, we made conforming changes to §§ 308.2(b)(1), (c)(1) and (2), and (f)(1) and (g) for consistency with changes made in response to comments to proposed § 303.7.

IV. Impact Analysis

Paperwork Reduction Act of 1995

There is a new requirement imposed by this rule. Proposed § 303.7(d)(5) adds a notice requirement where the initiating agency has requested a controlling order determination. In this case, the responding agency must: "(i) File the controlling order determination request with the appropriate tribunal in its State within 30 calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later."

For this new regulatory requirement statewide Child Support Enforcement systems are already required to have the functionality to generate the documents necessary to establish an order of support. This new regulatory requirement is considered a minor change or enhancement to a statewide IV–D system.

Under paragraph (d)(5)(ii) of the section, the responding agency must: "Notify the initiating State agency, the Controlling Order State and any State where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within 30 calendar days of receipt of the determination from the tribunal."

This provision should not increase the information collection burden on the State(s) because a Child Support Enforcement Network (CSENet) transaction for transmitting information about the determination of the controlling order to other States already exists. CSENet already has a transaction: *ENF Provide—GSCOE–enforcement—Provision of information, new controlling order.* It is sent by the responding State—the transaction is used to reply to an enforcement request notifying the initiating jurisdiction that a new controlling support order is in effect. The amount of the reconciled arrearages can also be transmitted via CSENet in an information data block.

There were no public comments regarding this impact analysis following the publication of the Notice of Proposed Rulemaking in the **Federal Register** on December 8, 2008 (73 FR 74408). The estimated burden has not changed in the final rule.

The total estimated burden for the change described above is:

Annual Burden Estimates

Instrument	Number of respondents 54	Average burden hours per response	Total burden hours
Systems modification	One time system enhancement	60 labor hours per State to modify statewide IV–D system.	3,240 hours.

It should be noted that the requirements of the Paperwork Reduction Act of 1995 [44 U.S.C. 3507(d)], regarding reporting and recordkeeping, apply to the federally-mandated intergovernmental forms referenced in the regulations, (OMB No. 0970–0085). The Office of Management and Budget has reauthorized the use of these forms until January 31, 2011.

Regulatory Flexibility Analysis

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this final rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. This final rule provides solutions to problems in securing child support and paternity determinations for children in situations where the parents and children live apart and in different jurisdictions and the Department has determined that they are consistent with the priorities and principles of the Executive Order. There are minimal costs associated with these proposed rules.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes 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 covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rules and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the proposed rule.

The Department has determined that this rule is not an economically significant rule and will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review

This final rule is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. The required review of the regulations and policies to determine their effect on family well-being has been completed, and this rule will have a positive impact on family well-being as defined in the legislation by helping to ensure that parents support their children, even when they reside in separate jurisdictions, and will strengthen personal responsibility and increase disposable family income.

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments or is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism impact as defined in the Executive Order.

List of Subjects

45 CFR Part 301

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 302

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Child support, Grant programs/social programs, Accounting.

45 CFR Part 308

Auditing, Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated: April 7, 2010.

Carmen R. Nazario,

Assistant Secretary for Children and Families.

Approved: June 17, 2010.

Kathleen Sebelius,

Secretary of Health and Human Services.

■ For the reasons discussed above, title 45 CFR chapter III is amended as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

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

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1301, and 1302.

■ 2. Amend § 301.1 by republishing the introductory text and adding the following definitions alphabetically:

§ 301.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

* * * * *

Central authority means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the Act.

* * * * *

Controlling order State means the State in which the only order was issued or, where multiple orders exist, the State in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued.

Country means a foreign country (or a political subdivision thereof) declared to be an FRC under section 459A of the Act and any foreign country (or political subdivision thereof) with which the State has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with Federal law pursuant to section 459A(d) of the Act.

* * * * *

Form means a federally-approved document used for the establishment and enforcement of support obligations whether compiled or transmitted in written or electronic format, including but not limited to the Income Withholding for Support form, and the National Medical Support Notice. In interstate IV–D cases, such forms include those used for child support enforcement proceedings under the UIFSA. *Form* also includes any federally-mandated IV–D reporting form, where appropriate.

Initiating agency means a State or Tribal IV–D agency or an agency in a country, as defined in this rule, in which an individual has applied for or is receiving services.

Intergovernmental IV–D case means a IV–D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV–D case may include any combination of referrals between States, Tribes, and countries. An intergovernmental IV–D case also may include cases in which a State agency is seeking only to collect support arrearages, whether owed to the family or assigned to the State.

Interstate IV–D case means a IV–D case in which the noncustodial parent lives and/or works in a different State than the custodial parent and child(ren) that has been referred by an initiating State to a responding State for services. An interstate IV–D case also may include cases in which a State is seeking only to collect support arrearages, whether owed to the family or assigned to the State.

* * * * *

One-state remedies means the exercise of a State's jurisdiction over a non-resident parent or direct establishment, enforcement, or other action by a State against a non-resident parent in accordance with the long-arm provision of UIFSA or other State law.

* * * * *

Responding agency means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV–D case.

* * * * *

Tribunal means a court, administrative agency, or quasi-judicial entity authorized under State law to establish, enforce, or modify support orders or to determine parentage.

Uniform Interstate Family Support Act (UIFSA) means the model act promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) and mandated by section 466(f) of the Act to be in effect in all States.

PART 302—STATE PLAN REQUIREMENTS

■ 3. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

■ 4. Revise § 302.36 to read as follows:

§ 302.36 Provision of services in intergovernmental IV–D cases.

(a) The State plan shall provide that, in accordance with § 303.7 of this chapter, the State will extend the full

range of services available under its IV–D plan to:

(1) Any other State;

(2) Any Tribal IV–D program operating under § 309.65(a) of this chapter; and

(3) Any country as defined in § 301.1 of this chapter.

(b) The State plan shall provide that the State will establish a central registry for intergovernmental IV–D cases in accordance with the requirements set forth in § 303.7(b) of this chapter.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 5. The authority citation for part 303 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

■ 6. Revise § 303.7 to read as follows:

§ 303.7 Provision of services in intergovernmental IV–D cases.

(a) *General responsibilities.* A State IV–D agency must:

(1) Establish and use procedures for managing its intergovernmental IV–D caseload that ensure provision of necessary services as required by this section and include maintenance of necessary records in accordance with § 303.2 of this part;

(2) Periodically review program performance on intergovernmental IV–D cases to evaluate the effectiveness of the procedures established under this section;

(3) Ensure that the organizational structure and staff of the IV–D agency are adequate to provide for the administration or supervision of the following functions specified in § 303.20(c) of this part for its intergovernmental IV–D caseload: Intake; establishment of paternity and the legal obligation to support; location; financial assessment; establishment of the amount of child support; collection; monitoring; enforcement; review and adjustment; and investigation;

(4) Use federally-approved forms in intergovernmental IV–D cases, unless a country has provided alternative forms as part of its chapter in *A Caseworker's Guide to Processing Cases with Foreign Reciprocating Countries.* When using a paper version, this requirement is met by providing the number of complete sets of required documents needed by the responding agency, if one is not sufficient under the responding agency's law;

(5) Transmit requests for information and provide requested information electronically to the greatest extent possible;

(6) Within 30 working days of receiving a request, provide any order and payment record information requested by a State IV–D agency for a controlling order determination and reconciliation of arrearages, or notify the State IV–D agency when the information will be provided;

(7) Notify the other agency within 10 working days of receipt of new information on an intergovernmental case; and

(8) Cooperate with requests for the following limited services: Quick locate, service of process, assistance with discovery, assistance with genetic testing, teleconferenced hearings, administrative reviews, high-volume automated administrative enforcement in interstate cases under section 466(a)(14) of the Act, and copies of court orders and payment records. Requests for other limited services may be honored at the State's option.

(b) *Central registry.*

(1) The State IV–D agency must establish a central registry responsible for receiving, transmitting, and responding to inquiries on all incoming intergovernmental IV–D cases.

(2) Within 10 working days of receipt of an intergovernmental IV–D case, the central registry must:

(i) Ensure that the documentation submitted with the case has been reviewed to determine completeness;

(ii) Forward the case for necessary action either to the central State Parent Locator Service for location services or to the appropriate agency for processing;

(iii) Acknowledge receipt of the case and request any missing documentation; and

(iv) Inform the initiating agency where the case was sent for action.

(3) If the documentation received with a case is incomplete and cannot be remedied by the central registry without the assistance of the initiating agency, the central registry must forward the case for any action that can be taken pending necessary action by the initiating agency.

(4) The central registry must respond to inquiries from initiating agencies within 5 working days of receipt of the request for a case status review.

(c) *Initiating State IV–D agency responsibilities.* The initiating State IV–D agency must:

(1) Determine whether or not there is a support order or orders in effect in a case using the Federal and State Case Registries, State records, information provided by the recipient of services, and other relevant information available to the State;

(2) Determine in which State a determination of the controlling order and reconciliation of arrearages may be made where multiple orders exist;

(3) Determine whether the noncustodial parent is in another jurisdiction and whether it is appropriate to use its one-state remedies to establish paternity and establish, modify, and enforce a support order, including medical support and income withholding;

(4) Within 20 calendar days of completing the actions required in paragraphs (1) through (3) and, if appropriate, receipt of any necessary information needed to process the case:

(i) Ask the appropriate intrastate tribunal, or refer the case to the appropriate responding State IV–D agency, for a determination of the controlling order and a reconciliation of arrearages if such a determination is necessary; and

(ii) Refer any intergovernmental IV–D case to the appropriate State Central Registry, Tribal IV–D program, or Central Authority of a country for action, if one-state remedies are not appropriate;

(5) Provide the responding agency sufficient, accurate information to act on the case by submitting with each case any necessary documentation and intergovernmental forms required by the responding agency;

(6) Within 30 calendar days of receipt of the request for information, provide the responding agency with an updated intergovernmental form and any necessary additional documentation, or notify the responding agency when the information will be provided;

(7) Notify the responding agency at least annually, and upon request in an individual case, of interest charges, if any, owed on overdue support under an initiating State order being enforced in the responding jurisdiction;

(8) Submit all past-due support owed in IV–D cases that meet the certification requirements under § 303.72 of this part for Federal tax refund offset,

(9) Send a request for review of a child support order to another State within 20 calendar days of determining that a request for review of the order should be sent to the other State and of receipt of information from the requestor necessary to conduct the review in accordance with section 466(a)(10) of the Act and § 303.8 of this part;

(10) Distribute and disburse any support collections received in accordance with this section and §§ 302.32, 302.51, and 302.52 of this chapter, sections 454(5), 454B, 457, and

1912 of the Act, and instructions issued by the Office;

(11) Notify the responding agency within 10 working days of case closure that the initiating State IV–D agency has closed its case pursuant to § 303.11 of this part, and the basis for case closure;

(12) Instruct the responding agency to close its interstate case and to stop any withholding order or notice the responding agency has sent to an employer before the initiating State transmits a withholding order or notice, with respect to the same case, to the same or another employer unless the two States reach an alternative agreement on how to proceed; and

(13) If the initiating agency has closed its case pursuant to § 303.11 and has not notified the responding agency to close its corresponding case, make a diligent effort to locate the obligee, including use of the Federal Parent Locator Service and the State Parent Locator Service, and accept, distribute and disburse any payment received from a responding agency.

(d) *Responding State IV–D agency responsibilities.* Upon receipt of a request for services from an initiating agency, the responding State IV–D agency must:

(1) Accept and process an intergovernmental request for services, regardless of whether the initiating agency elected not to use remedies that may be available under the law of that jurisdiction;

(2) Within 75 calendar days of receipt of an intergovernmental form and documentation from its central registry:

(i) Provide location services in accordance with § 303.3 of this part if the request is for location services or the form or documentation does not include adequate location information on the noncustodial parent;

(ii) If unable to proceed with the case because of inadequate documentation, notify the initiating agency of the necessary additions or corrections to the form or documentation;

(iii) If the documentation received with a case is incomplete and cannot be remedied without the assistance of the initiating agency, process the case to the extent possible pending necessary action by the initiating agency;

(3) Within 10 working days of locating the noncustodial parent in a different State, the responding agency must return the forms and documentation, including the new location, to the initiating agency, or, if directed by the initiating agency, forward/transmit the forms and documentation to the central registry in the State where the noncustodial parent has been located and notify the responding State's own central registry where the case has been sent.

(4) Within 10 working days of locating the noncustodial parent in a different political subdivision within the State, forward/transmit the forms and documentation to the appropriate political subdivision and notify the initiating agency and the responding State's own central registry of its action;

(5) If the request is for a determination of controlling order:

(i) File the controlling order determination request with the appropriate tribunal in its State within 30 calendar days of receipt of the request or location of the noncustodial parent, whichever occurs later; and

(ii) Notify the initiating State agency, the Controlling Order State and any State where a support order in the case was issued or registered, of the controlling order determination and any reconciled arrearages within 30 calendar days of receipt of the determination from the tribunal;

(6) Provide any necessary services as it would in an intrastate IV–D case including:

(i) Establishing paternity in accordance with § 303.5 of this part and, if the agency elects, attempting to obtain a judgment for costs should paternity be established;

(ii) Establishing a child support obligation in accordance with § 302.56 of this chapter and §§ 303.4, 303.31 and 303.101 of this part;

(iii) Reporting overdue support to Consumer Reporting Agencies, in accordance with section 466(a)(7) of the Act and § 302.70(a)(7) of this chapter;

(iv) Processing and enforcing orders referred by an initiating agency, whether pursuant to UIFSA or other legal processes, using appropriate remedies applied in its own cases in accordance with §§ 303.6, 303.31, 303.32, 303.100 through 303.102, and 303.104 of this part, and submit the case for such other Federal enforcement techniques as the State determines to be appropriate, such as administrative offset under 31 CFR 285.1 and passport denial under section 452(k) of the Act;

(v) Collecting and monitoring any support payments from the noncustodial parent and forwarding payments to the location specified by the initiating agency. The IV–D agency must include sufficient information to identify the case, indicate the date of collection as defined under § 302.51(a) of this chapter, and include the responding State's case identifier and locator code, as defined in accordance with instructions issued by this Office; and

(vi) Reviewing and adjusting child support orders upon request in accordance with § 303.8 of this part;

(7) Provide timely notice to the initiating agency in advance of any hearing before a tribunal that may result in establishment or adjustment of an order;

(8) Identify any fees or costs deducted from support payments when forwarding payments to the initiating agency in accordance with paragraph (d)(6)(v) of this section;

(9) Within 10 working days of receipt of instructions for case closure from an initiating State agency under paragraph (c)(12) of this section, stop the responding State's income withholding order or notice and close the intergovernmental IV–D case, unless the two States reach an alternative agreement on how to proceed; and

(10) Notify the initiating agency when a case is closed pursuant to §§ 303.11(b)(12) through (14) and 303.7(d)(9) of this part.

(e) *Payment and recovery of costs in intergovernmental IV–D cases.*

(1) The responding IV–D agency must pay the costs it incurs in processing intergovernmental IV–D cases, including the costs of genetic testing. If paternity is established, the responding agency, at its election, may seek a judgment for the costs of testing from the alleged father who denied paternity.

(2) Each State IV–D agency may recover its costs of providing services in intergovernmental non-IV–A cases in accordance with § 302.33(d) of this chapter, except that a IV–D agency may not recover costs from an FRC or from a foreign obligee in that FRC, when providing services under sections 454(32) and 459A of the Act.

■ 7. Amend § 303.11 by revising paragraph (b)(12), adding new paragraphs (b)(13) and (b)(14), and revising paragraph (c) to read as follows:

§ 303.11 Case closure criteria.

* * * * *

(b)* * *

(12) The IV–D agency documents failure by the initiating agency to take an action which is essential for the next step in providing services;

(13) The initiating agency has notified the responding State that the initiating State has closed its case under § 303.7(c)(11); and

(14) The initiating agency has notified the responding State that its intergovernmental services are no longer needed.

(c) In cases meeting the criteria in paragraphs (b)(1) through (6) and (10) through (12) of this section, the State must notify the recipient of services, or

in an intergovernmental case meeting the criteria for closure under (b)(12), the initiating agency, in writing 60 calendar days prior to closure of the case of the State's intent to close the case. The case must be kept open if the recipient of services or the initiating agency supplies information in response to the notice which could lead to the establishment of paternity or a support order or enforcement of an order, or, in the instance of paragraph (b)(10) of this section, if contact is reestablished with the recipient of services. If the case is closed, the former recipient of services may request at a later date that the case be reopened if there is a change in circumstances which could lead to the establishment of paternity or a support order or enforcement of an order by completing a new application for IV–D services and paying any applicable application fee.

* * * * *

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

■ 8. The authority citation for part 305 is revised to read:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658 and 1302.

§ 305.63 [Amended]

■ 9. Amend § 305.63 by:

■ a. Removing "interstate" and adding "intergovernmental" in its place wherever it occurs in paragraphs (c)(2) through (5) and paragraphs (d)(1) through (4);

■ b. Removing "§ 303.7(a), (b) and (c)(1) through (6) and (8) through (10)" and adding "§ 303.7(a), (b), (c), (d)(1) through (5) and (7) through (10), and (e)" in its place wherever it occurs in paragraphs (c)(2) through (5); and

■ c. Removing "§ 303.7(a), (b) and (c)(4) through (6), (c)(8) and (9)" and adding "§ 303.7(a)(4) through (8), (b), (c), (d)(2) through (5) and (7) and (10)" in its place wherever it occurs in paragraphs (d)(1) through (4).

PART 308—ANNUAL STATE SELF–ASSESSMENT REVIEW AND REPORT

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

Authority: 42 U.S.C. 654(15)(A) and 1302.

■ 11. Amend § 308.2 by:

■ a. Removing "interstate" and adding "intergovernmental" in its place wherever it occurs in paragraphs (b)(1), (c)(1) and (2), and (f)(1);

■ b. Removing "§ 303.7(a), (b) and (c)(4) through (6), (c)(8) and (9)" and adding "§ 303.7(a)(4) through (8), (b), (c), (d)(2) through (5) and (7) and (10)" in its place wherever it occurs in paragraphs (b)(1), (c)(1) and (2), and (f)(1); and

■ c. Revising paragraph (g) to read as follows:

§ 308.2 Required program compliance criteria.

* * * * *

(g) Intergovernmental services. A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. For all intergovernmental cases requiring services during the review period, determine the last required action and determine whether the action was taken during the appropriate time frame:

(1) Initiating intergovernmental cases:

(i) Except when a State has determined that use of one-state remedies is appropriate in accordance with § 303.7(c)(3) of this Chapter, within 20 calendar days of completing the actions required in § 303.7(c)(1) through (3) of the Chapter, and, if appropriate, receipt of any necessary information needed to process the case, ask the appropriate intrastate tribunal or refer the case to the responding State agency, for a determination of the controlling order and a reconciliation of arrearages if such a determination is necessary, and refer any intergovernmental IV–D case to the appropriate State Central Registry, Tribal IV–D program, or Central Authority of a country for action, if one-state remedies are not appropriate;

(ii) If additional information is requested, providing the responding agency with an updated form and any necessary additional documentation, or notify the responding agency when the information will be provided, within 30 calendar days of the request pursuant to § 303.7(c)(6) of this chapter;

(iii) Within 20 calendar days after determining that a request for review of the order should be sent to another State IV–D agency and of receipt of information necessary to conduct the review, sending a request for review and adjustment pursuant to § 303.7(c)(9) of this chapter;

(iv) Within 10 working days of closing its case pursuant to § 303.11 of this chapter, notifying the responding agency pursuant to § 303.7(c)(11) of this chapter;

(v) Within 10 working days of receipt of new information on a case, notifying the responding State pursuant to § 303.7(a)(7) of this chapter;

(vi) Within 30 working days of receiving a request, providing any order and payment record information requested by a responding agency for a controlling order determination and reconciliation of arrearages, or notify the State IV–D agency when the information will be provided pursuant to § 303.7(a)(6) of this chapter.

(2) Responding intergovernmental cases:

(i) Within 10 working days of receipt of an intergovernmental IV–D case, the central registry reviewing submitted documentation for completeness, forwarding the case to the State Parent Locator Service (SPLS) for location services or to the appropriate agency for processing, acknowledging receipt of the case, and requesting any missing documentation from the initiating agency, and informing the initiating agency where the case was sent for action, pursuant to § 303.7(b)(2) of this chapter;

(ii) The central registry responding to inquiries from initiating agencies within 5 working days of a receipt of request for case status review pursuant to § 303.7(b)(4) of this chapter;

(iii) Within 10 working days of locating the noncustodial parent in a different jurisdiction within the State or in a different State, forwarding/transmitting the forms and documentation in accordance with Federal requirements pursuant to § 303.7(d)(3) and (4) of this chapter;

(iv) Within two business days of receipt of collections, forwarding any support payments to the initiating jurisdiction pursuant to section 454B(c)(1) of the Act;

(v) Within 10 working days of receipt of new information notifying the initiating jurisdiction of that new information pursuant to § 303.7(a)(7) of this chapter;

(vi) Within 30 working days of receiving a request, providing any order and payment record information requested by an initiating agency for a controlling order determination and reconciliation of arrearages, or notify the State IV–D agency when the information will be provided pursuant to § 303.7(a)(6) of this chapter;

(vii) Within 10 working days of receipt of instructions for case closure from an initiating agency under § 303.7(c)(12) of this chapter, stopping the responding State's income withholding order or notice and closing the responding State's case, pursuant to § 303.7(d)(9) of this chapter, unless the two States reach an alternative agreement on how to proceed.

[FR Doc. 2010–15215 Filed 7–1–10; 8:45 am]

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Federal Register

Friday,
July 2, 2010

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, et al. Standards Improvement Project—Phase III; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1919, 1926, and 1928

[Docket No. OSHA–2006–0049]

RIN 1218–AC19

Standards Improvement Project—Phase III

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is continuing its efforts to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in its safety and health standards. This effort builds on the success of Standards Improvement Project (SIP)—Phase I published on June 18, 1998, and SIP—Phase II published on January 5, 2005. The Agency believes that the proposed revisions will reduce compliance costs, eliminate paperwork burdens, and clarify requirements without diminishing worker protections.

DATES: Submit comments and hearing requests on or before September 30, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments, identified by Docket No. OSHA–2006–0049, by any of the following methods:

Electronic. Submit comments electronically to *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile. OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.,* studies, journal articles), commenters must submit these attachments, in hard copy, to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.,* OSHA–2006–0049) so the Agency can attach them to the appropriate document.

Regular mail, express delivery, hand (courier) delivery, and messenger service. Submit comments and any additional material (*e.g.,* studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2006–0049 or RIN No. 1218–AC19, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Note that security-related procedures may result in significant delays in receiving comments and other written materials by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

Instructions. All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA Docket No. OSHA–2006–0049). Comments and other material, including any personal information, are placed in the public docket without revision, and will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

OSHA requests comments on all issues related to this proposed rule. It also welcomes comments on its findings that this proposed rule would have no negative economic, paperwork, or other regulatory impacts on the regulated community.

Docket. The electronic docket for this proposed rule, established at *http://www.regulations.gov*, lists most of the documents in the docket. However, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

References and Exhibits

In this **Federal Register** notice, OSHA references a number of supporting materials. References to these materials are specified as "ID," followed by the number of the document. OSHA posts these referenced materials in Docket No. OSHA–2006–0049 at *http://www.regulations.osha.gov*. The documents also are available at the OSHA Docket Office (*see* **ADDRESSES** section of this notice). For further information about accessing exhibits referenced in this **Federal Register** notice, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Jennifer Ashley, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Mr. Ryan Tremain, Health Scientist, Directorate of Standards and Guidance, N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2056 or fax (202) 693–1678.

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice. Electronic copies are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web site at *http://www.osha.gov*. In addition, the docket material is available for inspection at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone 202–693–2350 (TTY number: 877–889–5627).

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I. Background

OSHA wants to improve its standards by removing or revising confusing, outdated, duplicative, or inconsistent requirements. Improving OSHA standards will help employers better understand their obligations, which will lead to increased compliance, ensure greater safety and health for workers,

and reduce compliance costs. In addition, this action will allow employers to comply with many standards using newer and more flexible means than specified in the existing standards. OSHA's effort to improve standards began in the 1970s, not long after it issued the first set of standards. In 1973, OSHA issued proposals to clarify and update rules that it adopted originally on May 29, 1971 (36 FR 10466). In 1978, OSHA published a rulemaking titled, "Selected General and Special (Cooperage and Laundry Machinery, and Bakery Equipment) Industry Safety and Health Standards: Revocation" (43 FR 49726, October 24, 1978). Commonly known as the "Standards Deletion Project," this comprehensive final rule revoked hundreds of unnecessary and duplicative requirements in the general industry standards at 29 CFR 1910. Another rulemaking in 1984 titled, "Revocation of Advisory and Repetitive Standards" (49 FR 5318, February 10, 1984) resulted in the removal of many repetitive and unenforceable requirements. These rulemaking actions primarily removed standards that were: (1) Not relevant to worker safety (*i.e.,* the standards addressed public-safety issues); (2) duplicative of other standards found elsewhere in the general industry standards; (3) considered "nuisance" standards (*i.e.,* one having no merit or worker safety or health benefits); or (4) legally unenforceable.

In 1996, in response to the *Presidential Memorandum on Improving Government Regulations,* OSHA began another series of rulemaking improvement actions. Patterned after the earlier rulemaking actions, the new effort identified and then revised or removed, standards that were confusing, outdated, duplicative, or inconsistent. This effort also included standards that could be rewritten in plain language. In the first action, titled, "Miscellaneous Changes to General Industry and Construction Standards" (61 FR 37849, July 22, 1996), also known as the "Standards Improvement Project" or "SIP–I," OSHA focused on revising standards that were out of date, duplicative, or inconsistent.

OSHA published the final rule on SIP–I on June 18, 1998 (63 FR 33450). Changes made in SIP–I included reducing the frequency of a medical-testing requirement and eliminating an unnecessary and obsolete medical test required in both the Coke Oven and Inorganic Arsenic standards; revising the emergency-response provisions of the Vinyl Chloride standard; eliminating the public-safety provisions of the Temporary Labor Camps standard; and eliminating unnecessary cross references in the textile industry standards. OSHA made these improvements without reducing worker safety and health protection.

In 2002, OSHA published a proposed rule for phase II of the Standards Improvement Project (SIP–II) (67 FR 66494, October 31, 2002). In that notice, OSHA proposed to revise a number of provisions in health and safety standards that commenters identified during SIP–I, or that the Agency identified as standards in need of improvement.

In the final rule on SIP–II, published on January 5, 2005 (70 FR 1111), the Agency revised a number of health standards to reduce regulatory burden, facilitate compliance, and eliminate unnecessary paperwork without reducing health protections. The improvements made by SIP–II addressed issues such as worker notification of the use of chemicals in the workplace, frequency of exposure monitoring, and medical surveillance.

As stated in the 2006 Advance Notice of Proposed Rulemaking (ANPRM) for the SIP–III project (71 FR 76623, December 21, 2006), OSHA identified a number of standards as potential candidates for improvement in SIP–III based on the Agency's review of its standards, suggestions and comments from the public, and recommendations from the Office of Management and Budget (OMB). The OMB based its recommendations on comments it received on Regulatory Reform of the U.S. Manufacturing Sector (2005).[1] Many commenters during the SIP–II rulemaking process applauded the SIP process and OSHA for its efforts to streamline and improve its health standards by removing or revising outdated, duplicative, or inconsistent requirements (IDs 3–5, 3–10, 3–11, and 3–13 to Docket S–778A). These commenters encouraged the Agency to continue the SIP project, hence today's publication of a proposed SIP–III rule.

In SIP–III, OSHA's objective is to modify individual provisions of standards by removing or revising requirements that are confusing, outdated, duplicative, or inconsistent without reducing workers' safety and health or imposing any additional economic burden on employers. The ANPRM for SIP–III invited comments on a number of such requirements identified by OSHA, and also solicited recommendations from commenters for additional requirements for inclusion in the proposal. Commenters submitted 134 comments to the docket; OSHA discusses these comments below, along with the proposed changes.

[1] To view the full Regulatory Reform report, please visit: *http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf.*

II. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et al.*) is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *." (29 U.S.C. 651(b).) To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards, authorizing summary adoption of existing national consensus and established Federal standards within two years of the effective date of the OSH Act (29 U.S.C. 655(a)); authorizing promulgation of standards pursuant to notice and comment (29 U.S.C. 655(b)); and requiring employers to comply with OSHA standards (29 U.S.C. 654(b)).

An occupational safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment." (29 U.S.C. 652(8).) A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if it substantially reduces or eliminates significant risk. In addition, it must be technologically and economically feasible, cost effective, and consistent with prior Agency action, or a justified departure. A standard must be supported by substantial evidence, and be better able to effectuate the OSH Act's purposes than any national consensus standard it supersedes. (*See* 58 FR 16612–16616, March 30, 1993.)

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. (*See American Textile Mfrs. Institute* v. *OSHA,* 452 U.S. 490, 513 (1981) (*ATMI*); *American Iron and Steel Institute* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991) (*AISI*).)

A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure. See *ATMI,* 452 U.S. at 530 n. 55; *AISI,* 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the

same level of protection. *ATMI,* 452 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994) (*LOTO II*).

Section 6(b)(7) of the OSH Act authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing, and other information-gathering and transmittal provisions. (29 U.S.C. 655(b)(7).) OSHA standards also must be highly protective. (See 58 FR at 16614–16615; *LOTO II,* 37 F.3d at 668–669.) Finally, whenever practical, standards shall "be expressed in terms of objective criteria and of the performance desired." (29 U.S.C. 655(b)(5).)

III. Summary and Explanation of the Proposed Rule

OSHA is proposing a number of actions amending its standards, including revisions to its general industry, maritime, construction, and agricultural standards. A detailed discussion of each of the proposed revisions follows, including a discussion of comments the Agency received in response to the ANPRM. Some of the revisions proposed affect more than one industry. For example, the proposed revisions to the general industry Slings standard also would affect shipyard employment and the construction industry. When proposed revisions in a general industry standard would affect additional industries, OSHA will discuss the revisions fully in the general industry section, and then reference the provisions affected in the sections covering the other industries.

A. Proposed Revisions in General Industry Standards (29 CFR Part 1910)

1. Subpart E

OSHA is proposing several revisions to subpart E. First, OSHA proposes to revise the title of subpart E from "Means of Egress" to "Exit Routes and Emergency Planning." The Agency originally proposed to revise the title of subpart E to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans"(61 FR 47712, September 10, 1996) ; however, this title is missing from the final standard because of a printing error (see 67 FR 67949, November 7, 2002). OSHA now proposes to revise the title to the more concise "Exit Routes and Emergency Planning." As OSHA explained in the preamble to the 2002 final rule, the revised title is part of the Agency's use of plain language that readily conveys the contents of the subpart (67 FR 67949 at 67950).

OSHA also is proposing to revise § 1910.35 to update the edition of the National Fire Protection Association (NFPA) 101, *Life Safety Code,* that OSHA references therein as a compliance alternative. Currently, § 1910.35 accepts employer compliance with the 2000 edition of NFPA 101 instead of complying with corresponding requirements in §§ 1910.34, 1910.36, and 1910.37. The Agency analyzed the provisions of the 2006 edition of NFPA 101 (ID 0137), and preliminarily concluded that the corresponding provisions provide an equal or higher level of worker safety than §§ 1910.34, 1910.36, and 1910.37. Therefore, the Agency is proposing to update § 1910.35 by stating that employers who demonstrate compliance with the 2006 version of the *Life Safety Code* will be deemed to be in compliance with these requirements.

Finally, OSHA is proposing to revise § 1910.35 to add a second compliance alternative that will allow employers demonstrating compliance with the exit-route provisions of the International Code Council (ICC), 2006 International Fire Code (IFC), to be in compliance with the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37. Also, OSHA is proposing to revise the title of § 1910.35, listed in the Table of Contents in § 1910.33, a definition in § 1910.34, and two notes in § 1910.36, to correspond to the proposed new language to § 1910.35.

The proposed revision to add the IFC compliance alternative receives support from comments made in response to the 2006 ANPRM. In the ANPRM, OSHA explained the reasons for the recommended revision, and requested information on the suitability of allowing both the IFC, as well as ICC's International Building Code (IBC), to serve as an equivalent compliance option. The ANPRM recommendation was in response to a petition by the ICC, which submitted a comparison of the 2003 IBC and IFC provisions and the OSHA requirements. Subsequently, OSHA analyzed the provisions of the newer (2006) editions of the IFC and IBC, and compared them with requirements in §§ 1910.34, 1910.36, and 1910.37 (ID 0138). In this analysis, OSHA found that the IFC contains provisions for existing buildings and exit-route maintenance, while the IBC does not. These provisions are necessary to achieve equivalency with § 1910.37. Therefore, OSHA determined that the IFC corresponded to the OSHA requirements, and that the IBC did not. This analysis concluded that the corresponding provisions of the IFC provide an equivalent or higher level of worker safety than §§ 1910.34, 1910.36, and 1910.37. Therefore, the Agency is proposing to recognize the IFC as a compliance alternative, in addition to the NFPA 101 compliance alternative, thereby providing additional flexibility to employers.

In the ANPRM, OSHA asked if the egress provisions of the ICC codes offer protection equivalent to that required by subpart E. Many commenters responded affirmatively. For example, the Building Owners and Managers Association International (BOMA), which represents thousands of owners and managers of existing commercial properties in North America, stated that it strongly supports this proposed additional compliance option (ID 0121). Further, BOMA stated that the IBC and IFC are "responsive to not only the health safety and welfare needs of those who lease real estate, but for those who are employers in the industry as well."

The U.S. General Services Administration (GSA), Public Buildings Service, the landlord of the civilian Federal government, with a total inventory of over 345 million square feet of workspace for a million Federal workers, commented:

> [T]he requirements for egress in the IBC and IFC will satisfy the OSHA rules and clearly demonstrate that a building designed and constructed to the requirements of the IBC and IFC provides equivalent protection to the federal egress requirements. (ID 0130.)

A comment from the New York Department of State (ID 0023) included a detailed discussion of the IBC, IFC, and subpart E. This commenter concluded that the combined requirements of these two national model codes provide an equivalent level of protection to all occupants.

Many of the subpart E provisions are general, performance-oriented requirements, and do not cover conditions in every building. Employers may use a compliance alternative as guidance on specific situations. OSHA believes allowing employers two compliance options—compliance with either the NFPA 101 (2006) or the IFC (2006)—will give employers additional flexibility to use whichever compliance option best serves their needs, while meeting the level of worker protection provided by OSHA's subpart E rules.

OSHA notes that a number of commenters supporting the proposed revision stated that such a revision would involve a potential cost savings for them because it "can reduce design and construction delays. * * *" (See, for example, ID 0117.) Other commenters (IDs 0019, 0020) supported the flexibility the revision would provide to employers by allowing them to comply with either NFPA 101 or with

the ICC Codes, explaining that health-care facilities participating in Medicare and Medicaid used NFPA 101, even in those jurisdictions that use the ICC codes.

The ANPRM also included a question about whether other, alternative national building codes were available that OSHA should consider. Commenters (IDs 0018, 0021, 0023, 0119, 0121) responded that no other building codes are available for OSHA to consider. One commenter (ID 0121) noted, "Currently, 47 states and the District of Columbia use the IBC, and 42 states and the District of Columbia use the IFC." GSA stated (ID 0130) that they have "adopted the technical requirements of the IBC and the IFC. * * *"

Opposition to the revision came from the NFPA (IDs 0022, 0134). However, much of NFPA's comment centered on whether the ICC codes provide a level of safety equivalent to NFPA 101, rather than whether compliance with the ICC codes would provide a level of safety equivalent to that required by OSHA in subpart E. As noted previously, OSHA plans to retain and update existing § 1910.35. Thus, the comparison provided by NFPA (ID 0022) of the provisions of NFPA 101 and the ICC codes does not address the issue regarding the ability of the ICC codes to serve as an additional compliance option to OSHA's subpart E.

Another concern raised by the NFPA comments (IDs 0022, 0134) was that the ICC developed the ICC Codes using consensus principles that differed from the consensus principles used to develop NFPA codes. Again, this comment does not address the issue of whether the ICC Codes provide a level of protection equal to that provided by subpart E, regardless of the method of development. While it is true that OSHA, in conformance with section 6(b)(8) of the OSH Act, the National Technology Transfer and Advancement Act of 1995 (NTTAA), and OMB Circular A–119, must consider consensus standards in developing its mandatory standards, the Agency is not restricted to the use of consensus standards. OSHA does not plan to promulgate a government-unique standard instead of a consensus standard, but to allow compliance alternatives that provide workers with a level of safety that is at least equivalent to the level of safety provided by OSHA's existing subpart E requirements.

The Denver Fire Department (ID 0013) also objected to the proposed revision because the IBC and IFC do not specify minimum exit access widths for every type of occupancy. The Denver Fire Department did not explain how the lack of such specificity would impact worker safety; as noted earlier, OSHA does not believe worker safety would be compromised by including IFC 2006 as a compliance alternative. OSHA notes that both NFPA 101 and the ICC Codes allow exit access widths narrower than the 28-inch minimum specified in § 1910.36, but only in limited situations in which the occupancy type and occupant load ensure an equal level of safety.

OSHA believes that most of the information received in response to the ANPRM supports the proposal to allow the 2006 NFPA 101 or the 2006 IFC provisions as independent compliance alternatives to the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37. The Agency believes the proposed revisions will increase compliance flexibility, and achieve greater compatibility with many State and local jurisdictions, while maintaining worker protection.

2. Subpart I

a. Training Certification Records

OSHA is proposing to remove paragraph (f)(4) of the general industry Personal Protective Equipment (PPE) standard (§ 1910.132), paragraph (e)(4) of the shipyard employment PPE standard (§ 1915.152), and paragraph (n)(4) of the general industry and construction Cadmium standards (§§ 1910.1027 and 1926.1127), which require employers to prepare and maintain a written record certifying compliance with the training requirements of these sections. Specifically, employers must currently verify that affected workers received training as required by the standards through a written certification record that includes, at a minimum, the name(s) of the workers trained, the date(s) of training, and the types of training the workers received. The Cadmium standards for general industry and construction are the only substance-specific standards that require written certification to document training. The Agency estimates that it takes over 1.8 million hours for employers to develop and maintain the training-certification records mandated by the PPE standards in §§ 1910.132 and 1915.152, and over 3,000 hours for the training-certification records required by the Cadmium standards for general industry (§ 1910.1027) and construction (§ 1926.1127).[2]

OSHA does not believe that the training certification records required by the four standards listed previously provide a safety or health benefit sufficient to justify the time and cost to employers. OSHA believes that employers observe employees as they work to ensure that work practices and personal-protective equipment are consistent with the training received. In addition, OSHA generally conducts enforcement of training requirements by observation and worker interviews; thus, the lack of a written record would not interfere with OSHA's enforcement of training requirements. Therefore, OSHA believes that removing these training-certification requirements would not compromise worker safety or health. For these reasons, the Agency is proposing to remove the requirements to prepare and maintain training-certification records from the above-referenced standards.

In addition to the four training-certification records proposed for revocation, OSHA notes that 12 other standards in the general industry, construction, and shipyard employment require employers to prepare written records or documents to certify that they complied with training requirements. OSHA requests comment, including rationale, on whether it should revoke all or some of these 12 records. (*See* section VI.C ("Proposed Revisions to Information-Collection Requirements") below in this notice for a detailed description of the paperwork-burden hours associated with these training-certification requirements.)

b. Respiratory Protection

OSHA is proposing seven revisions related to the Respiratory Protection standard in § 1910.134. The following paragraphs discuss each of these revisions.

(1) Updating DOT regulations referenced in § 1910.134(i)(4)(i)

An industrial hygienist with the Michigan OSHA On-Site Consultation Program raised a question regarding the general OSHA requirements for requalifying cylinders for self-contained breathing apparatus (SCBA) specified by § 1910.134(i)(4)(i). This provision of the Respiratory Protection standard references the Department of Transportation (DOT) regulations in 49 CFR parts 173 and 178 for retesting air cylinders such as those used with SCBAs. In August 2002, the DOT revised its standard, which resulted in the reorganizing and renumbering its

[2] *See* 74 FR 61175, 74 FR 45883, 73 FR 74199, and 73 FR 74197, respectively, for information on accessing the information-collection requests (ICRs) for these training-certification records. The ICRs describe the procedures and data used to determine the hours required to develop and maintain the training-certification records.

regulations for testing air cylinders. New subpart C of 49 CFR part 180 now specifies the general DOT requirements for requalifying air cylinders; these requirements replicate the requirements in former 49 CFR parts 173 and 178 for requalifying air cylinders. OSHA, therefore, is proposing to revise the language in § 1910.134(i)(4)(i) by referencing the new DOT standard for cylinder testing at 49 CFR part 180. OSHA believes that the proposed revision will clarify the requirements of the Respiratory Protection standard by accurately identifying the location of the appropriate DOT reference standard. By expediting this process, the proposed revision will ease the regulatory burden on employers without reducing employee protection.

(2) Updating the NIOSH Respirator-Certification Requirement in § 1910.134(i)(9)

Existing paragraph (i)(9) of OSHA's Respiratory Protection standard (§ 1910.134) requires the employer to use breathing-gas containers marked in accordance with the NIOSH respirator-certification standard at 42 CFR part 84. In its presentation at the December 10, 2009, ACCSH meeting (*see* section X of this preamble below), NIOSH stated that it has seen some confusion in the regulated community as to how this provision applies to after-market cylinders. NIOSH recommended that OSHA revise the provision to clarify that after-market cylinders not manufactured under the quality-assurance program incorporated as part of the NIOSH approval process for self-contained breathing apparatus (SCBA) are not acceptable for use. Accordingly, OSHA is proposing to revise this provision to read: "The employer shall use only the respirator manufacturer's NIOSH-approved breathing gas containers, marked and maintained in accordance with the Quality Assurance provisions of the NIOSH approval for the SCBA as issued in accordance with the NIOSH respirator-certification standard at 42 CFR part 84." OSHA requests public comment on this NIOSH-recommended revision.

(3) Appendix C to § 1910.134

In response to the ANPRM, OSHA received a request from the Mexican Consulate in Omaha Nebraska. The request was to revise question 2a in the OSHA Medical Evaluation Questionnaire, Appendix C, Part A, Section 2, of its Respiratory Protection standard (§ 1910.134) by deleting the word "fits," leaving only the word "seizures" to describe the medical condition. The request described the use of the term "fits" as outdated, unnecessary, and offensive. OSHA agrees, and is proposing to remove it from the questionnaire. OSHA believes this revision to the questionnaire would have no effect on administration of, or responses to, the questionnaire.

(4) Appendix D to § 1910.134

OSHA is proposing to clarify that Appendix D of the Respiratory Protection standard (§ 1910.134) is mandatory by removing paragraph (o)(2) from the standard, and by revising paragraph (o)(1) of the standard to include Appendix D among the designated mandatory appendices. As stated in the ANPRM, the proposed revision to paragraph (o)(1) would reduce public confusion by clarifying the Agency's purpose regarding Appendix D when it published the Respiratory Protection standard on January 8, 1998, (63 FR 1152); namely, that Appendix D is mandatory. Evidence of this purpose is provided in paragraph (c)(2)(i), the introductory text to paragraph (k), and paragraph (k)(6) of the Respiratory Protection standard; these provisions mandate that employers provide voluntary respirator users with the information contained in Appendix D. Additionally, the title of Appendix D states that it is mandatory. In the ANPRM, OSHA posed the following three questions about this proposed revision for public consideration:

- Have employers understood that the requirement to provide Appendix D information to employees, who voluntarily use respirators, is a mandatory requirement?
- Is the information contained in Appendix D appropriate for alerting employees to considerations related to voluntary respirator use?
- To what extent, if any, would deleting paragraph (o)(2) and clarifying that Appendix D is mandatory, increase burden on employers?

The Building and Construction Trades Department of the AFL–CIO (BCTD; ID 0118) stated that the basic information in Appendix D is worthwhile, but construction workers find the language in the appendix difficult to understand. They suggested that OSHA better explain "why respirators should not be shared with other workers." The BCTD also stated that deleting paragraph (o)(2) would not increase burden to employers since the obligation to use Appendix D already exists under paragraphs (k)(6) and (c)(2), and that "deleting (o)(2) would definitely clarify an apparent contradiction about the mandatory requirements already in the standard."

The AFL–CIO (ID 0024) stated that, since paragraph (k)(6) states that, since employers must provide a copy of Appendix D to workers, it would be helpful to clarify that Appendix D is mandatory by including it among the list of mandatory appendices in paragraph (o)(1) as OSHA proposed, and that this action would clarify the mandatory requirement in (k)(6). The AFL–CIO further stated that "any additional burden from this action, if there is any, will be more than offset by the worker protection information conveyed in Appendix D during voluntary use situations."

The American Society of Safety Engineers (ASSE; ID 0021) also stated that employers already must provide the information in Appendix D to workers, and that failure to do so may result in OSHA citations. ASSE supported revising the language to make Appendix D mandatory because it "may foster compliance and actually reduce the potential for citations by clarifying the employer's responsibilities."

The 3M Company (ID 0028) also supported revising paragraph (o)(2). 3M stated that deleting paragraph (o)(2) would reduce confusion as to whether it is mandatory to provide Appendix D to workers when respiratory use is voluntary. 3M also stated that the information in Appendix D is appropriate.

The Associated General Contractors of America (AGCA; ID 0120) opposed deleting paragraph (o)(2) and revising paragraph (o)(1). In its response, AGCA urged, "OSHA to follow the complete rulemaking process to gauge the impact of this revision," and that any revisions should preserve employers' flexibility in informing their employees of the various uses of different respirators.

OSHA reviewed the comments received on revising the language in paragraph (o)(1) of § 1910.134 to indicate that Appendix D as mandatory, and on deleting paragraph (o)(2), which describes Appendix D as non-mandatory. Based on the current record, OSHA preliminarily concludes that the language in paragraph (o)(2) is confusing for employers since it contradicts the requirement in paragraphs (c)(2) and (k) that employers must provide employees with the information in Appendix D in voluntary respirator-use situations. Accordingly, OSHA agrees with commenters who stated that revising the language in paragraph (o) of § 1910.134 would clarify the employer's responsibilities and reduce confusion about whether information specified in Appendix D is mandatory. Regarding the comment by AGCA, OSHA notes that the SIP–III

proposal is a notice-and-comment rulemaking that provides the regulated public with an appropriate opportunity for determining the impact, if any, of the proposed revision on the public. In addition, OSHA does not believe that the proposed revisions would have any impact on the employers' flexibility in informing their employees of the various uses of respirators. Therefore, OSHA decided to propose revising the language in paragraph (o) of § 1910.134 to state that Appendix D is mandatory, and to delete the confusing and inconsistent language in paragraph (o)(2).

(5) Asbestos (§ 1915.1001)

The introductory paragraph to OSHA's Respiratory Protection standard (§ 1910.134) specifies that the standard applies to general industry (29 CFR 1910), shipyards (29 CFR 1915), marine terminals (29 CFR 1917), longshoring (29 CFR 1918), and construction (29 CFR 1926). Three of these parts, general industry, shipyards, and construction, contain standards regulating employee exposure to asbestos, with each of these standards having a provision entitled, "Respirator program." These paragraphs specify the requirements for an employer's respirator program with respect to asbestos exposure. In the final rulemaking for the Respiratory Protection standard, the Agency updated these paragraphs in the Asbestos standards for general industry and construction so that the program requirements would be consistent with the provisions of the newly revised Respiratory Protection standard (see 63 FR 1285 and 1298). However, the Agency inadvertently omitted revising the respirator-program requirements specified in paragraph (h)(3)(i) of the Asbestos standard for shipyards (§ 1915.1001). OSHA is proposing to correct this oversight by revising paragraph (h)(3)(i) of the Asbestos standard for shipyards to read the same as paragraphs (g)(2)(i) of the Asbestos standard for general industry (§ 1910.1001) and (h)(2)(i) of the Asbestos standard for construction (§ 1926.1101), which state, "[t]he employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m)."

Similarly, the Agency is considering removing paragraphs (h)(3)(ii), (h)(3)(iii), and (h)(4) from the shipyard Asbestos standard, which address filter changes, washing faces and facepieces to prevent skin irritation, and fit testing, respectively. OSHA believes this action is appropriate because the continuing-use provisions specified in paragraph § 1910.1001(g)(2)(ii) duplicate paragraphs (h)(3)(ii) and (h)(3)(iii) of the Asbestos standard for shipyards. Also, the fit-testing requirements provided in paragraph (f) of the Respiratory Protection standard either meet or exceed the provisions specified in (h)(4) of the shipyard Asbestos standard, except that the frequency of fit-testing is different. The current shipyard-employment Asbestos standard at § 1915.1001(h)(4)(ii) requires employers to perform quantitative and qualitative fit testing "at the time of initial fitting and at least every 6 months thereafter for each employee wearing a negative-pressure respirator." The Respiratory Protection standard at § 1910.134(f)(2) requires employers to fit test employees using a tight-fitting respirator "prior to initial use of the respirator, whenever a different facepiece * * * is used, and at least annually thereafter."

By adding the reference to the § 1910.134 Respiratory Protection standard to § 1915.1001(h)(3)(i) of the shipyard Asbestos standard, OSHA would incorporate the fit-testing requirements of § 1910.134(f), which include the requirement to use the OSHA-accepted qualitative fit-testing and quantitative fit-testing protocols and procedures contained in Appendix A of § 1910.134. Accordingly, the-fit testing requirements specified in Appendix C of § 1915.1001 would be redundant; therefore, OSHA is considering deleting this Appendix C from § 1915.1001.

In the ANPRM, OSHA asked the following questions regarding the § 1915.1001 respirator provisions:

- Would revising § 1915.1001(h)(3)(i) to be consistent with similar provisions in the asbestos standard for general industry and construction create additional compliance requirements?
- Does this change maintain the same level of employee protection? Would making the recommended changes increase the economic or paperwork burden?
- Besides altering the frequency of fit testing, how would making the recommended change to delete paragraphs (h)(3)(ii) through (h)(4)(ii) affect the requirements of the standard?

OSHA received several comments in response to these questions. The 3M Company (ID 0028) addressed this issue by stating:

> [M]aking § 1915.1001(h)(3)(i) consistent with similar provisions in other asbestos standards will [not] create additional compliance requirements. 3M believes it will result in less confusion among employers who work with asbestos in many different industries. * * * This change would maintain the same level of protection as provided by the other asbestos standards.

The American Society of Safety Engineers (ID 0021) supported revising the shipyard-employment respirator provisions to comply with the requirements in the Asbestos standards for general industry and construction, and deleting the Asbestos standard's specific fit-testing requirements while adopting the § 1910.134 requirements. OSHA believes, after reviewing of the comments received in response to the ANPRM, that it is appropriate to propose to remove paragraphs (h)(3)(ii), (h)(3)(iii), and paragraph (h)(4) from the shipyard-employment asbestos standard, and to add a reference to § 1910.134 in paragraph (h)(3)(i) of that standard. It also is appropriate to propose to delete the fit-testing requirements of Appendix C of § 1915.1001, and to replace Appendix C with a reference to Appendix A of § 1910.134 and the fit-testing requirements of § 1910.134(f). The Agency believes these proposed revisions would not increase employers' compliance burden, but instead would reduce this burden by providing consistency between the shipyard-employment Asbestos standard and the requirements of the Asbestos standards for general industry and construction.

(6) 13 Carcinogens (4–Nitrobiphenyl, etc.) (§ 1910.1003)

In the SIP–III ANPRM, OSHA discussed correcting an inadvertent omission from the respiratory-protection requirements for four of the 13 carcinogen standards. Each of the 13 original standards included respiratory-protection requirements appropriate to the hazards associated with the individual carcinogen. When OSHA combined these standards into a single standard (61 FR 9242, March 7, 1996), it treated the 13 carcinogens as particulates. However, four of the 13 carcinogens are liquids and not particulates (*i.e.,* methyl chloromethyl ether, bis-chloromethyl ether, ethyleneimine, and beta-propiolactone). In the 1996 regulatory action, the Agency inadvertently omitted the full-facepiece, supplied-air respirators in the continuous-flow or pressure-demand mode for employees involved in handling any of the four liquid carcinogenic chemicals. Instead, OSHA required half-mask particulate-filter respirators for the 13 carcinogens, which are inappropriate respirators for use with the four liquid carcinogens.

In the SIP–III ANPRM, OSHA discussed the reasons for reinstating the original respirator-use requirement in paragraph (c)(4)(iv) of § 1910.1003 for these four liquid carcinogens. OSHA also asked the following four questions

in the ANPRM regarding this revision (71 FR 76627):

- What types of respirators are currently being used to protect employees from exposure to these four chemicals?
- If OSHA reinstates the requirements for full facepiece air-supplied respirators, does the respirator-use requirement conflict with OSHA's Respiratory Protection Standard (Sec. 1910.134)?
- Would the reinstated respirator use requirement be more or less protective than the protection offered by OSHA's Respiratory Protection Standard?
- How would reinstating the respirator use requirement change the economic or paperwork burden?

The American Society of Safety Engineers (ID 0021) supported reinstating the former respirator-use requirements in § 1910.1003(c)(4)(iv), and did not know of any conflict this section would have with the requirements contained in § 1910.134. The AFL–CIO (ID 0024) stated that the inadvertent action OSHA took with these four carcinogens resulted in workers receiving substantially less respiratory protection than previously required, and that OSHA should correct this error immediately. The AFL–CIO strongly recommended that OSHA issue a technical correction to § 1910.1003 within 30 days to reinstate the original respiratory-protection requirements for these four carcinogens. The AFL–CIO also recommended that "the remaining 9 chemicals require the same, more protective respirators that are applicable to the 4 substances." AFL–CIO added, "With that approach, you would now have real and consistently applied worker protection measures that achieve desirable improvement in the standards."

The 3M Company (ID 0028) stated that, since these four carcinogens are liquids with significant vapor pressure, the current requirements for using half masks with dust, mist, and fume filters are inappropriate, and conflict with the § 1910.134 respirator-selection requirements. Further, 3M believed that reinstating the requirement for a full-facepiece, supplied-air respirator would provide the appropriate minimum assigned protection factor (APF) required for the four liquid carcinogens, and would be consistent with the respirator-selection requirements of § 1910.134. Therefore, the protection afforded to workers would be different for liquid-carcinogen vapors than that for the particulate carcinogens (an APF of 10 for particulates versus an APF of 1,000 for liquids using supplied-air respirators).

In its comments, 3M also maintained that requiring supplied-air respirators would result in the use of a more protective class of respirator than the § 1910.134 respirator-selection requirements. However, 3M also stated that, by requiring full-facepiece, supplied-air respirators, OSHA would introduce additional hazards for employees caused by trailing air-supply hoses. The commenter suggested a preference for half-facepiece respirators with chemical cartridges for the four liquid carcinogens, which could meet the respirator-selection requirements in § 1910.134 if the cartridges used to absorb the liquid carcinogens' vapors have an adequate service life. (*Id.*)

At the Advisory Committee on Construction Safety and Health (ACCSH) meeting on December 12, 2009, the National Institute for Occupational Safety and Health (NIOSH) representative provided specific comment on the revisions proposed to the respirator requirements of the 13 Carcinogens (4-Nitrobiphenyl, etc.) standard. The full committee then recommended "that OSHA and NIOSH work together to address * * * technical issues relating to the respiratory protection provisions in the proposed rule." (ACCSH, Ex.12.2.) The specific NIOSH comment was:

> [T]he lack of either a NIOSH REL or an OSHA PEL results in a NIOSH respirator recommendation of any self-contained breathing apparatus that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode, or any supplied-air respirator that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode in combination with an auxiliary self-contained positive-pressure breathing apparatus. Neither a supplied-air respirator with a full facepiece operated in a continuous flow mode nor a supplied-air respirator with a full facepiece operated in a pressure-demand mode would provide the [NIOSH] recommended level and type of protection unless used in combination with an auxiliary self-contained positive-pressure breathing apparatus. (ACCSH Ex. 12.2; comments on the proposed rule on Standards Improvement Project III by the National Personal Protective Technology Laboratory, NIOSH.)

Based on the NIOSH comments, OSHA is considering revising the 13 Carcinogens standard to ensure that employers provide respiratory protection meeting the NIOSH recommendation. Therefore, OSHA requests comment on whether it should include in the final SIP–III standard a revision to the respirator provisions of the 13 Carcinogens standard that explicitly requires employers to use self-contained breathing apparatus with a full facepiece and operated in a pressure-demand or other positive-pressure mode, or any supplied-air respirator that has a full facepiece and operated in a pressure-demand or other positive-pressure mode in combination with an auxiliary self-contained positive-pressure breathing apparatus. Alternatively, OSHA could modify the proposed language to require respirator selection pursuant to § 1910.134, which would require employers to evaluate the specific hazard to determine and select the appropriate NIOSH-approved respirator for use by employees exposed to these carcinogens. OSHA also requests comment on these alternative approaches, as well as any other regulatory approaches that would address the issue raised by NIOSH.

In this rulemaking, OSHA is proposing to reinstate the requirement that employers provide full-facepiece, supplied-air respirators to workers exposed to methyl chloromethyl ether, bis-chloromethyl ether, ethyleneimine, and beta-propiolactone. OSHA notes that reinstatement of the requirement to use supplied-air respirators with the four liquid carcinogens will provide needed safety for employees working with these chemicals. Deleting this requirement was an inadvertent omission that needs correction. Whether OSHA should allow the use of chemical cartridges with NIOSH-certified air-purifying half-mask respirators for these four liquid carcinogens depends on employers proving that the cartridges used to absorb the vapors emitted from these chemicals would have an adequate service life. OSHA requests comment on, and data describing, the availability of such chemical cartridges for use with these four carcinogens.

(7) 1,3-Butadiene (§ 1910.1051)

OSHA is proposing to remove paragraph (m)(3) from the 1,3-Butadiene standard (§ 1910.1051), which requires that employers keep fit-test records for employees who use respirators to reduce toxic exposures. In the ANPRM, OSHA raised the possibility of deleting this recordkeeping provision from the 1,3-Butadiene standard for general industry, relying instead on the fit-testing recordkeeping requirement in § 1910.134.

The American Society of Safety Engineers (ID 0021) agreed with OSHA that deleting the fit-testing records requirement in the 1,3-Butadiene standard was appropriate since the requirement duplicates the recordkeeping requirement in § 1910.134. The 3M Company (ID 0028) also supported deleting the 1,3-Butadiene fit-testing record requirement, noting that removing this

requirement would not reduce protection because the requirement in § 1910.134 is at least as protective as the 1,3-Butadiene requirement.

Based on its review of the comments received in response to the ANPRM, OSHA believes that deleting the fit-testing recordkeeping requirement in paragraph (m)(3) of the 1,3-Butadiene Standard and relying instead on the fit-testing recordkeeping requirements in § 1910.134 would not reduce employee protection. Therefore, OSHA is proposing this revision in this rulemaking.

3. Subpart J

a. Definition of "Potable Water" (§ 1910.141(a)(2))

OSHA is proposing to revise and update the definition of the term "potable water" in the Sanitation standards for general industry (§ 1910.141(a)(2)) and construction (§ 1926.51(a)(6)), and the Field Sanitation standard for agriculture (§ 1928.110(b)). The proposed definition would bring consistency to OSHA regulations.

OSHA currently defines potable water as "water which meets the quality standards prescribed in the U.S. Public Health Service Drinking Water Standards, published in 42 CFR part 72, or water which is approved for drinking purposes by the State or local authority having jurisdiction." OSHA adopted the existing definition from a Public Health Service Code that is no longer in existence.

OSHA proposes to define potable water as "water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 CFR part 141)." OSHA earlier proposed the same revision to the shipyard-employment standards (72 FR 72451–72520).

b. Washing Facilities (§ 1910.141(d))

OSHA is proposing to revise the Bloodborne Pathogens standard by removing from the definition of "handwashing facilities" at § 1910.1030(b) the term "hot" in the phrase "hot air drying machines." The definition currently reads as follows:

"*Handwashing Facilities* means a facility providing an adequate supply of running potable water, soap, and single use towels or hot air drying machines." OSHA is proposing this revision in response to an inquiry from Dyson B2B Inc. (Dyson; ID 0015.1), which describes a new air blower that uses high-velocity (non-heated) air, rather than hot or warm air, to dry hands. On July 13, 2007, OSHA issued a letter of interpretation to Dyson in which it recognized that some air-blower techniques provide the appropriate level of employee protection, and agreeing to include this proposed revision in the SIP–III rulemaking (ID 0144). In this letter, OSHA also acknowledged that current technology allows for the use of hand-drying products that do not involve hot air, and noted that, when it published the Bloodborne Pathogens standard, adequate non-heated, high-velocity air blowers were not available.

OSHA also is proposing to apply this revision to four Sanitation standards, including the Sanitation standard for general industry (§ 1910.141(d)(2)(iv)), marine terminals (§ 1917.127(a)(1)(iii)), longshoring (§ 1918.95(a)(1)(iii)), and construction (1926.51(f)(3)(iv)). The general industry and construction Sanitation standards at §§ 1910.141(d)(2)(iv) and 1926.51(f)(3)(iv), respectively, use identical language as follows:

> Individual hand towels or sections thereof, of cloth or paper, *warm* air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided. [Emphasis added.]

While the definitions for Marine Terminals at §§ 1917.127(a)(1)(iii) and Longshoring at 1918.95(a)(1)(iii) differ slightly from this definition, the term "warm air blowers" is used in both definitions. OSHA notes that, whether the definitions include the term "hot" or "warm," the definitions do not include high-velocity air blowers. In this rulemaking, OSHA is proposing to remove the term "hot" or "warm" from these definitions, which then would permit employers to use high-velocity air blowers in the workplace. OSHA believes the proposal does not revise these definitions substantively in that employers still could use hot-/warm-air drying machines, as well as air blowers or other air-drying machines that may become available.

4. Slings (§ 1910.184)

OSHA is proposing to amend its standards regulating slings at § 1910.184 (general industry), §§ 1915.112, 1915.113, and 1915.118 (shipyard employment), and § 1926.251 (construction) by removing outdated tables that specify safe working loads, and revising other provisions (*e.g.,* §§ 1910.184(e)(6) and 1915.112) that reference the outdated tables. The proposal would replace the outdated tables with a requirement that would prohibit employers from loading slings in excess of the recommended safe working load as prescribed on permanently affixed identification markings. The proposed revisions also would expressly prohibit the use of slings that do not have such markings.

Manufacturers produce slings with markings that indicate the sling's rated capacity (*i.e.,* safe working load), the name or trademark of the manufacturer, and other specifications (*e.g.,* size, material used in manufacturing the sling); this information prevents misuse of slings, thereby increasing employee safety. OSHA currently requires these markings for three of the five types of slings regulated by its standards (*i.e.,* alloy-steel-chain, metal-mesh, and synthetic-web slings).

Many slings are sufficiently large for manufacturers to emboss or stitch identification markings onto the sling's surface. Other slings have identification markings on tags attached to the sling by other means, such as a separate wire or cable. However, such tags may detach from the sling during use, in which case, the employer must remove the sling from service until the tag is replaced.

OSHA published the existing Slings standard (§ 1910.184) on June 27, 1975 (see 40 FR 27368), based on the then-current 1971 consensus standard, ANSI B30.9–1971, Slings. OSHA made § 1910.184 applicable to the construction industry on February 9, 1979 (44 FR 8577). After 1975, OSHA made no revisions to these standards except for minor corrections. The load-capacity tables in these standards are now obsolete, and no longer conform to the load-capacity tables of the updated ANSI B30.9 standard. For example, the current ANSI B30.9 standard includes tables for slings made of alloy-steel chain (grades 80 and 100) not included in the existing OSHA standards.

In 1996, the National Association of Chain Manufactures (NACM) petitioned OSHA to adopt requirements of the recently updated ANSI B30.9 standard. NACM believed that the existing OSHA standard was not as safe as the updated ANSI standard. The NACM petition recommended that, at a minimum, OSHA remove Table N–1–184–1 in § 1910.184, which lists outdated load-capacity requirements for alloy-steel-chain slings.

Therefore, OSHA is proposing to remove the existing load-capacity tables for slings from the following standards: § 1910.184 (general industry; tables N–184–1, and N–184–3 through N–184–22); § 1915.118 (shipyard employment; tables G–1 through G–5, G–7 through G–8, and G–10), including references to these tables in § 1915.112 and

§ 1915.113; and § 1926.251 (construction; tables H–1 and H–3 through H–19). Also, OSHA is proposing to add the requirement for identification markings on wire-, natural-, and synthetic-fiber rope slings in §§ 1910.184 and 1926.251, as well as manila rope and manila rope slings, wire rope and wire-rope slings, and chain and chain slings in § 1915.112. The proposal would provide similar protection for shackles in § 1915.113 and § 1926.251. In addition, OSHA is proposing that employers follow the safe working-load capacity information on the identification markings affixed to slings by the sling manufacturer. Further, if the sling is missing its identification marking, OSHA is proposing, consistent with the latest ASME/ANSI B30.9 standard, that employers remove these slings from service until they reaffix the identification markings.

OSHA believes the proposed revisions will eliminate duplicative, inconsistent, and outdated information, thus minimizing confusion over the rated capacity of any type of sling used by employers. Further, reliance on the information marked on the sling simplifies compliance for employers by eliminating the need to check tables or other sources of information. Finally, the proposed revisions will maintain or increase employee safety by ensuring that employers use slings with readily available, up-to-date load ratings.

OSHA requests comment from the public on the following questions regarding the use of slings in this country: (1) Are all slings manufactured in accordance with the specifications prescribed by the ASME/ANSI B30.9 slings standard; (2) are all slings equipped with markings or tags; (3) what other information do manufacturers mark on slings; and (4) do the markings and tags remain affixed to the sling, or are the markings and tags easily removed or damaged?

5. Subpart T

OSHA is proposing to remove two unnecessary requirements from paragraphs (b)(3)(i) and (b)(5) of its Commercial Diving Operations standard at § 1910.440. Paragraph (b)(3)(i) requires employers to retain dive-team member medical records for five years, even though the standard contains no requirement for diver medical examinations. In this regard, a 1979 court decision (*Taylor Diving and Salvage* v. *U.S. Department of Labor* (599 F.2d 622) (5th Cir., 1979)) resulted in the removal of the requirement (formerly located at § 1910.411) to provide medical examinations, and OSHA never removed the corresponding medical recordkeeping requirement from the standard. Also, OSHA is proposing to correct a typographical error in paragraph (b)(4) that refers to § 1910.20 instead of § 1910.1020.

6. Subpart Z

OSHA is proposing to remove the requirements to transfer records to the National Institute for Occupational Safety and Health (NIOSH) for 15 substance-specific standards in subpart Z, as well as from the standard regulating access to employee exposure and medical records (§ 1910.1020). In addition, the following paragraphs describe miscellaneous proposed revisions to several other health standards.

a. Transfer of Exposure and Medical Records to NIOSH

OSHA is proposing to remove provisions in its substance-specific standards that require employers to transfer exposure and medical records to NIOSH. Most of OSHA's existing substance-specific standards, as well as the Access to Employee Exposure and Medical Records standard (§ 1910.1020), require employers to transfer to NIOSH specified medical and exposure records when: An employer ceases to do business and leaves no successor; the period for retaining the records expires; or an employee terminates employment (including retirement or death). OSHA proposes to remove the record-transfer requirement from the following standards:

- Asbestos—§§ 1910.1001(m)(6)(ii), 1915.1001(n)(8)(ii), and § 1926.1101(n)(8)(ii);
- 13 Carcinogens (4-Nitrobiphenyl, etc.)—§ 1910.1003(g)(2)(i) and (ii);
- Vinyl Chloride—§ 1910.1017 (m)(3);
- Inorganic Arsenic—§ 1910.1018 (q)(4)(ii) and (iii);
- Access to Employee Exposure and Medical Records—§ 1910.1020(h)(3)(i), (ii) and (h)(4);
- Lead—§§ 1910.1025(n)(5)(ii) and (iii) and 1926.62(n)(6)(ii) and (iii);
- Benzene—§ 1910.1028(k)(4)(ii);
- Coke Oven Emissions—§ 1910.1029(m)(4)(ii) and (iii);
- Bloodborne Pathogens—§ 1910.1030(h)(4)(ii);
- Cotton Dust—§ 1910.1043(k)(4)(ii) and (iii);
- 1,2 Dibromo-3-Chloropropane—§ 1910.1044(p)(4)(ii) and (iii);
- Acrylonitrile—§ 1910.1045(q)(5)(ii) and (iii);
- Ethylene Oxide—§ 1910.1047(k)(5)(ii);
- Methylenedianiline—§ 1910.1050(n)(7)(ii);
- 1,3-Butadiene—§ 1910.1051(m)(6)(i).

In addition, OSHA is proposing as part of this rulemaking to remove paragraph (b)(5)(ii) from § 1910.440 ("Recordkeeping requirements") of its standards for Commercial Diving Operations; this provision requires employers to transfer diving medical records to NIOSH in the event no successor employer is available.

These proposed revisions are in response to a comment from NIOSH (ID 0135) recommending that OSHA reexamine the need for this requirement, and consider removing it from these standards because "the records unfortunately have not proved suitable for research purposes." NIOSH stated further (ID 0142) that "[g]iven that these records have proven to have no research utility, the costs associated with the processing and maintaining these records are not justified."

In its comments, NIOSH noted that, in addition to the 2,900 records for the 13 Carcinogens standards mentioned in their January 2006 response to OSHA's Information Collection Request for OMB–1218–0085 (ID 0142), it catalogued another 170,000 records over a 30-year period, and used none of these records for research purposes. NIOSH further stated (ID 0135) that "boxes [of records] are currently in temporary storage at a NIOSH facility awaiting resources to become available to process them. There is also another shipment of 2,300 boxes from a defunct manufacturing company in temporary storage waiting NIOSH processing."

NIOSH also noted that contractors hired by companies that are ceasing business operations often are responsible for sending records to NIOSH. However, many of these contractors have no knowledge of what records to send, and may send inappropriate documents. In this regard, NIOSH stated:

> [I]n fact, some companies have used the opportunity to simply empty their files and send NIOSH everything. As a result, we often receive extraneous information unrelated to the requirements of the standards (*e.g.,* contract reports, drug test clearances, records for hazards that are not required to be submitted to NIOSH, environmental/pollution records, company operating manuals). On some occasions, even when valid medical records are sent, the records do not identify the particular hazard(s) that the workers were exposed to.

NIOSH stated that, once records are in its possession, it must "expend increasingly scarce research resources in processing them in accordance with the NIOSH Records Schedule." Lastly, NIOSH presented data on the cost it

incurs with processing, shipping, and long-term storage, noting:

NIOSH has previously estimated the in-house cost of processing to be about $1.35/record for records received under the OSHA carcinogen standards. It should be noted that these carcinogen records are the best organized of any we receive. They require the least amount of processing effort and are therefore the least costly. Other more poorly organized records and those containing extraneous materials that NIOSH has processed using contractor staff have cost about $3.50–$4.00/record. In addition there are other minimal costs associated with preparing the paperwork for shipment to the FRC [Federal Records Center] as well as the actual shipping costs. Finally, there are the long-term FRC storage costs (currently $0.30/record/year). For the 170,000 records currently at the FRC, that represents a total lifetime storage cost of more than $2,000,000. (ID 0135.)

In conclusion, NIOSH stated, "Based on our experience over the last 30 years, NIOSH believes that the significant costs associated with the records transfer requirements cannot be justified in light of the complete lack of scientific utility of the records."

Because the data generated by the records-transfer requirements appears to be of little or no value to NIOSH, OSHA is proposing to remove the record-transfer requirements from its substance-specific health standards and from paragraphs (h)(3) and (h)(4) of § 1910.1020 (Access to Employee Exposure and Medical Records). However, before making a final determination on this proposal, the Agency is requesting workers, researchers, and other interested parties to provide comment on the possible usefulness of these records. For example, the Agency is interested in determining whether workers who become ill after exposure to a hazardous substance would have a need to retrieve their records to verify their exposure after the employer responsible for exposing them to the substance is no longer in business (and the records cannot be obtained from a bankruptcy trustee or legal receiver), or whether the data would be useful for medical, industrial-hygiene, or economic research purposes. OSHA also is asking for examples of instances in which individuals or organizations previously used the data. Additionally, the Agency requests comment on the availability of this type of data from sources other than NIOSH (such as attorneys who hold medical and exposure records when companies cease business operations). The Agency welcomes any ideas or suggestions on how the data could be made more useful for these purposes.

b. Miscellaneous Revisions

(1) Substance-Specific PPE and Respirator Training Requirements

OSHA proposes to remove specific training requirements from several of its substance-specific standards because standards regulating personal-protective equipment (PPE) and respirators in 29 CFR 1910, subpart I, already require the training. Specifically, § 1910.132 requires employers to train employees on: when PPE (*i.e.,* protective equipment for the eyes, face, head, hands, and feet) is necessary; what PPE is necessary; how to properly don, doff, adjust, and wear the PPE; the limitations of the PPE; and the proper care, maintenance, useful life, and disposal of the PPE. Additionally, § 1910.134 requires employers to train employees on why respirators are necessary; how improper fit, use, or maintenance can compromise the effectiveness of respirators; the capabilities and limitations of respirators; how to use respirators effectively in emergency conditions; how to inspect, don, and doff respirators; how to use and check the seals of respirators; and how to recognize medical signs and symptoms that may limit or prevent the effective use of respirators.

The standards regulating PPE and respirator training apply to every operation in which an employer uses PPE and respirators. Therefore, the training requirements in substance-specific standards mandating training on such equipment duplicate the requirements for PPE and respirator training in §§ 1910.132 and 1910.134. OSHA believes that these revisions will reduce confusion regarding the training requirements, thereby improving employer compliance and worker protection.

(2) Lead (§ 1910.1025) (Trigger Levels in the Lead Standards (§§ 1910.1025 and 1926.62))

In the Lead standards for general industry and construction, at §§ 1910.25 and 1926.62, respectively, OSHA is proposing to amend the trigger levels at which employers must initiate specific actions to protect workers exposed to lead because the airborne concentrations at which these actions must occur vary slightly. In this regard, a number of provisions in the Lead standards trigger actions at airborne concentrations that are "above the AL," and "at or above the PEL." The terminology in the Lead standards for these airborne concentrations is inconsistent and can be confusing. For example, § 1910.1025(d)(6)(iii) currently states that "[t]he employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level[.]" OSHA is proposing to revise this provision to state that "[t]he employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level[.]" Similar issues arise with respect to the blood-lead levels that trigger medical-removal protection or return to work in the Lead standards. OSHA is proposing to revise these terminologies in the Lead standards to make these provisions internally consistent and consistent with each other.

Tables 1 and 2 below describe the existing and proposed revisions in the general industry and the construction industry standards (with the proposed revisions in bold font).

TABLE 1—§ 1910.1025 GENERAL INDUSTRY

Existing language	Proposed language
§ 1910.1025(d)(6)(iii)	
If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.	If the initial monitoring reveals that employee exposure is **at or** above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.
§ 1910.1025(j)(1)(i)	

TABLE 1—§ 1910.1025 GENERAL INDUSTRY—Continued

Existing language	Proposed language
The employer shall institute a medical surveillance program for all employees who are or may be exposed **above** the action level for more than 30 days per year.	The employer shall institute a medical surveillance program for all employees who are or may be exposed **at or** above the action level for more than 30 days per year.
§ 1910.1025(j)(2)(ii)	
Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i)(A), of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.	*Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level **is at or above** the numerical criterion for medical removal under paragraph (k)(1)(i)(A), of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.
§ 1910.1025(k)(1)(i)(B)	
The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 μg/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 μg/100 g of whole blood.	The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 μg/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level **below** 40 μg/100 g of whole blood.
§ 1910.1025(k)(1)(iii)(A)(1)	
For an employee removed due to a blood lead level at or above 60 μg/100 g, or due to an average blood lead level at or above 50 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 40 μg/100 g of whole blood.	For an employee removed due to a blood lead level at or above 60 μg/100 g, or due to an average blood lead level at or above 50 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 ug/100 g of whole blood.

TABLE 2—§ 1926.62 LEAD

Existing language	Proposed language
§ 1926.62(j)(2)(ii)	
Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.	*Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level **is at or above** the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.
§ 1926.62(j)(2)(iv)(B)	
The employer shall notify each employee whose blood lead level exceeds 40 μg/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.	The employer shall notify each employee whose blood lead level **is at or above** 40 μg/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.
§ 1926.62(k)(1)(iii)(A)(1)	
For an employee removed due to a blood lead level at or above 50 μg/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is at or **below** 40 μg/dl.	For an employee removed due to a blood lead level at or above 50 μg/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is **below** 40 μg/dl.

(3) Occupational Exposure to Hazardous Chemicals in Laboratories (§ 1910.1450)

OSHA is proposing to revise a statement in non-mandatory Appendix A of the standard that regulates occupational exposure to hazardous chemicals in laboratories (the lab standard) at § 1910.1450. Specifically, OSHA is proposing to revise the statement on ingestion. OSHA included the statement in Appendix A of the lab standard when it published the standard on January 31, 1990 [55 FR 3327–3335]. The purpose of the statement was to provide guidance to employers developing a chemical-hygiene plan. OSHA based the statement on *Prudent Practices for Handling Hazardous Chemicals in Laboratories,* a committee report by the National Research Council. The statement addressed by this proposal appears in Section E of Appendix A in § 1910.1450, entitled, *Basic Rules and General Procedures for Working with Chemicals.* In paragraph 1(a), *Accidents and spills,* the existing text recommends that, when an employee ingests a hazardous chemical, "[e]ncourage the victim to drink large amounts of water."

OSHA is proposing to revise this recommendation in response to a commenter from Rexall Sundown (ID 0141), who noted, "I have a strong concern for the blanket statement concerning ingestion. I realize that it may have been taken from Prudent Practices; however, a strong word of caution may need to be added." The commenter indicated the containers for some hazardous chemicals warn, "Do not give anything by mouth. Contact medical advice immediately." The commenter recommended that OSHA adopt the approach found in the *Cornell University Laboratory Safety Manual and Chemical Hygiene Plan,* where treatment depends on the type and amount of chemical involved. Based on these considerations and the suggestion

that drinking large amounts of water may do more harm than good, OSHA is revising the language to read, "This is the one route of entry for which treatment depends on the type and amount of chemical involved. Seek medical attention immediately." OSHA believes the language proposed would enhance employee protection by providing appropriate advice in situations in which an employee may ingest a hazardous chemical.

B. Proposed Revisions to the Standards for Shipyard Employment (29 CFR Part 1915)

1. Appendix A of Subpart B

OSHA is proposing to amend Appendix A ("Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres") to subpart B of 29 CFR 1915 by revising the sentence in example number 1 under the section titled, "Section 1915.11(b) Definition of 'Hot work,'" to read, "Abrasive blasting of the external hull for paint preparation does not necessitate pumping and cleaning the tanks of a vessel." The proposed revision adds the word "external" to the existing sentence to indicate that the information provided by the section applies only to work performed on the outside of a ship. OSHA believes the proposed revision will clarify the compliance obligation under these conditions.

In 1994, OSHA published the final rule regulating confined and enclosed spaces and other dangerous atmospheres in shipyard employment (59 FR 37816, July 25, 1994). In that rulemaking, OSHA defined "hot work" in 29 CFR 1915.11 as:

> [A]ny activity involving riveting, welding, burning, and the use of powder-actuated tools or similar fire-producing operations. Grinding, drilling, abrasive blasting, or similar spark-producing operations are also considered hot work except when such operations are isolated physically from any atmosphere containing more than 10 percent of the lower explosive limit of a flammable or combustible substance.

OSHA's purpose in developing Appendix A to subpart B was to assist employers in complying with the requirements of that subpart. The section of Appendix A that OSHA is proposing to revise provides several examples of situations that do not involve hot work, including the example of abrasive blasting on the hull for paint preparation. However, in the final rule, OSHA did not explain that this example only applies to work performed on the external hull, not inside the hull, of a ship. To correct this oversight, OSHA is proposing to add the word "external" to this example.

2. §§ 1915.112, 1915.113, and 1915.118

OSHA proposes to revise and update the slings provisions of § 1915.112 (Ropes, chains and slings), paragraph (a) of § 1915.113 (Shackles and hooks), and § 1915.118 (Tables). See previous section A.4 for a detailed discussion of these proposed revisions.

3. § 1915.154—Respiratory Protection

The revisions OSHA is proposing to Appendix C of the Respiratory Protection standard at § 1910.134, described in previous section A.2.b(2), also would affect shipyard employment through the Respiratory Protection standard at § 1915.154.

4. § 1915.1001—Asbestos

OSHA proposes to revise § 1915.1001, Asbestos, to require employers to institute a respiratory-protection program in accordance with § 1910.134. See previous section A.2.b(6) for a detailed discussion of these proposed revisions.

C. Proposed Revisions to the Standards for Marine Terminals (29 CFR Part 1917)

1. §§ 1917.2—Definitions

OSHA is proposing to add a definition for the term "ship's stores" in § 1917.2. Currently, five provisions in Title 29 of the Code of Federal Regulations use the term "ship's stores"; however, OSHA provides no definition of the term in this title. OSHA uses the term in the definition of "longshoring operation" in §§ 1910.16(c)(1) and 1918.2; in the definition of "vessel cargo handling gear" in § 1918.2; in the scope and application section of 29 CFR 1917 at § 1917.1(a); and in § 1917.50(j)(3) (exceptions to the gear-certification requirements).

After publishing the final rule for marine terminals on June 30, 2000 (65 FR 40935), OSHA received a number of requests asking the Agency to define the term "ship's stores" as used in § 1917.50(j)(3). In a directive published on May 23, 2006 (CPL 02–00–139), OSHA defined the term to mean materials that are on board a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew. The definition in the directive is similar to the U.S. Coast Guard definition at 46 CFR 147. OSHA believes that the definition used in the directive is appropriate, and, therefore, is proposing to revise the definitions section of § 1917.2 to include this definition.

2. § 1917.127—Sanitation

OSHA proposes to revise and update the sanitation provisions in paragraph (a)(1)(iii) of § 1917.127 by removing the word "warm" from the phrase "warm air blowers." See previous section A.3.b for a detailed discussion of this proposed revision.

D. Proposed Revisions to the Standards for Longshoring (29 CFR 1918)

1. § 1918.2—Definitions

OSHA proposes to add a definition in § 1918.2 for the term "ship's stores." See previous section C.1 for a detailed discussion of this proposed revision.

2. § 1918.95—Sanitation

OSHA proposes to revise and update the sanitation provisions in paragraph (a)(1)(iii) of § 1918.95 by removing the word "warm" from the phrase "warm air blowers." See previous section A.3.b for a detailed discussion of this proposed revision.

E. Proposed Revisions to the Standards for Gear Certification (29 CFR 1919)

1. §§ 1919.6, 1919.11, 1919.12, 1919.15, and 1919.18

OSHA is proposing to update §§ 1919.6(a)(1), 1919.11(d), 1919.12(f), 1919.15(a), and 1919.18(b) to require employers to inspect a vessel's cargo-handling gear as recommended by International Labor Organization (ILO) Convention 152. This revision would require employers to test and thoroughly examine gear before initial use; thoroughly examine it every 12 months thereafter; and retest and thoroughly examine the gear every five years. The proposed revision is consistent with the current ILO Convention 152. The existing standards, based on outdated ILO Convention 32, require testing and examination every four years. OSHA believes these proposed revisions represent the usual and customary practice of the maritime industry, and, therefore, will increase employee protection while not adding to employers' compliance burden.

The proposed revisions would make the 29 CFR 1919 standards consistent with the existing requirement of the Longshoring standard at § 1918.11(a). Section 1918.11(a) requires an employer using a vessel's cargo-handling gear to ensure that the vessel has a current and valid cargo-gear register and certificates that comply with the recommendations of ILO Convention 152 for testing and examination of cargo gear. Paragraph (b) of § 1918.11 specifies that OSHA will consider vessels holding a valid certificate of inspection from the U.S. Coast Guard (USCG), as well as public

vessels, to meet the requirements of paragraph (a) of § 1918.11. Paragraphs (c) and (d) of § 1918.11 specify the competencies that persons or organizations making entries and issuing the certificates required by paragraph (a) of this section must have, both with regard to U.S. vessels not holding a valid USCG Certificate of Inspection, and vessels under foreign registry.

In 1997, when OSHA updated the Marine Terminals and Longshoring standards (62 FR 40141, July 25, 1997), it updated § 1918.11 requiring inspections of vessels' cargo-handling gear as recommended by ILO Convention No. 152, which replaced ILO 32 (upon which OSHA's current rule is based). Accordingly, this revision requires employers to test and thoroughly examine gear before initial use; thoroughly examine it every 12 months thereafter; and retest and thoroughly examine the gear every five years. The original standards, similar to existing requirements in 29 CFR 1919, required retesting and thorough examination every four years. OSHA is proposing to update the inspection and testing requirements in §§ 1919.6(a)(1), 1919.11(d), 1919.12(f), 1919.15(a), and 1919.18(b) to be consistent with the inspection and testing requirements in existing 29 CFR 1917 (Marine Terminals) and 1918 (Longshoring).

F. Proposed Revisions to the Construction Standards (29 CFR 1926)

1. Subpart D

a. § 1926.51(a)(6)

OSHA proposes to revise § 1926.51, Sanitation, by updating the definition of the term "potable water." See previous section A.3.a for a detailed discussion of this proposed revision.

b. § 1926.51(f)(3)

OSHA proposes to revise and update the sanitation provisions in paragraph (f)(3)(iv) of § 1926.51 by removing the word "warm" from the term "warm air blowers." See previous section A.3.b for a detailed discussion of this proposed revision.

c. § 1926.60

OSHA is proposing to revise paragraph (o)(8) of the Methylenedianiline standard, which requires employers to comply with the requirements in § 1926.33 regarding the transfer of records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

d. § 1926.62

The following paragraphs describe several revisions OSHA is proposing to the Lead standard for construction at § 1926.62.

(1) OSHA is proposing to revise the trigger levels at which employers must initiate specific actions to protect workers exposed to lead. See previous section A.6.b for a detailed discussion of this proposed revision.

(2) OSHA proposes to remove paragraphs (n)(6)(ii) and (iii) of § 1926.62, which require employers to comply with the requirements in § 1926.33 regarding the transfer records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

2. Subpart H

OSHA proposes to revise and update the slings requirements at § 1926.251 (Rigging equipment for material handling). See previous section A.4 for a detailed discussion of this proposed revision.

3. Subpart Z

a. Asbestos (§ 1926.1101)

(1) OSHA is proposing to correct the references in paragraphs (n)(7) and (n)(8) of the Asbestos standard for construction to refer to § 1926.33 rather than § 1910.20, because § 1910.20 does not exist.

(2) Section 1926.33 requires compliance with § 1910.1020, from which OSHA is proposing to remove the requirement to transfer employee exposure and medical records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

(3) OSHA proposes to remove the requirement in existing (n)(8)(ii) specifying that employers must transfer employee medical and exposure records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

b. Cadmium (§ 1926.1127)

(1) OSHA is proposing to revoke the training-certification record requirement at paragraph (n)(4) of § 1926.1127. See previous section A.2.a for a detailed discussion of this proposed revision.

(2) OSHA is proposing to correct the reference in paragraph (n)(6) of the Cadmium standard for construction to refer to § 1926.33, rather than paragraph (h) of § 1926.33, because § 1926.33 has no paragraph (h).

(3) Section 1926.33 requires compliance with § 1910.1020, from which OSHA is proposing to remove the requirement to transfer employee exposure and medical records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

G. Proposed Revisions to the Agriculture Standards (29 CFR Part 1928)

1. Subpart I (General Environmental Controls)

OSHA proposes to revise § 1928.110(b) by updating the definition of the term "potable water." See section A.3.a for a detailed discussion of this proposed revision.

H. Miscellaneous Issues

OSHA asked in question #40 of the ANPRM whether any other standards needed revision consistent with the purpose of the SIP process (71 FR 76629). The American Society of Safety Engineers (ASSE; ID 0021) responded that the OSHA Permissible Exposure Limits for air contaminants need revision. However, such an extensive rulemaking is beyond the limited scope of the SIP process.

The 3M Company (3M; ID 0028) recommended that OSHA remove from § 1910.134(d)(3)(iv)(B) the reference to filters certified under 30 CFR part 11, and instead require that air-purifying respirators use filters certified for particulates by NIOSH under 42 CFR part 84. The 3M Company also recommended that OSHA remove separate provisions regulating filter selection from its substance-specific standards, and replace these provisions with a reference to § 1910.134(d)(3)(iv)(B). In response to 3M's first recommendation, OSHA may consider such a revision when it receives sufficient evidence that employers are no longer purchasing or using dust-mist and dust-fume-mist filters. Regarding 3M's second recommendation, OSHA removed many of these separate filter-selection provisions from its substance-specific standards in the recent final rulemaking for assigned protection factors (APFs) (see 71 FR 50122). OSHA believes that to propose additional revisions to these provisions is inappropriate because, as it explained in the final APF rulemaking, "[T]he Agency decided to retain former respirator selection provisions in the existing substance-specific standards that it found supplemented or supplanted the proposed APFs and MUCs [maximum use concentrations] * * *. OSHA did so because these provisions enhance the respirator protection afforded to employees." (*Id.* at 50177.)

3M also addressed the 1,3-Butadiene standard's provisions that limit the use

of organic-vapor cartridges and canisters to specific levels of butadiene. The § 1910.134 standard allows employers to make service-life calculations in developing replacement schedules for vapor cartridges and canisters. 3M presented calculations in its ANPRM comments that resulted in service-life durations ranging from 16.5 hours at a 5 parts per million (ppm) butadiene concentration, to 4.75 hours at 50 ppm butadiene. 3M stated that permitting service-life calculations for butadiene exposure concentrations would allow employers to use powered air-purifying respirators for some butadiene exposures, thereby eliminating the problems that occur with trailing air hoses associated with the use of supplied-air respirators. OSHA disagrees with this recommended revision because butadiene is a compound with a high vapor pressure and, as a result, droplets captured in the filter may vaporize and penetrate through the filter, and expose the employee to excess levels of butadiene.

The National Marine Manufacturers Association (NMMA) and the American Composites Manufacturers Association (ACMA) petitioned OSHA to revise its standards at 29 CFR 1910, subpart H (*see* §§ 1910.106 and 1910.107) by adopting the provisions of National Fire Protection Association (NFPA) 30, *Flammable and Combustible Liquids Code,* and NFPA 33, *Standard for Spray Application using Flammable and Combustible Materials,* which apply to the manufacturing of styrene cross-linked composites (*i.e.,* glass-fiber reinforced plastics). In response to the petition, OSHA sought comment through the ANPRM for SIP–III. In the ANPRM, the Agency noted that it lacked data from which to draw conclusions on the relative level of protection provided by the NFPA and OSHA standards. OSHA requested data and information on the level of employee protection provided by these standards using the following questions:

- Are the provisions in the 2003 edition of NFPA 30 as protective or more protective of employee's safety and health than the equivalent provisions in § 1910.106? Should OSHA revise § 1910.106 to be consistent with these provisions? Please submit specific available information or data supporting your comments.
- Are the provisions in the 2003 edition of NFPA 33 as protective or more protective of employee's safety and health than the equivalent provisions in § 1910.107? Should OSHA revise § 1910.107 to be consistent with these provisions? Please submit specific available information or data supporting your comments.

In response to these questions, OSHA received a number of comments (IDs 0017, 0018, 0020, 0021, 0025, 0122, and 0128) supporting the composites provisions in these NFPA standards. However, none of the commenters provided persuasive data or information regarding the protection afforded to employees by the NFPA standards.

In addition to the comments, OSHA received a document from the ACMA entitled, "Fire Hazard Analysis of Composite Resin Manufacturing Spray Application Areas" (ID 0139). This document describes a study that identified issues regarding electrical classification, sprinkler protection, ventilation, and the use of flammable liquids in clean-up operations. The study, based on preliminary research, was part of an ACMA-sponsored effort to analyze the hazards in this industry, and to conduct testing to compare the level of safety provided by the OSHA standards and the NFPA standards. However, this document, like the comments described previously, does not provide the Agency with sufficient information to support proposing a revision to the 29 CFR 1910, subpart H standards. Therefore, OSHA decided not to include any specific revisions to §§ 1910.106 or 1910.107 of subpart H in the SIP–III proposal. Rather, it will continue to seek additional information and data for use in determining the need for revisions. Accordingly, OSHA again seeks information that may help determine if NFPA 33 provides protection for employees equivalent to that provided in § 1910.107, and requests comments and supporting data on the previous questions.

In the ANPRM, OSHA expressed its position on the need for training, noting, "Training is an essential part of every employer's safety and health program for protecting employees from injury and illness" (71 FR 76629). OSHA asked for comment on four questions concerning training requirements, and noted that, in SIP–II, it revised the notification and timing requirements in several health standards to make them consistent with each other (67 FR 66493). OSHA explained that it made these revisions to reduce confusion and to facilitate compliance, without diminishing employee protection. In the ANPRM, OSHA asked the following questions:

- How could the Agency modify the training requirements in various OSHA safety and health standards to promote compliance with training requirements?
- How should training content and frequency of retraining be addressed to improve employees' safety and health? Please identify changes that could be made to improve the training process.
- Would making training requirements uniform among various standards facilitate employers' compliance with OSHA regulations?
- To what extent, if any, do other agencies' training requirements overlap with OSHA's?

OSHA received several comments in response to these four questions. With regard to retraining, the Building and Construction Trades Department of the AFL–CIO (BCTD; ID 0118) said:

> OSHA should specify the frequency of retraining. The retraining should not be based on subjective criteria such as "when needed" or "if worker shows lack of understanding." Too often criteria like [these[are ignored or retraining is only implemented after an accident. All safety and health retraining should be required on an annual basis.

The BCTD (ID 0118) also recommended that OSHA require employers to prepare a written certification record for all training requirements, noting that some OSHA standards require certification records and others do not. It further recommended that OSHA add a new training requirement to the construction industry standards, one that would mandate that all construction workers receive the 10-hour OSHA safety-and-health course for construction. Additional training revisions recommended by the BCTD are beyond the scope of the SIP–III rulemaking, but OSHA will consider them for further action. (For a discussion of OSHA proposals regarding training-certification-record requirements, see item 2.a ("Training certification records") under previous section A ("Subpart I").

The Associated General Contractors of America (ID 0120) also addressed the frequency of training, noting, "[T]he amount of training should match the severity of the hazard and the prevalence of the hazard to particular occupations." Duke Energy (ID 0018) agreed with standardizing the language of the health standards, and suggested that, rather than specifying detailed training requirements in its health standards, OSHA should revise these standards to allow employers to comply with performance-based requirements, such as the requirements in OSHA's Hazard Communication standard at 1910.1200.

Both the American Society of Safety Engineers (ASSE; ID 0021) and Northrop Grumman Newport News (ID 0027) argued against the "one-size-fits-all" approach. Northrop Grumman stated:

A toolbox meeting may be appropriate for some employers while formal classroom, computer-based training, or on-the-job training may be effective for other employers. We also note that different audiences within the same employer may learn best using different methods or frequencies. For instance, employees retain information better on tasks they perform frequently versus tasks they perform infrequently. For an infrequent task, "just in time" training or a job briefing on the day of the job may be the best method to ensure an employee understands how to perform the work safely versus "annual" training that may have been conducted 11 months before the employee performs the work. Furthermore, information technology, such as virtual reality and computer-based training, is opening up tremendous new opportunities to enhance training beyond the traditional means.

ASSE recommended that OSHA consider the ANSI Z490.1 consensus standard when addressing training requirements. OSHA believes that the Z490.1 standard is useful for employers in developing and providing a framework for training programs, but that standard prescribes measures beyond the scope of this rulemaking. For example, the standard prescribes detailed criteria for developing and evaluating training programs, including needs assessment, learning objectives, course content, and a written training program plan, as well as detailed records documenting the successful completion of training.

After reviewing the commenters' submissions, OSHA is not convinced currently that employees or employers would benefit from any revisions to the frequency or content of the training requirements contained in its existing substance-specific standards. Additionally, as part of a separate rulemaking on the Global Harmonization System (74 FR 50279, September 30, 2009), OSHA is addressing the training provisions in several of its substance-specific standards. Furthermore, as discussed earlier, OSHA is proposing revisions to the training-certification requirements in several standards.

IV. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

A. Overview

OSHA determined that the proposed standard is not an economically significant regulatory action under Executive Order (E.O.) 12866. E.O. 12866 requires regulatory agencies to conduct an economic analysis of rules that meet specific criteria. The most frequently used criterion under E.O. 12866 is that the rule will impose on the economy an annual cost in excess of $100 million. Neither the benefits nor the costs of this rule exceed $100 million. OSHA provided OMB's Office of Information and Regulatory Affairs with this assessment of the costs, benefits, and alternatives, as required by section 6(a)(3)(C) of E.O. 12866.

OSHA also determined that the proposal is not a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 *et seq.*) requires OSHA to determine whether the Agency's regulatory actions will have a significant impact on a substantial number of small entities. OSHA's conclusion, based on the analysis described in this section of the preamble, indicates that the proposed rule will not have significant impacts on a substantial number of small entities.

The proposal deletes and revises a number of provisions in existing OSHA standards. OSHA believes that the proposal is technologically feasible because it reduces or removes current requirements on employers.

The Agency considered both regulatory and non-regulatory alternatives to the proposed revisions. Non-regulatory alternatives are not an appropriate remedy to effect these revisions because the proposed provisions reduce requirements or provide flexibility to employers by revising existing standards. As discussed in the previous Summary and Explanation section, the Agency considered alternatives for amending several provisions. In most instances, the Agency chose to revise outdated provisions to improve clarity, as well as consistency, with standards more recently promulgated by the Agency. In some instances, the proposal provides more flexibility in the way information is communicated to employees or the Agency. The purpose of the proposed provisions was to reduce burden on employers, or provide employers with compliance flexibility, while maintaining the level of protection for employees.

B. Costs and Cost Savings

1. Removing Requirements To Transfer Records to NIOSH

The Agency is deleting provisions from § 1910.1020(h)(3) and (h)(4) of its standard regulating access to employee medical and exposure records that will end employers' responsibility to send exposure and medical records to NIOSH. Under existing § 1910.1020(h)(3), if an employer ceases business operations without a successor, the employer must send employee exposure and medical records to NIOSH if required to do so by a substance-specific standard. For records associated with other substances, the employer must notify the Director of NIOSH in writing three months before disposing of them. Under § 1910.1020(h)(4), an employer who regularly disposes of employee records more than 30 years old must notify the Director of NIOSH, at least three months prior to disposal, of the records planned for disposal in the coming year.

Deleting these requirements from OSHA standards provides several sources of savings to NIOSH. In a comment to the rulemaking record (ID 135), NIOSH reported that it catalogued about 170,000 employee medical and exposure records during the past 30 years. NIOSH noted that the records were of no use for research purposes, and estimated that removing the duty to collect the records would result in a savings of $2 million for long-term storage of the catalogued records. In this regard, NIOSH stated that long-term storage costs are currently $0.30/record/year, which "represents a total lifetime storage cost of more than $2,000,000." In addition, NIOSH periodically receives records from employers who are terminating business operations. These employers often fail to contact NIOSH in advance regarding the appropriateness of the records they are sending to NIOSH. NIOSH protocol requires it to keep records, even inappropriate records, until it reviews the records; NIOSH keeps unreviewed records in temporary storage. Removal of the records-transfer requirement, as proposed, would relieve NIOSH of receiving and temporarily storing these records.

The proposal also would save NIOSH the resources it expends on processing received data on an on-going basis. NIOSH noted that the cost of processing records ranges from $1.35 to $4.00 per record, but the agency did not provide comment on how many records it typically processes annually. In its analyses of the paperwork burden associated with this records-transfer requirement, OSHA estimated that employers expend 3,611 hours at a cost of $157,459 annually (see section VI below, "OMB Review Under the Paperwork Reduction Act of 1995"). This savings also constitutes a benefit of the proposed rule.

2. Removing Training-Certification and Other Requirements

A second source of cost savings from the proposed rule is removing the certification requirements for employee training under the PPE and Cadmium standards. The Agency estimates that this action will save employers, across

a wide range of industries, about 1.86 million hours annually, with an estimated value of about $42.9 million (*see* OSHA's estimate of paperwork costs below in section VI).

The proposal's provisions on slings require employers to mark equipment (*i.e.,* slings and shackles) with safe working loads (SWL) and other rigging information. OSHA's current standards require this information for three of the five types of slings, and the Agency believes that it is industry practice for manufacturers to permanently mark all slings with this information. Thus, the Agency preliminarily concludes that these provisions will not impose any new cost burden on affected employers. OSHA believes that having the SWL information marked on slings instead of located in tables would provide employers with readily available and up-to-date sling information, thereby reducing employer cost. The Agency seeks comment on any economic effects that may result from replacing the tables with marks.

The proposal also relaxes the frequency of rigging inspections required under 29 CFR 1919 from every four years to every five years. The Agency seeks comment on whether this revision will result in any cost savings for employers.

C. Summary

OSHA preliminarily concludes that the provisions of the proposal do not impose any new costs on employers. Since the proposal does not impose costs of any significance on any employer, the Agency concludes that the proposed standard is economically feasible. The table below provides a summary of the cost savings OSHA estimates will result from this proposed rulemaking.

Item	Cost savings
NIOSH record storage (one-time savings)	$2.00 million.
Removing requirements that employers transfer records to NIOSH (annual savings)	$0.16 million.
Removing requirements for written certification of training (annual savings)	$42.90 million.
Total	$45.06 million.

V. Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the regulatory requirements of the proposal to determine whether these proposed requirements would have a significant economic impact on a substantial number of small entities. Since no employer of any size will have new costs, the Agency preliminarily concludes that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VI. OMB Review Under the Paperwork Reduction Act of 1995

A. Overview

The Standards Improvement Project-Phase III (SIP–III) proposal would revoke existing collection-of-information (paperwork) requirements contained in 41 existing Information-Collection Requests (ICRs) currently approved 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. PRA–95 defines "collection of information" as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format" (44 U.S.C. 3502(3)(A)). Under PRA–95, a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB, and displays a currently valid OMB control number.

B. Solicitation of Comments

OSHA prepared and submitted one ICR for the SIP–III proposal to the OMB for review in accordance with 44 U.S.C. 3507(d). The Agency solicits comments on the proposed new and modified collection-of-information requirements and the estimated burden hours associated with these requirements, including comments on the following items:

- Whether the proposed collection-of-information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information.

C. Proposed Revisions to Information-Collection Requirements

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about this ICR, including the reductions in reporting burden associated with the proposed revisions to information-collection requirements.

1. Title: Standards Improvement Project-Phase III (SIP–III)

2. Description of revisions to the ICRs: The proposal would remove the requirements for employers to transfer employee exposure-monitoring and medical records to the National Institute for Occupational Safety and Health (NIOSH) under the standard regulating access to employee exposure and medical records at § 1910.1020, as well as an additional 18 standards in the general, construction, and shipyard-employment industries. (*See* the earlier detailed discussion of this proposed revision under section IV.B.1.) In addition, the Agency is proposing to remove, from four of its standards, training-certification records that require employers to develop and maintain written records certifying that they complied with training requirements. In addition to the four training-certification records proposed for removal, OSHA is considering removing the training-certification requirements from 12 other general industry, construction, and shipyard-employment standards. (See the detailed discussion of this proposed revision located in previous section III.A.2.)

3. Changes in reporting burden and responses resulting from removing requirements to transfer records to NIOSH: The following table describes the estimated changes in burden hours and cost resulting from removing provisions from OSHA standards (identified by the current OMB control numbers) requiring employers to transfer employee exposure and medical records to NIOSH.

Standard and Provision	OMB Control No.	Change (burden hours)	Change (cost)
Commercial Diving Operations—29 CFR 1910.440(b)(5)(ii)	1218–0069	−301	−$5,764
Asbestos—29 CFR 1910.1001(m)(6)(ii)	1218–0133	−1	−$20
Asbestos—29 CFR 1915.1001(n)(8)(ii)	1218–0195	−1	−$22
Asbestos—29 CFR 1926.1101(n)(8)(ii)	1218–0134	−4	−$101
13 Carcinogens (4–Nitrobiphenyl, etc.)—29 CFR 1910.1003(g)(2)(i) and (ii)	1218–0085	−6	−$139
Vinyl Chloride—29 CFR 1910.1017 (m)(3)	1218–0010	−1	−$20
Inorganic Arsenic—29 CFR 1910.1018 (q)(4)(ii) and (iii)	1218–0104	−1	−$23
Access to Employee Exposure and Medical Records—29 CFR 1910.1020(h)(3)(i),(ii) and (h)(4)	1218–0065	−2,939	−$145,216
Lead—29 CFR 1910.1025(n)(5)(ii) and (iii)	1218–0092	−2	−$42
Lead—29 CFR 1926.62(n)(6)(ii) and (iii)	1218–0189	−1	−$22
Cadmium—29 CFR 1910.27(n)(6)	1218–0185	0	0
Cadmium—29 CFR 1926.1127(n)(6)	1218–0186	0	0
Benzene—29 CFR 1910.1028(k)(4)(ii)	1218–0129	−1	−$23
Coke Oven Emissions—29 CFR 1910.1029(m)(4)(ii) and (iii)	1218–0128	−3	−$60
Bloodborne Pathogens—29 CFR 1910.1030(h)(4)(ii)	1218–0180	0	0
Cotton Dust—29 CFR 1910.1043(k)(4)(ii) and (iii)	1218–0061	−3	−$69
1,2 Dibromo-3-Chloropropane—29 CFR 1910.1044(p)(4)(ii) and (iii)	1218–0101	0	0
Acrylonitrile—29 CFR 1910.1045(q)(5)(ii) and (iii)	1218–0126	−3	−$74
Ethylene Oxide—29 CFR 1910.1047(k)(5)(ii)	1218–0108	−3	−$55
Formaldehyde—29 CFR 1910.1048(o)(6)(ii) and (iii)	1218–0145	−2	−$41
Methylenedianiline—29 CFR 1910.1050(n)(7)(ii)	1218–0184	−1	−$18
Methylenedianiline—29 CFR 1926.60(n)(7)(ii)	1218–0183	−1	−$21
1,3-Butadiene—29 CFR 1910.1051(m)(6)(i)	1218–0170	−3	−$65
Methlyene Chloride—29 CFR 1910.1052(m)(5)	1218–0179	−1	−$21
Occupational Exposure to Hazardous Chemicals in Laboratories—29 CFR 1910.1450(j)(2)	1218–0131	−333	−$5,644
Totals		−3,611	−$157,460

The following table describes the estimated changes in burden hours and cost resulting from removing provisions of the four OSHA standards that specify that employers must develop and maintain written records certifying their compliance with training requirements.

Standard and Provision	OMB Control No.	Change (burden hours)	Change (cost)
Personal Protective Equipment—29 CFR 1910.132(f)(4)	1218–0205	−1,855,180	−$42,743,347
Cadmium—29 CFR 1910.1027(n)(4)	1218–0185	−1,226	−$26,371
Personal Protective Equipment (PPE)—29 CFR 1915.152(e)(4)	1218–0215	−2,776	−$48,664
Cadmium—29 CFR 1926.1127(n)(4)	1218–0186	−2,100	−$43,218
Totals		−1,861,282	−$42,861,600

The following table describes the estimated changes in burden hours and cost to the training-certification provisions that OSHA is considering removing from 12 of its standards; these training-certification provisions specify that employers must develop and maintain written records certifying their compliance with training requirements.

Standard and Provision	OMB Control No.	Change (burden hours)	Change (cost)
Powered Platforms for Building Maintenance—29 CFR 1910.66(i)(1)(v)	1218–0121	−469	−$11,247
Process Safety Management of Highly Hazardous Chemicals (PSM)—29 CFR 1910.119(g)(3)	1218–0200	−30,767	−$627,954
Hazardous Waste Operations and Emergency Response (HAZWOPER)—29 CFR 1910.120(e)(6), (p)(7)(i), (q)(6)(ii)-(v)	1218–0202	−3,352	−$113,231
Permit-Required Confined Spaces— § 1910.146(g)(4)	1218–0203	−39,185	−$805,251
The Control of Hazardous Energy (Lockout/Tagout)—29 CFR 1910.147(c)(7)(iv)	1218–0150	−180,768	−$3,947,973
Powered Industrial Trucks—29 CFR 1910.178(l)(1)-(3), (l)(6)	1218–0242	−29,785	−$638,591
Logging Operations—29 CFR 1910.266(i)(10)(i)-(ii)	1218–0198	−3,329	−$56,105
Telecommunications—29 CFR 1910.268(c)	1218–0225	−1,087	−$38,958
Electrical Power Generation, Transmission, and Distribution—29 CFR 1910.269(a)(2)(vii)	1218–0190	−4,554	−$65,851
Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment—29 CFR 1915.12(d)(5)(i) and (ii)	1218–0011	−1,601	−$35,996
Fire Protection in Shipyard Employment—29 CFR 1915.508(f)	1218–0248	−625	−$22,408
Training Requirements for Fall Protection—29 CFR 1926.503(b)	1218–0197	−481,885	−$18,759,783
Totals		−777,407	−$25,123,348

4. Number of respondents: 20,559,996.

5. Frequency of responses: On occasion.

6. Number of responses: 80,383,596.

7. Average time per response: Three minutes for a secretary to develop and maintain certification records to one hour for employers to send records to NIOSH.

8. Estimated total burden hours (reduction): −2,642,300 hours.

9. Estimated cost (capital—operation and maintenance): OSHA estimates that a capital-cost decrease of $2,929/year will result from the proposed revisions to the record-transfer provisions because employers would no longer have to mail worker exposure and medical records to NIOSH.

D. Submitting Comments

OSHA requests members of the public to comment on the paperwork requirements in this proposal by submitting their written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attn: OSHA Desk Officer (RIN–1218–AC19). The Agency encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket, along with their comments on other parts of the proposed rule. Commenters may submit their comments by using the Federal eRulemaking portal at *http://www.regulations.gov*. OSHA posts comments and submissions without change; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth. Information on using the h*ttp://regulations.gov* Web site to submit comments, and to access the docket, is available at the Web site's "User Tips" link. For instructions on submitting comments to the rulemaking docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES.**

E. Docket and Inquiries

To access the docket to read or download comments and other materials related to these paperwork determinations, including the complete Information Collection Request (ICR) (containing the Supporting Statement describing the paperwork determinations in detail), use the procedures described under the section of this notice titled **ADDRESSES**. Obtain an electronic copy of the complete ICR by visiting the Web site at *http://www.reginfo.gov/public/do/PRAMain,* scroll under "Currently Under Review" to "Department of Labor (DOL)" to view all of the DOL's ICRs, including those ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Ms. Jamaa N. Hill, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

VII. Federalism

OSHA reviewed this proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of State law only with the expressed consent of Congress. Agencies must limit any such preemption to the extent possible.

Under Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act; U.S.C. 651 *et seq.*), Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; States that obtain Federal approval for such a plan are referred to as "State-Plan States." (29 U.S.C. 667.) Occupational safety and health standards developed by State-Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce their own requirements for occupational safety and health standards.

While OSHA drafted this proposed rule to protect employees in every State, Section 18(c)(2) of the OSH Act permits State-Plan States and Territories to develop and enforce their own standards, provided the requirements in these standards are at least as safe and healthful as the requirements specified in this proposed rule.

In summary, this proposed rule complies with Executive Order 13132. In States without OSHA-approved State Plans, any standard developed from this proposed rule would limit State policy options in the same manner as every standard promulgated by OSHA. In States with OSHA-approved State Plans, this rulemaking would not significantly limit State policy options.

VIII. State Plans

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, the 27 States and U.S. Territories with their own OSHA-approved occupational safety and health plans (State-Plan States) must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary (*e.g.,* because an existing State standard covering this area is already "at least as effective" as the new Federal standard or amendment. (29 CFR 1953.5(a).) The State standard must be at least as effective as the final Federal rule, must be applicable to both the private and public (State and local government employees) sectors, and the State must complete the standard within six months after the publication date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than the existing standard, State-Plan States are not required to amend their standards, although OSHA may encourage them to do so.

OSHA determined that the State-Plan States must adopt provisions comparable to the provisions in this proposed rule within six months after the effective date of the rule. OSHA believes that the provisions of this proposed rule provide employers in State-Plan States and Territories with new and critical information and methods necessary to protect their employees from the hazards found in and around workplaces. The 27 States and territories with OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only. Until a State-Plan State or Territory promulgates its own comparable provisions based on the final rule developed from this proposed rule, Federal OSHA will provide the State or Territory with interim enforcement assistance, as appropriate.

IX. Unfunded Mandates Reform Act of 1995

OSHA reviewed this proposed rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA;

2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). As discussed in section IV ("Preliminary Economic Analysis and Regulatory Flexibility Act Certification") of this notice, the Agency determined that this proposed rule will not impose additional costs on any private- or public-sector entity. Accordingly, this proposed rule requires no additional expenditures by either public or private employers.

As noted under section VIII ("State Plans") of this notice, the Agency's standards do not apply to State and local governments except in States that elect voluntarily to adopt a State Plan approved by the Agency. Consequently, this proposed rule does not meet the definition of a "Federal intergovernmental mandate" (see Section 421(5) of the UMRA (2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, the Agency certifies that this proposed rule does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

X. Review by the Advisory Committee for Construction Safety and Health

The proposed provisions would improve OSHA's standards, including construction standards, by clarifying, updating, or removing standards that are confusing, outdated, duplicative, or inconsistent with other OSHA requirements. OSHA does not expect these proposed revisions to reduce worker protection or increase employer burden.

OSHA's regulation governing the Advisory Committee on Construction Safety and Health (ACCSH) at 29 CFR 1912.3 requires OSHA to consult with the ACCSH whenever the Agency proposes a rulemaking that involves the occupational safety and health of construction employees. Accordingly, in early November, 2009, OSHA distributed to the ACCSH members for their review, before their regular meeting, a copy of the proposed revisions that applied to construction, as well as a brief summary and explanation of these revisions. At the regular meeting on December 10, 2009, OSHA staff made a presentation to the ACCSH members that summarized the material provided to them earlier, and then responded to their questions. The ACCSH subsequently recommended that OSHA publish the proposal.

In addition to two general recommendations regarding respiratory-protection requirements for the 13 Carcinogens standard (see previous discussion in section A.2.b.(4)) and the retention of medical records, ACCSH recommended that OSHA revise the language in § 1926.95(a) to include the requirement in § 1910.132(d)(1) that employers must "select * * * the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment."

The ANPRM addressed revising the construction standards to include hazard-assessment and-certification requirements. However, OSHA decided that the personal-protective equipment provisions of the construction standards needed substantially more revision than this rulemaking could provide. For example, the PPE requirements in the construction standards for eyes, face, head, and extremities refer to consensus standards that are over 30 years old. These revisions would be extensive and complex, and would require a detailed analysis of risk, costs, and benefits. Therefore, OSHA will defer these revisions, including any revisions requiring employers to select the "types of PPE that will protect the affected employee from the hazards identified in the hazard assessment," to a future rulemaking.

XI. Public Participation

A. Submission of Comments and Access to the Docket

OSHA invites comments on the proposed revisions described, and the specific issues raised, in this notice. These comments should include supporting information and data. OSHA will carefully review and evaluate these comments, information, and data, as well as any other information in the rulemaking record, to determine how to proceed.

When submitting comments, parties must follow the procedures specified in the previous sections titled **DATES** and **ADDRESSES**. The comments must provide the name of the commenter and docket number. The comments also should identify clearly the provision of the proposal each comment is addressing, the position taken with respect to the proposed provision or issue, and the basis for that position. Comments, along with supporting data and references, submitted on or before the end of the specified comment period will become part of the proceedings record, and will be available for public inspection and copying at *http://www.regulations.gov.*

B. Requests for an Informal Public Hearing

Under section 6(b)(3) of the Occupational Safety and Health Act of 1970 and 29 CFR 1911.11, members of the public may request an informal public hearing by following the instructions under the section of this **Federal Register** notice titled **ADDRESSES**. Hearing requests must include the name and address of the party requesting the hearing, and submitted (*e.g.,* postmarked, transmitted, sent) on or before September 30, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

XII. List of Subjects

29 CFR Part 1910

Abrasive blasting, Carcinogens, Commercial diving, Egress, Hazard assessment, Hazardous substances, Medical records, Occupational safety and health, Personal protective equipment, Sanitation, Slings, Training, Training certification records, and Respiratory protection.

29 CFR Parts 1915, 1917, 1918, and 1919

Confined spaces, Dangerous atmospheres, Gear certification, Hazard assessment, Hazardous substances, Hot work, Occupational safety and health, Personal protective equipment, Sanitation, Shackles, Slings.

29 CFR Part 1926

Construction, Hazardous substances, Medical records, Occupational safety and health, Potable water, Shackles, Slings.

29 CFR Part 1928

Agriculture, Sanitation, Potable water.

XIII. 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, authorized the preparation of this proposed rule. OSHA is issuing this proposed rule pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on June 17, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

XIV. Proposed Amendments to Standards

For the reasons discussed in the preamble, the Occupational Safety and Health Administration proposes to amend 29 CFR parts 1910, 1915, 1917, 1918, 1919, 1926, and 1928 as set forth below:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General [Amended]

1. The authority citation for subpart A continues to read as follows:

Authority: Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), and 5–2007 (72 FR 31159), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

2. Amend § 1910.6 as follows:

a. Redesignate existing paragraphs (q)(25) through (q)(33) as paragraphs (q)(26) through (q)(34).

b. Add new paragraph (q)(25) and

c. Add a new paragraph (x).

The additions read as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(q) * * *

(25) NFPA 101–2009, Life Safety Code, IBR approved for § 1910.35. Copies of NFPA 101–2009 are available for purchase from the: National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471; telephone: 1–800–344–35557; e-mail: *custserv@nfpa.org.*

* * * * *

(x) The following material is available for purchase from the: International Code Council, Chicago District Office, 4051 W. Flossmoor Rd., Country Club Hills, IL 60478; telephone: 708–799–2300, x3–3801; facsimile: 001–708–799–4981; e-mail: *order@iccsafe.org.*

(1) IFC–2009, International Fire Code, IBR approved for § 1910.35.

(2) [Reserved]

Subpart E—Means of Egress [Amended]

3. Revise the authority citation for subpart E to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

4. Revise the title of subpart E from "Means of Egress" to "Exit Routes and Emergency Planning."

5. In § 1910.33, revise the title listed for § 1910.35 in the undesignated center heading, from "*Compliance with NFPA 101, Life Safety Code,*" to "*Compliance with Alternate Exit Route Codes.*"

6. Revise the definition of the term "Occupant load" in paragraph (c) of § 1910.34 to read as follows:

§ 1910.34 Coverage and definitions.

* * * * *

(c) * * *

* * * * *

Occupant load means the total number of persons that may occupy a workplace or portion of a workplace at any one time. The occupant load of a workplace is calculated by dividing the gross floor area of the workplace or portion of the workplace by the occupant load factor for that particular type of workplace occupancy. Information regarding the "Occupant load" is located in Chapter 7 ("Means of Egress") of NFPA 101–2009, Life Safety Code, and in Chapter 10 ("Means of Egress") of IFC–2009, International Fire Code.

* * * * *

7. In § 1910.35, revise the heading of the section and revise the introductory text to read as follows:

§ 1910.35 Compliance with alternate exit-route codes.

OSHA will deem an employer demonstrating compliance with the exit-route provisions of Chapter 7 ("Means of Egress") of NFPA 101, Life Safety Code, 2009 edition, or the exit-route provisions of Chapter 10 ("Means of Egress") of the International Fire Code, 2009 edition, to be in compliance with the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37.

* * * * *

8. In § 1910.36, revise the notes to paragraphs §§ 1910.36(b) and 1910.36(f) to read as follows:

§ 1910.36 Design and construction requirements for exit routes.

* * * * *

(b) * * *

(3) * * *

Note to paragraph § 1910.36(b) of this section: For assistance in determining the number of exit routes necessary for your workplace, consult Chapter 7 ("Means of Egress") of NFPA 101–2009, Life Safety Code, or Chapter 10 ("Means of Egress") of IFC–2009, International Fire Code.

* * * * *

(f) * * *

(2) * * *

Note to paragraph § 1910.36(f) of this section: Information regarding the "Occupant load" is located in Chapter 7 ("Means of Egress") of NFPA 101–2009, Life Safety Code, and in Chapter 10 ("Means of Egress") of IFC–2009, International Fire Code.

* * * * *

Subpart I—Personal Protective Equipment [Amended]

9. The authority citation for subpart I continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

10. Remove paragraph (f)(4) from § 1910.132.

11. In § 1910.134, revise paragraphs (i)(4)(i), (i)(9), and (o), and question 2a in Part A, Section 2 (Mandatory) of Appendix C, to read as follows:

§ 1910.134 Respiratory protection.

* * * * *

(i) * * *

(4) * * *

(i) Cylinders are tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR part 180);

* * * * *

(9) The employer shall use only the respirator manufacturer's NIOSH-approved breathing gas containers, marked and maintained in accordance with the Quality Assurance provisions of the NIOSH approval for the SCBA as issued in accordance with the NIOSH respirator-certification standard at 42 CFR part 84.

* * * * *

(o) Appendices. Compliance with Appendix A, Appendix B–1, Appendix B–2, Appendix C, and Appendix D to this section are mandatory.

* * * * *

Appendix C to § 1910.134: * * *

* * * * *

Part A. Section 2. * * *

* * * * *

1. * * *

2. * * *

a. Seizures: Yes/No

* * * * *

Subpart J—General Environmental Controls [Amended]

12. The authority citation for subpart J continues to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

13. Amend paragraph (a)(2) by revising the definition of "Potable water" and revise paragraph (d)(2)(iv) of § 1910.141 to read as follow:

§ 1910.141 Sanitation.

* * * * *

(a) * * *

(2) * * *

* * * * *

Potable water means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR part 141).

* * * * *

(d) * * *

(2) * * *

(iv) Individual hand towels or sections thereof, of cloth or paper, air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided.

* * * * *

Subpart N—Materials Handling and Storage [Amended]

14. Revise the authority citation for subpart N to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Sections 1910.176, 1910.177, 1910.178, 1910.179, 1910.180, 1910.181, and 1910.184 also issued under 29 CFR part 1911.

15. Amend § 1910.184 as follows:

a. Add new paragraphs (c)(13) and (c)(14).

b. Revise paragraphs (e)(6), (e)(8), (f)(1), and (h)(1).

c. Remove and reserve paragraphs (e)(5), (g)(6), and (i)(5).

d. Remove Tables N–184–1 and N–184–3 through N–184–22.

e. Redesignate Table N–184–2 as N–184–1.

The addition and revisions read as follows:

§ 1910.184 Slings.

* * * * *

(c) * * *

(13) Employers must not load a sling in excess of its recommended safe working load as prescribed by the sling manufacturer on the identification markings permanently affixed to the sling.

(14) Employers must not use slings without affixed and legible identification markings.

* * * * *

(e) *Alloy steel-chain slings*— * * *

* * * * *

(5) [Removed and Reserved]

(6) *Safe operating temperatures.* Employers must permanently remove an alloy steel-chain slings from service if it is heated above 1000 degrees F. When exposed to service temperatures in excess of 600 degrees F, employers must reduce the maximum working-load limits permitted by the chain manufacturer in accordance with the chain or sling manufacturer's recommendations.

* * * * *

(8) Effect of wear. If the chain size at any point of the link is less than that stated in Table N–184–1, the employer must remove the chain from service.

* * * * *

(f) *Wire-rope slings*—(1) *Sling use.* Employers must use only wire-rope slings that have permanently affixed and legible identification markings as prescribed by the manufacturer, and that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one.

* * * * *

(g) * * *

* * * * *

(6) [Removed and Reserved]

* * * * *

(h) *Natural and synthetic fiber-rope slings*—(1) *Sling use.* Employers must use natural and synthetic fiber-rope slings that have permanently affixed and legible identification markings stating the rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, type of fiber material, and the number of legs if more than one.

* * * * *

(i) * * *

* * * * *

(5) [Removed and Reserved]

* * * * *

Subpart T—Commercial Diving Operations [Amended]

16. Revise the authority citation for subpart T to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 107, Contract and Work Hours Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable, and 29 CFR part 1911.

§ 1910.440 [Amended]

17. Remove and reserve paragraphs (b)(3)(i), (b)(4), and (b)(5) of § 1910.440.

Subpart Z—Toxic and Hazardous Substances [Amended]

18. Revise the authority citation for subpart Z to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable, and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3, but not under 29 CFR part 1911, except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Pub. L. 106–430, 114 Stat. 1901.

19. Amend § 1910.1001 by removing paragraph (m)(6)(ii), and redesignating paragraph (m)(6)(i) as (m)(6).

20. Amend § 1910.1003 as follows:

a. Revise paragraph (c)(4)(iv).

b. Remove paragraph (g)(2)(i), and redesignate paragraphs (g)(2)(ii) and (g)(2)(iii) as (g)(2)(i) and (g)(2)(ii).

The revision reads as follows:

§ 1910.1003 13 Carcinogens (4-nitrobiphenyl, etc.).

* * * * *

(c) * * *

(4) * * *

(iv) Employers must provide each employee engaged in handling operations involving the carcinogens 4-Nitrobiphenyl, alpha-Naphthylamine, 3,3′-Dichlorobenzidine (and its salts), beta-Naphthylamine, Benzidine, 4-Aminodiphenyl, 2-Acetylaminofluorene, 4-Dimethylaminoazo-benzene, and N-Nitrosodimethylamine, addressed by this section, with, and ensure that each of these employees wears and uses, a NIOSH-certified air-purifying, half-mask respirator with particulate filters. Employers also must provide each employee engaged in handling operations involving the carcinogens methyl chloromethyl ether, bis-Chloromethyl ether, Ethyleneimine, and beta-Propiolactone, addressed by this section, with, and ensure that each of these employees wears and uses, a full-facepiece, supplied-air respirator operated in the continuous-flow or pressure-demand mode. Employers may substitute a respirator affording employees higher levels of protection than these respirators.

* * * * *

§ 1910.1017 [Amended]

21. Remove paragraph (m)(3) from § 1910.1017.

§ 1910.1018 [Amended]

22. Amend § 1910.1018 by removing paragraphs (q)(4)(ii) and (q)(4)(iii), and redesignating paragraph (q)(4)(iv) as (q)(4)(ii).

§ 1910.1020 [Amended]

23. Remove paragraphs (h)(3) and (h)(4) from § 1910.1020.

24. Amend § 1910.1025 as follows:

a. Revise paragraphs (d)(6)(iii), (j)(1)(i), (j)(2)(ii), (j)(2)(iv), (k)(1)(i)(B), and (k)(1)(iii)(A)(*1*).

b. Remove paragraphs (n)(5)(ii) and (n)(5)(iii), and redesignate paragraph (n)(5)(iv) as (n)(5)(ii).

The revisions read as follows:

§ 1910.1025 Lead.

* * * * *

(d) * * *

(iii) If the initial monitoring reveals that employee exposure is at or above the permissible exposure limit, the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level, at which time the employer shall repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.

* * * * *

(j) * * *

(1) * * *

(i) The employer shall institute a medical surveillance program for all employees who are or may be exposed at or above the action level for more than 30 days per year.

* * * * *

(2) * * *

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i)(A), of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

* * * * *

(iv) *Employee notification.* Within five working days after the receipt of biological monitoring results, the employer shall notify in writing each employee whose blood lead level is at or above 40 ug/100 g: * * *

* * * * *

(k) * * *

(1) * * *

(i) * * *

(B) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 ug/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level below 40 ug/100 g of whole blood.

(ii) * * *

(A) * * *

(*1*) For an employee removed due to a blood lead level at or above 60 ug/100 g, or due to an average blood lead level at or above 50 ug/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 ug/100 g of whole blood;

* * * * *

25. Amend § 1910.1027 by removing paragraph (n)(4), redesignating paragraphs (n)(5) and (n)(6) as paragraphs (n)(4) and (n)(5), and revising new paragraph (n)(4)(i) to read as follows:

§ 1910.1027 Cadmium.

* * * * *

(n) * * *

(4) * * *

(i) Except as otherwise provided for in this section, access to all records required to be maintained by paragraphs (n)(1) through (4) of this section shall be in accordance with the provisions of 29 CFR 1910.1020.

* * * * *

26. Revise paragraph (k)(4) of § 1910.1028 to read as follows:

§ 1910.1028 Benzene.

* * * * *

(k) * * *

(4) *Transfer of records.* The employer shall comply with the requirements involving transfer of records as set forth in 29 CFR 1910.1020(h).

* * * * *

§ 1910.1029 [Amended]

27. Amend § 1910.1029 by removing paragraphs (m)(4)(ii) and (m)(4)(iii), and redesignating paragraph (m)(4)(iv) as (m)(4)(ii).

28. Amend § 1910.1030 as follows:

a. Amend paragraph (b) by revising the definition of "*Handwashing facilities*"*; and*

b. Remove paragraph (h)(4)(ii) and redesignate paragraph (h)(4)(i) as (h)(4).

The revision reads as follows:

§ 1910.1030 Bloodborne pathogens.

* * * * *

(b) * * *

* * * * *

Handwashing facilities means a facility providing an adequate supply of running potable water, soap, and single-use towels or air-drying machines.

* * * * *

§ 1910.1043 [Amended]

29. Amend § 1910.1043 by removing paragraphs (k)(4)(ii) and (k)(4)(iii), and redesignating paragraph (k)(4)(iv) as (k)(4)(ii).

§ 1910.1044 [Amended]

30. Amend § 1910.1044 by removing paragraphs (p)(4)(ii) and (p)(4)(iii), and redesignating paragraph (p)(4)(iv) as (p)(4)(ii).

§ 1910.1045 [Amended]

31. Amend § 1910.1045 by removing paragraphs (q)(5)(ii) and (q)(5)(iii), and redesignating paragraph (q)(5)(iv) as (q)(5)(ii).

§ 1910.1047 [Amended]

32. Amend § 1910.1047 by removing paragraph (k)(5)(ii), and redesignating paragraph (k)(5)(i) as (k)(5).

§ 1910.1050 [Amended]

33. Amend § 1910.1050 by removing paragraph (n)(7)(ii), and redesignating paragraph (n)(7)(i) as paragraph (n)(7).

34. Amend § 1910.1051 as follows:

a. Remove and reserve paragraph (m)(3).

b. Revise paragraph (m)(6).

The revisions read as follows:

§ 1910.1051 1,3-Butadiene.

* * * * *

(m) * * *

(6) *Transfer of records.* The employer shall transfer medical and exposure records as set forth in 29 CFR 1910.1020(h).

* * * * *

35. In Appendix A to § 1910.1450, revise item (a) under Section E, subsection 1, to read as follows:

§ 1910.1450 Occupational exposure to hazardous chemicals in laboratories.

* * * * *

Appendix A to § 1910.1450—* * *

* * * * *

E. Basic Rules and Procedures for Working with Chemicals

* * * * *

1. General Rules

* * * * *

(a) *Accidents and spills*—* * *

Ingestion: This is one route of entry for which treatment depends on the type and amount of chemical involved. Seek medical attention immediately.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

36. Revise the authority citation for part 1915 to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable.

Sections 1915.120 and 1915.152 of 29 CFR also issued under 29 CFR part 1911.

Subpart B—Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment [Amended]

37. In Appendix A to subpart B, revise item number 1 under the heading "Section 1915.11(b) Definition of 'Hot work'," to read as follows:

Appendix A to Subpart B of Part 1915—Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres

* * * * *

Section 1915.11(b) Definition of "*Hot* work."

* * * * *

1. Abrasive blasting of the external hull for paint preparation does not necessitate pumping and cleaning the tanks of a vessel.

* * * * *

Subpart G—Gear and Equipment for Rigging and Materials Handling

38. Revise paragraphs (a), (b)(1), (b)(3), (c)(1), and (c)(3) of § 1915.112 to read as follows:

§ 1915.112 Ropes, chains, and slings.

* * * * *

(a) *Manila rope and manila-rope slings.* Employers must ensure that manila rope and manila-rope slings:

(1) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(2) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(3) Not be used without affixed and legible identification markings as required by paragraph (a)(1) of this section.

(b) *Wire rope and wire-rope slings.*

(1) Employers must ensure that wire rope and wire-rope slings:

(i) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed and legible identification markings as required by paragraph (b)(1)(i) of this section.

* * * * *

(3) When U-bolt wire rope clips are used to form eyes, employers must use Table G–1 in § 1915.118 to determine the number and spacing of clips. Employers must apply the U-bolt so that the "U" section is in contact with the dead end of the rope.

* * * * *

(c) * * *

(1) Employers must ensure that chain and chain slings:

(i) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed and legible identification markings as required by paragraph (c)(1)(i) of this section.

* * * * *

(3) Employers must note interlink wear, not accompanied by stretch in excess of 5 percent, and remove the chain from service when maximum allowable wear at any point of link, as indicated in Table G–2 in § 1915.118, has been reached.

* * * * *

39. In § 1915.113, revise paragraph (a) to read as follows:

§ 1915.113 Shackles and hooks.

* * * * *

(a) *Shackles.* Employers must ensure that shackles:

(1) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load;

(2) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(3) Not be used without affixed and legible identification markings as required by paragraph (a)(1) of this section.

* * * * *

§ 1915.118 [Amended]

40. In § 1915.118, remove Tables G–1, G–2, G–3, G–4, G–5, G–7, G–8, and G–10, and redesignate Table G–6 as Table G–1, and Table G–9 as Table G–2.

Subpart I—Personal Protective Equipment (PPE) [Amended]

§ 1915.152 [Amended]

41. Remove paragraph (e)(4) from § 1915.152.

Subpart Z—Toxic and Hazardous Substances [Amended]

42. Amend § 1915.1001 as follows:

a. Revise paragraph (h)(3)(i).

b. Remove paragraphs (h)(3)(ii), (h)(3)(iii), (h)(4), and (n)(8)(ii).

c. Redesignate paragraph (h)(3)(iv) as (h)(3)(ii), and paragraph (n)(8)(i) as (n)(8).

d. Revise Appendix C.

The revisions read as follows:

§ 1915.1001 Asbestos.

* * * * *

(h) * * *

(3) * * *

(i) When respiratory protection is used, the employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m) which covers each employee required by this section to use a respirator.

* * * * *

Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory

Employers must perform fit testing in accordance with the fit-testing requirements of 29 CFR 1910.134(f) and the qualitative and quantitative fit-testing protocols and procedures specified in Appendix A of 29 CFR 1910.134.

* * * * *

PART 1917—MARINE TERMINALS

43. Revise the authority citation for part 1917 to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008) or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Section 1917.29 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819), and 5 U.S.C. 553.

Subpart A—General Provisions [Amended]

44. Amend § 1917.2 by adding a definition for the term "Ship's stores" in alphabetical order to read as follows:

§ 1917.2 Definitions.

* * * * *

Ship's stores means materials that are aboard a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew.

Subpart F—Terminal Facilities [Amended]

45. Revise paragraph (a)(1)(iii) of § 1917.127 to read as follows:

§ 1917.127 Sanitation.

* * * * *

(a) * * *

(1) * * *

(iii) Individual hand towels, clean individual sections of continuous toweling, or air blowers; and

* * * * *

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

46. Revise the authority citation for part 1918 to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Section 1918.90 also issued under 5 U.S.C. 553.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819), and 5 U.S.C. 553.

Subpart A—General Provisions [Amended]

47. Amend § 1918.2, by adding the definition for the term "Ship's stores" in alphabetical order to read as follows:

§ 1918.2 Definitions.

* * * * *

Ship's stores means materials that are aboard a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew.

* * * * *

Subpart I—General Working Conditions [Amended]

48. Revise paragraph (a)(1)(iii) of § 1918.95 to read as follows:

§ 1918.95 Sanitation.

* * * * *

(a) * * *

(1) * * *

(iii) Individual hand towels, clean individual sections of continuous toweling, or air blowers; and

* * * * *

PART 1919—GEAR CERTIFICATION

49. Revise the authority citation for part 1919 to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 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 No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Subpart B—Procedures Governing Accreditation [Amended]

50. Revise paragraph (a)(1) introductory text of § 1919.6 to read as follows:

§ 1919.6 Criteria governing accreditation to certificate vessels' cargo gear.

(a)(1) A person applying for accreditation to issue registers and pertinent certificates, to maintain registers and appropriate records, and to conduct initial, annual and quinquennial surveys, shall not be accredited unless that person is engaged in one or more of the following activities:

* * * * *

Subpart C—Duties of Persons Accredited to Certificate Vessels' Cargo Gear [Amended]

51. Revise paragraph (d) of § 1919.11 to read as follows:

§ 1919.11 Recordkeeping and related procedures concerning records in custody of accredited persons.

* * * * *

(d) When annual or quinquennial tests, inspections, examinations, or heat treatments are performed by an accredited person, other than the person who originally issued the vessel's register, such accredited person shall furnish copies of any certificates issued and information as to register entries to the person originally issuing the register.

* * * * *

52. Revise paragraph (f) of § 1919.12 to read as follows:

§ 1919.12 Recordkeeping and related procedures concerning records in custody of the vessel.

* * * * *

(f) An accredited person shall instruct the vessel's officers, or the vessel's

operator if the vessel is unmanned, that the vessel's register and certificates shall be preserved for at least 5 years after the date of the latest entry except in the case of nonrecurring test certificates concerning gear which is kept in use for a longer period, in which event the pertinent certificates shall be retained so long as that gear is continued in use.

* * * * *

Subpart D—Certification of Vessels' Cargo Gear [Amended]

53. Revise paragraph (a) of § 1919.15 to read as follows:

§ 1919.15 Periodic tests, examinations and inspections.

* * * * *

(a) Derricks with their winches and accessory gear, including the attachments, as a unit; and cranes and other hoisting machines with their accessory gear, as a unit, shall be tested and thoroughly examined every 5 years in the manner set forth in subpart E of this part.

* * * * *

54. Revise paragraph (b) of § 1919.18 to read as follows:

§ 1919.18 Grace periods.

* * * * *

(b) Quinquennial requirements—within six months after the date when due;

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart D—Occupational Health and Environmental Controls [Amended]

55. Revise the authority citation for subpart D to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 11.

Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1926.62 of 29 CFR also issued under section 1031 of the Housing and Community Development Act of 1992 (42 U.S.C. 4853).

Section 1926.65 of 29 CFR also issued under section 126 of the Superfund Amendments and Reauthorization Act of 1986, as amended (29 U.S.C. 655 note), and 5 U.S.C. 553.

56. Revise paragraphs (a)(6) and (f)(3)(iv) of § 1926.51 to read as follows:

§ 1926.51 Sanitation.

* * * * *

(a) * * *

(6) *Potable water* means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR part 141).

* * * * *

(f) * * *

(3) * * *

(iv) Individual hand towels or sections thereof, of cloth or paper, air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided.

* * * * *

57. Revise paragraph (o)(8) of § 1926.60, to read as follows:

§ 1926.60 Methylenedianiline.

* * * * *

(o) * * *

(8) *Transfer of records.* The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1926.33.

* * * * *

58. Amend § 1926.62 as follows:

a. Revise paragraphs (j)(2)(ii), (j)(2)(iv)(B), and (k)(1)(iii)(A)(*1*).

b. Remove paragraphs (l)(2)(iii), (n)(6)(ii), and (n)(6)(iii).

c. Redesignate paragraphs (l)(2)(iv) through (l)(2)(viii) as (l)(2)(iii) through (l)(2)(vii).

d. Redesignate paragraph (n)(6)(iv) as (n)(6)(ii), and revise (n)(6)(ii).

The revisions read as follows:

§ 1926.62 Lead.

* * * * *

(j) * * *

(2) * * *

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

* * * * *

(iv) * * *

(B) The employer shall notify each employee whose blood lead level is at or above 40 ug/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

* * * * *

(k) * * *

(l) * * *

(iii) * * *

(A) * * *

(*1*) For an employee removed due to a blood lead level at or above 50 ug/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 ug/dl;

* * * * *

Subpart—H Materials Handling, Storage, Use, and Disposal [Amended]

59. Revise the authority citation for subpart H to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable. Section 1926.250 also issued under 29 CFR part 1911.

60. Amend § 1926.251 as follows:

a. Revise paragraphs (a)(2), (b)(4), (c)(1), (d)(1) and (f)(1).

b. Add new paragraphs (c)(16) and (d)(7).

The revisions and additions read as follows:

§ 1926.251 Rigging equipment for material handling.

(a) * * *.

(2) Employers must ensure that rigging equipment:

(i) Has permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed, legible identification markings, required by paragraph (a)(2)(i) of this section.

* * * * *

(b) * * *

(4) Employers must not use alloy steel-chain slings with loads in excess of the rated capacities (*i.e.,* working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(c) * * *.

(1) Employers must not use improved plow-steel wire rope and wire-rope slings with loads in excess of the rated

capacities (*i.e.,* working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(16) Wire rope slings shall have permanently affixed, legible identification markings stating size, rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, and the number of legs if more than one.

* * * * *

(d) * * *

(1) Employers must not use natural- and synthetic-fiber rope slings with loads in excess of the rated capacities (*i.e.,* working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(7) Employers must use natural- and synthetic-fiber rope slings that have permanently affixed and legible identification markings that state the rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, type of fiber material, and the number of legs if more than one.

* * * * *

(f) * * *.

(1) Employers must not use shackles with loads in excess of the rated capacities (*i.e.,* working load limits) indicated on the shackle by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

Subpart Z—Toxic and Hazardous Substances [Amended]

61. Revise the authority citation for subpart Z to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Section 1926.1102 of 29 CFR not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

62. Revise paragraphs (n)(7)(ii) and (iii) and (n)(8) of § 1926.1101 to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(n) * * *

(7) * * *

(ii) *Availability of records.* The employer must comply with the requirements concerning availability of records set forth in 29 CFR part 1926.33.

(8) *Transfer of records.* The employer must comply with the requirements concerning transfer of records set forth in 29 CFR part 1926.33.

* * * * *

63. Amend § 1926.1127 as follows:

a. Remove and reserve paragraph (n)(4).

b. Revise paragraph (n)(6).

The revisions read as follows:

§ 1926.1127 Cadmium.

* * * * *

(n) * * *

(6) *Transfer of records.* The employer must comply with the requirements concerning transfer of records set forth in 29 CFR part 1926.33.

* * * * *

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

64. Revise the authority citation for part 1928 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Section 1928.21 also issued under section 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 533)).

Subpart I—General Environmental Controls [Amended]

65. Revise the definition of the term "potable water" in paragraph (b) of § 1928.110 to read as follows:

§ 1928.110 Field sanitation.

* * * * *

(b) * * *

Potable water means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR part 141).

* * * * *

[FR Doc. 2010–15156 Filed 7–1–10; 8:45 am]

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Federal Register

Friday,
July 2, 2010

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0076, Sequence 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–43; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–43. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

DATES: For effective dates and comment dates, *see* separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–43 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–43

Item	Subject	FAR Case	Analyst
I	Government Property	2008–011	Parnell
II	Registry of Disaster Response Contractors	2008–035	Gary
III	Recovery Act Subcontract Reporting Procedures (Interim)	2010–008	Morgan
IV	Clarification of Criteria for Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns.	2008–023	Cundiff
V	Trade Agreements Thresholds (Interim)	2009–040	Davis

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–43 amends the FAR as specified below:

Item I—Government Property (FAR Case 2008–011)

This final rule amends the FAR to revise FAR part 45 and its associated clauses. Changes are being made to FAR parts 2, 4, 15, 32, 42, 45, and 52. These changes are to clarify and correct the previous FAR rule for part 45, Government Property, published under Federal Acquisition Circular 2005–17, FAR case 2004–025, May 15, 2007, (72 FR 27364). Minor changes are made to the proposed rule published August 6, 2009 (74 FR 39262).

The rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property. The rule does not affect the method of managing Government property. The rule merely clarifies and corrects the previous FAR rule.

Item II—Registry of Disaster Response Contractors (FAR Case 2008–035)

This final rule adopts, without change, the interim rule implementing Public Law 109–295, the Department of Homeland Security Appropriations Act, 2007, section 697, which requires the establishment and maintenance of a registry of disaster response contractors. The Disaster Response Registry is located at *http://www.ccr.gov.* The Federal Emergency Management Agency (within the Department of Homeland Security) has a link to the registry for vendors on its Web site at *http://www.fema.gov/business/contractor.shtm.* The Registry covers domestic disaster and emergency relief activities.

Item III—Recovery Act Subcontract Reporting Procedures (FAR Case 2010–008) (Interim)

This interim rule amends the FAR to revise the clause at FAR 52.204–11, American Recovery and Reinvestment Act—Reporting Requirements. The revised clause will require first-tier subcontractors with Recovery Act funded awards of $25,000 or more, to report jobs information to the prime contractor for reporting into *FederalReporting.gov.* It also will require the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

The revised clause will be used for all new solicitations and awards issued on or after the effective date of this interim rule. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contain the original clause FAR 52.204–11 (March 2009). Therefore, this interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009.

Item IV—Clarification of Criteria for Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns (FAR Case 2008–023)

This final rule amends FAR 19.1406(a) to clarify the criteria that need to be met in order to conduct a sole source service-disabled veteran-owned small business (SDVOSB) concern acquisition. The FAR language is amended to be consistent with the Veterans Benefit Act of 2003 (15 U.S.C. 657f) and the Small Business Administration's regulation (13 CFR 125.20) that implements the Act. This final rule also amends FAR 19.1306(a) to clarify the criteria that need to be met in order to conduct a sole source for Historically Underutilized Business Zone (HUBZone) small business concern acquisitions. These amendments to the FAR alleviate confusion for contracting officers on the appropriate use of the criteria needed to conduct sole source HUBZONE small business and SDVOSB concern acquisitions.

Item V—Trade Agreements Thresholds (FAR Case 2009–040) (Interim)

This interim rule adjusts the thresholds for application of the World

Trade Organization Government Procurement Agreement and the free trade agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005–43 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–43 is effective July 2, 2010, except for Items I, II, and IV which are effective August 2, 2010.

Dated: June 24, 2010.

Shay D. Assad,

Director, Defense Procurement and Acquisition Policy.

Dated: June 24, 2010.

Rodney P. Lantier,

Acting Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.

Dated: June 23, 2010.

William P. McNally,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 2010–15913 Filed 7–1–10; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 15, 31, 32, 42, 45, and 52

[FAC 2005–43; FAR Case 2008–011; Item I; Docket 2009–0029; Sequence 1]

RIN 9000–AL41

Federal Acquisition Regulation; FAR Case 2008–011, Government Property

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise FAR part 45, Government Property, and its associated clauses.

DATES: *Effective Date:* August 2, 2010.

FOR FURTHER INFORMATION CONTACT: Ms.nbsp; Jeritta Parnell, Procurement Analyst, at (202) 501–4082, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–43, FAR Case 2008–011.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 74 FR 39262, August, 6, 2009. This rule clarifies and corrects the previous FAR rule for part 45, Government Property, published under FAC 2005–17, FAR Case 2004–025, May 15, 2007 (72 FR 27364).

Sixteen respondents submitted 106 comments. The comments received were grouped under 31 general topics. A discussion of the comments and the changes to the rule as a result of these comments are provided below:

1. Access

There is no revision to the proposed rule based on this category of comment. One respondent recommended revising FAR 52.245–1(g)(4) to provide Government access to contractor site locations at reasonable times. The Councils did not agree. Similar language is already contained in the proposed rule at FAR 52.245–1(g)(1). The proposed FAR language at 52.245–1(g)(1) provides for Government access to all contractor site locations, prime and subcontractor (with prime contractor consent). This language was merely consolidated. The language consolidated and relocated subsections 52.245–1(g)(1) and 52.245–1(g)(4) into one subsection.

2. Closeout

There is no revision to the proposed rule based on this comment category. One respondent suggested adding a new paragraph after FAR 52.245–1(f)(x) entitled Disposition of contractor inventory. The Councils noted the issue raised by the commenter. The recommendations are outside the scope of this particular case.

3. Commingling

There is no revision to the proposed rule based on this comment category. Two respondents suggested that commingling Government and contractor material should not occur. One respondent questioned whether equipment can be commingled by being located with similar equipment. Another respondent recommended revising FAR 52.245–1(f)(1)(viii)(B) to address commingling while in storage or in stockrooms. The Councils do not agree. The practice of commingling only applies to material. Equipment, special tooling, and special test equipment can be co-located, but by their nature are not commingled. The Councils see no need to limit the applicability of commingling to a particular location(s).

4. Contractor Records

There is no revision to the proposed rule based on this comment category. Two respondents submitted three comments on contractor records. Two comments requested clarification on retention periods in FAR 4.705–3(h). In addition, one commenter requested clarification of the term "property records" in FAR 4.705–3(h). Another respondent recommended removal of language "consisting of equipment usage and status reports" from FAR 4.705–3(c). The Councils disagree. The beginning of the retention period is defined in FAR 4.704(a). The definition of property records is in the proposed rule at FAR 45.101. The recommendation for removal of language from FAR 4.705–3(c) is outside the scope of this particular case and will be considered in the formulation of a new case.

5. Corrective Action

There is a revision to the proposed rule at FAR 52.245–1(g)(3) based on this comment category.

Two respondents recommended revising the action required for corrective action. One respondent recommended additional language to distinguish between the lines of authority and responsibility as follows: " * * * the contractor shall immediately take all necessary corrective actions and shall prepare a corrective action plan at the request of the Property Administrator." The Councils partially agree. The language at FAR 52.245–1(g)(3) is revised to add "* * * the contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan." The second respondent suggested that there needs to be a better audit protocol and due process in property management practices. The Councils noted the issues raised by this respondent and the respondent's recommended revisions to FAR 52.245–1(g)(3). These revisions are outside the

scope of this case and will be considered in the formulation of a new FAR case.

6. Definitions

There are revisions to the proposed rule based on this comment category. Twenty-two comments were received from five respondents regarding definitions. One respondent recommended changing the definition of "cannibalize" to read as "Cannibalization means the unauthorized permanent removal of parts from Equipment, Special Tooling or Special Test Equipment in order to install them on other Government equipment." The Councils disagree. The current definition is meant to convey only the act of cannibalization itself, notwithstanding whether or not the act is authorized, or whether the removal of parts is temporary or permanent.

One respondent recommended that FAR part 45.101 include a Web site for 41 CFR 102–71.20, thus providing easier access to the term "Real Property." The Councils disagree. The Code of Federal Regulations is already easily accessible through most on-line search engines. Moreover, in general, the Councils wish to avoid adding unnecessary hyperlinks to the FAR due to their potentially transient nature.

One respondent recommended that the last sentence of the definition of "Equipment" be expanded to include special test equipment and special tooling in the exclusions. The Councils agree.

One respondent recommended revision of the definition to read: "Cannibalize means to remove worthwhile parts from property for probable use or installation on other property." The Councils disagree. The Councils revised the definition to limit cannibalization of parts to Government property. The use of cannibalization is governed by its application (*i.e.,* by the terms and conditions of the contract).

One respondent recommended revision of the definition of Government Furnished Property in both FAR 45.101 and 52.245–1. The Councils partially agree. The Councils revised the language to include "Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract".

One respondent recommended a new definition of "Property Loss." The Councils noted the issue raised by the commenter. The recommendation is outside the scope for the proposed rule. The Councils will consider adding this new definition as part of a future proposed rule.

One respondent recommended adding a definition of "Prime Property Administrator." The Councils noted the issue raised by the commenter. The recommendation is outside the scope for the proposed rule. The Councils will consider adding this proposal as part of a future proposed rule.

One respondent agreed with the proposed rule in regard to the definitions of "Equipment," "Material," "Plant equipment," "Government property," "Real property," "Plant equipment," and "Property records." The same respondent also agreed with the proposed changes to the definition of "Plant clearance officer" in FAR 2.101.

7. Disposal Schedules

There is a revision to the proposed rule based on this comment category. One respondent submitted five comments on disposal schedules. In one comment, the respondent requested amending the language at FAR 52.245–1(j)(1)(i)(B) to eliminate submission of inventory schedules for property that requires demilitarization; is classified, hazardous or dangerous; and for precious metals. The respondent recommended the use of a list in accord with the contractor's plans or by approval of the property administrator or contracting officer. The Councils noted the issue raised by the commenter. The recommendation is outside of the scope of this case. The proposed revision will be considered in the formulation of a new case.

The respondent, in two comments, agreed with the proposed language in FAR 52.245–1(j)(1)(i)(C) and 52.245–1(j)(3)(iv).

The respondent recommended deletion of paragraph FAR 52.245–1(j)(3)(iv)(A). The Councils agree. The respondent recommended deletion of paragraph FAR 52.215–1(j)(3)(iv)(F). The Councils do not agree. The language is retained and moved to paragraph (A). This language allows the flexibility to determine whether there may be further use of the property.

8. Evaluation

There is no revision to the proposed rule based on this category of comment. One respondent recommended revising FAR 45.202(a) to read: "(a) The contracting officer shall consider any potentially unfair competitive advantage that may result from the prospective contractor possessing Government property. This shall be done by adjusting the offers by applying, for evaluation purposes only, a rental equivalent evaluation factor." The Councils noted the issue raised by the commenter. The recommendation is outside the scope for the proposed rule. The Councils will consider adding this proposal as part of a future proposed rule.

9. Fair Value

There is no revision to the proposed rule based on this category of comment. One respondent recommended replacement of the term "acquisition cost" in FAR 45.602–3(b) and in 52.245–1(d)(2)(i)(B) with the term "fair market value". The Councils note the issue raised by the commenter. The recommendation is outside of the scope of this case. The proposed revision will be considered in the formulation of a new case.

10. Guidance

There is no revision to the proposed rule based on this comment category. One respondent recommended revising 42.302(a)(30)(iii) to add the following language "and guidance at FAR 45.103(a)(4) with the maximum use of Government property already in the contractor's possession." The Councils disagree. The intent of this paragraph is to address the use of the clause at FAR 52.245–9, Use and Charges. The use of Government property already in the possession of the contractor to its maximum extent is adequately addressed at FAR 45.103(a)(4) and is not appropriately referenced in this paragraph.

11. Item Unique

There is a revision to the proposed rule based on this comment category. The proposed rule language in FAR 45.201, 52.245–1(f)(1)(iii)(A)(4) and 52.245–1(f)(1)(vi)(B)(4) was deleted and the current FAR language is retained.

Three respondents with five comments recommend changing the proposed rule to use the term "unique item identifier (UII)" in place of "item unique." One comment recommended a general overall change to UII, two comments recommended revising 52.245–1(f)(1)(iii)(A)(4) to use the term "unique item identifier (UII)" in place of "item unique," one comment suggested that the term "item unique identifier" is a DoD term and that "asset identifier" is a more widely recognized term, and one comment suggested changing "Item unique" identifier to "Unique item" identifier as prescribed in Defense Acquisition Regulation Supplement (DFARS) 252.211–7007. The Councils agree with the proposal to retain the current FAR language of "unique item" identifier. The Councils did not agree with the term "asset identifier." The

Councils believe that unique item identifier is used across industry and is reflected in industry practices and standards.

12. Liability

There is no revision to the proposed rule based on this comment category. One respondent, with two comments, recommended revising the language associated with relief of stewardship responsibility to add the term liability (*see* FAR 52.245–1(f)). One comment recommended adding new language to read: "(vii) Relief of Liability. The Contractor shall have a process to enable the prompt disclosure and reporting of all instances of loss, theft, damage, and destruction of Government property, including Government property in the possession of contractors." The second comment recommended moving 52.245–1(f)(vi)(A) and (B) to the new paragraph (vii). The Councils noted the issues raised by the commenter. The recommendations are outside of the scope of this case. These recommendations will be considered in the formulation of a new case.

13. Location

There is no revision to the proposed rule based on this comment category. One respondent recommended revising FAR 45.501 and the amended FAR 45.502 to read as follows: "45.501 Prime contractor alternate locations. (a) The property administrator assigned to the prime contract may request support property administration from another contract administration office, for purposes of evaluating prime contractor management of property located at the prime contractor's alternate locations. (b) Prime contractor consent is not required for support delegations involving prime contractor alternate locations. FAR section 45.502 Subcontractor locations. (c) The prime property administrator shall accept the findings of the delegated support property administrator and advise the prime contractor of the results of property management reviews, including deficiencies found with the subcontractor's property management system." The Councils did not agree. The Government is not required to seek prime contractor consent to conduct property reviews at alternate locations of the prime contractor.

14. Lost Property

There is no revision to the proposed rule based on this comment category. Twenty-one comments were received from two respondents regarding lost property.

(a) One respondent provided two comments requesting consistency in the use of language throughout the FAR regarding loss (loss, theft, destruction, or damage).

(b) One respondent provided eighteen comments recommending that "loss, theft, destruction, or damage" be replaced with "lost" only.

(c) One respondent recommended that "loss, theft, destruction, or damage" be replaced with "lost" only and that "all" be removed at 52.245–1(f)(1)(x) from "inventorying all property."

The Councils recommend no change to the proposed rule. The Councils noted the recommendations for a new definition of "loss." As a result, the Councils recommend including the definition of "loss" in a separate case. The Councils do not agree with the deletion of "all" at 52.245–1(f)(1)(x). The clause at FAR 52.245–1(b)(1) already allows "the contractor to initiate and maintain the processes, systems, procedures, records, and methodologies necessary for the effective control of Government property consistent with voluntary consensus standards and industry leading practices and standards." This requirement extends to the physical inventory required at FAR 52.245–1(f)(1)(x).

15. Management Plan

There is a revision to the proposed rule based on this comment category. One respondent recommended revising FAR 52.245–1(g)(1) to allow for multiple contractor property plans. The Councils agree. The language at FAR 52.245–1(g)(1) is revised to allow for multiple plans by revising "plan" to "plan(s)."

16. Management System

There is a revision to the proposed rule based on this comment category.

Two respondents submitted four comments on this category. One respondent suggested that FAR 45.201(c)(4) be replaced with the following: "A description of their Property Management System and the voluntary consensus standards or industry leading practices and standards to be used in the management of Government Property." Another comment recommended revising FAR 45.105(b) to change "provide a schedule for their completion" to "request prompt correction of deficiencies and a schedule for their completion." Another comment recommended revising FAR 52.245–1(f)(1)(iii)(B) to delete the language "when approved by the Property Administrator." Another comment recommended revising FAR 45.105(b) to amend the proposed rule to provide more effective property management. The Councils disagree with the change to FAR 45.201(c)(4). This recommendation is outside the scope of this case. The Councils partially agree with the recommendation of one respondent to change FAR 45.105(b) and partially concur with another respondent to provide a schedule of completion; therefore, the language in FAR 45.105(b) is revised. The Councils disagree with the recommended request to delete the language "when approved by the Property Administrator." The Councils believe it is in the best interest of the Government for such approvals by the Government to be made on a contract by contract basis.

17. Markings

There is a revision to the proposed rule based on this comment category. One respondent recommended deleting "Government-affixed" at FAR 52.245–1(j)(8)(ii). The Councils agree.

18. New Coverage

There is no revision to the proposed rule based on this category of comment. Three respondents submitted four comments for this category of comments. One respondent recommended new coverage in FAR 45.103 to cover the contract award process when considering competitive advantage. The Councils disagree. The scope of the effort on the contract or type of contract (*e.g.,* A&E, construction) should not be the consideration for inclusion of the clauses at FAR 52.245–1 and 52.245–9. The sole consideration for use of these clauses is whether Government property is to be provided.

One respondent suggested making all references to "property" consistent by changing the term to "Government property." The Councils disagree. The Councils believe that all references to property in FAR part 45 inherently mean Government property (see FAR 45.000 Scope of part), and no further clarification is needed.

One respondent submitted two comments proposing new coverage. The first comment recommended new coverage in FAR 45.103 to cover the contract award process when considering competitive advantage. The second comment requested a rewrite of FAR 45.603. The Council noted the issues raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

19. Policy

There is no revision to the proposed rule based on this category of comment.

Two respondents submitted four comments for this comment category.

One respondent agrees with the revision.

Two respondents proposed coverage outside of the scope of this case. The Councils noted the comments. The proposed revisions are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

One respondent recommended adding a new paragraph (e) in FAR 45.102 to read: "Intangible property, *e.g.,* intellectual property, software, etc., are not subject to this requirements of this FAR part or the Government property clauses found at 52.245." The Councils disagree. The issue of whether Intellectual property is covered under FAR contract property regulations is addressed in the scope of part in FAR 45.000 and in the definitions in FAR 45.101.

20. Profit and Fee

There is a revision to the proposed rule based on this comment category. The proposed language in FAR 15.404–4(a)(3) is relocated to FAR 15.404–4(c)(3) and revised. Nine comments were received from eight respondents regarding profit and fee.

One respondent suggests removal of the proposed language in 15.404–4(a)(3) and inclusion of new language in 15.404–4(c)(3) that "instructs contracting officers to exclude the costs of contractor-acquired property from pre-negotiation cost objectives when calculating the Government's pre-negotiation profit or fee objective, unless the contractor acquired property is a deliverable under the contract." The Councils partially agree with this recommendation and the language is revised accordingly.

One respondent requests clarification of the language added in 15.404–4. The Councils agree with this recommendation.

One respondent suggests that requirement of the language added to 15.404–4(a)(3) will be burdensome and require auditing to ensure zero profit; instead of this method, the respondent suggests that the contracting officer take the value of the contractor acquired property in consideration when negotiating profits. The Councils partially agree with this suggestion. The Councils disagree with the assertion that the requirement is burdensome. The language has been modified to clarify its use and limit its applicability to equipment as defined in FAR 45.101.

One respondent suggests changing the weighted guidelines to address the value of contractor acquired property. The Councils disagree with this suggestion; however, the revised language provides direction to the contracting officer as to how equipment should be treated within the current guidelines.

Four respondents suggest removal of the language added in 15.404–4(a)(3). The Councils disagree with these suggestions.

One respondent believes there is no basis to eliminate profit on any allowable element of the contract cost, especially property that is required in the performance of a Government contract but not incorporated into the end item deliverable or listed as a deliverable. The Councils disagree with this suggestion. The language is revised to assure that it applies only to equipment as defined in FAR 45.101.

The language has been revised and moved to 15.404–4(c)(3). The revision does not change, expand or constrict existing contracting policy. Rather, the purpose of the revised language is to clarify policy, and ensure its awareness within the acquisition community.

Prior to the publication of FAR Case 2004–025, June 2007, FAR 45.302–2(c) and FAR 45.302–3(c) contained language intended to prevent contractors from acquiring facilities and treating the facilities in the same manner as a contract line item deliverable with associated profit or fee. FAR Case 2004–025 deleted this language. The requirements of this language were added to the proposed rule in FAR 15.404–4 because the policy still applies.

While the application of this policy tended to be obfuscated by the term "facilities," the underlying principle was clear—that when the contractor buys equipment or acquires real property on a "pass through" basis, *i.e.,* when not part of a deliverable, it is the Government—not the contractor—who assumes the risk. Moreover, it is generally held that upon contract award, contractors are required to furnish all property necessary to perform Government contracts (FAR Part 45.102) as well as all the necessary resources needed for contract performance (FAR 9.104–1(f), General standards).

Accordingly, it is not appropriate for the Government to include the cost of contractor acquired property (equipment) when calculating the Government's pre-negotiation profit or fee objective. Including such costs would unduly compensate the contractor for obtaining equipment it should already have; and for risks it did not incur. This is a long held view; however, up until the publication of the proposed rule FAR Case 2008–011, it had not been adequately addressed in the FAR.

This policy does not exclude the otherwise allowable cost of depreciation under FAR 31.205–11.

21. Rental

There is no revision to the proposed rule based on this category of comment. One respondent submitted two comments recommending amending FAR 45.301 and 45.303. One comment recommended amending FAR 45.301 by inserting a comma after the word "authorized" in paragraph (b) and making two sentences out of paragraph (b) so that it reads as follows: "(b) Rental charges, to the extent authorized, do not apply to Government property that is left in place or installed on contractor-owned property for mobilization or future Government production purposes; (c) Rental charges shall apply to property to be used for non-government commercial purposes." The second comment recommended amending FAR 45.303 to read "The contracting officer may authorize a contractor to use the property on an independent research and development (IR&D) program rent free, if—

(a) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;

(b) The contractor agrees not to claim rental value against any Government contract for the property; and

(c) Estimated rental proceeds are immaterial or rental cost to the contractor would subsequently, in a substantial way, be charged back to the Government as part of indirect cost."

The Councils note the issue raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

22. Responsibility vs. Liability

There is no revision to the proposed rule based on this category of comment. One respondent recommended moving the coverage in FAR 52.245–1(f)(vii) to FAR 45.104 or moving this paragraph to FAR 52.245–1(h)(1) and being repeated in 45.104, or replace the word "responsibility" with "liability." The Councils note the issue raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

23. Sale

One respondent agreed with the proposed language in FAR 45.604–3.

24. Scrap List

There is no revision to the proposed rule based on this category of comment. One respondent requested that the paragraph (FAR 45.606–1(b)) be revised as follows: "For scrap from other than production or testing, the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the property management plan or approvals by the property administrator or contracting officer). The Councils note the issue raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

25. Screening

One respondent agreed with the proposed language at FAR 45.602–3(b)(3).

26. Storage

One respondent agreed with the proposed language at FAR 52.245–1(j)(7)(ii).

27. Supply Source

One respondent agreed with the proposed language at FAR 52.251–1.

28. Title

There is no revision to the proposed rule based on this category of comment. The respondent agrees, in two comments, with the proposed language at FAR 52.245–1(e)(2)(ii) and (iii).

The respondent also proposes revising FAR 45.402(a). The Councils note the issue raised by the commenter. The recommendations are outside of the scope of this case. The proposed revisions will be considered in the formulation of a new case.

29. Use

One respondent agreed with the proposed language at FAR 52.245–1(c).

30. Administrative

One respondent agreed with the proposed language at FAR 52.245–1.

31. Wrong Case

One respondent submitted one comment opposing FAR 2009–005.

Summary of Proposed Rule Changes. The Councils made the following changes to the proposed rule as a result of the public comments.

Revised FAR 45.101 and 52.245–1 to clarify the definition of "equipment" by including special test equipment and special tooling in the exclusions.

Revised FAR 45.101 and 52.245–1 to clarify the definition of "cannibalize."

Revised FAR 45.101 and 52.245–1 to clarify the definition of "Government-furnished property."

Revised FAR 45.105 and FAR 52.245–1(g)(3) to clarify language necessary for contractors to take the necessary corrective action as specified by the schedule within the corrective action plan.

Revised FAR 52.245–1(j)(3)(iv)(A) to delete the language as proposed in the proposed rule and by moving and retaining the language at FAR 52.245–1(j)(3)(iv)(F) as paragraph (A).

Revised FAR 45.201, FAR 52.245–1(f)(1)(iii)(A)(4) and FAR 52.245–1(f)(1)(vi)(B)(4) to delete the proposed rule language and retain the current FAR language.

Revised FAR 52.245–1(j)(8)(ii) by deleting the language "Government-affixed."

Revised FAR 52.245–1(a) by removing language duplicating the definition of contractor's managerial personnel.

Revised FAR 15.404–4(a)(3) by relocating the language to FAR 15.404(c)(3) and clarifying that contracting officers shall exclude the cost of contractor-acquired property when calculating the Government's pre-negotiation profit or fee objective.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small businesses. The rule does not affect the method of managing Government property. The rule merely clarifies and corrects the previous FAR rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0075.

List of Subjects in 48 CFR Parts 2, 4, 15, 31, 32, 42, 45, and 52

Government procurement.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 4, 15, 31, 32, 42, 45, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 4, 15, 31, 32, 42, 45, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101, in paragraph (b)(2), by removing from the definition "Plant clearance officer" the words "plants and Federal installations" and adding "plants, Federal installations, and Federal and non-Federal industrial operations," in its place; and removing from the definition "Special tooling" the words "test equipment, and" and adding "tooling, and" in its place.

PART 4—ADMINISTRATIVE MATTERS

■ 3. Amend section 4.705–3 by adding paragraph (h) to read as follows:

4.705–3 Acquisition and supply records.

* * * * *

(h) Property records (see FAR 45.101 and 52.245–1): Retain 4 years.

PART 15—CONTRACTING BY NEGOTIATION

■ 4. Amend section 15.404–4 by adding a sentence after the first sentence of paragraph (c)(3) to read as follows:

15.404–4 Profit.

* * * * *

(c) * * *

(3) * * * Before applying profit or fee factors, the contracting officer shall exclude from the pre-negotiation cost objective amounts the purchase cost of contractor-acquired property that is categorized as equipment, as defined in FAR 45.101, and where such equipment is to be charged directly to the contract. * * *

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–19 [Amended]

■ 5. Amend section 31.205–19(e)(2)(iv)(C) by removing "52.245–1(h)(1)(ii)" and adding "52.245–1(a)" in its place.

PART 32—CONTRACT FINANCING

32.503–16 [Amended]

■ 6. Amend section 32.503–16 by removing from paragraph (a) "loss, theft, destruction, or damage to" and adding "lost, stolen, damaged, or destroyed" in its place.

32.1010 [Amended]

■ 7. Amend section 32.1010 by removing from paragraph (a) "loss, theft, destruction, or damage to property affected by the clause" and adding "lost, stolen, damaged, or destroyed property" in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 8. Amend section 42.302 by revising paragraphs (a)(30)(iii) and (a)(30)(v) to read as follows:

42.302 Contract administration functions.

(a) * * *

(30) * * *

(iii) Evaluate the use of Government property on a non-interference basis in accordance with the clause at 52.245–9, Use and Charges;

* * * * *

(v) Modify contracts to reflect the addition of Government-furnished property and ensure appropriate consideration.

* * * * *

PART 45—GOVERNMENT PROPERTY

■ 9. Amend section 45.101 by—

■ a. Revising the definitions "Cannibalize", "Equipment", "Government-furnished property", and "Government property";

■ b. Removing from the definition "Material" the words "and special test equipment" and adding "special test equipment or real property" in its place;

■ c. Removing the definition "Plant equipment";

■ d. Adding the definition "Property records"; and

■ e. Revising the definition "Real property."

■ The revised and added text reads as follows:

45.101 Definitions.

* * * * *

Cannibalize means to remove parts from Government property for use or for installation on other Government property.

* * * * *

Equipment means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

Government-furnished property means property in the possession of, or directly acquired by, the Government and subsequently furnished to the contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

Government property means all property owned or leased by the Government. Government property includes both Government-furnished property and contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

* * * * *

Property records means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

* * * * *

Real property. See Federal Management Regulation 102–71.20 (41 CFR 102–71.20).

* * * * *

■ 10. Amend section 45.102 by revising paragraph (d) to read as follows:

45.102 Policy.

* * * * *

(d) *Exception.* Property provided under contracts for repair, maintenance, overhaul, or modification is not subject to the requirements of paragraph (b) of this section.

■ 11. Amend section 45.104 by revising the introductory text of paragraph (a) to read as follows:

45.104 Responsibility and liability for Government property.

(a) Generally, contractors are not held liable for loss, theft, damage or destruction of Government property under the following types of contracts:

* * * * *

■ 12. Amend section 45.105 by revising the first sentence of paragraph (b); revising paragraph (b)(1); and removing from paragraph (d) "damage, destruction or theft" and adding "theft, damage or destruction" in its place.

The revised text reads as follows:

45.105 Contractors' property management system compliance.

* * * * *

(b) The property administrator shall notify the contractor in writing when the contractor's property management system does not comply with contractual requirements, and shall request prompt correction of deficiencies and shall request from the contractor a corrective action plan, including a schedule for correction of the deficiencies and shall provide a schedule for their completion. * * *

(1) Revocation of the Government's assumption of risk for loss, theft, damage or destruction; and/or

* * * * *

45.201 [Amended]

■ 13. Amend section 45.201 by removing from paragraph (d) "When use of property on more than one contract is anticipated, any" and adding "Any" in its place.

■ 14. Amend section 45.402 by revising paragraph (a) to read as follows:

45.402 Title to contractor-acquired property.

(a) Title vests in the Government for all property acquired or fabricated by the contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed-price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the contractor retains title to all property acquired by the contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

* * * * *

■ 15. Revise section 45.502 to read as follows:

45.502 Subcontractor and alternate prime contractor locations.

(a) To ensure subcontractor compliance with Government property administration requirements, and with prime contractor consent, the property administrator assigned to the prime contract may request support property administration from another contract

administration office. If the prime contractor does not provide consent to support property administration at subcontractor locations, the property administrator shall refer the matter to the contracting officer for resolution.

(b) The prime property administrator shall accept the findings of the delegated support property administrator and advise the prime contractor of the results of property management reviews, including deficiencies found with the subcontractor's property management system.

(c) Prime contractor consent is not required for support delegations involving prime contractor alternate locations.

45.602–3 [Amended]

■ 16. Amend section 45.602–3 by removing from paragraph (b)(3) "North Capitol and H Streets" and adding "732 North Capitol Street" in its place.

■ 17. Revise section 45.604–3 to read as follows:

45.604–3 Sale of surplus personal property.

Policy for the sale of surplus personal property is contained in the Federal Management Regulation, at Part 102–38 (41 CFR Part 102–38). Agencies may specify implementing procedures.

■ 18. Amend section 45.606–1 by revising paragraph (b) and adding paragraph (c) to read as follows:

45.606–1 Contractor with an approved scrap procedure.

* * * * *

(b) For scrap from other than production or testing, the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures).

(c) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that—

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals that are economically beneficial to recover; or

(6) Is dangerous to the public health, safety, or welfare.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.232–16 [Amended]

■ 19. Amend section 52.232–16 by—

■ a. Removing from the clause heading "(**JUL 2009**)" and adding "(**AUG 2010**)" in its place;

■ b. Removing from paragraph (d)(2)(ii) "under any other clause of this contract";

■ c. Removing from paragraph (d)(3) "or special tooling"; and

■ d. Removing from paragraph (e) "is damaged, lost, stolen, or" and adding "is lost, stolen, damaged, or" in its place.

52.232–32 [Amended]

■ 20. Amend section 52.232–32 by—

■ a. Removing from the clause heading "(**JAN 2008**)" and adding "(**AUG 2010**)" in its place;

■ b. Removing from paragraph (f)(2)(ii) "under any other clause of this contract";

■ c. Removing from paragraph (f)(3) "or special tooling"; and

■ d. Removing from paragraph (g) "is damaged, lost, stolen, or" and adding "is lost, stolen, damaged, or" in its place.

■ 21. Amend section 52.245–1 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a) by—

■ i. Revising the definitions "Cannibalize" and "Equipment";

■ ii. Adding two sentences to the end of the definition "Government-furnished property";

■ iii. Adding two sentences to the end of the definition "Government property";

■ iv. Removing from the definition "Material" the word "end-item" and adding the words "end item" in its place; and removing the words "and special test equipment" and adding the words ", special test equipment or real property" in its place;

■ v. Removing the definition "Plant equipment";

■ vi. Adding, in alphabetical order, the definition "Property records"; and

■ vii. Revising the definition "Real property";

■ c. Revising the first sentence of paragraph (b)(2), and paragraphs (c), and (e)(2)(ii);

■ d. Removing from paragraphs (e)(2)(iii) and (f)(1)(i) the word "material" and adding the word "property" wherever it occurs (8 times);

■ e. Revising paragraph (f)(1)(v)(A), introductory text of paragraph (f)(1)(vi), paragraphs (f)(1)(vi)(A), (f)(1)(vi)(B)(*4*), (f)(1)(vi)(B)(*10*), (f)(1)(vii)(A), (f)(1)(viii)(B), (f)(1)(x), (g), introductory text of paragraph (h)(1), paragraphs (h)(1)(ii) and (h)(1)(iii), the first sentence of paragraph (h)(2), (h)(3), introductory text of paragraph (i), and paragraph (j)(1)(i)(B);

■ f. Add paragraph (j)(1)(i)(C);

■ g. Revise paragraphs (j)(3)(iii)(E) and (j)(3)(iv);

■ h. Add paragraphs (j)(3)(v) and (j)(3)(vi);

■ i. Remove from paragraph (j)(7)(ii) the word "facility" and add the word "area" in its place;

■ j. Revise second sentence of paragraph (j)(8)(ii); and

■ k. In Alternate I, revise the date of the alternate, and the first sentence of paragraph (h)(1).

The added and revised text reads as follows:

52.245–1 Government Property.

* * * * *

GOVERNMENT PROPERTY (AUG 2010)

(a) * * *

* * * * *

Cannibalize means to remove parts from Government property for use or for installation on other Government property.

* * * * *

Equipment means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

Government-furnished property * * * Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

Government property * * * Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

* * * * *

Property records means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

* * * * *

Real property. See Federal Management Regulation 102–71.20 (41 CFR 102–71.20).

* * * * *

(b) * * *

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost, stolen, damaged, or destroyed property. * * *

* * * * *

(c) *Use of Government property.* (1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract,

unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are—

(i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;

(ii) Required for normal maintenance; or

(iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

* * * * *

(e) * * *

(2) * * *

(ii) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

* * * * *

(f) * * *

(1) * * *

(v) * * *

(A) The Contractor shall award subcontracts that clearly identify assets to be provided and shall ensure appropriate flow down of contract terms and conditions (*e.g.,* extent of liability for loss, theft, damage or destruction of Government property).

* * * * *

(vi) *Reports.* The Contractor shall have a process to create and provide reports of discrepancies; loss, theft, damage or destruction; physical inventory results; audits and self-assessments; corrective actions; and other property related reports as directed by the Contracting Officer.

(A) Loss, theft, damage or destruction. Unless otherwise directed by the Property Administrator, the Contractor shall investigate and promptly furnish a written narrative of all incidents of loss, theft, damage or destruction to the property administrator as soon as the facts become known or when requested by the Government.

(B) * * *

(*4*) Unique-item Identifier (if available).

* * * * *

(*10*) A statement that the Government will receive any reimbursement covering the loss, theft, damage or destruction in the event the Contractor was or will be reimbursed or compensated.

* * * * *

(vii) * * *

(A) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator; or a Property Administrator granted relief of responsibility for loss, theft, damage or destruction of Government property;

* * * * *

(viii) * * *

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

* * * * *

(x) *Property closeout.* The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss, theft, damage or destruction cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

* * * * *

(g) *Systems analysis.* (1) The Government shall have access to the Contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(h) *Contractor Liability for Government Property.*

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss, theft, damage or destruction to the Government property furnished or acquired under this contract, except when any one of the following applies—

* * * * *

(ii) The loss, theft, damage or destruction is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss, theft, damage or destruction, due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss, theft, damage or destruction of Government property occurred while the Contractor had adequate property management practices or the loss, theft, damage or destruction of Government property did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the Government property from further loss, theft, damage or destruction. * * *

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss, theft, damage or destruction of Government property.

* * * * *

(i) *Equitable adjustment.* Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause. However, the Government shall not be liable for breach of contract for the following:

* * * * *

(j) * * *

(1) * * *

(i) * * *

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures).

(C) Inventory disposal schedules shall be submitted for all aircraft regardless of condition, flight safety critical aircraft parts, and scrap that—

(*1*) Requires demilitarization;

(*2*) Is a classified item;

(*3*) Is generated from classified items;

(*4*) Contains hazardous materials or hazardous wastes;

(*5*) Contains precious metals that are economically beneficial to recover; or

(*6*) Is dangerous to the public health, safety, or welfare.

* * * * *

(3) * * *

(iii) * * *

(E) Precious metals in raw or bulk form;

* * * * *

(iv) The Contractor shall provide the information required by FAR 52.245–1(f)(1)(iii) along with the following:

(A) Any additional information that may facilitate understanding of the property's intended use.

(B) For work-in-progress, the estimated percentage of completion.

(C) For precious metals, the type of metal and estimated weight.

(D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.

(E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).

(v) Property with the same description, condition code, and reporting location may be grouped in a single line item.

(vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.

* * * * *

(8) * * *

(ii) * * * Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

* * * * *

Alternate I (AUG 2010). * * *

(h)(1) The Contractor assumes the risk of, and shall be responsible for, any loss, theft, damage or destruction of Government property upon its delivery to the Contractor as Government-furnished property. * * *

* * * * *

■ 22. Amend section 52.245–2 by revising the date of the clause, and the first two sentences of paragraph (b) to read as follows:

52.245–2 Government Property Installation Operation Services.

* * * * *

GOVERNMENT PROPERTY INSTALLATION OPERATION SERVICES (AUG 2010)

* * * * *

(b) The Government bears no responsibility for repair or replacement of any lost, stolen, damaged or destroyed-Government property. If any or all of the Government property is lost, stolen, damaged or destroyed or becomes no longer usable, the Contractor shall be responsible for replacement of the property at Contractor expense. * * *

* * * * *

■ 23. Amend section 52.245–9 by revising the date of the clause, and the introductory text of paragraph (a); and removing the definitions "Acquisition cost", "Government property", "Plant equipment", and "Real property".

The revised text reads as follows:

52.245–9 Use and Charges.

* * * * *

USE AND CHARGES (AUG 2010)

(a) *Definitions.* Definitions applicable to this contract are provided in the clause at 52.245–1, Government Property. Additional definitions as used in this clause include:

* * * * *

■ 24. Amend section 52.251–1 by revising the date of the clause, and the last sentence of the clause to read as follows:

52.251–1 Government Supply Sources.

* * * * *

GOVERNMENT SUPPLY SOURCES (AUG 2010)

* * * The provisions of the clause entitled "Government Property," at 52.245–1, shall apply to all property acquired under such authorization.

[FR Doc. 2010–15918 Filed 7–1–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 4, 7, 10, 13, 18, 26, and 52

[FAC 2005–43; FAR Case 2008–035; Item II; Docket 2009–0033, Sequence 1]

RIN 9000–AL30

Federal Acquisition Regulation; FAR Case 2008–035, Registry of Disaster Response Contractors

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have adopted, as final without change, the interim rule amending the Federal Acquisition Regulation (FAR) to implement the Department of Homeland Security Appropriations Act, 2007, section 697, which requires the establishment and maintenance of a registry of disaster response contractors.

DATES: *Effective Date:* August 2, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Millisa Gary, Procurement Analyst, at (202) 501–0699. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–43, FAR case 2008–035.

SUPPLEMENTARY INFORMATION:

A. Background

Public Law 109–295, the Department of Homeland Security Appropriations Act, 2007, section 697, requires the establishment and maintenance of a registry of contractors willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. In addition, contracting officers are required to consult the registry during market research and acquisition planning.

The interim rule was published in the **Federal Register** on October 14, 2009 (74 FR 52847). The public comment period closed on December 14, 2009. No comments were received in response to the interim rule.

In the interim rule, the Councils amended the language at FAR 2.101 to add a definition of "Disaster Response Registry," and at FAR 4.1104, 18.102, and 26.205 to require contracting officers to consult the registry at *http://www.ccr.gov.* In addition, a requirement was added to FAR 10.001 to require contracting officers to take advantage of commercially available market research methods to identify capabilities to meet agency requirements for disaster relief.

The Disaster Response Registry is located at *www.ccr.gov.* The Federal Emergency Management Agency (within the Department of Homeland Security) has a link to the registry for vendors on its Web site *http://www.fema.gov/business/contractor.shtm.* The Registry covers disaster and emergency relief activities inside the United States and its outlying areas only. Major disaster and emergency declarations are published in the **Federal Register** and are available at *http://www.fema.gov/news/disasters.fema.*

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule does not revise or change existing regulations pertaining to small business concerns seeking Government contracts. In addition, the Councils sought comments from small businesses on the affected FAR parts at the publication of the interim rule. No comments were received.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 2, 4, 7, 10, 13, 18, 26, and 52

Government procurement.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 2, 4, 7, 10, 13, 18, 26, and 52, which was published in the **Federal Register** at 74 FR 52847 on October 14, 2009, is adopted as a final rule without change.

[FR Doc. 2010–15914 Filed 7–1–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 52

[FAC 2005–43; FAR Case 2010–008; Item III; Docket 2010–0008, Sequence 1]

RIN 9000–AL63

Federal Acquisition Regulation; FAR Case 2010–008, Recovery Act Subcontract Reporting Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to revise the clause at FAR 52.204–11. This interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009. This change will require first-tier subcontractors with Recovery Act funded awards of $25,000 or more, to report jobs information to the prime contractor for reporting into *http://FederalReporting.gov.* It also will require the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

DATES: *Effective Date:* July 2, 2010.

Applicability Date: The changes to the original clause will be used for all new solicitations and contracts issued on or after the effective date of this interim rule. This change is not required for task and delivery orders where the original clause dated March 2009 is already in the underlying task and delivery order contract. This change is not required when modifying existing contracts that contain the clause dated March 2009. Therefore, this interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 31, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–43, FAR case 2010–008, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2010–008" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2010–008." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2010–008" on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–43, FAR case 2010–008, in all correspondence related to this case. 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: Mr. Karlos Morgan, Procurement Analyst, at (202) 501–2364 for clarification of content. Please cite FAC 2005–43, FAR case 2010–008. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

On February 17, 2009, the President signed Public Law 111–5, the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"), including a number of provisions to be implemented in Federal Government contracts. On March 31, 2009, the Councils published FAR Case 2009–009 in the **Federal Register**, (74 FR 14639) as an interim rule amending the FAR to implement section 1512 of the Recovery Act, which requires contractors to report on their use of Recovery Act funds. A correction was published May 14, 2009 (74 FR 22810). The FAR interim rule added a new subpart 4.15, and a new clause, 52.204–11, requiring contracting officers to include the clause in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts.

This new interim rule revises the clause and instructs contracting officers to include the clause in all new solicitations and contracts issued on or after the effective date of this interim rule. This revised clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contain the original clause FAR clause 52.204–11 dated March 2009. Therefore, no renegotiation is required. However, the revised clause will be required for any new Recovery Act funded task or delivery orders if the underlying task or delivery order contract does not contain FAR clause 52.204–11, dated March 2009.

The revised clause requires first-tier subcontractors to report jobs information to the prime contractor for reporting into *http://FederalReporting.gov.* It also requires prime contractors to submit their first quarterly report into *http://FederalReporting.gov* on or before the 10th day following the end of the calendar quarter in which the prime contractor received its award and submit quarterly thereafter. The revised clause also refers contractors and their first-tier subcontractors to a set of Frequently Asked Questions (FAQs) available online. Contractors subject to 52.204–11 were initially notified of the FAQs through a **Federal Register** notice (74 FR 48971), published on September 25, 2009.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* because it requires quarterly reporting on subcontractor jobs under newly awarded Recovery Act funded contracts.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

1. Reasons for the action.

This action is being implemented to obtain jobs information on first-tier subcontracts of $25,000 or more funded by the Recovery Act.

2. Objectives of, and legal basis for, the rule.

The FAR Council has authority to promulgate regulations it believes are necessary. OMB has determined that obtaining publicly reported jobs information at the subcontractor level on new contracts is desirable. This interim rule also requires that prime contractors begin to report in the calendar quarter in which the contract was awarded, even if no invoice has been submitted.

3. Description and estimate of the number of small entities to which the rule will apply.

The rule revises the clause requiring quarterly reporting of direct jobs for prime contractors and all first-tier subcontracts of $25,000 or more, funded by the Recovery Act. The clause also requires the first quarterly report to be submitted on or before the 10th day following the end of the calendar quarter in which the prime contractor was awarded the Recovery Act funded contract. This revised clause will only be required in new solicitations and contracts issued on or after the effective date of the interim rule. The revised clause is not required for task and delivery orders where the underlying task or delivery order contract already contains the original clause FAR 52.204–11 dated March 2009. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contain the original clause FAR 52.204–11 (March 2009). Therefore, the interim rule does not require renegotiation of any existing awards that already contain the original clause. The original clause imposed a public reporting burden on prime contractors and, in a more limited way, on their first-tier subcontractors. This interim rule will increase the burden on both prime contractors and first-tier subcontractors who receive new awards. However, because the Federal Government estimates it has already obligated the majority of the Recovery Act funded contracts (80 percent), the impact is more limited. According to the Federal Procurement Data System (FPDS), there are currently 23,346 Recovery Act-funded contract awards. If that number represents 80 percent of all awards, then there are an estimated 5,833 Recovery Act-funded actions left to be awarded. FPDS further shows that of the 23,346 awards already made, 41 percent of them have been to small businesses (this reflects the percentage of awards, not dollars obligated which is currently 29 percent). Therefore, of the 5,833 contracts remaining to be awarded, 2,392 will be awarded to small business.

The number of first-tier subcontractors estimated to participate in Recovery Act awards is estimated at 7,874. This is based on an assumption that there will be more first-tier subcontractors for higher dollar awards. It is estimated that there will be three first-tier subcontractors for each award of $550,000 or more; two first-tier subcontractors for each award between $100,000 and $449,999; and one first-tier subcontractor for each award between $25,000 and $100,000. By analyzing FPDS data, we determined that the highest dollar range represents 21 percent of all Recovery awards with the middle and lowest ranges representing 25 percent and 22 percent, respectively. The remaining 32 percent is made up of awards of $25,000 or below. Of the 7,874 first-tier subcontractors it is estimated that 25 percent, or 1,969, will be small businesses.

Based on the above, including the assumption that awards under $25,000 will have no subcontractors, the total number of small businesses, prime and subcontractors, to which this interim rule will apply is estimated at 3,595 and the total number of other than small businesses to which this rule will apply is estimated at 8,245.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This interim rule applies to all Federal contractors regardless of size or business ownership. It is in addition to what was previously required of all Federal contractors and first-tier subcontractors, requiring the quarterly reporting of jobs information for all first-tier subcontracts of $25,000 or more. Such reporting would probably be prepared by a company contract administrator or contract manager or a company subcontract administrator. The information necessary to calculate the jobs is primarily information that companies would maintain for their own business purposes. The reporting burden is quarterly.

5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

FAR Case 2009–009, American Recovery and Reinvestment Act of 2009 (Recovery Act)—Reporting Requirements, is related to this rule (*see* 74 FR 16469, published on March 31, 2009).

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

The interim rule does not require that first-tier subcontractors enter their jobs information directly into *http://FederalReporting.gov,* which eliminates the burden associated with Central Contractor Registration (CCR). CCR is required in order to use *http://FederalReporting.gov.* It also eliminates the burdens associated with registering in *http://FederalReporting.gov* and other burdens associated with the use of that system. The prime contractor will input the first-tier subcontractor's jobs information into *http://www.FederalReporting.gov.* However, the first-tier subcontractor will have to calculate the number of jobs that are funded by the Recovery Act each calendar quarter and report that information to the prime contractor in sufficient time that the prime contractor can submit the report. To help alleviate some of the burden, a set of Frequently Asked Questions is available at *http://www.whitehouse.gov/omb/recovery_faqs_contractors.* One of these FAQs provides a detailed example on how to calculate the jobs funded by the Recovery Act.

The Regulatory Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the Regulatory Secretariat. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–43, FAR Case 2010–008) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the interim rule contains information collection requirements. Accordingly, the Regulatory Secretariat forwarded an emergency information collection request for approval of a new information collection requirement to the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.* OMB approved the new information collection requirement as OMB Control No. 9000–0176, Quarterly Reporting for First-tier Subcontractors. Comments on the interim rule as well as the information collection will be considered in the revisions to both the rule and the information collection.

Any award funded by the Recovery Act that was awarded prior to the effective date of this interim rule contained the original clause at 52.204–11, dated March 2009. Any award funded by the Recovery Act that is awarded on or after the effective date of this interim rule will contain the revised clause at 52.204–11. The revised clause imposes additional collection requirements not contained in the original clause at 52.204–11 dated March 2009. The revised clause requires first-tier subcontractors with Recovery Act funded awards of $25,000 or more, to report jobs to the prime contractor for reporting into *http://FederalReporting.gov.* It also requires the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

Because the Federal Government estimates it has already awarded the majority of the Recovery Act funded contracts (80 percent), the impact of this collection is limited. According to the Federal Procurement Data System (FPDS), there are currently 23,346

Recovery Act-funded contract awards. If that number represents 80 percent of all awards, then there are an estimated 5,833 Recovery Act-funded actions left to be awarded. FPDS further shows that of the 23,346 awards already made, 41 percent of them have been to small businesses (this reflects the percentage of awards, not dollars obligated which is currently 29 percent). Therefore, of the 5,833 contracts remaining to be awarded, an estimated 2,392 will be awarded to small business.

The number of first-tier subcontractors estimated to participate in Recovery Act awards is estimated at 7,874. This is based on an assumption that there will be more first-tier subcontractors for higher dollar awards. It is estimated that there will be three first-tier subcontractors for each award of $550,000 or more; two first-tier subcontractors for each award between $100,000 and $449,999; and one first-tier subcontractor for each award between $25,000 and $100,000. By analyzing FPDS data, we determined that the highest dollar range represents 21 percent of all Recovery awards with the middle and lowest ranges representing 25 percent and 22 percent, respectively. The remaining 32 percent is made up of awards of $25,000 or below. Of the 7,874 first-tier subcontractors, it is estimated that 25 percent, or 1,969, will be small businesses.

Based on the above, including the assumption that awards under $25,000 will have no subcontractors, the total number of small businesses, prime and subcontractors, to which this interim rule will apply is estimated at 3,595 and the total number of other than small businesses to which this rule will apply is estimated at 8,245.

Though Section 1512 requires that the reports be completed by the prime contractor for all data elements, for practical purposes, the prime contractor will have to obtain certain information from their first-tier subcontractors, hence the need for the revised flow-down requirements in paragraph (d)(10). In addition to the burden of first-tier subcontractors having to collect and report jobs information to the prime contractor, there is also the burden on the prime contractor for preparing and monitoring subcontractors who will have to collect and report this information to the prime.

Annual Reporting Burden

We estimate the total annual public cost burden for these elements to be $2,950,792, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

First-tier Subcontract Respondents: 7,874.

Responses per respondent: 4 (reflects quarterly reports).

Total annual responses: 31,496.

Preparation hours per response: 1.0.

Total response burden hours: 31,496.

Average hourly wages ($50.00 + 36.35 percent overhead): $68.00.

Estimated cost to the public: $2,141,728.

Prime Contract Respondents: 3,966.

Responses per respondent: 4 (reflects quarterly reports).

Total annual responses: 15,864.

Preparation hours per response: .75.

Total response burden hours: 11,898.

Average hourly wages ($50.00 + 36.35 percent overhead): $68.00.

Estimated cost to the public: $809,064.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than August 31, 2010 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite the applicable OMB Control No.: 9000–0176 and FAR Case 2010–008, Recovery Act Subcontract Reporting Procedures, in all correspondence.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and 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.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (MVCB), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite the applicable OMB Control No.: 9000–0176 and FAR Case 2010–008, Recovery Act Subcontract Reporting Procedures, in all correspondence.

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because most of the funds provided under the American Recovery and Reinvestment Act of 2009 for obligation on Federal contracts, must be obligated by September 2010. In order to obtain the additional information on jobs prior to the statutory requirement to obligate most Recovery funds on contracts by September 2010, the requirements must be implemented immediately. However, pursuant to 41 U.S.C 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 4 and 52

Government procurement.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 4 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 4 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 4—ADMINISTRATIVE MATTERS

■ 2. Revise section 4.1502 to read as follows:

4.1502 Contract clause.

Insert the clause at 52.204–11, American Recovery and Reinvestment Act—Reporting Requirements in all solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This includes, but is not limited to, Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, or agency indefinite-delivery/indefinite-quantity (ID/IQ) contracts that will be funded with Recovery Act funds. Contracting officers shall include this clause in any existing contract or order that will be funded with Recovery Act funds. Contracting officers may not use Recovery Act funds on existing

contracts and orders if the clause at 52.204–11 is not incorporated. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contains the original clause FAR 52.204–11 (March 2009).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.204–11 by—
■ a. Removing from the clause heading "(MAR 2009)" and adding "(JUL 2010)"in its place;
■ b. Revising paragraphs (a) and (c);
■ c. Revising paragraph (d)(7) introductory text;
■ d. Removing from paragraph (d)(7)(i) the word "contractor's" and adding the word "Contractor's" in its place;
■ e. Revising paragraphs (d)(7)(ii) and (d)(10) introductory text; and
■ f. Adding paragraph (d)(10)(xii).

The added and revised text reads as follows:

52.204–11 American Recovery and Reinvestment Act—Reporting Requirements.

* * * * *

(a) *Definitions.* For definitions related to this clause (*e.g.,* contract, first-tier subcontract, total compensation etc.) see the Frequently Asked Questions (FAQs) available at *http://www.whitehouse.gov/omb/recovery_faqs_contractors.* These FAQs are also linked under *http://www.FederalReporting.gov.*

* * * * *

(c) Reports from the Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. The first report is due no later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, *see http://www.whitehouse.gov/omb/recovery_faqs_contractors.*

(d) * * *

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at $25,000 or more. At a minimum, the Contractor shall provide—

* * * * *

(ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at $25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. *See* an example of how to calculate the number of jobs at *http://www.whitehouse.gov/omb/recovery_faqs_contractors.*

* * * * *

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at $25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(1)(i), (ix), (x), (xi), and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:

* * * * *

(xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor's workforce. At a minimum, the subcontractor shall provide—

(A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at *http://www.whitehouse.gov/omb/recovery_faqs_contractors.*

* * * * *

52.212–5 [Amended]

■ 4. Amend section 52.212–5 by removing from the clause heading "(June 2010)" and adding "(JUL 2010)" in its place; and removing from paragraph (b)(4) "MAR 2009)" and adding "(JUL 2010)" in its place.

[FR Doc. 2010–15908 Filed 7–1–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 2005–43; FAR Case 2008–023; Item IV; Docket 2009–0017, Sequence 1]

RIN 9000–AL29

Federal Acquisition Regulation; FAR Case 2008–023, Clarification of Criteria for Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to clarify the criteria that need to be met in order to conduct a sole source Service-disabled Veteran-owned Small Business (SDVOSB) concern acquisition.

DATES: *Effective Date:* August 2, 2010

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Rhonda Cundiff, Procurement Analyst, at (202) 501–0044. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–43, FAR Case 2008–023.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed rule in the **Federal Register** at 74 FR 23373 on May 19, 2009, to revise the language in FAR 19.1406(a)(1) to clarify the criteria that need to be met in order to conduct a sole source SDVOSB concern acquisition. The final rule contains language that more closely mirrors the Veterans Benefit Act of 2003 (15 U.S.C. 657f). The final rule revises the language in FAR 19.1306(a)(1), which deals with sole source awards to Historically Underutilized Business Zone (HUBZone) small business concerns based on 15 U.S.C. 657a(b), to match the language in FAR 19.1406(a)(1) to alleviate confusion on the appropriate use of the criteria needed to conduct a sole source SDVOSB concern acquisition.

The public comment period for the FAR proposed rule closed July 20, 2009. Eight respondents submitted comments to the proposed rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided below. Three respondents concurred with the proposed changes to clarify the criteria that needed to be met in order to conduct a sole source SDVOSB concern acquisition.

1. *Comment: Increase knowledge of the marketplace and SDVOSB advocacy.* One respondent expressed concern that the contracting officer does not have sufficient knowledge of the marketplace to make a sole-source determination without the advice of the U.S. Department of Veterans Affairs, the Small Business Administration (SBA), or other entities that advocate for the veteran community. The respondent further added that the regulatory language needs to mandate that the contracting officer exercise a higher level of advocacy for service-disabled veteran-owned firms to ensure these firms receive greater representation in the procurement process.

Response: The purpose of this regulatory change is to clarify the circumstances under which a contracting officer may award a sole-source contract to a small business concern owned and controlled by a service-disabled veteran. This case does not address market research or advocacy; therefore the respondent's comments are considered outside the scope of this case.

2. *Comment: Correction to FAR 19.1306(a)(2).* One respondent requested an additional review be conducted regarding FAR 19.1306(a)(2), because paragraph (c) does not exist.

Response: The reference to paragraph (c) is deleted.

3. *Comment: Revise the language in FAR 19.1306(a) and 19.1406(a).* Two respondents recommended revising paragraph (a) of FAR 19.1406 Sole Source Awards to Service-disabled Veterans-owned Small Business concerns to match the language in paragraph (a) of FAR 19.1306 by adding the language: "(a) A participating agency contracting office may award contracts to a service-disabled Veteran-owned small business concern on a sole source basis without considering small business set-asides provided-".

Response: FAR 19.1406(a) has been revised to be consistent with FAR 19.1306(a).

4. *Comment: Revise the SDVOSB language to mirror the 8(a) language.* One respondent recommended that the language in the FAR for SDVOSB sole source criteria mirror the language of the 8(a) criteria.

Response: The SDVOSB program and the 8(a) Business Development Program were established under two separate statutes with different sole-source award requirements. The statute for the SDVOSB program does not require the FAR language to be similar to the FAR language for the 8(a) Business Development Program.

5. *Comment: Raise the prescribed $3 million threshold to $3.5 million.* One respondent recommended that the dollar limit for the sole source awards to a Service-disabled Veteran-owned small business be raised to $3.5 million from the prescribed $3 million to be consistent with the dollar limits for non-manufacturing 8(a) awards.

Response: Threshold changes are based on statute. Federal Acquisition Circular 2005–013, FAR Case 2004–033, published in the **Federal Register** at 71 FR 57363 on September 28, 2006, was based on a statutory requirement, raising thresholds in the FAR due to inflation. The escalation calculation for the inflationary threshold for sole source awards to Service-disabled Veteran-owned small businesses was not eligible for an inflationary increase (*see http://acquisition.gov/far/facsframe.html*). However, FAR Case 2008–024 is the case handling the next round of inflationary increases, and when that case is published as a final rule, the threshold may be raised; the Councils note that the inflation calculation is different for SDVOSB than for 8(a) and HUBZone because these statutes were enacted at different times.

This rule is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule clarifies the intent of the existing language and is not a change in policy. The Councils did not receive any comments on the Regulatory Flexibility Act or a perceived burden on small business.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 19.1306 by revising the introductory text of paragraph (a), paragraph (a)(1), the introductory text of paragraph (a)(2), and paragraph (a)(3) to read as follows:

19.1306 HUBZone sole source awards.

(a) A contracting officer may award contracts to HUBZone small business concerns on a sole source basis (see 19.501(c) and 6.302–5(b)(5)) before considering small business set-asides (see subpart 19.5), provided—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns;

(2) The anticipated price of the contract, including options, will not exceed—

* * * * *

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of subpart 19.8 or has been accepted as a requirement by SBA under subpart 19.8.

* * * * *

■ 3. Amend section 19.1406 by revising the introductory text of paragraph (a), paragraph (a)(1), and the introductory text of paragraph (a)(2); redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(5), respectively, and adding a new paragraph (a)(3) to read as follows:

19.1406 Sole source awards to service-disabled veteran-owned small business concerns.

(a) A contracting officer may award contracts to service-disabled veteran-owned small business concerns on a sole source basis (see 19.501(d) and

6.302–5(b)(6)), before considering small business set-asides (see subpart 19.5) provided none of the exclusions of 19.1404 apply and—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more service-disabled veteran-owned small business concerns;

(2) The anticipated award price of the contract, including options, will not exceed—

* * * * *

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of subpart 19.8 or has been accepted as a requirement by SBA under subpart 19.8;

* * * * *

[FR Doc. 2010–15902 Filed 7–1–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 25, and 52

[FAC 2005–43; FAR Case 2009–040; Item V; Docket 2010–0092, Sequence 1]

RIN 9000–AL57

Federal Acquisition Regulation; FAR Case 2009–040, Trade Agreements Thresholds

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to incorporate increased thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective Date:* July 2, 2010.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before August 31, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–43, FAR Case 2009–040, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009–040" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "FAR Case 2009–040". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009–040" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–43, FAR case 2009–040, in all correspondence related to this case. 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: For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2005–43, FAR Case 2009–040. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula under the agreements. On December 29, 2009 (74 FR 68907), the United States Trade Representative established new procurement thresholds. These thresholds became effective on January 1, 2010. The United States Trade Representative has specified the following new thresholds:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$203,000	$203,000	$7,804,000
FTAs:			
Australia FTA	70,079	70,079	7,804,000
Bahrain FTA	203,000	203,000	9,110,318
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	70,079	70,079	7,804,000
Chile FTA	70,079	70,079	7,804,000
Morocco FTA	203,000	203,000	7,804,000
NAFTA:			
—Canada	25,000	70,079	9,110,318
—Mexico	70,079	70,079	9,110,318
Oman FTA	203,000	203,000	9,110,318
Peru FTA	203,000	203,000	7,804,000
Singapore FTA	70,079	70,079	7,804,000
Israeli Trade Act	50,000		

B. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Councils do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the

meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005–43, FAR Case 2009–040) in all correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0130 (FAR 52.225–4), 9000–0025 (FAR 52.225–6) and 9000–0141 (FAR 52.225–9, 52.225–11, 52.225–21, and 52.225–23). The interim rule affects the prescriptions for use of the certifications. However, there is no impact on the estimated burden hours, because the threshold changes are in line with inflation and maintain the status quo.

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA), that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This interim rule incorporates increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. This action is necessary because the new thresholds became effective on January 1, 2010. However, pursuant to 41 U.S.C. 418b and FAR 1.501–3(b), the Councils will consider public comments received in response to this interim rule in the formation of the final rule. Absent this regulatory change, this requirement would not be incorporated into the FAR and implemented by the acquisition community.

List of Subjects in 48 CFR Parts 22, 25, and 52

Government procurement.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 2. Amend section 22.1503 by removing from paragraph (b)(3) "$67,826" and adding "$70,079" in its place; and removing from paragraph (b)(4) "$194,000" and adding "$203,000" in its place.

PART 25—FOREIGN ACQUISITION

25.202 [Amended]

■ 3. Amend section 25.202 by removing from paragraph (c) "$7,443,000" and adding "$7,804,000" in its place.

■ 4. Amend section 25.402 by revising the table that follows paragraph (b) to read as follows:

25.402 General.

* * * * *

(b) * * *

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$203,000	$203,000	$7,804,000
FTAs:			
Australia FTA	70,079	70,079	7,804,000
Bahrain FTA	203,000	203,000	9,110,318
CAFTA–DR (Costa Rica, El Salvador, Dominican Republic, Guatemala, Honduras, and Nicaragua)	70,079	70,079	7,804,000
Chile FTA	70,079	70,079	7,804,000
Morocco FTA	203,000	203,000	7,804,000
NAFTA:			
—Canada	25,000	70,079	9,110,318
—Mexico	70,079	70,079	9,110,318
Oman FTA	203,000	203,000	9,110,318
Peru FTA	203,000	203,000	7,804,000
Singapore FTA	70,079	70,079	7,804,000
Israeli Trade Act	50,000		

■ 4. Amend section 25.504–2 by revising Example 1. to read as follows:

25.504–2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.

Example 1.

Offer A	304,000	U.S.-made end product (not domestic).
Offer B	303,000	U.S.-made end product (domestic), small business.
Offer C	300,000	Eligible product.
Offer D	295,000	Noneligible product (not U.S.-made).

* * * * *

25.603 [Amended]

■ 5. Amend section 25.603 in paragraph (c) by removing "$7,443,000" and adding "$7,804,000" in its place.

25.1101 [Amended]

■ 6. Amend section 25.1101 by—
■ a. Removing from paragraph (b)(1)(i)(A) "$194,000" and adding "$203,000" in its place;
■ b. Removing from paragraphs (b)(1)(iii) and (b)(2)(iii) "$67,826", and adding "$70,079" in its place;
■ c. Removing from paragraphs (c)(1) and (d) "$194,000", and adding "$203,000" in its place.

■ 7. Amend section 25.1102 by removing from paragraphs (a) introductory text and (c) introductory text "$7,443,000" and adding "$7,804,000" in its place; revising the first sentence in paragraph (c)(3); and revising paragraph (d)(3) to read as follows:

25.1102 Acquisition of construction.

* * * * *

(c) * * *

(3) For acquisitions valued at $7,804,000 or more, but less than $9,110,318, use the clause with its Alternate I. * * *

(d) * * *

(3) For acquisitions valued at $7,804,000 or more, but less than $9,110,318, use the clause with its Alternate II.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(20) to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JUL 2010)

(b) * * *

__(20) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Jul 2010) (E.O. 13126).

* * * * *

■ 9. Amend section 52.213–4 by revising the date of the clause and the first sentence of paragraph (b)(1)(i) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (JUL 2010)

(b) * * *

(1) * * *

(i) 52.222–19, Child Labor—Cooperation with Authorities and Remedies (Jul 2010) (E.O. 13126). * * *

* * * * *

■ 10. Amend section 52.222–19 by revising the date of the clause; removing from paragraph (a)(3) "$67,826" and adding "$70,079" in its place; and removing from paragraph (a)(4) "$194,000" and adding "$203,000" in its place.

The revised text reads as follows:

52.222–19 Child Labor—Cooperation with Authorities and Remedies.

* * * * *

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (JUL 2010)

* * * * *

[FR Doc. 2010–15901 Filed 7–1–10; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket FAR 2010–0077, Sequence 5]

Federal Acquisition Regulation; Federal Acquisition Circular 2005–43; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–43 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–31, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below. Please cite FAC 2005–43 and the specific FAR case number. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755.

LIST OF RULES IN FAC 2005–43

Item	Subject	FAR Case	Analyst
I	Government Property	2008–011	Parnell
II	Registry of Disaster Response Contractors	2008–035	Gary
III	Recovery Act Subcontract Reporting Procedures (Interim)*	2010–008	Morgan
IV	Clarification of Criteria for Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns.	2008–023	Cundiff
V	Trade Agreements Thresholds (Interim)	2009–040	Davis

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–43 amends the FAR as specified below:

Item I—Government Property (FAR Case 2008–011)

This final rule amends the FAR to revise FAR part 45 and its associated clauses. Changes are being made to FAR

parts 2, 4, 15, 32, 42, 45, and 52. These changes are to clarify and correct the previous FAR rule for part 45, Government Property, published under Federal Acquisition Circular 2005–17, FAR case 2004–025, May 15, 2007, (72 FR 27364). Minor changes are made to the proposed rule published August 6, 2009 (74 FR 39262).

The rule specifically impacts contracting officers, property administrators, and contractors responsible for the management of Government property. The rule does not have a significant economic impact on small entities because the rule does not impose any additional requirements on small businesses. The rule does not affect the method of managing Government property. The rule merely clarifies and corrects the previous FAR rule.

Item II—Registry of Disaster Response Contractors (FAR Case 2008–035)

This final rule adopts, without change, the interim rule implementing Public Law 109–295, the Department of Homeland Security Appropriations Act, 2007, section 697, which requires the establishment and maintenance of a registry of disaster response contractors. The Disaster Response Registry is located at *http://www.ccr.gov.* The Federal Emergency Management Agency (within the Department of Homeland Security) has a link to the registry for vendors on its Web site at *http://www.fema.gov/business/contractor.shtm.* The Registry covers domestic disaster and emergency relief activities.

Item III—Recovery Act Subcontract Reporting Procedures (FAR Case 2010–008) (Interim) *

This interim rule amends the FAR to revise the clause at FAR 52.204–11, American Recovery and Reinvestment Act—Reporting Requirements. The revised clause will require first-tier subcontractors with Recovery Act funded awards of $25,000 or more, to report jobs information to the prime contractor for reporting into *FederalReporting.gov.* It also will require the prime contractor to submit its first report on or before the 10th day after the end of the calendar quarter in which the prime contractor received the award, and quarterly thereafter.

The revised clause will be used for all new solicitations and awards issued on or after the effective date of this interim rule. This clause is not required for any existing contracts, or task and delivery orders issued under a contract, that contain the original clause FAR 52.204–11 (March 2009). Therefore, this interim rule does not require renegotiation of existing Recovery Act contracts that include the clause dated March 2009.

Item IV—Clarification of Criteria for Sole Source Awards to Service-Disabled Veteran-Owned Small Business Concerns (FAR Case 2008–023)

This final rule amends FAR 19.1406(a) to clarify the criteria that need to be met in order to conduct a sole source service-disabled veteran-owned small business (SDVOSB) concern acquisition. The FAR language is amended to be consistent with the Veterans Benefit Act of 2003 (15 U.S.C. 657f) and the Small Business Administration's regulation (13 CFR 125.20) that implements the Act. This final rule also amends FAR 19.1306(a) to clarify the criteria that need to be met in order to conduct a sole source for Historically Underutilized Business Zone (HUBZone) small business concern acquisitions. These amendments to the FAR alleviate confusion for contracting officers on the appropriate use of the criteria needed to conduct sole source HUBZONE small business and SDVOSB concern acquisitions.

Item V—Trade Agreements Thresholds (FAR Case 2009–040) (Interim)

This interim rule adjusts the thresholds for application of the World Trade Organization Government Procurement Agreement and the other Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

Dated: June 25, 2010.

Edward Loeb,

Director, Acquisition Policy Division.

[FR Doc. 2010–15906 Filed 7–1–10; 8:45 am]

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S.J. Res. 33/P.L. 111–194
To provide for the reconsideration and revision of the proposed constitution of the United States Virgin Islands to correct provisions inconsistent with the Constitution and Federal law. (June 30, 2010; 124 Stat. 1309)

Last List June 30, 2010

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